**Chapter 3**

**Question 1: What is the key difference between a property right and a personal right?**

As noted at **1.14**, and also **3.1-3.4**,the key difference is that if B has a personal right against A, that right, by itself, binds only A. A personal right is a right against a specific person. In contrast, a property right is not defined by reference to a specific person, as it relates instead to something independent of a specific person, such as some land.

The practical implications of this are explored throughout the book, but a good example is provided by *National Provincial Bank v Ainsworth* (1965) as discussed at **1.58-1.62**. The Court of Appeal had found that Mrs Ainsworth’s right was a property right and so was capable of binding not only Mr Ainsworth, but also the bank, who had acquired a right in the land when Mr Ainsworth granted them a charge over the land. The House of Lords reversed this finding, holding that instead Mrs Ainsworth’s right was only a personal right against her husband, and so did not bind the bank, which was then free to insist that Mrs Ainsworth leave the property.

**Question 2: What is the *numerus clausus* principle?**

As discussed at **3.17-3.24**, the *numerus clausus* principle is an important complement to the distinction between personal rights and property rights. It ensures that A, an owner of property, is not free to decide that the right A gives to B will be a property right and so be capable of binding parties other than A. Even if A and B wish B’s right to be proprietary, it will only be so if its content falls within that of a permitted type of property right. So, in *Hill v Tupper* (1863), for example, discussed at **3.7** and **3.21**, even if A and B had intended that B’s exclusive right to put boats on the canal should bind third parties, that alone would not be enough to give B’s right that effect. As evidenced by *Rhone v Stephens* (1994), as discussed at **3.21**, there are also controls on the content of equitable interests in land.

The *numerus clausus* principle is more commonly identified with civilian systems of law, rather than common law systems such as English law, but its operation in land law is confirmed by s 1 and s 4 of the Law of Property Act 1925 which limit, respectively, the content of legal estates and interests in land and of equitable interests in land: see **3.19**.

**Question 3: Why might a party prefer to have a legal property right rather than an equitable property right?**

The most obvious reason relates to the defences question (see **3.38**). In relation to property other than land, such as a bike, there is a general, practically important defence to which an equitable property right is vulnerable, but which cannot usually be used against a legal property right: the defence of bona fide purchaser (of a legal interest for value) without notice (of B’s equitable interest). That defence no longer applies in relation to registered land (and only rarely applies in unregistered land). In land law, however, it is still easier for C to establish a defence against a pre-existing equitable interest of B than against a pre-existing legal estate or interest of B (see **3.39-3.40**). For example, a legal lease or legal easement will almost always count as an overriding interest (and so be immune from the lack of registration defence: see **11.60-11.62**), whereas B’s equitable lease or equitable easement can count as an overriding interest only if B is in actual occupation of the land at the relevant time (see **11.34-11.59**).

There is a second, less practically important reason why B might prefer to have a legal rather than an equitable property right (**3.42-3.46**). This is not to do with defences. It is to do with the different question of whether B’s right is even prima facie binding on X, a third party who interferes with the land without acquiring any right from A. There is a strong argument that an equitable property right, unlike a legal property right, is not binding on X in such a case, although the position is not entirely clear (see **3.45**).

**Question 4: If B has only a personal right against A, an owner of land, does that mean that B will never have a good claim against C, a party later buying A’s land?**

No! B’s personal right *itself* cannot bind C, as it is by definition a right specifically against A. However, it is possible for B to have a *new, direct* right against C (see **3.83-3.86**). In some cases, this right might be entirely distinct from B’s personal right against A. This might occur, for example, if C, when buying the land, enters into a contract with B to allow B to continue using A’s land, or grants B a legal lease of the land. The best interpretation of *Binions v Evans* (1972 (see **3.85**), for example, is that B’s licence from A did not bind C, but B instead had a new, direct right against C, arising as a result of C’s promise to allow B to continue in occupation of the land. In other cases, the direct right against C may have some link to B’s personal right against A. For example, if B’s personal right against A arises under a contract with A, the rest of the world will be under a duty to B not to procure a breach by A of A’s contract with B (see **3.10**).

**Question 5: What is the strongest argument for recognizing a contractual licence as a property right in land? What is the strongest argument against doing so?**

You should distinguish here between what the law is (ie the result a judge would reach under the current law) and possible future reform of the law, eg by Parliament. Under the current law, there is binding authority (e.g. *King v David Allan* (1916) (see **3.78**)) that a contractual licence is not a property right in land and s 4(1) of the Law of Property Act 1925, giving effect to the *numerus clausus* principle, prohibits a court from recognizing new forms of equitable interests in land (see **3.19**).

If the question is as to reform of the law, however, then all arguments are possible. As noted at **3.90**, the strongest argument would probably relate to specific types of contractual licence: those that allow B to occupy land as B’s home. Here, B’s interest in having the security of being able to assert his or her right not only against A, but also against future owners of A’s land (or third parties interfering with the land) is at its strongest. The strongest argument against changing the law might simply be the uncertainty caused by any change in the law, but another important point is that, since the decision of the House of Lords in *Street v Mountford* (1985) (see **7.9**), in many cases where B’s contract with A allows B a right to exclusive possession of land, B will have a lease, and so will in any case have a recognized property right. It is significant that cases such as *Errington v Errington* (1952) (see **3.80**)and *DHN Food Distributors Ltd v London Borough of Tower Hamlets* (1976) (see **3.81**) were decided by the Court of Appeal at a time when such a right to exclusive possession was not seen as necessarily giving B a lease, and so occupiers who would now clearly have a lease, and hence a property right in the land, were instead seen as having only a licence (see further **7.42**).