

x CONCEPTUALISING PROPERTY.

- Proprietary rights are rights in rem: rights against a thing, attached to an object.
- Enforceable against the world
- Insolvency: stronger right than personal, excluded from the pool of assets.
- Historical distinction between real (SP) & personal property (damages only).
- Definitive list exists – numerus clauses – **Hill v Tupper**
 - Blackstonian: right to exclude
 - Trinity of rights: right to exclude, control and manage
 - Bundle of rights – Honore – **Yanner v Eaton**

Murphy: property rights evolve as societal needs change – i.e. hunter-gatherers c.f. herd management.

Smith & Merrill: property rights most fundamental rights, can imagine a world without contract or tort, delineate control in society. What rights flow from ownership?

Honore: standard incidents of ownership but right to use as one wishes, and right to exclude must be the most paramount.

Swadling: does not follow that a proprietary right is superior to a personal one – i.e. fire damage to cash. Exigibility – content of right legitimises exigibility: exists because a third party has interfered some way.

Yanner v Eaton: reinforces property as a bundle of rights.

- The legislature, as referring to all fauna as “property” of the Crown in the Fauna Conservation Act, did not confer absolute, beneficial ownership onto the crown, but rather a lesser collection of management rights / regulatory control.
 - Property can mean different rights in different context: **not a monolithic notion of standard content & invariable intensity** but “*a comprehensive term that can be used to describe many different kinds of relationship between person and subject matter*” – what interest was vested in the property.
 - Context: wild animals could never be owned by the Crown – have & dispose of in a particular manner
 - Absurdity reasoning: would lose a bird every time it migrated to another state.
- Distinction between the ordinary usage of the word and the word as a legal concept
- Dissent: must understand property as the ordinary everyday usage – confuses distinction between the thing and the interests we can have in the thing?

Hill v Tupper 1863: numerous clauses – property is a closed list.

- Right to exclusively put boats on the canal is a new novel right – can only be personal between the leasor & boat operator, cannot be enforced against innkeeper.
 - Right argued: right to profit – fisheries can sue for disturbance – not analogous as not taking anything from the land – merely using water.
 - Consequences: as enforceable against the world, have to be careful in what rights can be property – “*infinite variety of interests in the land*”
 - re s 100 – not a great argument – limited purpose.

Escrow Holdings Forty v District Court 2016: numerous clauses today – perhaps not as relevant.

- Covenant of access – i.e. positive covenant – for carparking legitimate despite fact easement is the traditional means – right to access a thing that can be created and because a land registration system now exists, rigidity of principle less relevant.
 - Absurd to argue that should have done a covenant for right to park and easement for access – can look up rights on register nowadays.

- Undermines NC?
 - Y: used covenant in a new way, covenants never done this before
 - N: not a new right.

MEANS OF CONCEPTUALISATION – PROPERTY IN THE HUMAN BODY.

If property rights are defined as the right to exclude, use and manage – does one have rights in their body or in parts they can detach from their body? Can one have rights in another's body?

- Traditional common law view (after slavery): cannot own – i.e. have property rights in – another's body.
- Important to remember property law is merely one framework we can consider – separate from rights of bodily integrity etc.
- Heavily regulated area of the law, difficult to justify property concepts, easier to do in other means.
 - alive / dead distinction – c.f. **Yearworth, Lee v Long**
 - how do we define bodily integrity? body as a whole, majority of parts, or idea of a soul – i.e. hair on our head less sacred than sperm?
 - Why is property being argued as a framework – exclusive jurisdiction of control? surely better means to argue.

Doodeward: two headed foetus. If one exercises skill which changes the nature of the thing, then that can be property – a thing that has separate value.

Moore: scientists used cells, developed cure that made lots of money. Held that the man whose cells were used, cannot sue for tort of conversion: human cells are not property.

- Decision largely based on policy:
 - importance of research
 - area best suited for legislation
 - other remedies available.

Yearworth: sperm for the purposes of conversion – leg gives control & use of your sperm even if highly regulated so should count as property.

- Criticism – control & use do not necessarily constitute property in any given context – were leg really envisioning property?

Lee v Long: Wife cannot take possession – i.e. have a property interest in - dead husband's sperm: no property vested in the human body.

- **Doodeward** rejected: outdated view of humanity
- **Yearworth** distinguished: men who donated sperm were alive.

POSSESSION: EXCLUSIVE PHYSICAL CONTROL & INTENTION TO POSSESS.

