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LIEN (VOLUME 68 (2008) 5TH EDITION)

1. TYPES OF LIEN AND COMPARISONS

(1) TYPES OF LIEN

801. Types.

The concept of lien in the simple sense of a legal right to keep possession of property until a claim has been met has been extended to cover a number of analogous rights. Liens are now variously described as legal¹, non-possessory², equitable³, general⁴, particular⁵, statutory⁶, maritime⁷, contractual⁸, judicial⁹ and subrogatory¹⁰. Some of these may exist concurrently¹¹. A lien arising by operation of law or equity and not contractual in its nature does not seem to fall within the definition of 'security' in the Consumer Credit Act 1974¹² but is included for the purposes of the Insolvency Act 1986¹³. A lien also falls within the definition of 'security interest' for the purposes of the Financial Collateral Arrangements (No 2) Regulations 2003¹⁴.

1 Legal liens are sometimes described as possessory or common law liens: see PARAS 802, 817 et seq.

2 See PARA 803.

3 See PARAS 804, 855 et seq.

4 See PARAS 817, 828 et seq. A general lien is a sub-category of legal lien.

5 See PARAS 818, 838 et seq. A particular lien is a sub-category of legal lien.

6 See PARA 806.

7 See PARA 807.

8 See PARA 808. As to the differences among common law, customary and contractual liens see *Welsh Development Agency (Holdings) Ltd v Modern Injection Mouldings Ltd* (6 March 1986, unreported), QBD. As to lien by custom or usage see PARA 831.

9 See PARA 803.

10 See PARAS 809, 874.

11 See PARA 805.

12 'Security', in relation to an actual or prospective consumer credit agreement or consumer hire agreement, or any linked transaction, means a mortgage, charge, pledge, bond, debenture, indemnity, guarantee, bill, note or other right provided by the debtor or hirer, or at his request (express or implied), to secure the carrying out of the obligations of the debtor or hirer under the agreement: see the Consumer Credit Act 1974 s 189(1); and **CONSUMER CREDIT** vol 9(1) (Reissue) PARA 200.

13 'Security' means, in relation to England and Wales, any mortgage, charge, lien or other security: see the Insolvency Act 1986 s 248(b); and **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARA 109. See also *Bristol Airport plc v Powdrill*[1990] Ch 744, [1990] 2 All ER 493, CA; *Re Sabre International Products Ltd*[1991] BCLC 470. See further *Re Atlantic Computer Systems plc*[1992] Ch 505, [1992] 1 All ER 476, CA; *Euro Commercial Leasing Ltd v Cartwright & Lewis*[1995] 2 BCLC 618; *London Flight Centre (Stansted) Ltd v Osprey Aviation Ltd*[2002] BPIR 1115, sub nom *Re London Flight Centre (Stansted) Ltd*[2002] All ER (D) 52 (Jul). A banker having a lien on a cheque was formerly held to be a secured creditor within the meaning of the Bankruptcy Act 1914 s 167 (repealed): see *Re Keever (a bankrupt), ex p Trustee of the Property of the Bankrupt v Midland Bank Ltd*[1967] Ch 182 at 192, [1966] 3 All ER 631 at 635 per Ungood-Thomas J. See also **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 560; **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARAS 157, 263.

14 See the Financial Collateral Arrangements (No 2) Regulations 2003, SI 2003/3226, reg 3; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 526.

UPDATE

801 Types

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/1. TYPES OF LIEN AND COMPARISONS/(1) TYPES OF LIEN/802. Legal lien.

802. Legal lien.

In its primary or legal sense 'lien'¹ means a right at common law in one person to retain that which is rightfully² and continuously³ in his possession belonging to another until the present and accrued claims⁴ of the person in possession are satisfied⁵. In this primary sense it is given by law⁶ and not by contract⁷. A written agreement to give a lien is not a bill of sale⁸, for a legal lien does not as a rule arise until possession of the property is obtained⁹. However, in exceptional cases, possession is not essential to constitute a legal lien¹⁰.

1 'Legal lien' is used in this title to denote a lien in the primary sense. Such liens are sometimes described as possessory or common law liens. As to legal lien see also PARA 817 et seq. Equitable liens arise independently of possession: see PARAS 804, 855 et seq.

2 See PARA 823.

3 See PARA 826.

4 See PARA 827.

5 *Hammonds v Barclay* (1802) 2 East 227 at 235; *Re Holmes, ex p Heywood* (1815) 2 Rose 355; *Lickbarrow v Mason* (1793) 6 East 20n at 27n, HL; and see *Dyson v Peat* [1917] 1 Ch 99 at 103.

Common law liens arise in particular trades and professions. The general principles governing common law liens are discussed in this title, but for more detailed consideration of common law liens reference should be made to the titles concerned with the trade or profession in question. Thus for lien of carriers see **CARRIAGE AND CARRIERS** vol 7 (2008) PARAS 761-763; and see eg *T Comedy (UK) Ltd v Easy Managed Transport Ltd* [2007] EWHC 611 (Comm), [2007] 2 All ER (Comm) 242, [2007] 2 Lloyd's Rep 397; for lien of innkeepers see **LICENSING AND GAMBLING** vol 67 (2008) PARA 213; and for lien of solicitors see **LEGAL PROFESSIONS** vol 66 (2009) PARA 996 et seq. As to the lien of an agent see **AGENCY** vol 1 (2008) PARAS 114-118; and as to the lien of a bailee see **BAILMENT** vol 3(1) (2005 Reissue) PARAS 48-49.

6 Legal liens subsist under the common law or by statutes, eg the Sale of Goods Act 1979 ss 39, 41-43 (see **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARAS 236-237, 242-245).

7 As to contract see PARA 808. Lien is sometimes spoken of as arising by contract, but such a lien is more in the nature of a pledge: *Gladstone v Birley* (1817) 2 Mer 401 at 404; and see PARAS 819, 832. Note, however, that a right of sale is inherent in a pledge; such a right does not, on the other hand, arise under a common law possessory lien unless specifically conferred by agreement or by custom, and may be absent from any right of detention conferred by contract: see PARA 848; and **PLEDGES AND PAWNS** vol 36(1) (2007 Reissue) PARAS 22-31.

As regards possessory liens, the rules in courts of law and courts of equity under the old practice were the same: *Gladstone v Birley*; *Oxenham v Esdaile* (1828) 2 Y & J 493; and see *Heywood v Waring* (1815) 4 Camp 291.

8 *Great Eastern Ry Co v Lord's Trustee* [1909] AC 109, HL. See also **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2076.

9 *Kinloch v Craig* (1789) 3 Term Rep 119. See also *Shaw v Neale* (1858) 6 HL Cas 581 at 601.

10 Eg in the cases of liens for seamen's wages and bottomry bonds: see *Cross Law of Lien and Stoppage in Transitu* (1840) p 4. As to maritime liens see PARA 807.

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803. Non-possessory lien.

In its secondary sense, 'lien' may be applied to a right subsisting in a person who has no possession of the property concerned but who nevertheless has a right against the owner analogous to a legal lien¹. Such a right may arise in equity², by statute³ or under a court order⁴. Thus, a trustee has an equitable lien on the trust estate or fund for money properly expended on it⁵; and a solicitor, in addition to his legal lien on the client's documents in his possession, has a right to ask the court to direct that property recovered is to stand security for his costs⁶. Likewise, a receiver or receiver and manager appointed by the court has an indemnity over assets and is a secured creditor with a lien for his expenses, remuneration and costs⁷. A trustee's lien on the trust estate or fund for money properly expended on it seems to extend to the payment of costs of proceedings authorised by the court⁸. It may also extend to future liabilities⁹. However, where a beneficiary or minority shareholder is entitled to a similar indemnity there can be no legal lien because there is no possession; and it is not clear whether an equitable or judicial lien could be said to arise in such a case, or whether such a proposition could have any useful effect¹⁰. A trustee's equitable and statutory rights to impound a beneficiary's interest, where the trustee has committed a breach of trust at the instigation of the beneficiary, do not depend on the trustee's actual possession of the trust fund¹¹.

1 As to the primary sense of 'lien' see PARA 802. As to legal lien see also PARA 817 et seq.

2 See PARAS 804, 855.

3 See PARA 806. An analogous right conferred by statute is often described as a charge, eg the statutory charge under the Community Legal Service (Financial) Regulations 2000, SI 2000/516, Pt III (regs 42-53) on property recovered or preserved in legal proceedings: see **LEGAL AID** vol 65 (2008) PARA 99 et seq.

4 There seems to be no purpose in describing a right arising under a court order as a lien or judicial lien, for such a right would be enforceable in the same way as any other provision of the order and is not subject to special considerations. See generally **CIVIL PROCEDURE**.

5 As to equitable liens generally see PARAS 804, 855 et seq. As to the trustee's lien in particular see eg *Re Pumfrey, Worcester City and County Banking Co v Blick* (1882) 22 ChD 255 at 262; *Re Pauling's Settlement Trusts (No 2)*, *Younghusband v Coutts & Co Ltd* [1963] Ch 576, [1963] 1 All ER 857; *Re Spurling's Will Trusts, Philpot v Philpot* [1966] 1 All ER 745, [1966] 1 WLR 920; *X v A* [2000] 1 All ER 490, [2000] 1 EGLR 19; and **TRUSTS** vol 48 (2007 Reissue) PARA 905. As to equitable maritime liens see PARA 807.

A trustee seeking to exercise his power of lien over a trust fund must establish substantial grounds for doing so; it is then for the beneficiaries to show that those grounds do not exist: *Wester v Borland* [2007] EWHC 2484 (Ch), [2007] All ER (D) 204 (Oct).

6 As to the nature of a solicitor's lien see *Re Fuld (No 4)* [1968] P 727 at 736, [1967] 2 All ER 649 at 654 per Scarman J; *Clifford Harris & Co v Solland International Ltd* [2005] EWHC 141 (Ch), [2005] 2 All ER 334, (2005) Times, 10 March; and **LEGAL PROFESSIONS** vol 66 (2009) PARA 1006 et seq.

7 *Bertrand v Davies* (1862) 31 Beav 429 at 436. See also *Re Berkeley Applegate (Investment Consultants) Ltd (in liquidation)*, *Harris v Conway* [1989] Ch 32 at 50-51, [1988] 3 All ER 71 at 82-83 per Edward Nugee QC.

8 *Re Beddoe, Downes v Cottam* [1893] 1 Ch 547, CA.

9 See *X v A* [2000] 1 All ER 490, [2000] 1 EGLR 19.

10 See *Wallersteiner v Moir (No 2)* [1975] QB 373 at 391, [1975] 1 All ER 849 at 858, CA, per Lord Denning MR, and at 403 and 868 per Buckley LJ. The right to indemnity has not been regarded as having any preferential status, such as lien might give, on insolvency or liquidation: see *Wallersteiner v Moir (No 2)* at 408 and 872 per Scarman LJ. Cf PARA 858.

11 *Re Pauling's Settlement Trusts (No 2)*, *Younghusband v Coutts & Co Ltd* [1963] Ch 576 at 584, [1963] 1 All ER 857 at 861 per Wilberforce J.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/1. TYPES OF LIEN AND COMPARISONS/(1) TYPES OF LIEN/804. Equitable lien.

804. Equitable lien.

An equitable lien is a species of equitable charge arising by operation of law independent of possession¹. Although the vendor's and the purchaser's equitable liens arise in circumstances where there is a contract, a contract is not necessary for the creation of an equitable lien². Since it arises in equity, an equitable lien is subject to all the usual conditions affecting equitable rights³. It is not possible to state a general principle which accounts for the diversity of situations in which an equitable lien arises⁴. Apart from equitable liens arising from contractual dealings in property, equitable liens have been based upon general considerations of justice or upon the principle that he who seeks the aid of equity in enforcing some claim must admit the equitable rights of others associated with the subject matter⁵. The vendor's lien is founded on the principle of equity that he who has obtained possession of property under a contract for payment of its value will not be allowed to keep it without payment⁶. Where, through the deposit of deeds and compliance with the statutory formalities, an equitable mortgage arises, there is a legal lien on the documents⁷.

1 *Re Bond Worth Ltd* [1980] Ch 228 at 250-251, [1979] 3 All ER 919 at 940-941 per Slade J; *Re Welsh Irish Ferries Ltd* [1986] Ch 471 at 477-478, [1985] 3 WLR 610 at 613-614 per Nourse J. See also PARA 855 et seq.

2 Eg the trustee's lien: see *Shirlaw v Taylor* (1991) 102 ALR 551 at 557, Aust Fed Ct, Full Ct.

3 Thus relief may be refused where the conduct of the person claiming the right has been questionable or improper. The principles of equitable jurisdiction are fully discussed elsewhere in this work: see **EQUITY** vol 16(2) (Reissue) PARAS 551-583. As to the distinction between an equitable interest and a mere equity see **EQUITY** vol 16(2) (Reissue) PARA 567.

4 *Hewett v Court* (1983) 149 CLR 639 at 645, Aust HC, per Gibbs CJ. See eg *Giumelli v Giumelli* (1999) 196 CLR 101, Aust HC; but contrast *Yeoman's Row Management Ltd v Cobbe* [2008] UKHL 55, [2008] All ER (D) 419 (Jul), reversing the decision of the Court of Appeal sub nom *Cobbe v Yeomans Row Management Ltd* [2006] EWCA Civ 1139, [2006] 1 WLR 2964, [2006] All ER (D) 01 (Aug), which had affirmed in part the decision of the High Court ([2005] EWHC 266 (Ch), [2005] 2 P & CR D2, [2005] All ER (D) 406 (Feb)) granting a lien to secure an interest over certain property in order to satisfy claims based upon proprietary estoppel and constructive trust; the House of Lords held that the claims for relief based upon proprietary estoppel and constructive trust were not justified and that the appropriate relief was a quantum meruit payment.

5 See *Shirlaw v Taylor* (1991) 102 ALR 551 at 557-558, Aust Fed Ct, Full Ct.

6 See PARA 859.

7 See PARA 812.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/1. TYPES OF LIEN AND COMPARISONS/(1) TYPES OF LIEN/805. Concurrent legal and equitable liens.

805. Concurrent legal and equitable liens.

Legal and equitable liens may both arise in the same transaction¹. Thus on the sale of land the vendor's or purchaser's equitable lien exists concurrently with a more limited legal lien before conveyance and a legal lien on the title deeds in the claimant's possession². It would also seem that a legal lien arising by statute on the sale of goods may exist concurrently with an equitable lien on the same goods³.

1 As to legal lien see PARAS 802, 817 et seq; and as to equitable lien see PARAS 804, 855 et seq.

2 See PARAS 859, 864.

3 See PARA 860. As to concurrent legal lien and equitable mortgage see PARA 812. An equitable charge over a chattel can co-exist with a bailment of the chattel: *Re Cosslett (Contractors) Ltd* [1997] Ch 23 at 41, [1996] 4 All ER 46 at 61 per Jonathan Parker J.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/1. TYPES OF LIEN AND COMPARISONS/(1) TYPES OF LIEN/806. Statutory lien.

806. Statutory lien.

Where a lien arises by virtue of statute there will be different considerations from those raised by a common law or equitable lien, because the primary question will be the meaning of the statute. It will not necessarily follow that the principles affecting a common law or equitable lien are intended by the statute to apply¹. Statute law may also destroy or nullify a lien which would otherwise be enforceable². It may not be clear whether the statute creates a general or a particular lien³. An example of a statutory lien is that created in favour of the unpaid seller by the Sale of Goods Act 1979⁴.

1 As to the statutory lien of the consignee see PARA 830. As to the statutory right of detention under the Civil Aviation Act 1982 s 88 see *Bristol Airport plc v Powdrill* [1990] Ch 744, [1990] 2 All ER 493, CA (the statutory right of detention is a lien or other security for the purposes of the insolvency legislation; applied in *London Flight Centre (Stansted) Ltd v Osprey Aviation Ltd* [2002] BPIR 1115, sub nom *Re London Flight Centre (Stansted) Ltd* [2002] All ER (D) 52 (Jul)); *Re Sabre International Products Ltd* [1991] BCLC 470. See also PARA 801 note 13; and **AIR LAW** vol 2 (2008) PARA 436. Cf *Euro Commercial Leasing Ltd v Cartwright & Lewis* [1995] 2 BCLC 618. The right of detention of a ship conferred on the Port of London Authority by the Port of London Act 1968 s 39 subsists for as long as the authority has possession of the ship and cannot, without the authority's consent, be removed or nullified by an order of the court: *The Freightline One* [1986] 1 Lloyd's Rep 266. As to an insurance agent's lien on a marine insurance policy see the Marine Insurance Act 1906 s 53; and **INSURANCE** vol 25 (2003 Reissue) PARA 274. As to common law lien see PARAS 802, 817 et seq; and as to equitable lien see PARAS 804, 855 et seq.

