

# Contents

---

<i>Preface</i>	v
<i>Table of Cases</i>	xiii
<i>Table of Legislation</i>	xxxvii
<i>Table of Conventions, Treaties, etc</i>	xlvii
<b>1 The Basic Concepts of Personal Property Law</b>	<b>1</b>
I Introduction	1
II What is a Property Right?	2
III Subdividing Personal Property: Different Types of Asset	2
IV Ownership, Possession and Legal Title	4
A Ownership	4
B Possession	7
C Legal Title	13
V Equitable Title under a Trust	18
A What is a Trust?	19
B Creation of an Express Trust	22
VI Original Modes of Acquisition	24
A Legal Title	24
B Equitable Title	30
VII Conclusion	31
<b>2 Transfer of Legal Title to Choses in Possession I</b>	<b>33</b>
I Introduction	33
II Passage of Property under Sale of Goods Act 1979	34
A Classification	36
B Sale of Specific Goods	36
C Unascertained Goods	42
D Reservation of the Right of Disposal	51
III Deed	53
IV Delivery	53
A Transferring Possession	54
B Intention	55
V Conclusion	56

<b>3</b>	<b>Transfer of Legal Title to Choses in Possession II:</b>	
	<b>The <i>Nemo Dat</i> Rule</b>	57
I	Introduction	57
II	Exceptions to <i>Nemo Dat</i>	58
	A Estoppel	59
	B Factors Act 1889 section 2	63
	C Voidable Title	68
	D Sale under a Power of Sale	70
	E Sale by a Seller or Buyer in Possession	71
	F Hire Purchase Act 1964	80
III	Overreaching	81
IV	Conclusion	83
<b>4</b>	<b>Assignment of Legal Choses in Action</b>	85
I	Introduction	85
II	Statutory (Legal) Assignment	86
	A What can be Assigned?	89
	B Writing and Notice Requirements	90
III	Equitable Assignment	92
	A Joinder	93
	B Requirements of Equitable Assignment	96
IV	Rules Common to both Equitable and Statutory Assignment	105
	A 'Subject to Equities'	106
	B Priorities	110
V	Non-Assignable Choses in Action	113
	A Non-Assignability in Law	113
	B Non-Assignability by Contract	116
VI	Conclusion	123
<b>5</b>	<b>Transfer or Disposition of Subsisting Equitable Interests</b>	125
I	Introduction	125
II	Five Scenarios: When is Writing Required?	126
	A The 'Plain Vanilla' Case	126
	B Directions to the Trustee to Hold on Trust	126
	C Contracts for Valuable Consideration: Sales of Equitable Interests	127
	D Express Sub-Trusts	130
	E The Vandervell Saga	131
III	Surrender vs Disclaimer	134
IV	Priorities	135
V	Conclusion	136
<b>6</b>	<b>Negotiation and Negotiable Instruments</b>	137
I	Introduction	137

II	What is a Negotiable Instrument?	138
	A Examples of Negotiable Instrument	139
	B Becoming a Negotiable Instrument	141
III	Transfer and Operation of Bills of Exchange	142
	A Transfer of a Bill of Exchange	143
	B Liability and Enforcement	151
IV	Negotiation of Bills of Lading	159
V	Commercial Uses of Bills of Exchange	162
	A Documentary and Negotiation Credits	162
	B Electronic Bills of Exchange and Electronic Negotiation	166
VI	Conclusion	167
<b>7</b>	<b>Defective Transfers and Payments</b>	<b>169</b>
I	Introduction	169
II	Void Transfers	170
III	Resulting Trusts	173
	A Voluntary Conveyance and Purchase Money Trusts	174
	B Automatic Resulting Trusts	180
	C The Basis for the Resulting Trust	182
IV	Voidable Transfers	193
	A Instances of Voidability	194
	B Bars to Rescission	196
	C What Type of Interest is a Power?	199
V	Conclusion	202
<b>8</b>	<b>Protection of Legal Title via Tort Law</b>	<b>203</b>
I	Introduction	203
II	Conversion	203
	A What Property can be Converted?	204
	B Acts Counting as Conversion	209
	C Entitlement to Sue in Conversion	213
	D Remedies	217
III	Trespass to Goods	226
	A Elements of Trespass	227
	B Remedies	228
IV	Replevin and Reversionary Injury	230
V	Conclusion	232
<b>9</b>	<b>Protection of Equitable Title: Remedies for Misdirected Property</b>	<b>233</b>
I	Introduction	233
II	Tracing	234
	A Common Law Tracing	236
	B Equitable Tracing	241
	C Remedies	247
	D Defences	250

III	The Basis for Proprietary Claims Contingent on Tracing	251
A	Basis of the Claim: Property or Unjust Enrichment	252
B	The Unjust Factor	254
IV	Subrogation	256
V	Personal Claims	258
A	Dishonest Assistance	258
B	Knowing Receipt	260
VI	Conclusion	264
<b>10</b>	<b>Bailment and Attornment</b>	<b>265</b>
I	Introduction	265
II	What is Bailment?	265
A	Prerequisites of Bailment	266
B	Relationship between the Bailor and Bailee	269
C	Termination of Bailment	278
D	Rights against Third Parties	279
E	Involuntary Bailees and Finders	282
III	Attornment	284
IV	Commercial Uses of Bailment	285
A	Hire Purchase Agreements	286
B	Financial Leases	287
C	Carriage of Goods by Sea	288
V	Is Bailment Necessary?	289
VI	Conclusion	292
<b>11</b>	<b>Security Interests and Quasi-Security</b>	<b>294</b>
I	Introduction	294
II	Credit and the Function of Security and Quasi-security	294
III	The Types of Security Interest	298
IV	The General Rules	299
A	Attachment	299
B	Perfection	301
C	Priorities	309
V	Reform	313
VI	Quasi-security and the Relation with Security Interests	317
A	Retention of Title Clauses	318
B	Other Quasi-Security Interests	326
VII	Conclusion	332
<b>12</b>	<b>Pledges and Liens</b>	<b>334</b>
I	Introduction	334
II	Pledges	334
A	Delivery	335
B	Re-Delivery or Redemption	339

C	Sale	340
D	Pledges' Relations with Third Parties	342
III	Liens	342
A	Lienholders' Rights against Third Parties	344
B	Contractual Liens	346
C	Common Law or Customary Liens	346
D	Statutory Liens	349
E	Equitable Liens	352
IV	Conclusion	358
<b>13</b>	<b>Non-possessory Security Interests I: Mortgages and Bills of Sale</b>	<b>359</b>
I	Introduction	359
II	What is a Mortgage?	360
A	Legal Mortgages	362
B	Equitable Mortgages	364
III	Enforcement	366
A	Foreclosure	367
B	Sale	368
C	Receivership	374
D	Possession	377
E	Enforcement of Bills of Sale	377
IV	Conclusion	379
<b>14</b>	<b>Non-possessory Security Interests II: Charges</b>	<b>380</b>
I	Introduction	380
II	Floating and Fixed Charges	380
A	Determining whether a Charge is Fixed or Floating	383
B	The Importance of the Distinction	391
III	The Nature of the Floating Charge	393
A	The Licence Theory	394
B	The Defeasible Charge Theory	395
C	Overreaching	395
C	Power to Acquire a Persistent Right	398
V	Remedies of the Chargee on Default	399
A	Administrative Receivership	400
B	Administration	403
V	Reform	406
A	Reform Proposals and UCC Article 9	407
B	Abolition of the Floating Charge	411
VI	Conclusion	413
<b>15</b>	<b>Concluding Observations</b>	<b>414</b>
	<i>Index</i>	421