known as estray statutes, generally provide that the person must give public notice of the fact that the property has been found, perhaps by putting an ad in a local newspaper. All states have statutes of limitations that require the true owner of property to claim it or bring a legal action to recover possession of it within a certain number of years. A person who keeps possession of lost or unclaimed property for longer than that period of time will become its owner.

The *Corliss* case, which follows, discusses the relative rights of a person who finds property on land owned by someone else.

Corliss v. Wenner and Anderson

2001 Ida. App. LEXIS 79 (Ct. App. Idaho 2001)

In the fall of 1996, Jann Wenner hired Anderson Asphalt Paving to construct a driveway on his ranch. Larry Anderson, the owner of Anderson Asphalt Paving, and his employee, Gregory Corliss, were excavating soil for the driveway when they unearthed a glass jar containing paper-wrapped rolls of gold coins. Anderson and Corliss collected, cleaned, and inventoried the gold pieces dating from 1857 to 1914. The 96 coins weighed about four pounds. Initially, Anderson and Corliss agreed to split the coins among themselves, with Anderson retaining possession of all the coins. Subsequently, Anderson and Corliss argued over ownership of the coins, and Anderson fired Corliss. Anderson later gave possession of the coins to Wenner in exchange for indemnification on any claim Corliss might have against him regarding the coins.

Corliss sued Anderson and Wenner for possession of some or all of the coins. Corliss contended that the coins should be considered "treasure trove" and awarded to him pursuant to the "finders keepers" rule of treasure trove. Wenner, defending both himself and Anderson, contended that he had the better right to possession of the gold coins. The trial court held Idaho did not recognize "treasure trove" and that the coins, having been carefully concealed for safekeeping, fit within the legal classification of mislaid property, to which the right of possession goes to the landowner. Alternatively, the court ruled that the coins, like the topsoil being excavated, were a part of the property owned by Wenner and that Anderson and Corliss were merely Wenner's employees. Corliss appealed.

Schwartzman, Chief Judge

At common law all found property is generally categorized in one of five ways. Those categories are:

> ABANDONED PROPERTY—that which the owner has discarded or voluntarily forsaken with the intention of terminating his ownership, but without vesting ownership in any other person.
>
> LOST PROPERTY—that property which the owner has involuntarily and unintentionally parted with through neglect, carelessness, or inadvertence and does not know the whereabouts.
>
> MISLAID PROPERTY—that which the owner has intentionally set down in a place where he can again resort to it, and then forgets where he put it.
>
> TREASURE TROVE—a category exclusively for gold or silver in coin, plate, bullion, and sometimes its paper money equivalents, found concealed in the earth or in a house or other private place. Treasure trove carries with it the thought of antiquity, i.e., that the treasure has been concealed for so long as to indicate that the owner is probably dead or unknown.
>
> EMBEDDED PROPERTY—that personal property which has become a part of the natural earth, such as pottery, the sunken wreck of a steamship, or a rotted-away sack of gold-bearing quartz rock buried or partially buried in the ground.

Under these doctrines, the finder of lost or abandoned property and treasure trove acquires a right to possess the property against the entire world but the rightful owner regardless of the place of finding. The finder of mislaid property is required to turn it over to the owner of the premises who has the duty to safeguard the property for the true owner. Possession of embedded property goes to owner of the land on which the property was found.

One of the major distinctions between these various categories is that only lost property necessarily involves an element of involuntariness. The four remaining categories involve voluntary and intentional acts by the true owner in placing the property where another eventually finds it. However, treasure trove, despite not being lost or abandoned property, is treated as such in that the right to possession is recognized to be in the finder rather than the premises owner.

On appeal, Corliss argues that the district court should have interpreted the undisputed facts and circumstances surrounding the placement of the coins in the ground to indicate that the gold coins were either lost, abandoned, or treasure trove. Wenner argues that the property was properly categorized as either embedded or mislaid property.