2 See eg PARAS 861, 885. An accountant's lien in respect of unpaid fees over a client's books of accounts, files and papers is unenforceable in so far as the existence of the lien conflicts with the requirement imposed by what is now the Companies Act 2006 s 388(1) (see **COMPANIES** vol 15 (2009) PARA 709) that a company's accounting records must be kept at the company's registered office or such other place as the directors think fit, and must at all times be open to inspection by the company's officers: *DTC (CNC) Ltd v Gary Sargeant & Co (a firm)* [1996] 2 All ER 369, [1996] 1 WLR 797. See also **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARA 676.

An adjudicator of a dispute arising under a construction contract providing for a procedure complying with the Housing Grants, Construction and Regeneration Act 1996 s 108 was not entitled to exercise a lien on the decision until payment of fees as it was impermissible for the arrangement about the payment of fees to frustrate or impede the statutory process: *Cubitt Building and Interiors Ltd v Fleetglade Ltd* [2006] EWHC 3413 (TCC), 110 ConLR 36, [2007] All ER (D) 268 (Jan).

3 See eg the Consumer Credit Act 1974 ss 70(2), 73(5); cf s 72(4). See further **CONSUMER CREDIT**. As to general liens see PARAS 817, 828 et seq; and as to particular liens at common law see PARAS 818, 838 et seq.

4 In the Sale of Goods Act 1979 ss 39, 42, 43, 47, 48, 55: see **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 236 et seq. See also *The Bineta* [1966] 3 All ER 1007n, [1967] 1 WLR 121.

UPDATE

806 Statutory lien

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/1. TYPES OF LIEN AND COMPARISONS/(1) TYPES OF LIEN/807. Maritime liens.

807. Maritime liens.

A maritime lien is a claim or privilege on a ship, freight or cargo in respect of service done to it or damage caused by it¹. Such a lien does not import or require possession of the ship, freight or cargo, for it is a claim or privilege on that property to be carried into effect by legal process². The nature and extent of maritime liens is discussed in detail elsewhere in this work³.

The maritime liens recognised by English law are those in respect of bottomry and respondentia bonds⁴, salvage of property⁵, seamen's wages⁶, damage⁷ and a salvor's rights under any international convention or national law⁸. A maritime lien has been held not to exist in respect of towage⁹, the supply of goods, materials etc¹⁰ or insurance contributions¹¹. It is doubtful whether a maritime lien exists in respect of pilotage dues¹². An owner's lien over cargoes or subfreights is contractual only, having no independent root in Admiralty, common law, equity or statute, and creates a right only as between the parties to the contract in which it is contained¹³.

Statutory rights and remedies similar to those enjoyed by the holder of a maritime lien, and enforced in similar manner, include claims in respect of the wages, disbursements and liabilities of the master of a ship¹⁴; claims in respect of damage to land caused by persons rendering services to a vessel wrecked, stranded or in distress¹⁵; claims in respect of the fees and expenses of a receiver of wreck¹⁶; and claims in respect of the expenses of a local authority incurred on account of the burial or destruction of the carcase of any animal or carcase thrown or washed from any vessel¹⁷.

A statutory lien attaches when property is arrested in a claim in rem in Admiralty jurisdiction¹⁸.

1 *Harmer v Bell, The Bold Buccleugh* (1852) 7 Moo PCC 267 at 284 (approved in *Currie v M'Knight* [1897] AC 97 at 106, 8 Asp MLC 193 at 195, HL); *The Ripon City* [1897] P 226 at 241, 242, 8 Asp MLC 304 at 310-311 per Gorell Barnes J. The law relating to maritime liens applies to hovercraft and property connected with hovercraft, notwithstanding that the hovercraft is on land at any relevant time: see the Hovercraft Act 1968 s 2(2).

Damage giving rise to any claim under the Nuclear Installations Act 1965 in respect of any occurrence such as is mentioned in ss 7(2)(b) or (c), 10 or 11, which constitutes a breach of duty under ss 7, 8, 9, 10 or 11, does not give rise to a lien or other right in respect of any ship: see s 14; and **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1504.

2 *Harmer v Bell, The Bold Buccleugh* (1852) 7 Moo PCC 267; *The Ripon City* [1897] P 226, 8 Asp MLC 304; *The Tervaete* [1922] P 259 at 270, 16 Asp MLC 48 at 55, CA.

As to possessory liens see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1034.

3 See **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1014. As to the ranking of maritime liens see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1025 et seq; and as to their enforcement and extinction see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1037 et seq.

4 As to bottomry and respondentia bonds see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 437; **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1022.

5 As to salvage see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1019.

6 As to seamen's wages see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1020.

7 As to damage see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1027.

8 See **SHIPPING AND MARITIME LAW** vol 94 (2008) PARAS 911, 1019.

9 *Westrup v Great Yarmouth Steam Carrying Co* (1889) 43 ChD 241, 6 Asp MLC 443.

10 *Northcote v The Henrich Björn (Owners), The Henrich Björn* (1886) 11 App Cas 270, 6 Asp MLC 1, HL; *The Cella* (1888) 13 PD 82, CA; *The James W Elwell* [1921] P 351, 15 Asp MLC 418.

11 *Cassa Nazionale della Previdenza Marinara v Proceeds of the Sale of the Italian SS Acrux, The Acrux* [1965] P 391, [1965] 2 All ER 323, [1965] 1 Lloyd's Rep 565.

As to an insurance agent's lien on a marine insurance policy see the Marine Insurance Act 1906 s 53; and **INSURANCE** vol 25 (2003 Reissue) PARA 274.

12 See **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 125. As to who may sue for, and as to the recovery of, such wages see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARAS 127 et seq, 467 et seq.

13 See *Samsun Logix Corp v Oceantrade Corp*, *Deval Denizelik VE Ticaret AS v Oceantrade Corp* [2007] EWHC 2372 (Comm), [2008] 1 All ER (Comm) 673, [2007] All ER (D) 272 (Oct), applying *Tradigrain SA v King Diamond Marine Ltd, The Spiros C* [2000] 2 All ER (Comm) 542, [2000] 2 Lloyd's Rep 319, CA.

14 See the Merchant Shipping Act 1995 s 41; and **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 477; **SHIPPING AND MARITIME LAW** vol 94 (Reissue) PARA 1021. In effect, this provision gives the master of a vessel a maritime lien: *The Ripon City* [1897] P 226 at 232, 234, 242, 247, 8 Asp MLC 304 at 308, 311, 312 per Gorrell Barnes J. See also *Morgan v Castlegate Steamship Co, The Castlegate* [1893] AC 38 at 46, 7 Asp MLC 284 at 285, HL per Lord Herschell.

15 See the Merchant Shipping Act 1995 s 234(5), (6); and **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 995.

16 See the Merchant Shipping Act 199 s 249(3); and **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 989.

17 See the Animal Health Act 1981 s 57; and **ANIMALS** vol 2 (2008) PARA 1125.

18 See **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1023.

UPDATE

807 Maritime liens

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/1. TYPES OF LIEN AND COMPARISONS/(1) TYPES OF LIEN/808. Contractual lien.

808. Contractual lien.

Where a lien arises by contract¹ there will usually be different considerations from those raised by a common law or equitable lien, because the primary question will be the meaning of the terms of the contract². Contract has been said to supersede the lien and to limit the rights of the person claiming under contract to those for which provision has been made in the contract³. A contract which purports to create a general lien will be strictly construed⁴. Just as a contract may supersede the lien, so a course of dealing inconsistent with the lien may destroy it⁵. Repudiation of the contract, however, will not destroy a lien which has already arisen with respect to sums unpaid under it⁶.

1 An example of a contractual lien is a security within the terms of the Consumer Credit Act 1974: see PARA 801 note 12. See also *Samsun Logix Corp v Oceantrade Corp*, *Deval Denizcilik VE Ticaret AS v Oceantrade Corp* [2007] EWHC 2372 (Comm), [2007] All ER (D) 272 (Oct), applying *Tradigrain SA v King Diamond Marine Ltd*, *The Spiros C* [2000] 2 All ER (Comm) 542, [2000] 2 Lloyd's Rep 319, CA (shipowner's lien over cargoes or subfreights is contractual only); *Agnew v IRC* [2001] UKPC 28 at [39]-[41], [2001] 2 AC 710 at [39]-[41], [2001] 2 BCLC 188 (shipowner's lien on subfreights derived from the common form provision in a charterparty is the creation of neither the common law nor equity but originates in maritime law; the better view is that it is not a charge at all but a contractual, non-possessory, personal right which is sui generis). As to common law lien see PARAS 802, 817 et seq; and as to equitable lien see PARAS 804, 855 et seq. A right which arises by express contractual agreement is sometimes described as a lien: see *Re Bond Worth Ltd* [1980] Ch 228, [1979] 3 All ER 919.

2 See eg the wide effect of the contractual lien described in PARA 835 text and note 2. As to whether the benefit of a contractual lien over goods in storage may be transferred to the purchaser of the storage company see *Gordon v Gordon* [2002] EWCA Civ 1884, [2002] All ER (D) 308 (Dec).

3 *Walker v Birch* (1795) 6 Term Rep 258; *Re Leith's Estate*, *Chambers v Davidson* (1866) LR 1 PC 296 at 305; *Fisher v Smith* (1878) 4 App Cas 1, HL; and see *Seka Pty Ltd (in provisional liquidation) v Fabric Dyeworks (Aust) Pty Ltd* (1991) 4 ACSR 455, Aust Fed Ct. See also PARAS 832, 854 note 9.

4 *Kinnear v Midland Rly Co* (1868) 19 LT 387; and see *Squamish Terminals Ltd v Price-Waterhouse Ltd* (1980) 26 BCLR 22 at 26, BC SC, per Andrews J. As to general liens see PARAS 817, 828 et seq.

5 See *Fisher v Smith* (1878) 4 App Cas 1, HL; and PARA 852. Cf *Heath Lambert Ltd v Sociedad de Corretaje de Seguros* [2006] EWHC 1345 (QB), [2006] 2 All ER (Comm) 543, [2006] 2 Lloyd's Rep 551 (agreement allowing for payment of loss proceeds directly to second defendant did not affect claimant's lien under the Marine Insurance Act 1906 s 52(2) over the proceeds both as against the second defendant and any other intermediary, whether or not the second defendant was under a direct obligation to pay the premium. In addition, the lien could be maintained until the premium was paid or the claim was in some other way satisfied and was not extinguished where judgment had been obtained). As to the creation of lien inferred from a course of dealing see PARA 856.

6 See *Oyster Marine Ltd v Lomas*, *Re Gosport Realisations Ltd* [2003] All ER (D) 276 (Feb), CA.

UPDATE

808 Contractual lien

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/1. TYPES OF LIEN AND COMPARISONS/(1) TYPES OF LIEN/809. Subrogatory lien.

809. Subrogatory lien.

A lien may arise in equity by subrogation. Where A's money is used to pay off the claim of B, who is a secured creditor, A is entitled to be regarded in equity as having had an assignment to him of B's rights as a secured creditor¹. This right of subrogation arises independently of contract or guarantee² and is equivalent to the right of contribution which exists in equity where a creditor has a right to come upon more than one person or fund for the payment of a debt. In such a case there is an equity between the persons interested in the different funds that each shall bear no more than a due proportion³. That principle applies equally where ultimately one person is liable for the whole debt and the other is ultimately liable for none of it⁴. The right of subrogation will only carry with it the right to a lien where the person primarily liable was subject to such a lien⁵ and not, for instance, where the original loan was clearly intended to be unsecured⁶ or where a trustee has no indemnity rights against the trust fund because his contract is unauthorised⁷. A lender has been entitled to be subrogated to the right of the vendor to claim a lien on property in respect of purchase moneys which the lender was defrauded into advancing and which but for the payment made by reason of the lender's advance would have remained unpaid⁸. Similarly the lender was subrogated to the earlier chargee's right to subrogation⁹ to the lien which the vendor would have had if the price (or the relevant part of it) had remained unpaid¹⁰.

1 *Burston Finance Ltd v Speirway Ltd (in liquidation)* [1974] 3 All ER 735 at 738, [1974] 1 WLR 1648 at 1652 per Walton J. This formulation was cited with obvious approval by Oliver J in *Paul v Speirway (in liquidation)* [1976] Ch 220 at 231, [1976] 2 All ER 587 at 597, by Jonathan Parker LJ in *Halifax plc v Omar* [2002] EWCA Civ 121 at [79]-[80], [2002] 2 P & CR 377, [2002] All ER (D) 271 (Feb), by Lord Hutton in *Banque Financière de la Cité v Parc (Battersea) Ltd* [1999] 1 AC 221 at 245, [1998] 1 All ER 737 at 757, HL, and most recently by Neuberger LJ in *Cheltenham & Gloucester plc v Appleyard* [2004] EWCA Civ 291 at [25], (2004) Times, 29 March, [2004] All ER (D) 280 (Mar), who stated that the principle was 'nowhere better stated'. This is similar to the statutory transfer of a mortgage, where the receipt for mortgage money indicates that payment has been made by some person not immediately entitled to the equity of redemption: see the Law of Property Act 1925 s 115(2); and **MORTGAGE** vol 77 (2010) PARA 649.

2 *Re Downer Enterprises Ltd* [1974] 2 All ER 1074 at 1080, [1974] 1 WLR 1460 at 1468 per Pennycuik V-C, distinguishing *Baynton v Morgan* (1888) 22 QBD 74, CA.

3 *Deering v Earl of Winchelsea* (1787) 2 Bos & P 270, Ex Ch; *Craythorne v Swinburne* (1807) 14 Ves 160; *Stirling v Forrester* (1821) 3 Bli 575; *Duncan, Fox & Co v North and South Wales Bank* (1880) 6 App Cas 1 at 19, HL.

4 *Re Downer Enterprises Ltd* [1974] 2 All ER 1074 at 1081, [1974] 1 WLR 1460 at 1469 per Pennycuik V-C. As to subrogation generally see **EQUITY** vol 16(2) (Reissue) PARA 770; **MORTGAGE** vol 77 (2010) PARAS 290, 384-385; Fisher and Lightwood's Law of Mortgage Ch 43.

5 As to lien by subrogation see further PARA 874.

6 *Paul v Speirway Ltd (in liquidation)* [1976] Ch 220 at 232, [1976] 2 All ER 587 at 597 per Oliver J (applying *Wylie v Carlyon* [1922] 1 Ch 51; *Capital Finance Co Ltd v Stokes* [1969] 1 Ch 261, [1968] 3 All ER 625, CA). Where the later incumbrancer is subrogated the mortgage is not kept alive but the party who has the right of subrogation has the same rights as if it had been kept alive and assigned to him: see *Banque Financière de la Cité v Parc (Battersea) Ltd* [1999] 1 AC 221 at 236, [1998] 1 All ER 737 at 749, HL, per Lord Hoffmann.

7 *Ecclesiastical Comrs v Pinney* [1900] 2 Ch 736 at 743, CA.

8 *Halifax plc v Omar* [2002] EWCA Civ 121, [2002] 2 P & CR 377, [2002] All ER (D) 271 (Feb).

9 Ie for the lender to take the benefit by sub-subrogation.

10 See *UCB Group Ltd v Hedworth* [2003] EWCA Civ 1717, [2003] 3 FCR 739, [2003] All ER (D) 71 (Dec).

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/1. TYPES OF LIEN AND COMPARISONS/(2) COMPARISONS AND DISTINCTIONS/810. Distinctions.

(2) COMPARISONS AND DISTINCTIONS

810. Distinctions.

A lien must be distinguished from a mortgage¹, a pledge², a bill of sale³ and an equitable charge⁴.

1 See PARAS 811-813; and **MORTGAGE** vol 77 (2010) PARA 113.

2 See PARA 815; and **PLEDGES AND PAWNS** vol 36(1) (2007 Reissue) PARA 1 et seq.

3 See PARA 816; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 1620 et seq.

4 See PARA 814; and **EQUITY** vol 16(2) (Reissue) PARAS 406 note 7, 606.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/1. TYPES OF LIEN AND COMPARISONS/(2) COMPARISONS AND DISTINCTIONS/811. Legal lien and mortgage.

