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THE BASIC TENSION OF PROPERTY LAW

1 THE PROPERTY LAW SYSTEM

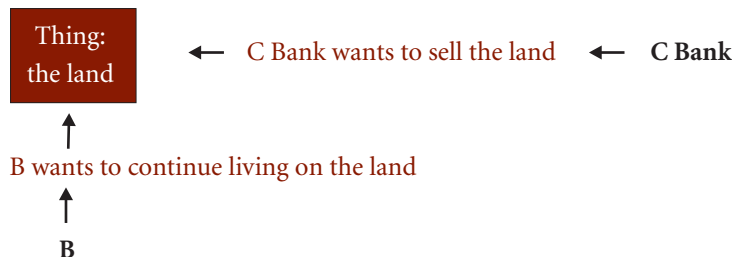
Property law is about rights to use things. ‘Things’ are objects that can be physically located in a particular place: such as land, bikes or the knapsack of the boy on the cover of this book. Property law deals with two very common but impossibly difficult questions: (i) *who* is entitled to use a thing?; and (ii) *how* are they entitled to use it? Property law is therefore difficult, but not impossibly so. It consists of an ordered and logical system that aims to allocate rights to use things in a transparent and predictable way. This book aims to reveal that system and to demonstrate how it can be used to understand and evaluate property law.

It is often said that property law is boring. It is less often said that this is a remarkable compliment to the property law system. It shows how effective the system is in taking the heat out of important and controversial disputes.

EXAMPLE 1

A and B, lovers, move in to a home together. The land on which they live is owned by A. A, without telling B, then borrows money from C Bank. It is a ‘mortgage’ deal: in return for the loan, A gives C Bank, should A fail to repay the loan as agreed, a power to sell the land and use the proceeds to meet A’s debt. A then fails to repay the loan as agreed. A has moved out but B remains in occupation of the land. C Bank wants to: (i) remove B from the land; (ii) sell the land; and (iii) use the proceeds to meet A’s debt to C Bank.

C Bank wants to sell the land; but B wants to continue living there. We thus have a dispute about the rights of B and C Bank to use a particular thing: the land. A diagram helps us to understand the dispute; an animated slide assists further and can be viewed on www.hartpub.co.uk/companion/propertylaw.html.



On the face of it, such a dispute should arouse violent passions. Should C Bank be allowed to evict B, in order to sell the land and recover money owed to it by A? Or should B be allowed to remain in his family home? The dilemma is acute enough in its own terms, but it also represents a wider clash between: (i) market forces and commerce; and (ii) social protection and home life.

The personal and political ramifications of the dispute between B and C Bank ought to interest even the most disaffected observer. Yet the property law system softens the sting of such contests. It provides a set of *technical rules* to determine whether B or C Bank is the winner. So the big-hitters of commerce and the home do not slug it out directly: the contest is settled over the chessboard, not in the boxing ring. Less destruction is caused; but fewer spectators are attracted.

Of course, chess can be interesting—but only if you know the rules. And the rules of the property law system are worth knowing. Their genius lies in their ability to deal with *both* very simple and very complex disputes. This means that, whilst the system is bewildering at first, cracking the code allows you to understand even the most difficult cases. And, once the rules are mastered, it is possible to get beyond the technical terms and to see the pervading themes and underlying tensions of property law. After all, no system, no matter how successful, can eliminate the sharp controversies surrounding: (i) *who* gets to use things; and (ii) *how* they get to use them.

2 THE BASIC TENSION OF PROPERTY LAW

The clash between B and C Bank, set out in **Example 1**, is simply an example of a more general dispute that the property law system must resolve.

EXAMPLE 2

B owns a bike. X steals that bike and sells it to C. C, when buying the bike, honestly believes that it belongs to X.