- While possession is one right we get to exercise when we own something i.e. forms part of the taxonomy of property interest, and certainly has been argued as the most definitive right, procedurally the law is much more concerned with possession and it is also much easier to prove before a court
- Law regards any person who is in fact in possession of land or goods as lawfully in possession and any invasion of that possession as unlawful unless made by someone with a better right to possession.
- Property law is thus not argued as within a framework of ownership but with possession as the frame of reference: **relative title – who has a better title (claim) to the thing?**
 - Someone who has the thing in their possession will automatically have a strong claim to the thing

- Someone who has a thing in their possession that they do not own is a bailee – either voluntary or involuntary and therefore must take reasonable care in the circumstances. If thing has been lost or maybe abandoned, this involves taking all reasonable steps to return to owners.

Armory v Delamair: finder does not acquire absolute ownership, yet does acquire a title that allows him to keep it against all but the relevant owner.

- Roberts: **Armory** gets us off on wrong foot as conceptualises an ownership framework – should be about relative title – finder acquires possession therefore has a better claim to the thing against all but those who can prove earlier possession.

Parker v British Airways Board: special category of finders?

Gold bracelet found on floor of airport lounge. Parker found it honestly, took all reasonable steps to reacquire with original owner, Airport Lounge while having some physical control, control was not for the means of possessing property, but rather keeping undesirable individuals out, nor did they manifest intent.

Donaldson LJ – c.f. Eveleigh J: based his decision on first principles of possession. Better?

- Occupiers will have a better claim to the thing if found in or attached to property.
- Finders will have a better claim to thing if occupiers have not manifested their intent to control property
 - Thing must be abandoned or lost.
 - Both must take all reasonable steps to reacquire with owners
 - Finders will have a weaker claim if they come across the thing dishonestly.
- In some circumstances the intention of the occupier to assert control speaks for itself: bank example – how do we reconcile this with the decision of **Bridges?**
 - **Cairns: notes were found in a shop which the public had unrestricted access.**
 - **i.e. not about knowledge of thing but control over the area in which the thing is found**
- At other extreme is park to which public has unrestricted access – in between those extremes are the forecourts of petrol filling stations, unfenced front gardens of private houses, the public parts of shops and supermarkets.

Eveleigh: first principles of possession

- occupier of a house will invariably possess any lost article on the premise – he may not have taken any positive steps to demonstrate his intent, but so firm his control his intent can be seen to be attached to it
- **firmer the control, the less will be the need to demonstrate intent.**
- bank vault: bracelet lying on the floor would be difficult to argue no intent.

Roberts: owners are merely earlier possessors. Donaldson's analysis is overcomplicated – does not matter if thing is abandoned or lost, or come across dishonestly – property interest in a thing is only concerned with proving possession between the two people before the court. Any focus on earlier possession is immaterial.

Flack: strong presumption that one intends to possess everything in their house.

- Immaterial that Flack did not know about the suitcase – while the presumption is certainly rebuttable, the statement was not strong enough to do so.
 - Relativity of title: between police and Flack.
 - Residential premises: exclusive access – immaterial that three others have keys.
 - **Parker:** intent can be imputed from the circumstances.
 - Re the nature of thing: money not an illegal thing in & of itself, legislation only requires policy to keep possession of it for limited purpose, once purpose is up they cannot continue possessing the thing.

- Dissent: Flack rebutted presumption – would not have wanted suitcase there, fact it is a suspicious thing should matter.

Tamworth: while accepted he was in control of the land at the relevant time, did not exercise physical control over the land and cannot impute intention.

- Rights of police no higher than usual finder
- Access: not overly secure, people could come & go as they please (indeed, that was his defence at the criminal trial) – 500 people to pick maize.
 - Spectrum: from residential property – quarter acre – bank vault - these facts.
- While **Parker** iterates the need for an inquiry into intent to possess lost items, here the level of control is closely linked to intent – i.e. no sign / other evidence – often the two inquiries will be closely linked.
- Re criminality of the thing – does not matter. property law not criminal law.
 - Criminal Proceeds (Recovery) Act.

Requires 2 stage enquiry?

1. did the occupier / finder / plaintiff take possession of the thing?
2. does the other party have a better claim to possession?

Exclusive physical control.

- Occupier of house will almost invariably possess everything that is in the house (**Parker**)
- Spectrum of control (**Tamworth**): bank vault – park open 24 hours – everything in between
- Control over an area separate to knowledge of the thing - **Hannah v Peel** – no physical possession of house and no knowledge of the thing – but c.f. **Flack**: knowledge should not matter? could justify on basis that as he had never lived in the house, did not have any control over the house.