811. Legal lien and mortgage.

A legal lien has been held to differ from a mortgage in that it is not generally assignable without the express or implied authority of the owner of the subject goods¹. A mortgage, in comparison, can be transferred at the will of the mortgagee². There is, however, authority for the rule that a legal lien can be assigned along with the secured debt itself³. A more substantial difference between legal lien and mortgage may be that, whereas a legal lien lasts only so long as possession of the goods is sustained, a mortgage does not depend on possession, and can arise or subsist without any delivery of possession to the mortgagee⁴. Further, a legal lien in its true sense arises by operation of law, whereas a mortgage is contractual in origin⁵.

1 See PARA 820; and see *Tobin v Melrose* [1951] SASR 139, S Aust SC. For departures from the supposed principle that a legal lien is not freely assignable see PARAS 809, 820; and see eg *Gordon v Gordon* [2002] EWCA Civ 1884, [2002] All ER (D) 308 (Dec). As to legal lien see PARAS 802, 817 et seq.

2 See the Law of Property Act 1925 ss 114, 115(2); *Taylor v Russell* [1892] AC 244 at 255, HL; and **MORTGAGE** vol 77 (2010) PARA 364.

3 See *Bull v Faulkner* (1848) 2 De G & SM 772, followed in *Vered v Inscorp Holdings Ltd* (1993) 31 NSWLR 290, NSW SC, per Hodgson J. See also PARA 820.

4 The mortgagee may, however, be entitled to possession: see *Western Bank Ltd v Schindler* [1977] Ch 1 at 9, [1976] 2 All ER 393 at 396, CA, per Buckley LJ; and **MORTGAGE** vol 77 (2010) PARAS 402, 554.

5 As to contractual liens see PARA 808. As to legal lien and equitable mortgage see PARA 812. Note that, for the purposes of the Law of Property Act 1925, 'mortgage' includes a lien for securing money or money's worth: see the Law of Property Act 1925 s 205(1)(xvi). A lien is also an 'incumbrance': see s 205(1)(vii). See further **MORTGAGE** vol 77 (2010) PARA 223.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/1. TYPES OF LIEN AND COMPARISONS/(2) COMPARISONS AND DISTINCTIONS/812. Concurrent legal lien and equitable mortgage.

812. Concurrent legal lien and equitable mortgage.

Where a valid equitable mortgage of land has been created¹, the mortgagee has a concomitant legal lien on the title deeds². There must, however, be a contract which complies with the statutory formalities³ for the equitable mortgage to arise⁴.

1 The former rule that a deposit of title deeds to a property by way of security created by itself an equitable mortgage of the property has not survived the enactment of the Law of Property (Miscellaneous Provisions) Act 1989 s 2 (see note 3): *United Bank of Kuwait plc v Sahib* [1997] Ch 107, [1996] 3 All ER 215, CA.

2 *Ex p Whitbread* (1812) 19 Ves 209 at 210 per Lord Eldon LC. Cf PARA 859 text and notes 1-3. As to legal lien see PARAS 802, 817 et seq. For further decisions where the lien was respected and enforced see *Barton v Gainer* (1858) 3 H & N 387; *Re General Provident Assurance Co Ltd* (1869) 38 LJ Ch 320; *Heath v Crealock* (1874) 10 Ch App 22; *Rummens v Hare and Rummens* (1876) 1 Ex D 169, CA; *Swanley Coal Co v Denton* [1906] 2 KB 873, CA. The 1925 legislation expressly preserved the rights of any person in possession of title deeds: see the Law of Property Act 1925 ss 13, 39, 85, 97, Sch 1 Pt VII para 7; and the Land Registration Act 1925 s 66 (repealed). Ordinarily, of course, the immediate freeholder of land prima facie has a right to possession of the deeds of that land: see, as to the complex history of this matter, *Clayton v Clayton* [1930] 2 Ch 12 at 18. As to the statutory right to the deeds when a power of sale has become exercisable see the Law of Property Act 1925 s 106(4); and MORTGAGE vol 77 (2010) PARA 488.

3 Ie the Law of Property (Miscellaneous Provisions) Act 1989 s 2: see SALE OF LAND vol 42 (Reissue) PARA 29. Section 2 applies to equitable mortgages created through deposit of title deeds: *United Bank of Kuwait plc v Sahib* [1997] Ch 107 at 140-141, [1996] 3 All ER 215 at 225, CA, per Peter Gibson LJ. See also MORTGAGE vol 77 (2010) PARA 118. A contract for the sale or other disposition of an interest in land can only be made in writing and only by incorporating all the terms which the parties have expressly agreed in one document or, where documents are exchanged, in each document: see the Law of Property (Miscellaneous Provisions) Act 1989 s 2(1). The terms may be incorporated in a document either by being set out in it or by reference to some other document: s 2(2). The document incorporating the terms or, where documents are exchanged, one of the documents incorporating them (but not necessarily the same one) must be signed by or on behalf of each party to the contract: s 2(3). See further SPECIFIC PERFORMANCE vol 44(1) (Reissue) PARA 858.

4 See note 3. In earlier cases, the courts seem to have been reluctant to preserve the legal lien where an otherwise valid equitable mortgage is void for non-registration under the companies legislation (see COMPANIES vol 15 (2009) PARAS 1277 et seq, 1294): see eg *Re Molton Finance Ltd* [1968] Ch 325, [1967] 3 All ER 843, CA. See also *Re Wallis and Simmonds (Builders) Ltd* [1974] 1 All ER 561, [1974] 1 WLR 391; *Re Bond Worth Ltd* [1980] Ch 228 at 271, [1979] 3 All ER 919 at 957 per Slade J; *Re Welsh Irish Ferries Ltd* [1986] Ch 471 at 477-478, [1985] BCLC 327 at 329-330 per Nourse J.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/1. TYPES OF LIEN AND COMPARISONS/(2) COMPARISONS AND DISTINCTIONS/813. Equitable lien and mortgage.

813. Equitable lien and mortgage.

The main distinction between equitable lien and mortgage is that the mortgage is contractual but the lien arises by operation of equity¹. An equitable lien does not depend on possession and in theory, as an equitable right to a charge, it is assignable; but, since it is dependent for enforcement on a court order², it is not in practice assignable. A lien is not, then, in the strict sense of the word a mortgage, but, for the purposes of the Law of Property Act 1925, a mortgage includes any charge or lien on any property for securing money or money's worth³. It follows that an equitable lien affecting a legal estate in unregistered land will rank for priority according to its date of registration as a land charge⁴ and may be void as against a purchaser if not so registered⁵. It also follows that an equitable lien may be realised by the court as an equitable mortgage⁶.

For the purposes of the Land Registration Act 2002, a 'charge' includes any mortgage, charge or lien for securing money or money's worth⁷. No specific provision is made by the 2002 Act with regard to the priority of equitable charges, which are subject to the basic rule about priority⁸ and rank in order of their creation⁹. A lien over a registered estate can properly be protected by a unilateral notice, even in circumstances where the lien is simply claimed and has not yet been adjudicated upon¹⁰.

1 See PARA 804. As to equitable lien see also PARA 855 et seq.

2 See PARA 880.

3 See the Law of Property Act 1925 s 205(1); PARA 811 text and note 5; and **MORTGAGE** vol 77 (2010) PARA 101.

4 See the Law of Property Act 1925 s 97 (amended by the Land Charges Act 1972 s 18(1), Sch 3; the Land Registration Act 2002 s 133, Sch 11 para 2(1), (10)) (which does not apply to mortgages or charges to which the Land Charges Act 1972 does not apply by virtue of s 14(3) (which excludes certain land charges created by instruments necessitating registration under the Land Registration Act 2002), or to mortgages or charges of registered land); and the Land Charges Act 1972 s 2(1). See also **LAND CHARGES** vol 26 (2004 Reissue) PARAS 622, 629; **MORTGAGE** vol 77 (2010) PARA 261.

5 See the Land Charges Act 1972 s 4(2); and the Law of Property Act 1925 ss 198, 199 (s 198 amended by the Local Land Charges Act 1975 s 17(2), Sch 1). See also **LAND CHARGES** vol 26 (2004 Reissue) PARAS 616, 643.

6 See the Law of Property Act 1925 s 90 (amended by the County Courts Act 1984 Sch 2 Pt II para 13(1), (3); and by SI 1991/724). As to the consequence of lien being included as a mortgage within the Law of Property Act 1925 see **MORTGAGE** vol 77 (2010) PARA 101 et seq.

7 See the Land Registration Act 2002 s 132(1).

8 See the Land Registration Act 2002 s 28; and **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 934.

9 See **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 937.

10 *Donnelly v Weybridge Construction Ltd* [2006] EWHC 348 (TCC), [2006] BLR 158, [2006] All ER (D) 191 (Mar).

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/1. TYPES OF LIEN AND COMPARISONS/(2) COMPARISONS AND DISTINCTIONS/814. Equitable charge.

814. Equitable charge.

An equitable charge is normally a right founded on contract, whereas both legal and equitable liens, in their true sense, arise by operation of law or equity¹. The effects of an equitable lien and an equitable charge are similar in that both are equitable interests and not mere equities² and both are liable to be defeated under the Limitation Act 1980³. If applying to unregistered land, both are also liable to be defeated for non-registration⁴. However, an equitable charge requires registration under the companies legislation⁵ whereas a lien does not⁶.

1 As to legal lien see PARAS 802, 817 et seq; and as to equitable lien see PARAS 804, 855 et seq. For a discussion of the differences between an equitable charge and a lien see also *Re Cosslett (Contractors) Ltd* [1998] Ch 495 at 508, [1999] 1 BCLC 205 at 216, CA, per Millett LJ.

2 See **EQUITY** vol 16(2) (Reissue) PARA 567.

3 See the Limitation Act 1980 s 20(1) (claim time-barred after 12 years); para 885; and **LIMITATION PERIODS** vol 68 (2008) PARA 1105.

4 See PARA 813 text and note 5.

5 Ie under the Companies Act 1985 ss 395, 396 (see **COMPANIES** vol 15 (2009) PARA 1277 et seq): *Re Wallis & Simmonds (Builders) Ltd* [1974] QB 94, [1974] 1 All ER 561. The Companies Act 1985 ss 395, 396 are prospectively repealed by the Companies Act 2006 Sch 16, as from a day to be appointed under s 1300(2), and will be replaced by the provisions of the Companies Act 2006 ss 860(1), (7), 861(1)-(5), 870(1), 874(1)-(3) (not yet in force); at the date at which this volume states the law, no such day had been appointed.

6 *Re Hamlet International plc (in administration), Trident International Ltd v Barlow* [1999] 2 BCLC 506, [2000] BCC 602, CA. The same principle applies with regard to registration of legal liens: see PARA 821.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/1. TYPES OF LIEN AND COMPARISONS/(2) COMPARISONS AND DISTINCTIONS/815. Pledge or pawn.

815. Pledge or pawn.

A pledge or pawn is a bailment of goods or chattels as security for some debt or engagement¹. It gives a special assignable interest in the property to the pledgee² and carries an inherent power of sale in the event of default³. It differs from both a legal and an equitable lien in being essentially contractual⁴, but is similar to a legal lien in that actual or constructive delivery occurs and possession passes to the pledgee⁵. The right to possession of the property vests in the pledgee so far as is necessary to secure the debt⁶. The manner in which a possessory security is designated in the parent contract or other instrument is a persuasive, but not necessarily decisive, indication as to whether the security is a pledge or a lien⁷.

1 See **PLEDGES AND PAWNS** vol 36(1) (2007 Reissue) PARA 1 et seq. As to bailment generally see **BAILMENT**.

2 *Donald v Suckling* (1866) LR 1 QB 585 at 612.

3 See **PLEDGES AND PAWNS** vol 36(1) (2007 Reissue) PARA 27.

4 See further *Johnson v Stear* (1869) 15 CBNS 330 at 334-335 per Erle CJ. As to legal lien see PARAS 802, 817 et seq; and as to equitable lien see PARAS 804, 855 et seq.

5 *Dublin City Distillery Ltd v Doherty* [1914] AC 823, HL; *Official Assignee of Madras v Mercantile Bank of India Ltd* [1935] AC 53, PC.

6 *Halliday v Holgate* (1868) LR 3 Exch 299 at 302.

7 See *Askrigg Pty Ltd v Student Guild of the Curtin University of Technology* (1989) 18 NSWLR 738, NSW SC. See also *Gunnedah Municipal Council v New Zealand Loan and Mercantile Agency Co Ltd* [1963] NSWLR 1229, NSW SC; *Re Vital Learning Aids Pty Ltd* [1979] 2 NSWLR 442, NSW SC; *Seka Pty Ltd (in provisional liquidation) v Fabric Dyeworks (Aust) Pty Ltd* (1991) 4 ACSR 455, Aust Fed Ct.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/1. TYPES OF LIEN AND COMPARISONS/(2) COMPARISONS AND DISTINCTIONS/816. Bill of sale.

816. Bill of sale.

A bill of sale is in some sense the converse of a legal lien¹ in that possession is not given but the property in goods or chattels is transferred by a written instrument². Since a lien arises by operation of law or equity there is no document, and so the registration requirements of the Bills of Sale Acts do not apply³.

1 As to legal lien see PARAS 802, 817 et seq.

2 See FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 1620.

3 See FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 1628. As to the Bills of Sale Acts see FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 1630. As to written contractual liens see PARA 861; and FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 1645.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/2. LEGAL LIEN/(1) NATURE AND ESSENTIALS/817. General lien.

2. LEGAL LIEN

(1) NATURE AND ESSENTIALS

817. General lien.

A general lien entitles a person in possession of chattels to retain them until all claims or accounts of the person in possession against the owner of the chattel are satisfied¹. It can only exist (1) as a common law right arising from general usage; or (2) by express agreement². General liens are discouraged because they give special privileges as against other creditors and tend to upset the equitable distribution of assets on bankruptcy³. They have been regarded as an encroachment upon the common law⁴. However, where the usage has been frequently recognised⁵ the right of lien becomes part of the common law, and is accepted by the courts without further evidence⁶.

1 2 Selwyn's Law of Nisi Prius (13th Edn) p 1312; and see **BAILMENT** vol 3(1) (2005 Reissue) PARA 48. As to general liens see also PARA 828 et seq.

In *R v Humphery* (1825) M'Cle & Yo 173 a wharfinger's general lien was held to prevail against an extent by the Crown. As to an innkeeper's lien upon any property, other than that excluded by statute, brought into the hospitium of the inn by a guest, in respect of the guest's unpaid bills see **LICENSING AND GAMBLING** vol 67 (2008) PARA 213.

The exact converse of a general lien occurs when there is a particular lien under one contract extending over articles to be sent in different parcels at different times: see PARA 841 text and note 11. Such a lien has also been treated as general: see PARA 828. As to particular liens see PARAS 818, 838 et seq.

2 *Green v Farmer* (1768) 4 Burr 2214 at 2221; *Houghton v Matthews* (1803) 3 Bos & P 485 at 494; *Kirchner v Venus* (1859) 12 Moo PCC 361; *Bock v Gorrisen* (1860) 2 De GF & J 434 at 443, CA in Ch; *Jowitt & Sons v Union Cold Storage Co* [1913] 3 KB 1; *United States Steel Products Co v Great Western Rly Co* [1916] 1 AC 189 at 196, HL, per Lord Buckmaster LC; *Re Southern Livestock Producers Ltd* [1963] 3 All ER 801 at 802, [1964] 1 WLR 24 at 26 per Pennycuik J; and see PARA 808.

3 *Rushforth v Hadfield* (1805) 6 East 519 at 528; *Squamish Terminals Ltd v Price-Waterhouse Ltd* (1980) 26 BCLR 22, BC SC. As to the effect of bankruptcy on a creditor's lien see PARA 837; and **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARAS 430, 569. As to liquidation see PARA 834.

4 *Rushforth v Hadfield* (1806) 7 East 224 at 229.

5 The usage must be universally acknowledged and acquiesced in, certain and uniform in its operation, and reasonable and not inconsistent with the general law: *Leuckhart v Cooper* (1836) 3 Bing NC 99; *Nelson v Dahl* (1879) 12 ChD 568 at 575; and see *Majeau Carrying Co Pty Ltd v Coastal Rutile Ltd* (1973) 1 ALR 1, Aust HC.

