

Bell and the Accession of Moveables to Moveables. Is reform warranted?

Bell's principles (s 1298)

That of two substances, one of which can exist separately, the other not, the former is the principal: That where both can exist separately, the principal is that which the other is taken to adorn or complete: That in the absence of these indications, bulk prevails; next value. And in all such cases where there can be no separation, the property is with the owner of the principal, leaving to the other a claim for indemnification

Context

Bell here proposes a systemic order of inquiry to be used for the problem of identifying the principal and accessory in the case of accession of moveables to moveables. Generally, the same rules apply for deciding whether accession has taken place as apply for moveables to land. The same principle applies - *accessorium sequitur principale* - the accessory follows the principal. However, the problem of identification of principal and accessory is more complicated than in the case of fixtures where land (heritable property) is considered the principal. The area of law here is not settled. Institutional writers such as Bell and Stair still provide authority when considering this problem. Stair suggests that one should look to the 'design of the artefact' when identifying the principal and accessory elements. Stair's analysis points towards looking at the nature and role of the things as items of property, regardless of value. Bell's second criteria seems to accord with Stair's identification of the dominant role. Yet, there has been criticism of Bell's favour of bulk over value. Relatively little case law exists in this area. The South African case of *Khan v Minister of Law and Order* gives some weight to Bell's third criterion of bulk. Here a BMW car turned out to be the front of one car and back of another stolen car. The rear which included the bodywork up to the windscreen was held to be the principal. This paper will aim to take Bell's principles as a starting point and seek to answer to what extent they are a suitable guide to this date for the accession of moveables to moveables.

Research aims and questions

Whether considerations of equity and intention should be considered in the case of accession of moveables to moveables?

As MacQueen notes, accession is a result of physical factors, in principle it takes place regardless of circumstances and without reference to intention. Yet, there have been attempts to suggest that such circumstances should be taken into account in the specific instance of moveables to moveables. Knobel considers the application of the principle of *inaedificatio* in South African law with respect to the accession of moveables to land and its potential application in the case of moveables to moveables. Here a subjective criteria is relevant that takes account of the intention of the owner of the moveable or of the person who attached the moveable. Reform of the law has been proposed by the Scottish Law Commission (SLC). The SLC suggested (Alternative A) that accession be linked with specification and the basic principle should be that the final product becomes the common property of all the persons who had an interest in the materials, with the court having the power to make equitable adjustments. Alternative B ties co-ownership in proportion to value and suggests acquisition by the owner of the principal where the principal can be distinguished and it is of substantially greater value than the accessory. This paper will engage with the development in this

area of law and engage with the unimplemented reforms put forth by the SLC. Such reforms challenge both Bell's principles and conceptions of law based on Roman law including the distinction between specificatio and accessio and inflexible rules that take no account of equity. Like the SLC Memorandum this paper will also seek to take a comparative view of the law in this area considering other jurisdictions and possible resolutions that can be drawn from this.

Reading List

Textbooks

Hector L. MacQueen et al. (eds), *Gloag and Henderson: The Law of Scotland* (15th edn, Thomson/W. Green, 2012) para 31.06

Carey Miller with David Irvine, *Corporeal Moveables in Scots Law* (2nd ed, Thomson/W. Green, 2005) para 3.19

Gretton and Steven, *Property Trusts and Succession* (4th edn, Bloomsbury, 2021) para 9.13-9.14

Cases

Khan v Minister of Law and Order 1991 (3) SA 439

Wylie and Lockhead v Mitchell (1870) 8 M 552

Zahnrad Passau GmbH v Terez Ltd 1986 SLT 84 OH

JL Cohen Motors v Alberts (1985) 2 SA 427

Rollo v Thomson (1857) 19 D 994

McDonald v Provan (of Scotland Street) Ltd 1960 SLT 231

Rolle v Thomson (1857) 19 D 994

Articles

L P W van Vliet, 'Accession of Movables to Land: I' (2002) 6(1) ELR 67 *on general principles

Ina Knobel, 'Accession of Movables to Movables and Inaedificatio - South Africa and Some Common Law Countries' (2011) 74 Journal of Contemporary Roman-Dutch Law 296

Books

Carey Miller, *The acquisition and protection of ownership* (Cape Town: Juta, 1986) 39

Other

Scottish Law Commission Memorandum no.28 (1976)

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