Who should now be permitted to use the bike: B or C? If C is allowed to use the bike, and chooses to do so, should he have to compensate B? It seems there are essentially four options to consider:¹

	Who is permitted to use the bike: B or C?	Does that person have to pay money to the other party?
Option 1	B	No
Option 2	B	Yes: B must pay C
Option 3	C	Yes: C must pay B
Option 4	C	No

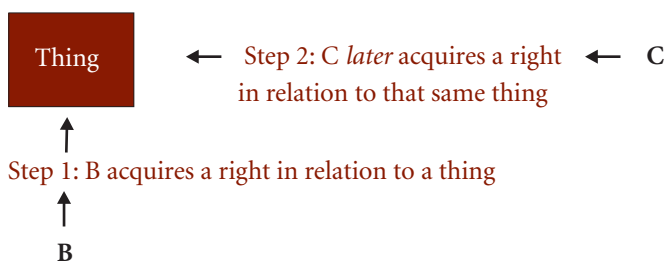
¹ Of course, both B and C have a right against X. However, those rights may be of little use in practice: X may be: (i) impossible to trace; or (ii) have no assets from which to pay B or C.

B will hope that the property law system goes for Option 1: (i) B is entitled to use the bike; and (ii) B does not have to pay any money to C. Options 2 and 3 are less attractive to B; and Option 4 is the worst for him.²

The structure of this dispute is clearly similar to **Example 1**. B may say that his prior right should be protected: he did not choose to give the bike away, so it should be returned to him. C could argue that commerce is best served if people who buy things in good faith are protected from the hidden claims of former owners.

There are thus important similarities between **Example 1**, involving land, and **Example 2**, involving a bike. In fact, it is possible to set out a general model for such cases:

1. B claims that he has acquired a right to make some use of a particular thing.
2. C claims that, at a later point in time, he too acquired such a right.
3. B and C wish to use that same thing in inconsistent ways, so a dispute arises.



In such a case, there is a clear tension between: (i) protecting a prior user of a thing (B); and (ii) protecting a party who later deals with the thing (C). As a matter of moral reasoning there may well be no right answer to such a dilemma. However, a legal system must give an answer: this **basic tension between B and C**, which runs throughout the property law system, *must* be resolved. And, for the sake of consistency and certainty, a legal system must provide clear, settled rules to resolve the tension. Those rules are based on the **basic structure** of property law (see **Chapter B**).

3 THE BASIC TENSION AND LAND LAW

The **basic structure** of property law is based on core concepts that apply throughout the property law system. We will examine these concepts in the remainder of **Part I** (see **Chapter B and Chapters C1, C2 and C3**). Some parts of the property law system also have their own distinct rules: property law is about rights to use things; and some things are special. Land, for a number of reasons, is one such special thing. As a result, the land law system, whilst it rests on the same basic structure that applies throughout the property law system, forms a distinct part of that system. This is why each of **Parts II and III** is divided into: (i) a set of chapters looking at the general position, applying throughout the property

² The property law system currently goes for Option 3 (see **D1:3.5.1 and D1:4.3**); and, in rarer cases, Option 1 (see **D1:4.2**). In one of those rarer cases, Option 2 may be used if C, honestly believing the bike was his, has improved the bike and so increased its value (see **D1:4.4**).

law system (see **Chapters D1–D4 and F1–F4**); and (ii) a set of chapters looking at the special position, applying only in the land law system (see **Chapters E1–E6 and G1–G6**). A crucial question crops up throughout this book: is it really necessary to have a special set of rules for land? This must depend on whether, and how, land is different from other things.

3.1 The special features of land

3.1.1 Permanence

Subject to the rarest of exceptions,³ land is permanent. Whereas other objects that can be physically located (eg bikes) wear out, the usefulness of land endures. This special feature of land is reflected by a special feature of the land law system: ownership of land can be split up over time (see **E1:1**).⁴ For example, A, an owner of land, can give B a Lease: B then has ownership of that land for a limited period (see **G1B:1**). In contrast, if A is an owner of a bike, A *cannot* give B ownership of that bike for a limited period (see **D1:1.4.3**).⁵

3.1.2 Uniqueness

‘Location, location, location’: a crucial feature of any piece of land is its physical location. That physical location can never be shared by another piece of land. In this significant sense, all pieces of land are unique. This special feature of land explains two special rules of land law.

(i) Recovery of the thing itself from X or C?

First, let us say that: (i) B owns a thing, such as a bike; and (ii) X takes physical control of that thing without B’s consent or other lawful authority. B can assert his right, as an owner of the thing, against X: by interfering with B’s right, X commits a wrong against B. However, there is no guarantee that a court will order X to return the bike to B:⁶ rather than getting his thing back, B may well have to settle for receiving money from X (see **D1:4.2**).⁷ Similarly, in **Example 2**, the property law system *does* allow B to assert his prior right against C (see **D1:3.5.1**). However, in general, B will *not* be able to force C to return the bike itself: C is permitted to continue using the bike *provided* C pays money to B.