6 *Brandao v Barnett* (1846) 12 Cl & Fin 787 at 805, HL; *K Chellaram & Sons (London) Ltd v Butlers Warehousing and Distribution Ltd* [1978] 2 Lloyd's Rep 412, CA (packing and consolidation contract apt on its wording to create general lien, but lien not here enforceable against owners of goods, because latter neither contemplated nor intended that goods would be entrusted for packing to the party asserting the lien). See also **CUSTOM AND USAGE**.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/2. LEGAL LIEN/(1) NATURE AND ESSENTIALS/818. Particular lien.

818. Particular lien.

A particular lien at common law¹ is the right to retain goods for which charges have been incurred until those charges have been paid². If the owner of the goods is willing to pay the charges, the goods may not be retained until payment of any general balance due to the person having the particular lien³.

Being consistent with the principle of natural equity, particular liens are favoured by the law, which is construed liberally in such cases⁴. As general liens may arise from general usage, or by express contract, it follows that particular liens may arise in the same manner⁵.

The terms of a contract may be such as to negative a particular lien which might otherwise have arisen⁶, but a particular lien cannot be extended by contract so as to become a general lien against the goods of strangers to the contract⁷.

1 As to statutory liens see PARA 806.

2 *Hammonds v Barclay* (1802) 2 East 227 at 235 per Grose J; and see *Hewett v Court* (1982) 149 CLR 639 at 653, Aust HC, per Wilson and Dawson JJ. As to particular liens see also PARA 838 et seq.

3 *Jones v Tarleton* (1842) 9 M & W 675.

4 *Jackson v Cummins* (1839) 5 M & W 342; *Scarfe v Morgan* (1838) 4 M & W 270 at 283 per Parke B.

5 *Cross Law of Lien and Stoppage in Transitu* (1840) p 27. To establish a lien by express contract, the contract must be certain: *Robertson v Showler* (1845) 13 M & W 609. It must also be generally consistent with the existence of a lien: *Wilson v Lombank Ltd* [1963] 1 All ER 740, [1963] 1 WLR 1294 (bailor of car to garage for repair had regular periodic account; no particular lien). As to general liens see PARAS 817, 828 et seq.

6 *Hatton v Car Maintenance Co Ltd* [1915] 1 Ch 621.

7 Thus an unpaid seller's right of stoppage in transitu cannot be defeated by any agreement between the carrier and the buyer: see *Oppenheim v Russell* (1802) 3 Bos & P 42; *Wright v Snell* (1822) 5 B & Ald 350; *Leuckhart v Cooper* (1836) 3 Bing NC 99 at 107. See also **BAILMENT** vol 3(1) (2005 Reissue) PARA 48; **CARRIAGE AND CARRIERS** vol 7 (2008) PARAS 761-763.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/2. LEGAL LIEN/(1) NATURE AND ESSENTIALS/819. Legal lien by contract.

819. Legal lien by contract.

A lien, whether general or particular, may be created and defined by contract. A lien so arising bears in some respects a closer resemblance to a pledge¹, although it can of course exist without an inherent or agreed power of sale, which is a concomitant of pledge². A general lien often arises by contract between a company and its members under the articles of association³. An agreement which is void from the beginning for want of legal formalities cannot give rise to a right of lien⁴, but an agreement to do something which is illegal could give rise to a lien if the work was done⁵. Just as a legal lien may be created by contract, it may be negatived by the terms of the contract, either expressly⁶ or by implication because it is inconsistent with the terms of the contract⁷. It may also be discharged or superseded by the contract⁸.

1 *Gladstone v Birley* (1817) 2 Mer 401 at 404; and see PARA 832. As to pledges see **PLEDGES AND PAWNS** vol 36(1) (2007 Reissue) PARA 1 et seq.

2 See PARA 815.

3 *Bradford Banking Co v Briggs, Son & Co Ltd* (1887) 12 App Cas 29, HL; *Bank of Africa v Salisbury Gold Mining Co* [1892] AC 281, PC; *Champagne Perrier-Jouet SA v HH Finch Ltd* [1982] 3 All ER 713, [1982] 1 WLR 1359; and see **COMPANIES** vol 15 (2009) PARA 1206 et seq. An equitable lien is also often so created: see PARA 804. A lien created by the articles of association is by statute deemed to be contractual (see the Companies Act 1985 s 14 (prospectively repealed by the Companies Act 2006 Sch 16, and replaced by s 33 (not yet in force), as from a day to be appointed under s 1300(2)); and **COMPANIES** vol 14 (2009) PARA 243), but questions of notice are also relevant (see PARA 833; and **COMPANIES** vol 14 (2009) PARA 248).

4 *Fergusson v Norman* (1838) 5 Bing NC 76. Cf *United Bank of Kuwait plc v Sahib* [1997] Ch 107, [1996] 3 All ER 215, CA (no equitable mortgage of real property by deposit of title deeds, as no compliance with the statutory requirements). See also PARA 812 text and notes 3-4.

5 *Scarfe v Morgan* (1838) 4 M & W 270 at 282.

6 See eg *Rolls Razor Ltd v Cox* [1967] 1 QB 552 at 568, [1967] 1 All ER 397 at 402, CA, per Lord Denning MR.

7 See eg *Orakpo v Manson Investments Ltd* [1978] AC 95, [1977] 3 All ER 1, HL; and PARAS 825, 874. As to particular liens see *Wilson v Lombank Ltd* [1963] 1 All ER 740, [1963] 1 WLR 1294; *Hatton v Car Maintenance Co Ltd* [1915] 1 Ch 621. See also PARA 818.

8 See PARA 853.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/2. LEGAL LIEN/(1) NATURE AND ESSENTIALS/820. Nature of legal lien.

820. Nature of legal lien.

A legal lien is a right of defence to a claim in respect of the chattel¹ and is not a right of action in itself². Its limited character has both advantages and disadvantages for the party entitled. On the one hand, lien can be asserted even where the secured debt is statute-barred³, and the chattel cannot be taken in execution⁴. On the other hand, a lien confers no power to sell the chattel⁵. It has been held that, in contradistinction to pledge⁶, a lien confers a mere personal right, which cannot be transferred to a third party merely by granting the third party possession of the chattel, without the consent of the owner⁷. But decisions on solicitors' liens⁸ and, in Australia, decisions on accountants' liens⁹ have readily inferred the necessary authority and have held the lien to be assignable in cases where the secured debt is also assigned¹⁰. It seems that the benefit of a lien can therefore be assigned along with the debt in respect of which it arises¹¹. It is arguable that these decisions afford one of several indications that common law possessory liens are beginning to be recognised as a limited form of property interest¹².

1 Eg a claim in conversion brought by the owner to recover the chattel.

2 *Tappenden (t/a English and American Autos) v Artus* [1964] 2 QB 185 at 194-195, [1963] 3 All ER 213 at 215-216, CA, per Diplock LJ, holding further that lien is a self-help remedy, triggered by the performance of work which improves a chattel of which the performer has lawful possession, and does not depend on any implied contractual term. But a lien, depending necessarily on possession of the subject chattel, normally entitles the holder to sue any third party who commits a wrong (such as trespass or conversion) against the chattel during the period of that possession: *The Winkfield* [1902] P 42, CA. See also PARA 846 text and note 1; and **BAILMENT** vol 3(1) (2005 Reissue) PARA 89. As to legal lien see also PARA 802.

3 See *Higgins v Scott* (1831) 2 B & Ad 413. See also **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 502; **LIMITATION PERIODS** vol 68 (2008) PARA 1105 et seq.

4 Goods the subject of a lien cannot be taken in execution, because lien is merely a personal right continuing during the possession of the goods: *Legg v Evans* (1840) 6 M & W 36. As to what can be seized in execution see **CIVIL PROCEDURE** vol 12 (2009) PARA 1315 et seq.

5 As to the enforcement of a legal lien see PARA 846 et seq.

6 See **PLEDGES AND PAWNS** vol 36(1) (2007 Reissue) PARA 4.

7 *Wilkins v Carmichael* (1779) 1 Doug KB 101 at 105; *Daubigny v Duval* (1794) 5 Term Rep 604 at 606 per Buller J; *M'Combie v Davies* (1805) 7 East 5 at 6 per Lord Ellenborough; *Donald v Suckling* (1866) LR 1 QB 585 at 612-613 per Blackburn J, and at 618-619 per Cockburn CJ. The rule stated in the text does not apply where there is an equitable right of subrogation: see PARA 809. A purchaser of an article which is subject to a lien having called upon his vendor to pay off the sum claimed may himself pay off that sum in order to obtain possession of what he has purchased and sue the vendor for any sum properly so paid (*Bevan v Waters* (1828) 3 C & P 520); and goods may, it seems, be delivered by a person who has a lien on them to another person as his agent with notice of the lien so as to preserve his lien (see *M'Combie v Davies* (1805) 7 East 5). The right to pledge conferred on factors (see **AGENCY** vol 1 (2008) PARA 148) arises entirely by statute, and is an exception to the general rule: *Cole v North Western Bank* (1875) LR 10 CP 354, Ex Ch.

8 *Bull v Faulkner* (1848) 2 De G & Sm 772; and see **LEGAL PROFESSIONS** vol 66 (2009) PARA 1002.

9 *Vered v Inscorp Holdings Ltd* (1993) 31 NSWLR 290, NSW SC.

10 In these decisions, it was held that, as the law allows the assignment of debts, it also allows the assignment of the benefit of any lien held over the client's papers in respect of the debt: see *Bull v Faulkner* (1848) 2 De G & Sm 772 at 776 per Knight Bruce V-C; *Vered v Inscorp Holdings Ltd* (1993) 31 NSWLR 290 at 295-296, NSW SC, per Hodgson J, distinguishing *Donald v Suckling* (1866) LR 1 QB 585 on the ground that Blackburn J was referring at 612 only to an unauthorised transfer.

11 See eg *Gordon v Gordon* [2002] EWCA Civ 1884, [2002] All ER (D) 308 (Dec); and see *Vered v Inscorp Holdings Ltd* (1993) 31 NSWLR 290, NSW SC. The proposition in the text must be read subject to any express or implied prohibition on such assignment by the owner. That might occur, for example, where the chattel subject to the lien is a valuable work of art and the

party having the lien has some personal characteristic or resource, known to the owner, which makes him especially well qualified to hold and safeguard it: cf *Donald v Suckling* (1866) LR 1 QB 585 at 618 per Cockburn CJ (entering a similar reservation in the case of pledge).

12 For another such indication see *The Freightline One* [1986] 1 Lloyd's Rep 266 at 272 per Sheen J (possessory lien, in common with the statutory right of detention conferred by the Port of London Act 1968 s 39, may survive a change of ownership of the chattel).

In *Tappenden (t/a English and American Autos) v Artus* [1964] 2 QB 185 at 195, [1963] 3 All ER 213 at 216, CA, Diplock LJ described lien as a remedy in rem, requiring for its exercise no intervention by the courts.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/2. LEGAL LIEN/(1) NATURE AND ESSENTIALS/821. Registration.

821. Registration.

A common law possessory lien, being dependent for its existence on possession, does not require to be registered under the statutory provisions relating to bills of sale¹ and the provisions² relating to company charges³.

1 *Great Eastern Rly Co v Lord's Trustee* [1909] AC 109 at 111, HL (carrier's possessory lien not within Bills of Sale Act 1878); and see *Seka Pty Ltd (in provisional liquidation) v Fabric Dyeworks (Aust) Pty Ltd* (1991) 4 ACSR 455 at 459, Aust Fed Ct, per Pincus J; *Re Trendent Industries Pty Ltd (in liquidation)* (1983) 8 ACLR 115 at 121-122, NSW SC, per Needham J. As to bills of sale see PARA 816; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 1620 et seq.

2 Ie the Companies Act 1985 Pt XII (ss 395-424) (prospectively repealed by the Companies Act 2006 Sch 16, and replaced, as from a day to be appointed under s 1300(2), by the provisions of the Companies Act 2006 Pt 24 Chs 1, 3 (ss 860-877, 893-894 (not fully in force)): see **COMPANIES** vol 15 (2009) PARA 1277 et seq.

3 See *Re Hamlet International plc (in administration), Trident International Ltd v Barlow* [1999] 2 BCLC 506, [2000] BCC 602, CA. Support for the proposition in the text can also be derived from those decisions which uphold a similar principle in relation to pledge: see **PLEDGES AND PAWNS** vol 36(1) (2007 Reissue) PARA 3. Further support may be found in Australian and New Zealand decisions holding that a possessory lien is not a registrable charge or bill of sale within local legislation: see eg *Young v Matthew Hall Mechanical & Electrical Engineers Pty Ltd* (1988) 13 ACLR 399, SCWA; *Re Trendent Industries Pty Ltd (in liquidation)* (1983) 8 ACLR 115, NSW SC; *Seka Pty Ltd (in provisional liquidation) v Fabric Dyeworks (Aust) Pty Ltd* (1991) 4 ACSR 455, Aust Fed Ct; *Waitomo Wools (NZ) Ltd v Nelsons (NZ) Ltd* [1974] 1 NZLR 484, NZ CA.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/2. LEGAL LIEN/(1) NATURE AND ESSENTIALS/822. Care and custody of chattel.

822. Care and custody of chattel.

The holder of a lien, being voluntarily in possession of a chattel which belongs to another¹, is a bailee of the chattel² and (subject to contrary agreement or special circumstances) owes the normal duty of care owed by a bailee towards the owner³. This includes a duty to exercise reasonable care in the safekeeping and management of the chattel and a duty to answer for the deliberate wrongs of those to whom the holder of the lien has entrusted the chattel and delegated any part of that duty of care⁴. In general, the party asserting the lien cannot charge the owner for the costs of keeping the chattel during the period of his possession by reason of the lien, and cannot add such costs to the charges in respect of which the lien is asserted⁵. The position may be more favourable to the lien-holder where retention of the chattel is predominantly for the benefit of the bailor⁶.

1 See **BAILMENT** vol 3(1) (2005 Reissue) PARA 1.

2 The bailment is probably one for mutual advantage: see **BAILMENT** vol 3(1) (2005 Reissue) PARAS 2, 38.

3 *Scarfe v Morgan* (1838) 4 M & W 270 at 279, 284, 289; *Great Western Rly Co v Crouch* (1858) 3 H & N 183, Ex Ch; *Nightingale v Tildsley* [1980] CLY 134, Wolverhampton County Court (where it was held that there was inter alia no duty to grease or turn the engines or renew the tyres or batteries of lorries or to inspect them regularly). See also *Angus v McLachlan* (1883) 23 ChD 330 (innkeeper); and **BAILMENT** vol 3(1) (2005 Reissue) PARAS 38-44, 70.

4 *Scarfe v Morgan* (1838) 4 M & W 270 at 279, 284, 289; *Great Western Rly Co v Crouch* (1858) 3 H & N 183, Ex Ch; *Nightingale v Tildsley* [1980] CLY 134, Wolverhampton County Court.

5 *Somes v British Empire Shipping Co* (1860) 8 HL Cas 338; and see *Morris v Beaconsfield Motors* [2001] EWCA Civ 1322, [2001] All ER (D) 335 (Jul); *Delantera Amadora SA v Bristol Channel Shiprepairers Ltd, The Katingaki* [1976] 2 Lloyd's Rep 372; *Rashtriya Chemicals and Fertilisers Ltd v Huddart Parker Industries Ltd, The Boral Gas* [1988] 1 Lloyd's Rep 342; but cf *Vacha v Gillett* (1934) 50 LI LR 67 at 76 per Mackinnon J.

6 *China Pacific SA v Food Corpn of India, The Winson* [1982] AC 939 at 962-963, [1981] 3 All ER 688 at 696, HL, per Lord Diplock, and at 964 and 697 per Lord Simon of Glaisdale. See also *Morris v Beaconsfield Motors* [2001] EWCA Civ 1322, [2001] All ER (D) 335 (Jul) (defendant lien-holder entitled to recover £105 paid to the Revenue to retain cherished numberplate of car in its possession, since that had been to the benefit of the claimant as lienor). It is possible that a railway company may have a lien over a horse in its possession in respect of charges incurred in its care: *Great Northern Rly Co v Swaffield* (1874) LR 9 Exch 132. See further PARA 849. As to the statutory lien for food supplied to animals at railway stations see **ANIMALS** vol 2 (2008) PARA 868. As to enforcement of a legal lien see PARA 846 et seq.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/2. LEGAL LIEN/(1) NATURE AND ESSENTIALS/823. Possession.

