

Answers to end of chapter Q&A

Question 1: What is the difference between a direct right and a pre-existing property right?

The concept of a direct right is discussed on p 193. Consider a case such as *National Provincial Bank v Ainsworth*. Mrs Ainsworth (B) had a 'deserted wife's equity': this gave her a right to occupy land owned by Mr Ainsworth (A). Mr Ainsworth then gave the National Provincial Bank (C) a charge over the land. In such a case, there are essentially two ways, in theory, in which Mrs Ainsworth could assert a right against the bank. First, if Mrs Ainsworth's 'deserted wife's equity' counted as a property right, and the bank had no defence to it, that pre-existing property right would then bind the bank. Second, if the bank acted in such a way as to give Mrs Ainsworth a new, direct right against the bank, Mrs Ainsworth could of course use such a right. A direct right, unlike a pre-existing property right, therefore depends for its existence on C's conduct.

Question 2: When can a promise made by C to A give B a direct right against C?

A promise made by C to A cannot give B a direct contractual right against C (unless of course A is acting as B's agent). However, as discussed on pp 194-202, there are a number of ways in which C's promise to A can give B a non-contractual right against C. First, and most importantly, it may be possible for B to acquire a statutory right against C, under the Contract (Rights of Third Parties) Act 1999: part of section 1 of that statute is set out on pp 195-196. The Act can apply only where C's promise creates a contract between A and B. Second, if C's promise is made in a deed, that promise can give B a direct right against C, even if B is not a party to the deed. If C's promise is made in a deed *with A*, the general rule is that B can only acquire a right if she too is a party to the deed. However, that general rule will be modified if section 56 of the Law of Property Act 1925 applies: see pp 194-195.

It also appears that, even if C's promise to A is not part of a contract, nor made in a deed, it may be able to give B a direct right against C. This seems to have occurred in cases such as *Bannister v Bannister* and *Binions v Evans*: see pp 197-200. The principle applied in these cases is discussed in the extract from *Lloyd v Dugdale*, set out on pp 201-202. It seems that if C, when acquiring a land from A, 'undertakes a new obligation' to B then, at least if that obligation relates to the land acquired by C, B can acquire a direct right against C. However, as we will see in Chapter 14, section 4, the principle is a controversial one and its existence has been doubted.

Question 3: Is the Court of Appeal's decision in *Midland Bank Trust Co Ltd v Green (No 3)* that Evelyne Green was liable to pay damages to Geoffrey Green compatible with the House of Lords' earlier decision that Geoffrey's unregistered equitable property right did not bind Evelyne?

The Court of Appeal's decision in *Midland Bank Trust Co Ltd v Green (No 3)* provides a good example of the distinction between a direct right and a pre-existing property right

(see Question 1 above). In *Midland Bank Trust Co Ltd v Green* (discussed in Chapter 6 on pp 174-175), the House of Lords held that Evelyne Green had a defence to Geoffrey's Green pre-existing property right: as he had failed to register that right as a land charge, Evelyne could rely on the lack of registration defence provided by the Land Charges Act 1925. The House of Lords decision settled only the question of whether Geoffrey could assert a pre-existing property right against Evelyne; it did not determine whether he could instead assert a new, direct right, arising as a result of her conduct.

In *Midland Bank Trust Co Ltd v Green (No 3)*, the Court of Appeal decided that Geoffrey did indeed have a new, direct right against both Evelyne and Walter (Geoffrey's father, who had sold the land to Evelyn). That right arose because of Evelyne and Walter's conduct: they had conspired together to commit an act with the predominant purpose of causing economic loss to Geoffrey, and had thus committed the tort of 'lawful act conspiracy': see p 203. As a result, each was liable to pay damages to Geoffrey.

Question 4: When might it be important to know if a direct right acquired by B as a result of C's conduct is a property right as opposed to a personal right against C?

On pp 208-211, we consider the *content* of a direct right acquired by B against C. Depending on its content, such a right may count as a property right, rather than as a simple personal right against C. For example, in *Bannister v Bannister*, Scott LJ took the view that C had promised to hold the freehold he acquired from A on trust for B, for the duration of B's life. When C's promise was enforced, B necessarily acquired a right under a trust: an equitable property right. In contrast, in *Midland Bank Trust Co Ltd v Green (No 3)*, the direct right acquired by Geoffrey Green (B) was simply a personal right against Evelyne (C) and Walter (A): each had to pay Geoffrey damages.

The question as to whether B's direct right is a property right or a personal right against C will be crucial if, for example, C later transfers his right to the land to C2 (see the diagram on p 209). In such a case, if the direct right B acquired against C counts as a property right, it will be capable of binding C2. In contrast, if the direct right B acquired against C is only a personal right, it cannot bind C2. In the latter case, B's only chance of asserting a right against C2 will be to show that he has a further direct right against C2, arising as a result of C2's conduct.