In contrast, if: (i) B has ownership of some land; and (ii) X takes physical control of that land without B’s consent or other lawful authority; then (iii) a court *will* make an order (a ‘possession order’) allowing B to remove X and to take physical control of the land (see **E1:4.2**). This difference between land and other things thus relates to the **remedies question**: the question of how a court will protect B’s right. It explains why land is

³ See eg *Holbeck Hall Hotel Ltd v Scarborough BC* [2000] QB 836.

⁴ ‘E1:1’ refers to **Chapter E1, section 1**.

⁵ And ‘D1:1.4.3’ refers to **Chapter D1, section 1.4.3**.

⁶ The court has a statutory discretion to make such an order: Torts (Interference with Goods) Act 1977, s 3(2)(a) (see **D1:4.2**).

⁷ Instead, B can try to bypass the courts by simply taking his thing back from X. It seems B does have a right to do so where X’s *initial* taking of physical control is a wrong against B. However, this form of ‘self-help’ is very risky: (i) there is no *general* rule that B can use reasonable force to recover a thing that he has wrongfully been deprived of (see *per* Tuckey LJ in *R v Mitchell* [2004] RTR 14 at [18]; *Devoe v Long* [1951] 1 DLR 203 (Court of Appeal of New Brunswick)); and (ii) even if B does have a right to retake control of his thing, he may commit a wrong if he uses excessive force (see eg *Revell v Newbery* [1996] QB 567 where B acted to defend his things from being wrongfully taken by C but used excessive force and thus committed a wrong against C).

sometimes known as ‘real property’. ‘Real’ comes from the Latin for ‘thing’ (*res*); when used in the phrase ‘real property’ it indicates that B can recover the *thing itself* if wrongfully deprived of it by X or C.

(ii) Forcing A to transfer the thing itself to B?

Second, let us say A owns a bike and makes a contractual promise to sell his bike to B. A then changes his mind and refuses to go ahead with the promised sale. B can assert his right against A: by breaching his contractual duty to B, A commits a wrong against B. However, it is unlikely that the court will order A to transfer the bike itself to B; B will, almost always, have to settle for receiving money from A. The aim of remedies for breach of contract is to put B in the position he would have been in had A kept his promise: B’s right is adequately protected if A gives B any money necessary to allow B to buy a similar bike elsewhere.

However, where A promises to transfer a *unique thing* to B, the position is different. To put B in the position he would have been had A kept his promise, A must give B the *thing itself*. So, in the rare case where A promises to transfer a unique bike to B, A may be ordered to keep his promise.⁸ In contrast, if A promises to transfer land to B, the standard position is that a court will order A to keep his promise and to transfer his right to the land to B:⁹ after all, each piece of land is unique. Again, this difference between land and other things relates to the **remedies question**: the question of how a court will protect B’s right. Where B’s contractual right is to acquire a right to land, it is, in general, specifically protected; where B’s contractual right is to acquire a right to a thing other than land, B usually has to settle for receiving money.

3.1.3 Capacity for multiple simultaneous use

The same piece of land can be used in many different ways, by many different people, at the same time. For example, let us say:

1. A buys No 32 Acacia Gardens from A0.
2. A0 owns a local shop and makes A promise, when buying No 32, that neither A nor future owners of No 32 will use it as a shop.
3. A acquires No 32 with a ‘mortgage’ loan: in return for a loan from C Bank, A gives C Bank a security right (see **G4:1**). C Bank thus has a right, if A fails to pay back the loan to: (i) remove A and other occupiers from the land; (ii) sell the land; and (iii) use the proceeds to pay off A’s debt.
4. In return for payment from E, a neighbour, A gives E a right to reach E’s house by using a path crossing the garden of No 32.
5. A then moves away. He decides to keep the land and use it as an investment by renting it to B. So, in return for paying money to A, B is permitted to occupy the land. B uses the land as his home and allows his lover, D, to live with him.