823. Possession.

No legal lien can arise until possession has been obtained by the person claiming the lien¹. A racehorse trainer may not, therefore, have a lien for his fees where discretion as to the place at which, and the jockey by whom, the horse is to be raced is reserved by contract to the owner². The transfer of deeds to a client's deed box by a solicitor may be sufficient to give possession to the client for this purpose³. The possession must have been rightfully obtained before a lien can arise⁴. Thus a person who rejects goods for which he has paid is no longer entitled to possession and may assert no lien for the purchase price⁵; and a person who has obtained possession of the property of another by misrepresentation may not set up a lien to which he might otherwise have been entitled⁶. A person paying freight duty or other charges on goods of which he has obtained possession may not wrongfully retain the goods until repayment of the freight duty or charges⁷. Similarly, money paid by insurers to brokers under a mistake of fact is not the property of the assured and is not therefore subject to the broker's lien for unpaid premiums of the assured⁸. A person cannot have a lien over property which he has acquired in an assumed character⁹. Agents employed by a person who subsequently becomes bankrupt cannot by obtaining possession after the bankruptcy¹⁰ set up a lien against the bankrupt's trustee for money due to them from the bankrupt¹¹.

Where a party is entitled to a particular lien in respect of goods as having performed work on them, that lien is not lost by a temporary loss of possession in circumstances where there is a clear intention for the lien to continue¹².

1 *Langley Beldon & Gaunt Ltd v Morley* [1965] 1 Lloyd's Rep 297 at 305-306 per Mocatta J; *The Narada* [1977] 1 Lloyd's Rep 256 at 257 per Brandon J; *The Gregos* [1985] 2 Lloyd's Rep 347 at 361 per Sheen J; *The Freightline One* [1986] 1 Lloyd's Rep 266 at 272 per Sheen J. See also *Dinmore Meatworks Pty Ltd v Kerr* (1962) 108 CLR 628, Aust HC; *Protean Enterprises (Newmarket) Pty Ltd v Randall* [1975] VR 327, Vict SC, Full Ct.

2 *Ward v Fielden* [1985] CLY 2000; and see *Saville v Thompson* (29 November 1984, unreported), QBD.

3 *Mason v Morley* (1865) 11 Jur NS 459. It would appear from this case that the subsequent wrongful removal of the deeds by the solicitor would not deprive the client of his lien, at least where the solicitor is a co-trustee with the client. As to loss of possession see PARA 854. As to physical control see also Harris 'The Concept of Possession in English Law' in *Oxford Essays in Jurisprudence* (1st Series) p 74.

4 *Madden v Kempster* (1807) 1 Camp 12, NP; *Griffiths v Hyde* (1809) 2 Selwyn's Nisi Prius (13th Edn) 1320; *Wickens v Townshend* (1830) 1 Russ & M 361; *Bernal v Pim* (1835) 1 Gale 17 at 20.

5 *JL Lyons & Co v May and Baker Ltd* [1923] 1 KB 685.

6 *Madden v Kempster* (1807) 1 Camp 12, NP.

7 *Lempriere v Pasley* (1788) 2 Term Rep 485; *Stone v Lingwood* (1725) 1 Stra 651. The latter case seems to have been doubted by Lord Mansfield CJ in *Green v Farmer* (1768) 4 Burr 2214 at 2218, but is believed to be good law.

8 See *Scottish Metropolitan Assurance Co v P Samuel & Co* [1923] 1 KB 348; and **INSURANCE** vol 25 (2003 Reissue) PARA 277. As to payment under mistake of fact generally see *Kelly v Solari* (1841) 9 M & W 54; *Chase Manhattan Bank NA v Israel-British Bank (London) Ltd* [1981] Ch 105, [1979] 3 All ER 1025. See also *Woolwich Equitable Building Society v IRC* (No 2) [1993] AC 70, [1992] 3 All ER 737, HL; *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669, [1996] 2 All ER 961, HL (distinguished in *Sempra Metals Ltd (formerly Metallgesellschaft Ltd) v IRC* [2007] UKHL 34, [2008] 1 AC 561, [2007] 4 All ER 657); *Kleinwort Benson Ltd v Lincoln City Council* [1999] 2 AC 349, [1998] 4 All ER 513, HL (applied in *Sempra Metals Ltd (formerly Metallgesellschaft Ltd) v IRC*); and **MISTAKE** vol 77 (2010) PARA 69 et seq.

9 *Wickens v Townshend* (1830) 1 Russ & M 361 at 363 per Lord Lyndhurst LC.

10 Ie either through an act of the bankrupt (*Nichols v Clent* (1817) 3 Price 547) or of their own (*Taylor v Robinson* (1818) 2 Moore CP 730).

11 As to the effect of bankruptcy on lien see PARA 837; and **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARAS 430, 569.

12 See *Rose v CMS Operations Ltd* [2002] EWHC 59 (Ch), [2002] All ER (D) 20 (Jan) (claimants, owners of two racing cars, kept them throughout the season at the defendant's premises for work to be carried out on them in return for payment; cars were taken to race meetings only when needed, were looked after by defendant's staff and were still effectively within its possession; held that defendant permitting claimants to race cars at Silverstone was not sufficient for it to lose its lien over them for non-payment for work as cars returned to the defendant's possession straight after race and claimants not allowed to take them anywhere else).

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/2. LEGAL LIEN/(1) NATURE AND ESSENTIALS/824. Wrongful act of third person.

824. Wrongful act of third person.

Possession derived from the wrongful act of a third person is generally insufficient to found a legal lien. The reason for this is normally taken to be that the possession necessary to sustain a lien must be lawful¹, and at common law a person in possession of goods cannot, either by sale or pledge, confer a better title than he has himself². It follows that, where an artificer or other bailee receives possession of a chattel not directly from the owner but from some intermediate bailee of the owner, the recipient possessor must normally show that the intermediate bailee had the actual authority of the owner (whether express or implied) to create the lien³. It appears, however, that a mere ostensible authority in the intermediate bailee may entitle the artificer or other recipient to assert a lien against the owner⁴. Moreover, the general rule does not apply where the article on which the lien is claimed is a negotiable instrument and the person claiming the lien has obtained possession in good faith without notice of any wrongdoing⁵. Nor does it apply where the party who wrongfully handed over the goods is acting as a mercantile agent in possession with the consent of the owner⁶.

1 See *Tappenden (t/a English and American Autos) v Artus* [1964] 2 QB 185 at 195, [1963] 3 All ER 213 at 216, CA, per Diplock LJ; and PARA 823.

2 *Buxton v Baughan* (1834) 6 C & P 674; *Cole v North Western Bank* (1875) LR 10 CP 354 at 362, Ex Ch. However, a wharfinger having in his possession goods bearing a fraudulent trade mark is not thereby deprived of his lien for his charges: *Moet v Pickering* (1878) 8 ChD 372, CA.

3 *Tappenden (t/a English and American Autos) v Artus* [1964] 2 QB 185, [1963] 3 All ER 213, CA; *Green v All Motors Ltd* [1917] 1 KB 625, CA; *Bowmaker Ltd v Wycombe Motors Ltd* [1946] KB 505, [1946] 2 All ER 113; *Keene v Thomas* [1905] 1 KB 136; *Singer Manufacturing Co v London and South Western Rly Co* [1894] 1 QB 833; *Pennington v Reliance Motor Works Ltd* [1923] 1 KB 127; *K Chellaram & Sons (London) Ltd v Butlers Warehousing and Distribution Ltd* [1978] 2 Lloyd's Rep 412, CA; *Welsh Development Agency (Holdings) Ltd v Modern Injection Mouldings Ltd* (6 March 1986, unreported), QBD. See also PARA 842.

4 *Tappenden (t/a English and American Autos) v Artus* [1964] 2 QB 185 at 196-201, [1963] 3 All ER 213 at 216-220, CA, per Diplock LJ (disapproving *Pennington v Reliance Motor Works Ltd* [1923] 1 KB 127 at 129 per McCardie J); *Bowmaker Ltd v Wycombe Motors Ltd* [1946] KB 505 at 509, [1946] 2 All ER 113 at 115 per Lord Goddard CJ; *Albermarle Supply Co Ltd v Hind & Co* [1928] 1 KB 307, CA; *Welsh Development Agency (Holdings) Ltd v Modern Injection Mouldings Ltd* (6 March 1986, unreported), QBD; *Jarl Trä AB v Convoys Ltd* [2003] EWHC 1488 (Comm), [2003] 2 Lloyd's Rep 459, [2003] All ER (D) 328 (Jun); and see PARA 842. Cf *K Chellaram & Sons (London) Ltd v Butlers Warehousing and Distribution Ltd* [1978] 2 Lloyd's Rep 412, CA (no actual or ostensible authority on facts). See also the Torts (Interference with Goods) Act 1977 s 6(4), which is not thought to have changed the position stated in the text in favour of the party asserting the lien: see **TORT** vol 45(2) (Reissue) PARA 624. See also Goff and Jones *The Law of Restitution* (7th Edn, 2007) p 247 note 74.

5 *Brandao v Barnett* (1846) 12 Cl & Fin 787 at 805, HL. See also the Bills of Exchange Act 1882 s 27(3); and **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) (Reissue) PARA 1487.

6 See the Factors Act 1889 s 2. As to the power of a factor to pledge goods of his principal see **AGENCY** vol 1 (2008) PARA 148; **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 218. Although factors have a general lien for all money due to them (see PARA 829), the lien obtained on goods possession of which is obtained from a factor is, in the absence of an agreement, only a particular lien against the true owner: *Kaltenbach v Lewis* (1885) 10 App Cas 617, HL. A factor usually has the characteristics that he is an agent entrusted with the possession of goods of several principals (or sometimes only one) for the purpose of sale in his own name, without disclosing his principal's name, being remunerated by a commission: *Rolls Razor Ltd v Cox* [1967] 1 QB 552 at 568, [1967] 1 All ER 397 at 402, CA, per Lord Denning MR. See further PARA 829.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/2. LEGAL LIEN/(1) NATURE AND ESSENTIALS/825. Possession obtained for a particular purpose only.

825. Possession obtained for a particular purpose only.

Although a person may by law be entitled to a general lien on property of another coming into his hands, that general lien may be excluded if, by the contract between the parties, the property is placed in his hands only for a particular purpose¹. The particular purpose may be shown by a document signed by the person receiving the property², by letters written by the owner at the time of the deposit directing what is to be done with it³, by oral conversation duly proved⁴ or by correspondence between the parties⁵. However, the evidence may only be sufficient to give the particular purpose priority over the general lien, which may be valid subject to that purpose⁶. If it is the intention that deeds or papers deposited for a particular purpose are not to be subject to a general lien arising by usage, the deposit should be accompanied by a special agreement⁷. Where the particular purpose is at an end and the documents are allowed to remain in the hands of a person, for example a solicitor, who is entitled by usage to a general lien, that general lien is good⁸.

1 *Walker v Birch* (1795) 6 Term Rep 258; *Brandao v Barnett* (1846) 12 Cl & Fin 787, HL; and see **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARAS 860-861. In any event, a contract which purports to create a general lien will be strictly construed: *Kinnear v Midland Rly Co* (1868) 19 LT 387; and see *Squamish Terminals Ltd v Price-Waterhouse Ltd* (1980) 26 BCLR 22 at 26, BC SC, per Andrews J. As to general liens see PARAS 817, 828 et seq.

2 *Walker v Birch* (1795) 6 Term Rep 258, which concerned a receipt by cotton brokers for cotton, where they undertook to account for the proceeds of sale.

3 *Buchanan v Findlay* (1829) 9 B & C 738, where bills were remitted and directions given how the proceeds were to be applied. See also *Snaith v Burrigge* (1812) 4 Taunt 684, where a letter with the bill of lading of ship's stores directed the stores to be handed over to the government.

4 *Key v Flint* (1817) 8 Taunt 21, where a bill was deposited for the purpose of raising money; *Burn v Brown* (1817) 2 Stark 272, where a ship's certificate was deposited by the master of the ship with factors to enable them to pay duties; *Humphries v Wilson* (1819) 2 Stark 566, where a bill was deposited for the purpose of being discounted, and after payment of a particular debt the balance was to be paid to the depositor; *Brandao v Barnett* (1846) 12 Cl & Fin 787, HL, where exchequer bills were handed to a banker to be exchanged at maturity for new bills. As to a solicitor's lien see **LEGAL PROFESSIONS** vol 66 (2009) PARA 996 et seq.

5 *Bock v Gorrisen* (1860) 2 De G F & J 434, CA in Ch, where bonds were purchased by merchants in London on account of merchants in Hamburg to be retained in London for safe custody.

6 *Frith v Forbes* (1862) 4 De G F & J 409.

7 *Ex p Sterling* (1809) 16 Ves 258.

8 *Ex p Sterling* (1809) 16 Ves 258; *Ex p Pemberton* (1810) 18 Ves 282; and see **LEGAL PROFESSIONS** vol 66 (2009) PARA 997.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/2. LEGAL LIEN/(1) NATURE AND ESSENTIALS/826. Continuity of possession.

826. Continuity of possession.

It is essential to a legal lien that the person claiming it should have possession¹ and the right of continued possession of the article over which the lien is claimed, even where the care and skill exercised by such a person in respect of the article would, on general principles, give rise to a right of lien². Thus it has been held that a trainer of a racehorse, who would on general principles have a lien because of his care and skill in improving the horse, has no lien if the owner can remove the horse to send him to run in races³. A livery stable keeper who takes in a horse which is to be removed from time to time and ridden by the owner has no lien⁴; nor does a person who takes in cows on agistment to feed on his grass, and which are to be removed to be milked by the owner⁵. However, if the delivery of the article is for a limited and specific purpose and with the intention of maintaining the lien, delivery of the article is not such an interruption as to prevent the possession from being continuous⁶.

Whether there is a right of continuous possession or not depends on the nature of the particular contract or the custom applicable to the subject matter⁷.

Goods which were originally bailed in circumstances other than those which would give rise to a lien may become subject to a lien by reason of subsequent agreement or change of circumstance; and it seems that there is no need for the original bailment to have been for a purpose which would give rise to a lien⁸.

1 *Pennington v Reliance Motor Works Ltd* [1923] 1 KB 127, which held that the surrender of possession is the surrender of the lien and the lien cannot be subsequently claimed because possession is regained. See also *The Freightline One* [1986] 1 Lloyd's Rep 266 at 272, obiter, per Sheen J; *Jones v Pearle* (1723) 1 Stra 557; *Sweet v Pym* (1800) 1 East 4. Cf *Euro Commercial Leasing Ltd v Cartwright & Lewis* [1995] 2 BCLC 618 (solicitor's lien over client's funds in client account; fresh lien attaching when solicitors, having wrongly paid out to office account, repaid money into client account). See further PARA 854.

2 *Forth v Simpson* (1849) 13 QB 680; *Kruger v Wilcox* (1755) Amb 252; *Sweet v Pym* (1800) 1 East 4; *Great Eastern Rly Co v Lord's Trustee* [1909] AC 109, HL; and see *Rust v McNaught* (1917) 144 LT Jo 76 (on appeal (1918) 144 LT Jo 440, CA).

3 *Forth v Simpson* (1849) 13 QB 680; *Ward v Fielden* [1985] CLY 2000. See also *Saville v Thompson* (29 November 1984, unreported), QBD; and PARA 823. It had been held in *Bevan v Waters* (1828) 3 C & P 520, and apparently in *Jacobs v Latour* (1828) 5 Bing 130, that a trainer had a lien, but it is pointed out in *Jackson v Cummins* (1839) 5 M & W 342 that the judge had overlooked the usage that an owner may remove a racehorse to run races. At the same time, when a horse is delivered to a trainer to be trained for a particular race, the trainer may set up a lien until he delivers the horse over to be run in that particular race: *Jackson v Cummins*; *Forth v Simpson*. Cf *Rose v CMS Operations Ltd* [2002] EWHC 59 (Ch), [2002] All ER (D) 20 (Jan) (racing cars), cited in note 6.

4 *Scarfe v Morgan* (1838) 4 M & W 270 at 283. A livery stable keeper is unable to claim a lien in the absence of agreement on the grounds that (1) his possession is not exclusive; and (2) he does nothing to improve the horse: *Wallace v Woodgate* (1824) Ry & M 193; *Judson v Etheridge* (1833) 1 Cr & M 743. See also *Donatty v Crowther and Kelly* (1826) 11 Moore CP 479; *Orchard v Rackstraw* (1850) 9 CB 698; cf *Re Sillence, ex p Roy* (1877) 7 ChD 70. The same principle applies with respect to a garage proprietor: see *Hatton v Car Maintenance Co Ltd* [1915] 1 Ch 621, where a company which by agreement with the owner of a car maintained the car and provided a driver, but allowed the owner to take the car out when and as she liked, was held to have no lien on the car for money due under an agreement. At common law, an innkeeper had a lien on his guest's horse, but this has been altered by statute: see LICENSING AND GAMBLING vol 67 (2008) PARA 213.