Analogies:

- **Tamworth:** while an occupier – i.e. lease holder - 500 people access to maize picking, no security, old building
- **Flack:** three other people have keys irrelevant
- **Parker:** while some level of control, was more about keeping undesirables out, lots of people could still come in.
- where does it fit on the spectrum?

Intention to possess.

- firmer the control, less intent need to be proved – i.e. intent is attached to the control (**Parker**)
- Strong presumption that lack of knowledge of the thing will not rebut intention (**Flack**).
- close inquiry – often the control exercised will be the only relevant thing to imputing intention (**Tamworth**).
- distinction between having physical control over an area for another purpose – i.e. keeping undesirables out – and having physical control for purposes of possessing things.
- Criminality of the thing irrelevant to the inquiry.

Analogies:

- is it a house? (**Flack**)
- No sign, did not go looking for lost items regularly (**Parker**).

Finders c.f. bailment: finders become bailee's once they take the thing into their possession. the only way finders are different from bailee is, if upon finding the thing, they do not take into their possession.

the error in conceptualising them differently arises from the fact that when finders cases and bailee cases are brought to court – a finder is never arguing against the owner – i.e. one who can prove earlier possession. Whereas implicit in issues arising in bailee cases, is the bailor (the owner).

BAILMENT.

Logical reasoning: when someone is in possession of a thing but another retains ownership.

- Bailor keeps best title to the thing
- Bailee gets some possessory interest.

If the thing is damaged or lost, onus on the bailee to prove they took reasonable care in the circumstances.

Requires 3 stage enquiry:

1. did the bailee take possession of the thing?
2. what was the reasonable care required in the circumstances?
3. did the bailee exercise that reasonable care?

Voluntary – bailee volunteers to look after the thing.

Coggs v Bernard: categories of bailment.

- Liability on facts: 'fraud in being negligent;
- Different if drunken man had come along.

Wellington Racing Club v Symonds: reasonable care in the circumstances.

- Liability on facts: ticket system, attendant, hung up in separate room mean was reasonable for Symonds to think in circumstances that it was being cared for.
- Even though there was a sign, it was not clear enough for all to see.
- Would be different if something unforeseeable had happened – i.e. mob.
- seems to be immaterial that service was not paid for.

Southlands Hospital Board: ring case – standard of care depends on circumstances and not categories.

- Hospital became a gratuitous bailee upon patient's death
- Hospital should have taken reasonable steps to keep safe after it failed to return the ring to bailor's executor etc.

Barton Ginger: truck drivers had to be exiting and entering – unreasonable to expect checking of all truck drivers – reasonable to leave for 15 mins.

Ashby v Tolhurst: not a bailment situation, even if it was – liability excluded.

- Mere license situation: nature of carpark does not give attendant possession over car. ticker indicative of mere license.
 - BUT: ticket owner could be asked to show ticket – does this imply exclusive physical control?

- WHAT IF: car keys had been given
- Can alter liability – exclude etc.

Considerations:

Did bailee take possession of the thing? Exclusive physical control, intention to possess.

- nature of thing – is it a bailment situation or mere license. c.f. carpark (**Ashby**)

What level of care is required?

- security of storage (**Wellington Racing Club**).
 - Attendant?
 - Ticket given?
 - Must people come in & out for the purposes of business? (**Barton Ginger**).
- sign excluding liability – visible & clear?
- money given – nominal or significant.
- cause of damage – bailee (**Wellington Racing Club / Coggs**) or third party (**Barton Ginger**).

Did they exercise that care?

Sub-bailment.

Between bailor & bailee

Requires 2 step enquiry:

1. did the terms of the original bailment explicitly or impliedly allow for sub-bailment? If no – strict liability on bailee.
2. If yes – did the bailee take reasonable care in selecting the sub-bailee?

Edwards v Newlands: on terms of bailment K, and from the nature of the bailment – looking after furniture – no sub-bailment was allowed.

- personal expectation that Newlands was going to store.
- contract for storage of furniture – personal skill & care of the contractors was of the essence of the contract.

Power Farming v Knapdale: no authority to enter into an informal lease with third party, bailment was to keep tractor in showroom for sale.

- while accepted that bailment would have terminated on formation of a lease, no lease was ever allowed by bailor.
- Causation? J considers that but for the breach tractor would have been sitting in the showroom.
 - BUT: but for the breach, a formal lease would have been organised and therefore damaged would have occurred anyway? BUT: insurance would have been resolved.