As with most accidentally discovered buried treasure, the history of the original ownership of the coins is shrouded in mystery and obscured by time. The coins had been wrapped in paper, like coins from a bank, and buried in a glass jar, apparently for safekeeping. Based on these circumstances, the district court determined that the coins were not abandoned because the condition in which the coins were found evidenced an intent to keep them safe, not an intent to voluntarily relinquish all possessory interest in them. The district court also implicitly rejected the notion that the coins were lost, noting that the coins were secreted with care in a specific place to protect them from the elements and from other people until such time as the original owner might return for them. There is no indication that the coins came to be buried through neglect, carelessness, or inadvertence. Accordingly, the district court properly concluded, as a matter of law, that the coins were neither lost nor abandoned.

The district court then determined that the modern trend favored characterizing the coins as property either embedded in the earth or mislaid—under which the right of possession goes to the landowner—rather than treasure trove—under which the right of possession goes to the finder. Although accepted by a number of states prior to 1950, the modern trend since then, as illustrated by decisions of the state and federal courts, is decidedly against recognizing the "finders keepers" rule of treasure trove.

We conclude that the rule of treasure trove is of dubious heritage and misunderstood application, inconsistent with our values and traditions. The danger of adopting the doctrine of treasure trove is laid out in *Morgan v. Wiser* (Tenn. 1985).

> [We] find the rule with respect to treasure-trove to be out of harmony with modern notions of fair play. The common-law rule of treasure-trove invites trespassers to roam at large over the property of others with their metal detecting devices and to dig wherever such devices tell them property might be found. If the discovery happens to fit the definition of treasure-trove, the trespasser may claim it as his own. To paraphrase another court: The mind refuses consent to the proposition that one may go upon the lands of another and dig up and take away anything he discovers there which does not belong to the owner of the land.

The invitation to trespassers inherent in the rule with respect to treasure trove is repugnant to the common law rules dealing with trespassers in general. The common law made a trespass an actionable wrong without the necessity of showing any damage therefrom. Because a trespass often involved a breach of the peace and because the law was designed to keep the peace, the common law dealt severely with trespassers.

Recognizing the validity of the idea that the discouragement of trespassers contributes to the preservation of the peace in the community, we think this state should not follow the common law rule with respect to treasure trove. Rather, we adopt the rule suggested in the concurring opinion in *Schley v. Couch* . . . which we restate as follows:

> Where property is found embedded in the soil under circumstances repelling the idea that it has been lost, the finder acquires no title thereto, for the presumption is that the possession of the article found is in the owner of the locus in quo.

Landownership includes control over crops on the land, buildings and appurtenances, soils, minerals buried under those soils. The average Idaho landowner would expect to have a possessory interest in any object uncovered on his or her property. And certainly the notion that a trespassing treasure hunter, or a hired handyman or employee, could or might have greater possessory rights than a landowner in objects uncovered on his or her property runs counter to the reasonable expectations of present-day landownership.

There is no reason for a special rule for gold and silver coins, bullion, or plate as opposed to other property. Insofar as personal property (money and the like) buried or secreted on privately owned realty is concerned, the distinctions between treasure trove, lost property, and mislaid property are anachronistic and of little value. The principal point of such distinctions is the intent of the true owner which, absent some written declaration indicating such, is obscured in the mists of time and subject to a great deal of speculation.

By holding that property classed as treasure trove (gold or silver coins, bullion, plate) in other jurisdictions is classed in Idaho as personal property embedded in the soil, subject to the same limitations as mislaid property, possession will be awarded to the owner of the soil as a matter of law. Thus, we craft a simple and reasonable solution to the problem, discourage trespass, and avoid the risk of speculating about the true owner's intent when attempting to infer such from the manner and circumstances in which an object is found. Additionally, the true owner, if any, will have the opportunity to recover the property.

We hold that the owner of the land has constructive possession of all personal property secreted in, on, or under his or her land. Accordingly, we adopt the district court's reasoning and conclusion melding the law of mislaid property with that of embedded property and conclude, as a matter of law, that the landowner is entitled to possession to the exclusion of all but the true owner, absence a contract between the landowner and finder.

Judgment for Wenner affirmed.

Legal Responsibilities of Finders Some states go further and make it a criminal offense for a person who comes into control of property that he knows or learns has been lost or mislaid to appropriate the property to his own use without first taking reasonable measures to restore the property to the owner. For example under the Georgia Code, "A person commits the offense of theft of lost or mislaid property that he knows or learns to have