5 *Jackson v Cummins* (1839) 5 M & W 342; *Chapman v Allen* (1632) Cro Car 271. See also *Helton v Sullivan* [1968] Qd R 562, Qld SC; *Grazing and Export Meat Co Ltd v Anderson* [1976] 1 NZLR 187, NZ SC. In *Richards v Symons* (1845) 8 QB 90, a lien given to an agister by agreement was not lost by the removal of the agisted animal (see ANIMALS vol 2 (2008) PARA 723); and in *Re Hamlet International plc (in administration), Trident International Ltd v Barlow* [1999] 2 BCLC 506, [2000] BCC 602, CA, a lien over stock coupled with a right to sell and to use the proceeds to discharge outstanding debts from customers was not lost by the sale of the stock under a court order.

6 *Albemarle Supply Co Ltd v Hind & Co* [1928] 1 KB 307, CA, where garage proprietors allowed taxis to be taken out of their garage to ply for hire; and see *Rose v CMS Operations Ltd* [2002] EWHC 59 (Ch), [2002] All ER (D) 20 (Jan) (claimants, owners of two racing cars, kept them throughout the season at the defendant's premises for work to be carried out in return for

payment; cars taken to race meetings only when needed, looked after by the defendant's staff and still effectively within its possession; held that defendant permitting claimants to race cars at Silverstone was not sufficient for it to lose its lien over cars for non-payment for work as cars returned to defendant's possession straight after race, and claimants not allowed to take them anywhere else). Cf *North Western Bank Ltd v Poynter, Son and Macdonalds* [1895] AC 56, HL; *Caldwell v Sumpters* [1972] Ch 478, [1971] 3 All ER 892 (revsd without affecting the point [1972] Ch 478, [1972] 1 All ER 567, CA) (delivery of client's papers by solicitor to third party at client's request, under express reservation that third party shall hold to solicitor's order; solicitor's lien sustained). See further *Bentley v Gaisford* [1997] QB 627, [1997] 1 All ER 842, CA; and **LEGAL PROFESSIONS** vol 66 (2009) PARA 1005. In *Densham v Fallon Aviation Ltd* (6 May 1982, unreported), QBD, Neill J was not prepared to hold that an arbitrator had been obviously wrong in holding that bailees of an aircraft retained constructive possession of it, and thereby sustained their lien, during a sub-bailment for repair by the sub-bailees.

7 *Forth v Simpson* (1849) 13 QB 680 at 685 per Patteson J.

8 *RA Barrett & Co Ltd v Livesey* (6 November 1980, unreported), CA, states an analogous rule in relation to bailments by way of pledge; it seems that a similar rule would apply in relation to a lien; and see *Bolwell Fibreglass Pty Ltd v Foley* [1984] VR 97, Vict SC, Full Ct.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/2. LEGAL LIEN/(1) NATURE AND ESSENTIALS/827. Debt must have accrued due.

827. Debt must have accrued due.

The debt which gives rise to the lien must be due, not accruing¹. Therefore, a contract for a particular mode of future payment which precludes any implied contract for immediate payment does not give rise to a lien even where labour has been expended on a chattel². It is immaterial whether the contract for future payment is an express contract or is implied from usage of trade³.

1 *Crawshay v Homfray* (1820) 4 B & Ald 50; *Fisher v Smith* (1878) 4 App Cas 1, HL; *Wehner v Dene Steam Shipping Co* [1905] 2 KB 92 at 101; *Dyson v Peat* [1917] 1 Ch 99; and see *Vered v Inscorp Holdings Ltd* (1993) 31 NSWLR 290 at 294, NSW SC, per Hodgson J; and *Liverpool Freeport Electronics Ltd v Habib Bank Ltd* [2007] EWHC 1149 (QB) at [136], [2007] All ER (D) 266 (May), where a previous edition of this paragraph was cited and applied by Christopher Clarke J. Cf *Baker v Lloyd's Bank Ltd* [1920] 2 KB 322; and see PARA 837. As to whether the owner's countermanding of the work before its completion precludes a lien from arising, or enables the bailee to retain the chattel as security in respect of work completed, see *Lilley v Barnsley* (1844) 1 Car & Kir 344; *Green v All Motors Ltd* [1917] 1 KB 625 at 633-634, CA, per Scrutton LJ; and see *Bolwell Fibreglass Pty Ltd v Foley* [1984] VR 97, Vict SC, Full Ct; and PARA 844.

2 *Chase v Westmore* (1816) 5 M & S 180; *Crawshay v Homfray* (1820) 4 B & Ald 50; and see *Vered v Inscorp Holdings Ltd* (1993) 31 NSWLR 290 at 294, NSW SC, per Hodgson J. See also PARA 844; and **BAILMENT** vol 3(1) (2005 Reissue) PARA 77.

3 *Raitt v Mitchell* (1815) 4 Camp 146. As to usages in general see **CUSTOM AND USAGE**. No lien is created on a fund the subject of litigation by an agreement to share the proceeds of such litigation: *Alexander v Hammond* (1854) 3 WR 145.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/2. LEGAL LIEN/(2) GENERAL LIENS/828. Instances of general lien.

(2) GENERAL LIENS

828. Instances of general lien.

A general lien¹ has been established² in favour of solicitors³, bankers⁴, club trustees⁵, factors⁶, stockbrokers⁷, insurance brokers⁸ and possibly warehouse-keepers⁹ and calico printers¹⁰, but not confirmers¹¹. Where printers had printed certain numbers (not consecutive) of an entire work, it was held that the printer had a general lien on copies not delivered for his general balance due, but this case may also be regarded as an instance of a particular lien based on a single contract for a number of items¹². Similarly, a tailor has a lien on any part of a suit for the price of the whole¹³.

1 As to the nature of a general lien see PARA 817.

2 2 Selwyn's Law of Nisi Prius (13th Edn) 1314, citing *Turner v Deane* (1849) 3 Exch 836 per Parke B, states that attorneys, bankers, and factors are the only persons having such a general lien, but Parke B merely instances these persons as having a general lien.

3 See *Wilkins v Carmichael* (1779) 1 Doug KB 101 at 104; *Cowell v Simpson* (1809) 16 Ves 275 at 280; and **LEGAL PROFESSIONS** vol 66 (2009) PARA 998. The solicitor's lien on his client's documents applies whether or not they are of intrinsic value: see *Hughes v Hughes* [1958] P 224, [1958] 3 All ER 179, CA.

4 See *Davis v Bowsher* (1794) 5 Term Rep 488; *Brandao v Barnett* (1846) 12 Cl & Fin 787 at 805, HL; *London Chartered Bank of Australia v White* (1879) 4 App Cas 413, PC. However, the banker's lien may be subject to a trust where the banker has received money with knowledge of circumstances which make it in law trust money: see *Quistclose Investments Ltd v Rolls Razor Ltd* [1968] Ch 540, [1968] 1 All ER 613; affd sub nom *Barclays Bank Ltd v Quistclose Investments Ltd* [1970] AC 567, [1968] 3 All ER 651, HL. See **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARAS 825, 860 et seq, 1487. A banker can set off a debit balance on a private account against a credit balance on an office account if he has no notice of any trust (*Greenwood Teale v William Williams, Brown & Co* (1894) 11 TLR 56) but the general lien of a banker does not extend to securities of the customer known by the banker to be affected by a trust (*Cuthbert v Robarts, Lubbock & Co* [1909] 2 Ch 226, CA).

5 See PARA 833.

6 See PARA 829. See also **AGENCY** vol 1 (2008) PARA 114; **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 430. This lien is confined to factors strictly, and does not extend to all cases of principal and agent: *Bock v Gorrisen* (1860) 2 De GF & J 434, CA in Ch. See also *Bowman v Malcolm* (1843) 11 M & W 833; *Harrison v Scott* (1846) 5 Moo PCC 357. Wharfingers have been said to have a general lien: *Naylor v Mangles* (1794) 1 Esp 109; *Spears v Hartly* (1800) 3 Esp 81. See also *R v Humphery* (1825) M'Cle & Yo 173. But this may not be the case everywhere: see **CUSTOM AND USAGE**. Packers, being in the nature of factors, have a general lien: *Green v Farmer* (1768) 4 Burr 2214 at 2222; *Re Witt, ex p Shubbrook* (1876) 2 ChD 489, CA; *Ex p Deeze* (1748) 1 Atk 228.

7 *Jones v Peppercorne* (1858) John 430; *Re London and Globe Finance Corp'n* [1902] 2 Ch 416; *John D Hope & Co v Glendinning* [1911] AC 419, HL. See further **AGENCY** vol 1 (2008) PARA 114.

8 *Hewison v Guthrie* (1836) 2 Bing NC 755; and see **INSURANCE** vol 25 (2003 Reissue) PARA 274. As to an insurance broker's statutory lien on a policy of marine insurance see **INSURANCE** vol 25 (2003 Reissue) PARAS 274-275.

9 *Hill & Sons v London Central Markets Cold Storage Co Ltd* (1910) 102 LT 715; *Jowitt & Sons v Union Cold Storage Co* [1913] 3 KB 1 at 10; *Re Catford, ex p Carr v Ford* (1894) 71 LT 584; *R v Humphery* (1825) M'Cle & Yo 173. Cf *Leuckhart v Cooper* (1836) 3 Bing NC 99; *K Chellaram & Sons (London) Ltd v Butlers Warehousing and Distribution Ltd* [1978] 2 Lloyd's Rep 412, CA (defendant warehousemen's standard terms held apt in general terms to create general lien over goods bailed for packing and consolidation; but held ineffective against owners who had not contemplated or consented to the delivery of the goods by their own forwarding agents to the defendants on such terms). See also PARA 842. The conduct of the parties in any particular case may show that no general lien was intended: *Hill & Sons v London Central Markets Cold Storage Co Ltd*. See further **BAILEMENT** vol 3(1) (2005 Reissue) PARA 48.

10 *Weldon v Gould* (1801) 3 Esp 268, where it was thought that calico printers had a general lien for work done in their business, although not for money lent or in respect of any other matter. Cf *Cassils & Co and Sassoon & Co v Holden Wood Bleaching Co Ltd* (1914) 84 LJKB 834, CA.

11 *Tellrite Ltd v London Confirmers Ltd* [1962] 1 Lloyd's Rep 236.

12 *Blake v Nicholson* (1814) 3 M & S 167. As to particular liens see PARAS 818, 838 et seq.

13 *Blake v Nicholson* (1814) 3 M & S 167 at 169 per Lord Ellenborough CJ.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/2. LEGAL LIEN/(2) GENERAL LIENS/829. Factor's general lien.

829. Factor's general lien.

Where there is a general course of dealing between a merchant and a factor¹, the factor may retain the merchant's goods for the general balance due to him². In order to obtain a general lien as a factor, an agent must be entrusted with possession of the goods for the purpose of a sale, although a limit may be placed on the price, and the factor may not sell in his own name. An agent who does not have possession of the goods is not, however, entitled to a general lien as a factor³. The lien extends to the price of the goods sold by the factor on behalf of the merchant⁴, which price may be received after the merchant's bankruptcy⁵, and, notwithstanding the factor's bankruptcy, the lien is good, with the result that a purchaser of goods from a factor indebted to him may set off the price against his own debt not only against the factor but also against the real vendor of the goods⁶. As in all other cases of general lien, the lien is excluded where the goods are deposited for a specific purpose⁷. The lien is also excluded where the transaction in respect of which the claim arises was not one in which the factor was acting as such on behalf of the person against whom he claims the lien⁸.

1 As to the characteristics of a factor see PARA 824 note 6.

2 *Kruger v Wilcox* (1755) Amb 252; and see PARA 828 note 6. The balance may include any money which will become due on bills accepted by the factor on behalf of the merchant: *Re Fawcus, ex p Buck* (1876) 3 ChD 795. This rule applies only to goods dealt with in the ordinary course of business: *Compston v Haigh* (1836) 5 LJCP 99.

3 *Stevens v Biller* (1883) 25 ChD 31, CA.

4 *Kruger v Wilcox* (1775) Amb 252; *Drinkwater v Goodwin* (1775) 1 Cowp 251.

5 *Robson v Kemp* (1802) 4 Esp 233. The lien exists until all debts of the bankrupt for which the factor is liable are paid: *Foxcraft v Wood* (1828) 4 Russ 487.

6 *Hudson v Granger* (1821) 5 B & Ald 27. As to the extension of the lien to a policy of marine insurance see **INSURANCE** vol 25 (2003 Reissue) PARAS 274-275.

7 *Walker v Birch* (1795) 6 Term Rep 258; and see also PARA 825.

8 *Houghton v Matthews* (1803) 3 Bos & P 485. See also *Compston v Haigh* (1836) 5 LJCP 99.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/2. LEGAL LIEN/(2) GENERAL LIENS/830. Statutory lien of consignee.

830. Statutory lien of consignee.

Where the owner of goods has (1) given possession of them to another person for the purpose of consignment or sale, or (2) shipped them in another's name, and the consignee of the goods has not had notice that that person is not their owner, by statute the consignee has the same lien on the goods for advances made to or for the use of that person as if the person were their owner and he may transfer the lien to another person¹.

¹ See the Factors Act 1889 s 7(1). Nothing in s 7 limits or affects the validity of any sale, pledge or disposition by a mercantile agent: s 7(2). As to the origin of this provision see *Mildred, Goyeneche & Co v Maspons y Hermano* (1883) 8 App Cas 874, HL. See also **AGENCY** vol 1 (2008) PARA 118.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/2. LEGAL LIEN/(2) GENERAL LIENS/831. General lien by usage.

831. General lien by usage.

To establish a general lien arising by usage in a particular case, for instance in a particular locality, the usage must be certain and reasonable and so universally acquiesced in that everyone in the trade knew of, or on inquiry could have ascertained, its existence¹. To establish a general lien of this nature there must be satisfactory evidence of numerous and important instances of its exercise. If the evidence is sufficient to establish the usage, the parties are presumed to be aware of, and are bound by, the usage². The question whether the lien exists is one of fact³.

A particular lien arising by agreement on property deposited overrides the general lien of the deposittee on such property arising by virtue of usage⁴.

1 *Plaice v Allcock* (1866) 4 F & F 1074; *Re Spotten & Co, ex p Provincial Bank* (1877) 11 IR Eq 412; *Majeau Carrying Co Pty Ltd v Coastal Rutile Ltd* (1973) 1 ALR 1 at 3, Aust HC, per Gibbs J, and at 10 per Stephen J; *Protean Enterprises (Newmarket) Pty Ltd v Randall* [1975] VR 327, Vict SC, Full Ct. See also PARA 817. As to reasonableness of the usage see also *Leuckhart v Cooper* (1836) 3 Bing NC 99; and **CUSTOM AND USAGE**.

2 *Cross Law of Lien and Stoppage in Transitu* (1840) p 15, which is approved in *Re Spotten & Co, ex p Provincial Bank* (1877) 11 IR Eq 412. See also *Langley, Beldon & Gaunt Ltd v Morley* [1965] 1 Lloyd's Rep 297 at 306-307 per Mocatta J (existence within particular trade of standard trading term purporting to confer general lien by contract, and proof of use of such term by members of the trade, an impediment to the discovery of an equivalent general lien based exclusively on custom and usage; on the facts, no custom favouring general lien for forwarding agents in the West Riding of Yorkshire).

3 *Bleaden v Hancock* (1829) 4 C & P 152.

4 *Inman v Clare* (1858) John 769. See also *Frith v Forbes* (1862) 4 De GF & J 409; and see *AV Reardon Pty Ltd v Protean Enterprises (Newmarket) Pty Ltd* [1975] VR 327; *Seka Pty Ltd (in provisional liquidation) v Fabric Dyeworks (Aust) Pty Ltd* (1991) 4 ACSR 455, Aust Fed Ct. As to particular liens see PARAS 818, 838 et seq.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/2. LEGAL LIEN/(2) GENERAL LIENS/832. General lien by contract.