Each of A0, A, B, C, D and E has a right to make some use (or at least to prevent a

⁸ So eg if A has promised to transfer to B the very bike ridden by a winner of the Tour de France, B may be able to insist on specific performance of the contract. See eg *Thorn v Public Works Commissioners* (1863) 32 Beav 490. The Sale of Goods Act 1979, s 52 recognises that a court has a discretion to order specific performance of a contract to sell ‘specific or ascertained’ goods.

⁹ There may always be an exception: see eg *Patel v Ali* [1984] Ch 283.

particular use) of the land. Things other than land are also capable of multiple, simultaneous use. If A owns a bike, A can: (i) give B permission to ride the bike; and (ii) offer his bike as security for a loan from C (see **F4:1**). The difference between land and other things is therefore one of *degree*. However, the difference remains important as it poses a significant question for the land law system: can it reconcile the competing desires of all those who simultaneously want to use the same piece of land? It certainly helps to explain another special feature of the land law system: the longer list of property rights in land (see **E1:1**).

3.1.4 Social importance

Land is uniquely capable of meeting important social needs. B can only acquire the sense of security and identity that comes with establishing a home¹⁰ if he has some sort of right in relation to land. Similarly, it is very difficult to establish business premises without a right to use land. As a result, an interference with B's use of land can have dramatic consequences. For example, eviction from a settled home can cause great stress and disruption; eviction from business premises can cause grave commercial harm.

This special feature of land is reflected in a number of special rules. For example, if: (i) B occupies land as his home; and (ii) C unlawfully prevents B occupying that land *or* with the intention of causing B to leave the land, interferes with the 'peace or comfort' of B or members of B's household, then (iii) C commits a criminal offence.¹¹ Further, if B has ownership of some land, the rest of the world is under a *prima facie* duty not to unreasonably interfere with B's use and enjoyment of that land. So, if C's pig farm, next to B's land, produces nauseating smells, C breaches that duty and thus commits the wrong of nuisance against B.¹² However, C commits no such wrong if he interferes, in a similar way, with B's enjoyment of a thing other than land.¹³ Further, in some circumstances, A and B's private agreement can be regulated by mandatory rules protecting B's use of land. So, if A gives B a Lease of land for one year, B may have a statutory right to remain even after the year has expired (see **G1B:1.2**).

This special feature of land also means that certain human rights may be of particular relevance in land law. For example, Article 8 of the European Convention on Human Rights states that: 'Everyone has the right to respect for his private and family life, his home and his correspondence.' So, in **Example 1**, B could argue that C Bank's attempt to force him out of his family home interferes with that human right. As we will see, this right is of course subject to qualifications (see **B:8.3.2**); but the social importance of land means that the right *may* have a role in shaping the rules of the land law system.

3.1.5 Limited availability

It is impossible to make more land.¹⁴ This special feature of land has a number of conse-

¹⁰ For a consideration of the importance of the home see eg L. Fox, *Conceptualising Home* (2007), ch 1.

¹¹ Protection from Eviction Act 1977, s 1 (see too **E6:3.4.1(vi)**). The description set out above is only a summary: for more detail see eg Bright, *Landlord and Tenant Law in Context* (2007) 686–9. See too Criminal Law Act 1977, s 6: C can be guilty of a criminal offence if: (i) B is in occupation of land and objects to C's entry onto the land; and (ii) C knows of B's presence and objection; and (iii) C, without lawful authority, uses or threatens violence in order to gain entry to the land. C does not commit the offence if he himself is a 'displaced residential occupier' (see s 6(3)), ie, if C, not a trespasser, was himself ousted by B (see s 12).

¹² *Bone v Seale* [1975] 1 WLR 797.

¹³ To bring a claim in nuisance, B must have a property right in land: see *Hunter v Canary Wharf* [1997] AC 655.

¹⁴ It may, however, be possible to 'reclaim' land currently covered by water.

quences. First, coupled with the many valuable uses to which land can be put, it ensures that land is an *expensive commodity*. For most, acquiring ownership of land is impossible unless a lender, such as C Bank, is willing to provide a substantial loan. In return, C Bank will demand a security right over the land. Second, the limited availability of land intensifies the need for the stock of land to be *freely marketable*. As a result, it is particularly undesirable for an owner to remove land from the market by placing permanent restrictions on its use.