Between bailor & sub-bailee

Even though no direct bailment contract has formed between them, a bailor can sue a sub-bailee

Morris (mink fur) & **Gilchrist** (Wharf clocks)

1. Did the bailor authorise the bailee to make a new bailment agreement with the sub-bailee?
2. If yes: **The relationship between sub-bailee & bailor is according to the terms that the bailee put the property into the hands of the sub-bailee.**
 - Too wide? Only what is reasonable in the circumstances.
3. If no – bailor cannot be bound by the terms in the sub-bailment. maybe bailor probably better off to sue bailee for making a sub-bailment not authorised?

Pioneer container: the jurisdiction clause must apply to the original bailor.

- Explicitly: words of the original bailment – *the sub-bailment can be on any terms.* – **common clause in shipping**
 - still limited to what is reasonable in the circumstances.
- Implicitly: context: c.f. **Pioneer Container** – shipping context / international context demands sub-bailments be formed.
- Did sub-bailee know of original bailor? Not an issue on facts – but hints that if a sub-bailee does not know they are a sub-bailee and thinks only that they are the bailee (and that the bailee is the bailor) – cannot be liable to original / actual bailor.

Involuntary bailment

Goods that are in your possession – possessor is and reasonably is in a state of uncertainty as to whether goods have been abandoned.

- reasonable enquiries in the circumstances

2 step enquiry –

1. was it abandoned by the earlier possessor?
2. if not, what point in time was it reasonable to decide it was abandoned?
 - condition of the thing
 - location of the thing
 - value of the thing

Robot Arenas v Waterfield: reasonable enquiries in the circumstances

- on abandonment: must be divesting abandonment – i.e. owner stops looking.
- a defence – onus on the bailee (i.e. not the accused abandoner) to prove
 - bailee failed to prove subjective intent – i.e. Robot Arenas did not intend in fact to abandon the thing even though objectively may have looked they did.
- nature of thing: condition, location, value. analogue: rusty bike or diamond ring
- inconvenience to plaintiff
 - enquired into whether it had been abandoned or not through a third party – waited 5 weeks for a response. did not matter that could have contacted third party again
 - burden on bailee: would have cost extra if kept much longer – site had been purchased with vacant possession

Abandonment – divesting: person no longer wants the thing in possession.

2 step enquiry:

1. subjective intent: did the earlier possessor specifically intend to abandon the thing?
2. physical act of relinquishment – this can be difficult to prove.

Haynes Case: no abandonment in law

Simpson v Gowers: specific intent and relinquishment

Hong Kong Banking: requires unequivocal action.

Liens – continuing right of possession. Right of one person to retain possession of property belonging to another or to have a charge over it.

- using another's good as security against a debt: you haven't paid me, therefore I will keep the thing.
- common law used to be very complex and muddled – particular and general liens.

- PPSA enacted to resolve these problems: created register, priority
- s 93: common law liens have priority – hence the need for them to be specific.
- Can contract out: **Forth v Simpson, Hatton**

Particular – specific types of liens: workers, innkeepers etc. specific debt to a specific thing

4 step enquiry:

1. is the thing in the lienholder's possession? Continued and uninterrupted possession (**Albemarle**) exception
2. is there a debt due?
3. does the debt due relate to the thing in possession? - **Burrow**: no connection between debt due to a container and retaining the horse training gear
4. has some kind of improvement been carried out on the thing.

Albemarle exception?

- Taxi cabs case: maintained three taxis. operator took them out, defendant proved had agreed with operator that lien would continue despite him taking them out everyday.
1. delivery of the thing back the owner for a limited and specific purpose
 2. acknowledgement of the lien before delivering
 3. acknowledgement that the lien will not be lost because of the delivery
 4. acknowledgement that the thing will be returned to the lienholder

StockCo v Walker: grazing contract – stipulated cows must be weighed which implies the requirement for improvement.

- Whole purpose of the contract was to convert the animals into a profitable commodity
- continued and uninterrupted possession? argued that if K envisioned the cows being weighed, they would have had to leave the possession of Walker for a period of time. J rejects: Walker could talk them to the weigh station, nothing about them having to be returned to original owner to be weighed.