832. General lien by contract.

Lien in its proper sense is a right which the law gives, but it is usual to speak of lien by contract¹, and numerous modern instances of a right to detain goods as security depend for their effect on the validity, scope and construction of the governing contract². If a mercantile relation which might involve a lien is created by contract and security is given for the result of the dealings in that relation, the agreement of the parties for security excludes lien and limits their rights by the extent of the express contract made by them³. However, evidence of usage of a particular place to add to or affect the construction of a written contract may be admitted on the principle that the parties who made the contract were both cognisant of the usage and are presumed to have made their agreement with reference to it. There can, however, be no such presumption if either party is ignorant of the usage⁴, unless the circumstances are such that the knowledge can be conclusively presumed⁵.

1 It has been said that a lien arising by contract is more in the nature of a pledge: see *Gladstone v Birley* (1817) 2 Mer 401. But see PARAS 815, 819; and **PLEDGES AND PAWNS** vol 36(1) (2007 Reissue) PARA 4. To constitute a lien by agreement there must be a specific appropriation of the property: *Jones v Starkey* (1852) 16 Jur 510. As to contractual lien see generally PARA 808.

2 See eg *K Chellaram & Sons (London) Ltd v Butlers Warehousing & Distribution Ltd* [1978] 2 Lloyd's Rep 412, CA, which concerned a warehousing, packing and consolidation company; *Jarl Trä AB v Convoys Ltd* [2003] EWHC 1488 (Comm), [2003] 2 Lloyd's Rep 459, [2003] All ER (D) 328 (Jun), which concerned the validity of a general lien under a carrier's sub-contract with a wharfinger. See also PARA 828 note 9. Contracts which purport to create general liens are restrictively construed: *Kinnear v Midland Rly Co* (1868) 19 LT 387; and see *Squamish Terminals Ltd v Price-Waterhouse Ltd* (1980) 26 BCLR 22 at 26, BC SC, per Andrews J.

3 *Re Leith's Estate, Chambers v Davidson* (1866) LR 1 PC 296 at 305. Factors have a general lien by custom as a general rule, but where they hold on an express agreement they only have the rights given by the agreement and general lien is excluded: *Walker v Birch* (1795) 6 Term Rep 258. Where there is an express antecedent contract, a lien which might otherwise be implied does not arise: *Stevenson v Blakelock* (1813) 1 M & S 535 at 543. See further *Langley, Beldon & Gaunt Ltd v Morley* [1965] 1 Lloyd's Rep 297 at 306-307 per Mocatta J; and PARA 831 note 2.

4 *Kirchner v Venus* (1859) 12 Moo PCC 361 at 399; and see **CUSTOM AND USAGE** vol 12(1) (Reissue) PARA 671.

5 See **CUSTOM AND USAGE** vol 12(1) (Reissue) PARA 671 et seq.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/2. LEGAL LIEN/(2) GENERAL LIENS/833. General lien arising from notice.

833. General lien arising from notice.

An express agreement for a general lien may be made not only between individuals but also by articles of association of a limited company¹. Such an agreement may even be made by public notice given by bodies of traders that they will only do work on terms of having a general lien², although such notice must have come to the knowledge of the persons against whom the lien is claimed³. The general lien of club trustees over the club's assets vested in them seems to be based on this principle of notice or possibly on custom⁴.

1 See PARA 819 note 3; and **COMPANIES** vol 15 (2009) PARA 1206 et seq.

2 Cf *Langley, Beldon & Gaunt Ltd v Morley* [1965] 1 Lloyd's Rep 297 at 306-307 per Mocatta J. See PARA 831 note 2.

3 *Kirkman v Shawcross* (1794) 6 Term Rep 14; *Jowitt & Sons v Union Cold Storage Co* [1913] 3 KB 1 at 10. In ascertaining the extent of the lien, the notice will be construed strictly: *Cumpston v Haigh* (1836) 2 Bing NC 449; and see *Protean Enterprises (Newmarket) Pty Ltd v Randall* [1975] VR 327, Vict SC, Full Ct. See also PARA 832 note 2.

4 See *Wise v Perpetual Trustee Co Ltd* [1903] AC 139, PC. This general lien on the club property seems to subsist both at law and in equity: see **CLUBS** vol 13 (2009) PARA 249. As to lien by custom or usage see PARA 831.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/2. LEGAL LIEN/(2) GENERAL LIENS/834. Effect of liquidation.

834. Effect of liquidation.

The court will normally confirm a general lien which has arisen after the commencement of the winding up of a company¹ but before the date of the winding-up order². However, if at the date of the winding-up order the lien has for any reason not taken effect, it is lost and the person claiming is left to claim as an ordinary creditor, for the court has no power to order the completion of transactions uncompleted at the date of the order³. Where a general lien has been created by contract it is not defeated by the later crystallisation of a floating charge which was in existence but not crystallised at the time of creation of the lien⁴.

1 As to the date of commencement of winding up see *COMPANY AND PARTNERSHIP INSOLVENCY* vol 7(3) (2004 Reissue) PARA 489. As to the necessity for confirmation at the court's discretion see *COMPANY AND PARTNERSHIP INSOLVENCY* vol 7(4) (2004 Reissue) PARA 700.

2 *Re Wiltshire Iron Co, ex p Pearson* (1868) 3 Ch App 443; *Re Llangennech Coal Co* (1887) 56 LT 475; *Re Northfield Iron and Steel Co Ltd* (1866) 14 LT 695; *Re Pavy's Patent Felted Fabric Co* (1876) 1 ChD 631.

3 *Re Wiltshire Iron Co, ex p Pearson* (1868) 3 Ch App 443; and see *COMPANY AND PARTNERSHIP INSOLVENCY* vol 7(4) (2004 Reissue) PARA 700. As to extinction of lien see PARA 850 et seq. As to the unenforceability of liens over any of the books, papers or other records of a company which is being wound up by the court see the Insolvency Act 1986 s 246; and *COMPANY AND PARTNERSHIP INSOLVENCY* vol 7(4) (2004 Reissue) PARA 676. See also *Re Aveling Barford Ltd* [1988] 3 All ER 1019, [1989] 1 WLR 360; *DTC (CNC) Ltd v Gary Sargeant & Co (a firm)* [1996] 2 All ER 369, [1996] 1 WLR 797.

4 *George Barker (Transport) Ltd v Eynon* [1974] 1 All ER 900, [1974] 1 WLR 462, CA. See also *Re Trendent Industries Pty Ltd (in liquidation)* (1983) 8 ACLR 115, NSW SC; and see *COMPANIES* vol 15 (2009) PARA 1271.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/2. LEGAL LIEN/(2) GENERAL LIENS/835. Effect of receivership.

835. Effect of receivership.

Where a receiver or manager is appointed by the court, his contracts are not made on behalf of the company, so that he has no power to create a prior lien for an existing debt of the company without the court's leave¹. Where a lien exists before the appointment of a receiver (whether by the court or otherwise) or where there is a contract authorising the exercise of a general lien in certain events, the lien or the contract is binding on the receiver even if the relevant events occur after the date of his appointment².

1 *Moss Steamship Co Ltd v Whinney* [1912] AC 254 at 263, HL; see also **COMPANIES** vol 15 (2009) PARA 1370. For the equivalent rule relating to receivers other than administrative receivers see the Insolvency Act 1986 s 37(1); and **COMPANIES** vol 15 (2009) PARA 1350. As to administrative receivers see the Insolvency Act 1986 s 44(1); and **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARA 402.

2 *George Barker (Transport) Ltd v Eynon* [1974] 1 All ER 900 at 907, [1974] 1 WLR 462 at 470, CA, per Edmund Davies LJ.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/2. LEGAL LIEN/(2) GENERAL LIENS/836. Effect of administration order.

836. Effect of administration order.

On the making of an administration order¹, certain restrictions affect the enforcement of any security over a company's property². During the period for which an administration order is in force, no steps may be taken to enforce any security over the company's property except with the consent of the administrator or the leave of the court and subject, where the court gives leave, to such terms as the court may impose³. A similar constraint governs the commencement or continuation of other proceedings against the company or its property⁴. The purpose of these provisions is to afford the company a moratorium in cases where the making of an administration order would be likely to achieve certain defined objectives⁵.

1 See **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARA 212 et seq.

2 See the Insolvency Act 1986 Sch B1 para 43 (Sch B1 added by the Enterprise Act 2002 s 248(2), Sch 16); and **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARA 263. As to the meaning of 'security' see PARA 801 note 13; and **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARA 109. The exercise of statutory and common law rights of detention over a company's property until payment of a debt constitutes the enforcement of a lien or security: see *Bristol Airport plc v Powdrill* [1990] Ch 744, [1990] 2 All ER 493, CA; *Re Sabre International Products Ltd* [1991] BCLC 470; *Euro Commercial Leasing Ltd v Cartwright & Lewis* [1995] 2 BCLC 618; *London Flight Centre (Stansted) Ltd v Osprey Aviation Ltd* [2002] BPIR 1115, sub nom *Re London Flight Centre (Stansted) Ltd* [2002] All ER (D) 52 (Jul). See also PARA 801; and **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARA 263.

Similar restrictions apply during the period beginning with the presentation of a petition for an administration order and ending either with the making of such an order or the dismissal of the petition, or with the date when the administration order takes effect: see the Insolvency Act 1986 Sch B1 para 44 (as so added); and **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARA 226. As to the position of secured creditors in the event of a company voluntary arrangement see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARA 71 et seq.

3 See the Insolvency Act 1986 Sch B1 para 43(1), (2), (7) (as added: see note 2). As to other restrictions see Sch B1 para 43(3), (4), (6), (6A); and **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARA 263.

4 See the Insolvency Act 1986 Sch B1 para 43(1), (6) (as added: see note 2).

5 As to these objectives see the Insolvency Act 1986 Sch B1 para 3 (as added: see note 2); and **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARA 214.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/2. LEGAL LIEN/(2) GENERAL LIENS/837. Effect of bankruptcy.

837. Effect of bankruptcy.

In bankruptcy¹ a lien may be claimed by the bankrupt's creditor even against bills which mature after the bankruptcy, so long as the lien itself arose before the date of the bankruptcy order².

1 See *Re TW Construction Ltd* [1954] 1 All ER 744, [1954] 1 WLR 540; *Re Repertoire Opera Co Ltd* (1895) 39 Sol Jo 505.

2 *Re Bushell, ex p Great Western Rly Co* (1882) 22 ChD 470, CA. Cf *Hawthorn v Newcastle upon Tyne and North Shields Rly Co* (1840) 3 QB 734n; *Baker v Lloyd's Bank Ltd* [1920] 2 KB 322. See also **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 835; **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARAS 430, 569, 696. The discharge of a bankrupt does not affect the right of any secured creditor to enforce his security for the payment of a debt from which the bankrupt is released: Insolvency Act 1986 s 281(2). See **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 643.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/2. LEGAL LIEN/(3) PARTICULAR LIENS/838. When particular liens arise.

(3) PARTICULAR LIENS

838. When particular liens arise.

Except as provided by statute¹, particular liens² arise where the common law has obliged certain classes of persons to receive goods and where work has been done on particular chattels. A particular lien may also arise where a surety has paid the debt of a principal debtor, the surety having a lien on property charged to secure the debt³.

1 As to statutory lien see PARA 806.

2 As to particular liens see also PARA 818.

3 *Re Jeffery's Policy* (1872) 20 WR 857; and see **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 1161.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/2. LEGAL LIEN/(3) PARTICULAR LIENS/839. Obligation to receive goods.

839. Obligation to receive goods.

Particular liens have always been allowed by the common law where a party was obliged by law to receive goods; in those cases where the law imposed the burden it also gave the power of retaining for the indemnity of the party so burdened¹. However, where there is no obligation to receive goods, there is no lien for labour and skill expended on their maintenance as distinguished from their improvement or repair. Nor, it would seem, is there a lien where the claim is for a lump sum including mixed items of improvement and maintenance².

Where a particular lien is claimed by a person who is obliged by law to receive the goods, it is immaterial to whom they belong³.

1 *Naylor v Mangles* (1794) 1 Esp 109; *Robins & Co v Gray* [1895] 2 QB 501, CA; *Rushforth v Hadfield* (1805) 6 East 519 at 525; *Yorke v Grenaugh* (1703) 2 Ld Raym 866. See also *Singer Manufacturing Co v London and South Western Rly Co* [1894] 1 QB 833.

2 *Hatton v Car Maintenance Co Ltd* [1915] 1 Ch 621 at 624; and see PARA 844.

3 *Marsh v Police Comr* [1945] KB 43, [1944] 2 All ER 392, CA (stolen goods); *Robins & Co v Gray* [1895] 2 QB 501, CA. See also PARA 840; **CARRIAGE AND CARRIERS** vol 7 (2008) PARAS 761-763; **LICENSING AND GAMBLING** vol 67 (2008) PARA 213. In the case of the innkeeper, the lien is not affected by the fact that the innkeeper knows that the goods are not the property of the guest: *Robins & Co v Gray* [1895] 2 QB 501, CA; *Snead v Watkins* (1856) 1 CBNS 267. Cf *Johnson v Hill* (1822) 3 Stark 172. In other cases where a particular lien is claimed, the work must normally be done on the authority of the owner of the goods: see PARAS 824, 842.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/2. LEGAL LIEN/(3) PARTICULAR LIENS/840. Common carriers and innkeepers.

840. Common carriers and innkeepers.

A common carrier¹ is under a legal obligation to carry goods², and, by way of compensation for that obligation, is entitled to a particular legal lien on the goods until the charge for carriage is paid³. A hotel proprietor, in his capacity as an innkeeper, is under obligation to receive and afford proper entertainment to everyone who offers himself as a guest, and safely and securely to keep the goods brought by the guest, and thus has a particular lien upon such goods until the expenses of the guest's food and lodging are discharged⁴.

1 As to who are common carriers see **CARRIAGE AND CARRIERS** vol 7 (2008) PARAS 3-4.

2 As to the extent of a common carrier's obligations see **CARRIAGE AND CARRIERS** vol 7 (2008) PARA 7 et seq.

3 See **CARRIAGE AND CARRIERS** vol 7 (2008) PARAS 761-763. The right may be enlarged by agreement: *Kinnear v Midland Rly Co* (1868) 19 LT 387, which is also an authority for the application of the ejusdem generis doctrine to lien; *George Barker (Transport) Ltd v Eynon* [1974] 1 All ER 900, [1974] 1 WLR 462, CA. The right has been held to apply where goods were deposited in a railway cloakroom: *Singer Manufacturing Co v London and South Western Rly Co* [1894] 1 QB 833. A master of a ship has a lien on the cargo for freight (*Anon* (1701) 12 Mod Rep 447, 511; *Artaza v Smallpiece* (1793) 1 Esp 23), and on passengers' luggage for passage money (*Wolf v Summers* (1811) 2 Camp 631). As to the general rights of a master of a ship see **SHIPPING AND MARITIME LAW**.

4 See PARA 839 note 3; and **LICENSING AND GAMBLING** vol 67 (2008) PARA 213.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/2. LEGAL LIEN/(3) PARTICULAR LIENS/841. Lien for work done.

841. Lien for work done.

The right of particular lien has been extended to agency¹ and to all cases where a person has expended labour and skill in the improvement or repair², as distinct from mere maintenance³, of a chattel bailed to him for that purpose⁴. It is a common law principle that if a person has an article delivered to him on which he has to do some work and to bestow trouble or expense, he has a right to retain it until his charge is paid⁵. Thus, the artificer to whom goods are delivered for the purpose of being worked up, the farrier by whose skill an animal is cured of disease and the horse breaker by whose skill an animal is rendered manageable, have liens on the chattels for their charges⁶. Similarly, a solicitor has a lien over his client's papers for recovery of fees⁷ as well as a statutory power to take security for his costs⁸ or to apply for a charging order under the Solicitors Act 1974⁹.

The lien applies only to the chattel produced or on which the work is done¹⁰. Where the article upon which the work is to be done is sent in different parcels and at different times, there is a lien upon the whole if it is all done under one contract¹¹.

1 An agent has a lien for claims against his principal arising out of his employment unless the lien is inconsistent with his contract or with the special purposes for which the goods were entrusted to him. As against third persons, the agent's lien cannot be greater than the principal's rights: see **AGENCY** vol 1 (2008) PARAS 114-118.

2 *Hatton v Car Maintenance Co Ltd* [1915] 1 Ch 621 at 624; *Delantera Amadora SA v Bristol Channel Shiprepairers Ltd, The Katingaki* [1976] 2 Lloyd's Rep 372.