The limited availability of land, coupled with its importance and uniqueness, can lead to special limits being placed on an owner of land. For example, the need to promote the marketability of land has led the land law system to give protection to certain parties, such as C Bank in **Example 1**, who acquire rights relating to land. As we will see, registration rules, particularly prominent in land law, are one means of giving C such protection. Equally, the rules of the land law system have long tried to promote marketability by preventing an owner from limiting the use of land after his death.¹⁵ Further, legislation commonly allows public bodies compulsory purchase powers: powers to acquire land from an owner in order to use it for a specific purpose, such as the building of a motorway.¹⁶

More startling is the doctrine of *adverse possession*: a means by which an owner of land can lose his right without receiving any compensation. Due to changes in the registered land system,¹⁷ the doctrine of adverse possession now has much less of an impact. However, where it applies, its effect is dramatic. If: (i) X occupies B's land without B's consent;¹⁸ and (ii) B fails, over a long period,¹⁹ to take steps to remove X; then (iii) B's right to the land can be extinguished.²⁰ The doctrine only applies if X has been acting as an owner of the land: it protects X's claimed ownership, exercised over the long period, by extinguishing B's prior ownership. It can protect X even if X is fully aware that the land initially belongs to B.²¹ In this way, the doctrine recognises X's claim (established by his long use) and removes the right of B, who has failed to make use of his land.

The doctrine of adverse possession applies only to land. If: (i) X takes physical control of B's bike without B's consent or other authority; and (ii) B fails, over a long period, to assert his ownership against X; then (iii) there is *no* general rule that the passage of time, by itself, can lead to B losing his ownership of the bike.²² The limited availability of land supports the

¹⁵ For a brief historical account see Birks, ch 18 in *Land Law: Themes and Perspectives* (ed Bright and Dewar, 1998) at 462–7.

¹⁶ The general procedure to be followed where a public body exercises such a power is set out by the Acquisition of Land Act 1981 and the Compulsory Purchase Act 1965. The compensation payable to the party whose land is purchased is regulated by the Land Compensation Act 1961.

¹⁷ In a case where B is registered as owner of the land (and such registration is now the norm) s 83 of the Land Registration Act 2002 replaces the previous rules with those set out in Sched 6 of the 2002 Act. We will discuss the new rules in detail in **E1:3.7.1** and **G1A.3**.

¹⁸ The doctrine can apply where X initially occupies with B's consent, but that consent is then withdrawn: see eg *JA Pye (Oxford) Ltd v Graham* [2003] 1 AC 419 (see **Chapter B, Example 14a**). It can also apply where X has a property right allowing him to occupy the land, but that property right does not bind B: see eg *National Westminster Bank v Ashe* [2008] EWCA Civ 55.

¹⁹ Under s 15 of the Limitation Act 1980, the period is set at 12 years. Under Sched 6 of the 2002 Act, if C adversely possesses for 10 years, he can apply to be registered (in B's place) as a new owner of the land. If B objects to C's application, but then fails (over the next two years) to take steps to remove C, C can then *insist* on being registered in B's place (see **E1:3.7.1**).

²⁰ Limitation Act 1980, s 17; Land Registration Act 2002, Sched 6.

²¹ See eg *JA Pye (Oxford) Ltd v Graham* [2003] 1 AC 419.

²² If, as in **Example 2**, X steals B's bike and sells it to C, B may lose his ownership of the bike if he does not bring a claim against C within six years from C's purchase of the bike: Limitation Act 1980, ss 3(2) and 4(2) (see **D1.3.7**).

idea that land is too scarce a commodity to remain under the ownership of a party who fails, over a long period, to assert his right. As seen above, it also heightens the need for land to be freely marketable. The doctrine of adverse possession certainly promotes that goal: the extinction of B's right not only protects X, but also anyone later acquiring a right from X (see further **B:8.3.1(iii)**).

3.2 The special features of land and the basic tension

The special features of land have an important effect on the basic tension. We can see this by going back to **Example 1**. In attempting to resolve such a dispute, we could look at the special features of land. However, this only reveals the true extent of the problem.