Bay Flight Co v Flight care: no lien – no debt due, no possession, no **Albemarle** exception

- no debt due at time; a debt represented by an invoice payable at a time in the future is accruing, rather than due.
 - Outstanding invoice of 11 December was no means due by the 21 December.
- no possession: gave possession back to original owners to take photos of it
- **Albemarle** exception: giving back possession on understanding it will be returned.
 - no acknowledgement of lien – informal relationship between two parties, neighbours etc.
 - no acknowledgement that lien would continue despite redelivery
 - no mention of returning aircraft for the purposes of continuing the lien – mere expectation that the aircraft would be delivered to finish the work done.

General – specific debt enabled to retain possession of general thing. solicitors, stockbrokers etc.

- arose out of custom – lien would eventually get a kind of social legitimacy / notoriety which Courts would then accept.
 - accepted by the Courts – becomes matter of law applying to all persons in the trade
 - or matter of fact requiring proof of custom in each instance

- general lien entitles the person in possession of chattels or intangible securities to retain it until all the person's claims against the owner of the chattel have been satisfied.

Waitomo Wools: contractual liens merely create a security interest under the PPSA.

Toll Logistics: no particular, general or contractual lien.

- particular: could not claim workers lien (i.e. improvement carried out) because had lost possession when they sent the DVDs away
- general: while establishing a packers lien, J rejected this on basis packers were given liens because they traditionally lent money as well – i.e. different concept of job from what exists today
- contractual: accepted that the contract created a lien. however, when a contract creates a lien, it creates one only within the framework of the PPSA, therefore priority rights apply.

Transferring – transferring ownership from one person to another.

Tangibles. i.e. chattels

4 step enquiry

1. Donor able to give the thing – i.e. in possession / ownership
2. Donor intention to gift the thing
 - Do not consider statement of the gift in isolation – consider situation as a whole. i.e. any other evidence on the facts?
 - **Shower v Pilck** future intention expressed? Intention must be current.
 - **StockCo v Gibson** exact thing articulated? general thing insufficient
3. Delivery of the thing
 - **Williams v Williams** in other room / give a key?
 - **Rawlinson** hand on the thing
 - **Thomas:** how specific were the instructions? more or less specific
4. Donee acceptance of the thing

Shower v Pilck: no transferral as future intention express. plate case

- 'I will give you the plate' insufficient as an expression of current intention – cannot express a future intention
- unclear if delivery satisfied? plate was already in daughter-in-laws possession. would seem to say that must have intention before delivery – i.e. a contemporaneous thing
 - **Elders Trust:** can have delivery before intention.

Williams v Williams: no transferral as no delivery. pianola

- Intention sufficient – present intention
- BUT no delivery as pianola was in other room.
- Would be different if father had given keys to son, or if he had had his hand on the thing?
 - BUT: should this really make a difference – difficulties of family context.

Bushell v Bushell: reiterates difficulty of family context – husband gives wife pony trap etc.

- family context: giving or merely permission to use?
- **Nolan v Nolan** another example

Rawlinson v Mort: example of delivery – hand on organ sufficient. delivery as a manifestation of intention?

Thomas v Times Book co: transferral – intention imputed and delivery significant.

- intention: difficult to figure out because author is now dead.
 - Estate: books were precious, never would have gifted, money hard to come by
 - Thomas: value only occurred in hindsight, why would Thomas make this up knowing he would come back and take it back (i.e did not know he was going to die)
- delivery: sufficient that he told Thomas where maybe he could find it
 - might be in pub or taxi somewhere.

StockCo v Gibson: insufficient to give cows – would have to specify exactly what cows, how many cows etc.

Intangibles – contracts, debts, benefits.

MAIN ISSUES.

what if assignment is ...

- conditional
- subject to equities
- part of a debt
- transferred but there is no notice given
- transferred but assignee does not know
- transferred but is a future amount
- transferred but assignor becomes insolvent
- transferred but there is an assignment exclusion clause?

is this within the framework of property law?

Y: intangibles form part of assets and wealth, transferrable

N: personal right – only enforceable against debtors. c.f. insolvency: assignee enters pool of debtors creditors.

ss 48 – 53 PLA.

s48: interpretation – must be absolute

s 49: application

s50: how thing in action assigned

- no requirement for notice
- (3): subject to equities that arose before debtor had notice

s51: further consequences

- (2): if notice not given, and debtor pays assignor, debtor relieved of debt
- (3): if notice has been given, debtor must pay assignee
- (4): if more than one assignee, assignee who gives notice first is one debtor must pay so long as assignee did not realise of other assignee's in existence.
 - **Dearl v Hall** – rule still applies – assignee who gives notice first. practical rationale of why you give notice as assignee.

s52: further provisions

- (2): act not a code, equitable assignments still exist.
- (4): part of a thing in action OK

s53: future assignments

- (1): future assignments valid.

c.f. 1952 Act: no longer need notice for an assignment to be valid.