Special Features Favouring B

Social importance: B is currently using the land as a home (note Article 8 of the European Convention on Human Rights)

Uniqueness: If B has to move, he may have to change many aspects of his life

Special Features Favouring C Bank

Limited availability: High value of land means C Bank may have made a large loan to A and so will suffer a heavy loss if it cannot sell the land

Limited availability: The need to keep land freely marketable means that C Bank, when acquiring a right from A, should be protected from possible rights of B

On the one hand, B can point to the social importance of land: he is currently using the land as a home and uprooting that home will cause severe disruption. B can also point to the uniqueness of land: even if B is able to find a home elsewhere, it will be in a different location and so B may be forced to change many aspects of his life. So it might seem that the social importance and uniqueness of land should cause the rules of the land law system to lean in favour of someone, such as B, who is currently occupying or otherwise making use of land.

However, C Bank can make a powerful counter-argument. It may well have made a substantial loan to A: the limited availability of land, along with its social importance, ensures that land has a high value. So, if C Bank is unable to sell the land, it is likely to be left substantially out of pocket. It is also important to think about the wider consequences of finding in favour of B. First, whilst it is easy to have sympathy with B rather than with a faceless bank, it should be remembered that if banks have systematic problems in recovering loans, this can have repercussions not just for the bank's customers but for the wider economy.²³ Second, if C Bank is unable to sell the land, we need to consider the effect of such a decision on lenders' future practice. Will lenders have to carry out extensive and

However, the six-year period only begins to run *once* a party has bought the bike in good faith and so cannot help X: Limitation Act 1980, s 4(1).

²³ The importance to the wider economy of such banks has been dramatically emphasised by the UK Government's decision to nationalise Northern Rock plc using powers under the Banking (Special Provisions) Act 2008. The problems faced by that bank, a major 'mortgage' lender, were *not* caused by difficulties faced by the bank in recovering loans; but the highly unusual steps taken by the Government nonetheless demonstrate the importance of such banks to the wider economy.

expensive checks to ensure that there are no other users of the home who may later thwart a lender's attempt to sell the land? After all, as land is capable of multiple, simultaneous use, there may be many potential rights that a lender will need to watch out for. The costs incurred by lenders would then be passed on to borrowers. As land is already very expensive, this will make it harder still for would-be homeowners to enter the market. And, given its limited availability, it would be unfortunate if it became very difficult to trade in land. Given that we cannot produce new land, we should be particularly careful to make sure the land we do have does not become permanently burdened and thus difficult to buy or sell.

When first considering **Example 1**, we noted that the dispute between B and C Bank could be characterised as part of a wider clash between commerce and market forces on the one hand and the need for social protection and the maintenance of a home on the other. The fact that the dispute involves land, a special kind of thing, does *not* help us resolve this conflict; instead, it *heightens the tension*. The dispute between market forces and social protection thus draws out the ambivalent nature of land itself. On the one hand, it is of limited availability and constitutes an important financial investment: we therefore do not want the process of buying land to be unduly difficult. Yet on the other hand, it is unique and socially important: we therefore do not want to give insufficient protection to those who use and, in particular, occupy land. Moreover, as land is uniquely susceptible to multiple, simultaneous use, the sort of dispute we have discussed is more likely to arise in relation to land. The special nature of land therefore *affords greater opportunity* for the basic tension underlying property law to arise. It is for these reasons that land law is not only a special form of property law: it is also a form of property law specially worth studying.

4 THE SCOPE OF PROPERTY LAW

Property law is about rights to use things. However, as we will see throughout this book, the principles developed by the property law system can also be applied in other contexts.

EXAMPLE 3

A has an account with Z Bank. A goes into bankruptcy. A's rights, including his bank account, therefore pass to C, A's trustee in bankruptcy. C is under a statutory duty to use A's rights, including A's bank account, to pay off A's creditors. However, B claims that, *before* going bankrupt, A declared a Trust, in B's favour, of A's bank account.

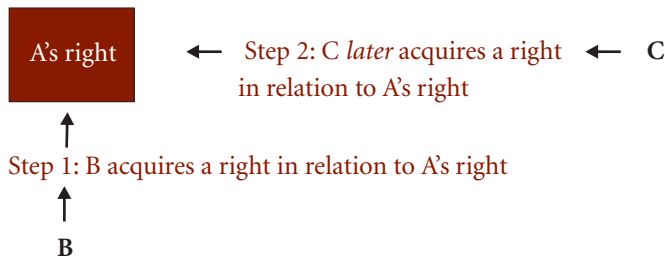
In such a case: (i) C wants to use the value of A's account to pay off A's creditors; but (ii) B wants the value of A's account to be used solely for B's benefit.

In this case, there is no dispute about the use of a thing. A does not have a right to any *thing*: there is no specific bundle of banknotes in a safe at Z Bank that belongs to A. A instead has a *right* to receive from Z Bank, on demand, money equal to the credit in his account. Nor can A's right against Z Bank count as a thing: it certainly exists, but, unlike a plot of land or a bike, it is not an object that can be physically located in a particular place.²⁴

²⁴ Gaius stated that 'All the law we use relates to persons, things or actions' (*Institutes* at 1.8: see eg *Institutes of Roman Law*, trans and ed De Zulueta, 1946). In that phrase, 'things' is given a different, *wider* meaning to the

Example 3 is therefore different from **Examples 1 and 2**. It is a dispute about the use of a *right*: B and C want to make inconsistent uses of A's right against Z Bank. There are, however, important similarities between **Example 3** and **Examples 1 and 2**. In particular, the very same model that applied to the first two examples also applies to **Example 3**:

1. B claims that he has acquired a right to make some use of a particular *right held by A*.
2. C claims that, at a later point in time, he too acquired such a right.
3. B and C wish to use that same *right held by A* in inconsistent ways, so a dispute arises.



In **Example 3**, there is, again, a clear tension between: (i) protecting B (a prior user of a right held by A); and (ii) protecting C (a party who later deals with the right held by A). So, the **basic tension** can arise not only where there is a dispute about the use of a thing, but also where there is a dispute about the use of a right. As a result, *some parts* of the **basic structure** of property law apply not only to questions about the use of a thing but also to questions about the use of a right (see **B:10**). This means that, to learn about those parts of the basic structure, we will need to consider some cases where the dispute between B and C concerns the use of a right. For example, cases about Trusts of bank accounts (such as **Example 3**) may tell us important things about the general principles of Trusts that also apply to cases involving land or bikes.

Nonetheless, important parts of the basic structure of property law apply *only* to questions about the use of a thing and so *cannot* apply to questions about the use of a right (see eg **B:4.2** and **B:10**). Disputes about the use of a right are, strictly speaking, beyond the scope of the property law system.

meaning adopted in this book: it includes, for example, A's contractual right to receive money from Z Bank. Things in that broad sense can then be divided into: (i) corporeal things; and (ii) incorporeal things (see eg Gaius, *Institutes* at 2.12-2.14). The first category (corporeal things) equates to the meaning of 'things' adopted in this book. So, A's contractual right against Z Bank is, in Gaius's terms, an 'incorporeal thing'; and, in the terms used in this book, not a thing at all (see further **D1:1.1** and note too Pretto-Sakmann, *Boundaries of Personal Property* (2005), Part II).

SUMMARY AND STRUCTURE OF THE BOOK

Property law concerns rights to use things: objects that can be physically located in a particular place. It tells us: (i) *who* is entitled to use a thing; and (ii) *how* they are entitled to use it. Disputes between parties who wish to make inconsistent uses of a thing are inherently difficult and controversial. Such disputes demonstrate the **basic tension** that runs throughout property law between: (i) protecting B (a prior user of a thing); and (ii) protecting C (a party who later acquires a right to use that thing). That basic tension is evident in both **Example 1**, concerning the use of land, and **Example 2**, concerning the use of a bike. Due to the special features of land, that basic tension is particularly acute in **Example 1**.

The basic tension can also arise when B and C wish to make inconsistent uses of a *right initially held by A*. So in **Example 3**, concerning the use of A's bank account, some of the principles of the property law system may be relevant. However, as such a case does not involve the use of a thing, it is, strictly speaking, beyond the scope of the property law system.

The aim of the property law system is to provide a transparent and predictable means of allocating parties' rights, and hence of settling disputes such as those in **Examples 1 and 2**. To do so, the property law system relies on a **basic structure**. We will examine this structure in **Chapter B**. In **Chapters C1, C2 and C3** we will look at three essential concepts that form part of that basic structure. The remainder of **Part I** thus consists of an introduction to the basic structure and basic concepts that apply *throughout* the property law system. In **Parts II and III**, we will look in more detail at those *general* rules (see **Chapters D1–D4 and F1–F4**); as well as looking at the *special* rules that make up the land law system (see **Chapters E1–E6 and G1–G6**).