Standing v Bowring: assignee does not need to know about assignment in order to assignment to be valid.

- old woman gives bonds to nephew. Does not tell him – wants to give bonds to new husband – cannot.

Shengala: legally effective assignment – while act does not require notice, notice still given.

Durham Bros v Robinson: conditional assignment – can only be done in equity. building case.

- Third party building houses for Robinson (debtor) i.e. Robinson owes third party money under the building K
- Third party owes money to plaintiff, cannot afford to pay plaintiff back currently
- Third party assigns future money from the building K to P as security
- Third party intending to pay P properly, and thus take assignment back.
- Should D pay P?
 - can only assign in equity – not absolute
 - complex – any conditional assignment in equity requires the assignee to join the assignor in an action

Roxborough v Cox – assignments are subject to equities, cannot assign something better than what you have. bank case.

- Assignor assigns debt of 3000 pounds (bank) to assignee
- Bank: assignee owes us 600 pounds, we are only going to pay you 2400
 - yes: as assignee if you are going to take the benefits of the action, must also take factors that lessen
 - can exclude equities if need be.

Commercial Factors – assignee owed debtor money, debtor could pay assigned debt minus what assignee owed him.

McLeay v CIR – future amount OK – mortgage repayments case.

- son owes interest payments from mortgage to father
- father wants to use interest payments to give to charity – i.e. transfer interest payments to charity
- IRD: money does not exist yet, what if son comes and repays mortgage in full
 - court: payment not conditional – greater than a mere expectancy
 - **Williams v CIR / Norman v FCT:** future payments not allowed.
 - s 53: future payments allowed.

Percieval v Dunn – not formal / clear enough language.

- please pay P the amount of his account & oblige. 42 pounds for goods delivered
- Held: an assignment of a debt owed will not be a valid assignment unless it specifies the fund or debt out of which the payment was to be made.

Palmer v Sharpe – insolvency – money earned but not yet due – effective if earned but not yet due. Is an assignment of moneys to become payable in the future invalid if assignor becomes bankrupt before such moneys become payable?

- Plaintiff has K with third party to build sheds – payment in instalments (70% as work done, 30% retained).
- P assigns to D 150 pounds payable under the contract
- P goes bankrupt

- Third party gets another to finish shed
- But 456 pounds is owed to P as a % of the 30% retained as work done
- can D get the 150 back? or does it form part of P's assets as assigned after bankruptcy?
 - D can get 150 back – timing: when P assigned the 150, he had earned it as part of the 30% held back – it was just not yet payable.
 - would be different if he had assigned a future amount not yet earned – D would have join in line with other creditors
 - **Ex Parte Nichols** – future profits of business – profits accrued after his bankruptcy no longer property of the bankrupt, therefore cannot assign)
- need some kind of definite amount already earned (**In re Irvine**).

Aicken v Bradley – another example of assignment effective as long as it occurs before bankruptcy.

- Bradley lends third party (Drake) \$500 by way of mortgage
- Drake building a fence for D; D keeps back \$150 from the mortgage as security to finish the fence
- Aicken loans Drake some money
- Drake \$100 from the \$150 kept back from the mortgage to Aicken
- Drake goes bankrupt
- does the remaining \$150 kept back by Bradley go to Drake's pool of assets, or can Aicken claim his \$100 as a legal assignment that occurred prior to bankruptcy.
 - Yes: money retained by Bradley always legally Drake's – informal holding by Bradley.
 - Valid assignment.

Non-assignment clause? i.e. when the contract excludes assignment. Law very complex in this area.

- Damages: effective assignment, debtor can get damages from assignor
- Specific performance: non-effective assignment – kind of specific performance – BUT assignee could get damages from assignor
- third option? assignee sue assignor, then hold fruits / outcome from that decision on trust for assignee. If assignor goes bankrupt, assignee can claim as property right.

Lenesta Sludge – non-effective assignment – the rights SC had with LS etc were not transferred when LG bought land. Thus, LG can sue SC in breach of K.

BNZ securities – non-effective assignment. BUT perhaps the property rights still transfer, just personal rights don't – i.e. assignee could own action, just cannot enforce. becomes relevant in insolvency: assignee can claim that while transferral of rights was not effective between assignee & debtor, still effective between assignor & assignee – thus put the benefits of the K into the hands of assignee if assignor goes bankrupt.