3 See PARA 843.

4 *Jackson v Cummins* (1839) 5 M & W 342 at 349 per Parke B. See also *Bevan v Waters* (1828) 3 C & P 520 (training of a racehorse); *Scarfe v Morgan* (1838) 4 M & W 270 (mare covered by a stallion). Labour must be expended to give this lien: see **BAILMENT** vol 3(1) (2005 Reissue) PARAS 77-79. Thus persons putting out a fire on a ship have a particular lien on goods saved (*Hartford v Jones* (1698) 1 Ld Raym 393), but the mere finding and taking care of an article gives no right to a lien on it (*Nicholson v Chapman* (1793) 2 Hy Bl 254). See also *Minerva Publishing Co v Minerva Press Ltd* [2001] All ER (D) 137 (Nov) (defendant printers' claim to exercise a lien over authors' manuscripts, photographs, and other original materials delivered to it by publishers not made out on the evidence).

5 *Bevan v Waters* (1828) 3 C & P 520. As to a workman's lien see **BAILMENT** vol 3(1) (2005 Reissue) PARAS 77-79.

6 *Scarfe v Morgan* (1838) 4 M & W 270 at 283 per Parke B.

7 See eg *Clifford Harris & Co v Solland International Ltd* [2005] EWHC 141 (Ch), [2005] 2 All ER 334, (2005) Times, 10 March; and see **LEGAL PROFESSIONS** vol 66 (2009) PARA 997 et seq.

8 See the Solicitors Act 1974 s 65; and **LEGAL PROFESSIONS** vol 66 (2009) PARA 990.

9 See the Solicitors Act 1974 s 73; and **LEGAL PROFESSIONS** vol 66 (2009) PARA 1011.

10 *Welsh Development Agency (Holdings) Ltd v Modern Injection Mouldings Ltd* (6 March 1986, unreported), QBD (no lien over plastic injection moulds bailed to manufacturers for purpose of manufacturing toys); *Minerva Publishing Co v Minerva Press Ltd* [2001] All ER (D) 137 (Nov) (no lien over authors' manuscripts, photographs, and other original materials delivered to printers); *Hollis v Claridge* (1813) 4 Taunt 807 (lien of a conveyancer on a draft, not on all papers); *Bleaden v Hancock* (1829) 4 C & P 152 (lien of a printer on engravings, not on the plates from which the engravings were made). See also *Marks v Laheè* (1837) 3 Bing NC 408; *Steadman v Hockley* (1846) 15 M & W 553 (no lien of conveyancer on deeds 'with and in respect of which' he does work); *Fraser v Equatorial Shipping Co Ltd and Equatorial Lines Ltd, The Ijaola* [1979] 1 Lloyd's Rep 103 at 115 per Lloyd J.

11 *Blake v Nicholson* (1814) 3 M & S 167. See also *Re Southern Livestock Producers Ltd* [1963] 3 All ER 801 at 806, [1964] 1 WLR 24 at 29, where a herd of pigs was treated as one entity; *Fraser v Equatorial Shipping Co Ltd and Equatorial Lines Ltd, The Ijaola* [1979] 1 Lloyd's Rep 103. Cf *Dinmore Meatworks Pty Ltd v Kerr* (1962) 108 CLR 628, Aust HC.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/2. LEGAL LIEN/(3) PARTICULAR LIENS/842. Owner's authority.

842. Owner's authority.

No lien arises in favour of a workman for work done unless the possession he obtains at the time when the goods are delivered to him¹ is lawful². Ordinarily, this rule requires that there should exist, at the time of delivery, an express or implied authority on the part of the owner for the work to be done³. Thus, there is no lien where work has been done on a car at the request of a hirer whose hire purchase agreement has become void⁴. However, the owner's authority may be implied from an undertaking by the hirer to keep the property in repair⁵, from the trade usage⁶ or from the mere fact that the goods are delivered by the employee of an owner with whom the workman has been accustomed to deal⁷. Where there is a bailment the purpose of which is for the bailee to use the goods, the authority so to use must be construed as authority to do, in relation to the goods, all things reasonably incidental to their reasonable use, unless any particular thing is expressly excluded⁸. Moreover, it appears sufficient to create a lien if the hirer or other intermediate bailee, while lacking the owner's actual authority, has apparent or ostensible authority from him to commission the work which gives rise to the lien⁹. In that event, the party asserting the lien is not bound by a contractual limitation of the hirer's or other intermediate bailee's authority, unless or until the limitation is expressly communicated to him¹⁰. In appropriate circumstances a workman or bailee claiming a lien may infer the owner's authority from the hirer's use and possession of a chattel, but the bare fact of a bailment of goods does not of itself give the bailee any authority to confer actual possession of the goods on anyone else¹¹.

Similarly, a sub-contractor can normally assume that the contractor has authority to sub-contract and, if the property in the goods has not passed, the sub-contractor will have a lien¹². However, if the property has passed, as will normally be the case in a sub-contract for services, the sub-contractor's rights are strictly confined to the terms of the sub-contract¹³.

1 *Bowmaker Ltd v Wycombe Motors Ltd* [1946] KB 505, [1946] 2 All ER 113, DC; and see **BAILMENT** vol 3(1) (2005 Reissue) PARA 78.

2 *Tappenden (t/a English and American Autos) v Artus* [1964] 2 QB 185, [1963] 3 All ER 213, CA, where a car was lawfully delivered by a bailee to an artificer for repairs, but the bailment was later determined. See also PARA 824; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 1812.

3 *Hiscox v Greenwood* (1802) 4 Esp 174, where a coachmaker, not usually employed by the claimant, was not entitled to a lien on the claimant's chaise left with him for repair by the claimant's employee acting without authority; *Buxton v Baughan* (1834) 6 C & P 674, where there was no lien on a phaeton stored by the defendant without a previous bargain between him and the owner; *Cassils & Co and Sassoon & Co v Holden Wood Bleaching Co Ltd* (1914) 84 LJKB 834, CA, where printers to whom calico was sent by the owner for printing consigned it without authority for bleaching, and it was held that no lien arose in favour of the bleachers; *K Chellaram & Sons (London) Ltd v Butlers Warehousing & Distribution Ltd* [1978] 2 Lloyd's Rep 412, CA, where there was no general lien against owners of goods who neither consented to nor contemplated the delivery of their goods by their forwarding agents to the defendant warehousemen on terms purporting to create a general lien. See also *Castellain v Thompson* (1862) 13 CBNS 105; and cf the cases cited in notes 5-6. As to general liens see PARAS 817, 828 et seq.

It is not thought that anything in the Torts (Interference with Goods) Act 1977 s 6(4) (see **TORT** vol 45(2) (Reissue) PARA 624) alters the proposition stated in the text: see Goff and Jones *The Law of Restitution* (7th Edn, 2007) p 247 note 74.

For the authorities concerned with solicitors' liens see *Hollis v Claridge* (1813) 4 Taunt 807; and **LEGAL PROFESSIONS** vol 66 (2009) PARA 997 et seq.

4 *Bowmaker Ltd v Wycombe Motors Ltd* [1946] KB 505, [1946] 2 All ER 113, DC.

5 *Keene v Thomas* [1905] 1 KB 136; *Green v All Motors Ltd* [1917] 1 KB 625, CA.

6 *Cassils & Co and Sassoon & Co v Holden Wood Bleaching Co Ltd* (1914) 84 LJKB 834, CA; *Pennington v Reliance Motor Works Ltd* [1923] 1 KB 127. Cf *K Chellaram & Sons (London) Ltd v Butlers Warehousing and Distribution Ltd* [1978] 2 Lloyd's Rep 412, CA.

7 *Hiscox v Greenwood* (1802) 4 Esp 174; *Hussey v Christie* (1808) 9 East 426. Although an employee's actions may lead to the implication of his employer's authority he cannot by discharging the bill on his employer's account claim a lien for himself against his employer's property: *Hussey v Christie*.

8 *Tappenden (t/a English and American Autos) v Artus* [1964] 2 QB 185, [1963] 3 All ER 213, CA.

9 *Tappenden (t/a English and American Autos) v Artus* [1964] 2 QB 185 at 196-201, [1963] 3 All ER 213 at 216-220, CA, per Diplock LJ; *Bowmaker Ltd v Wycombe Motors Ltd* [1946] KB 505 at 509, [1946] 2 All ER 113 at 115, DC, per Lord Goddard CJ; *Albermarle Supply Co Ltd v Hind & Co* [1928] 1 KB 307, CA; *Welsh Development Agency (Holdings) Ltd v Modern Injection Mouldings Ltd* (6 March 1986, unreported), QBD. Cf *K Chellaram & Sons (London) Ltd v Butlers Warehousing and Distribution Ltd* [1978] 2 Lloyd's Rep 412, CA (insufficient 'contemplation and intention' on part of owner to confer general lien on defendant warehousemen).

10 *Tappenden (t/a English and American Autos) v Artus* [1964] 2 QB 185 at 198, [1963] 3 All ER 213 at 218, CA, per Diplock LJ; *Albermarle Supply Co Ltd v Hind & Co* [1928] 1 KB 307, CA; *Singer Manufacturing Co v London and South Western Rly Co* [1894] 1 QB 833; *Green v All Motors Ltd* [1917] 1 KB 625 at 633-634, CA.

11 *Tappenden (t/a English and American Autos) v Artus* [1964] 2 QB 185 at 196, [1963] 3 All ER 213 at 216, CA, per Diplock LJ; *Buxton v Baughan* (1834) 6 C & P 674.

12 *Bellamy v Davey* [1891] 3 Ch 540; and see *Jarl Trä AB v Convoys Ltd* [2003] EWHC 1488 (Comm), [2003] 2 Lloyd's Rep 459, [2003] All ER (D) 328 (Jun) (carriers went into liquidation owing money to wharfingers to whom they had sub-contracted handling of cargo on terms including general lien on goods the subject of the operations; carriers' customers disputed wharfingers' lien over their goods and claimed that the terms of the sub-contract were so onerous and unreasonable that they could not be said to have consented to them, despite the fact that the contract of carriage included a clause allowing the carriers to sub-contract the performance of any of their duties under the contract of carriage 'on any terms'; held that once it was recognised that many sub-contractors did business on terms which included a general lien in respect of charges due from their own customers, the risk that they might be entitled to exercise a lien on one person's goods to obtain payment of a debt due from another was one that had to be accepted as arising in the ordinary course of business). See also note 13.

13 *Pritchett and Gold and Electrical Power Storage Co Ltd v Currie* [1916] 2 Ch 515, CA. The sub-contractor can never have a lien extending beyond the ambit of his sub-contract, eg where money has been paid on a principal contract which governs matters with which the sub-contractor is not concerned: see *Pritchett and Gold and Electrical Power Storage Co Ltd v Currie* at 523 per Pickford LJ, distinguishing *Bellamy v Davey* [1891] 3 Ch 540.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/2. LEGAL LIEN/(3) PARTICULAR LIENS/843. Improvement.

843. Improvement.

There is no lien for the mere maintenance of a chattel, however much care and skill may be expended¹. Therefore, assuming the requirement of possession to be satisfied², there is a lien in favour of a person who trains a horse, a person who provides the service of a mare and a person who cares for an animal through illness, but not in favour of a person who merely keeps a horse in a livery stable or maintains a herd of pigs³. It appears to be a question of fact and degree whether repair amounts to improvement⁴ or mere maintenance⁵. If the claim to lien is based on both maintenance and improvement and the two bases of claim cannot be severed, the claim as a whole will fail⁶. The prevention of deterioration must not be equated with improvement⁷, but it has been said that the repair of damage, although it may be described as 'maintenance', will give rise to a repairer's lien⁸.

1 *Scarfe v Morgan* (1838) 4 M & W 270 at 283. See also *Bell v Clare* (1989) 23 FCR 274, Aust Fed Ct. Consistently with this principle, it has been held in Australia that a gratuitous depositary has no lien: *Graham v Voigt* (1989) 95 FLR 146 at 153, ACT SC, per Kelly J.

2 See PARA 823.

3 *Judson v Etheridge* (1833) 1 Cr & M 743; *Re Southern Livestock Producers Ltd* [1963] 3 All ER 801, [1964] 1 WLR 24, where the maintenance of a herd of pigs and production of litters was held not to amount to an improvement, but it was indicated that the position might be different if the work and skill had extended to the provision of and servicing by boars. The mere supervision of natural increase is not enough: *Re Southern Livestock Producers Ltd* at 806 and 28. See also *Bell v Clare* (1989) 23 FCR 274, Aust Fed Ct; *Helton v Sullivan* [1968] Qd R 562, Qld SC.

4 *Green v All Motors Ltd* [1917] 1 KB 625 at 631, CA.

5 *Hatton v Car Maintenance Co Ltd* [1915] 1 Ch 621. An auctioneer to whom a mortgage deed was delivered to enable him to demand the money due was held to have no lien because there was no work to be done on the deed: *Sanderson v Bell* (1834) 2 Cr & M 304. An agister of cows has no lien: *Prentice v Taylor* (1859) 1 F & F 469; and see *Grazing & Export Meat Co Ltd v Anderson* [1976] 1 NZLR 187, NZ SC. See also PARA 826; and **ANIMALS** vol 2 (2008) PARA 723.

6 *Sanderson v Bell* (1834) 2 Cr & M 304 at 311; *Re Southern Livestock Producers Ltd* [1963] 3 All ER 801 at 806, [1964] 1 WLR 24 at 29 per Pennycuik J.

7 *Re Southern Livestock Producers Ltd* [1963] 3 All ER 801 at 805, [1964] 1 WLR 24 at 28 per Pennycuik J.

8 *Albemarle Supply Co Ltd v Hind & Co* [1928] 1 KB 307 at 318, CA, per Scrutton LJ; *Re Southern Livestock Producers Ltd* [1963] 3 All ER 801 at 805, [1964] 1 WLR 24 at 28 per Pennycuik J, who was tempted to hold, but felt himself precluded by authority from holding, that a lien arises where labour and skill are used to prevent a chattel from deteriorating in contradistinction to improving it. However, it is arguable that the prevention of deterioration was the basis for the lien in the 'sick animal' cases (see PARA 845 note 10) and in *Green v All Motors Ltd* [1917] 1 KB 625 at 629, CA.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/2. LEGAL LIEN/(3) PARTICULAR LIENS/844. Work must be completed.

844. Work must be completed.

No lien ordinarily arises until the work has been completed¹, but if completion is countermanded or otherwise prevented by the owner a lien arises at all events for the work actually done². If, in countermanding or in otherwise preventing the completion of the work, the owner is in breach of the contract, the artificer may be entitled to complete the work and then claim a lien on the completed article³. In accordance with the general rule, of course, the work must be done or skill expended in respect of the chattel⁴.

There is no distinction between an agreement to do the work for a stipulated sum and the implied contract to pay a reasonable sum, but, if there is a stipulated price to be paid at a particular time or in a particular manner, the workman may not set up a lien inconsistent with his contract⁵.

1 *Pinnock v Harrison* (1838) 3 M & W 532 at 535 per Parke B; *Wiltshire Iron Co Ltd v Great Western Railway Co* (1871) LR 6 QB 776 (common carrier's lien for unpaid freight can be exercised only when carriage completed); and see *Bolwell Fibreglass Pty Ltd v Foley* [1984] VR 97 at 111, Vict SC, Full Ct, per Brooking J. See also *George Barker (Transport) Ltd v Eynon* [1974] 1 All ER 900, [1974] 1 WLR 462, CA.

2 *Lilley v Barnsley* (1844) 1 Car & Kir 344.

3 *Bellamy v Davey* [1891] 3 Ch 540 at 545; and see *Bolwell Fibreglass Pty Ltd v Foley* [1984] VR 97 at 111, 116, Vict SC, Full Ct, per Brooking J, who took the view that *Lilley v Barnsley* (1844) 1 Car & Kir 344 was wrongly decided in so far as it held that the owner could, by countermanding the work, deprive the artificer of the ability to earn the full contractual remuneration and assert a lien to that full amount. But the artificer may have no right to complete the work contrary to the wishes of the owner where completion would require the owner's co-operation, whether active or passive, or where the artificer has no substantial or legitimate interest in completing: *White and Carter (Councils) Ltd v McGregor* [1962] AC 413, [1961] 3 All ER 1178, HL; *Hounslow London Borough Council v Twickenham Garden Developments Ltd* [1971] Ch 233 at 253 per Megarry J.

4 *Bevan v Waters* (1828) 3 C & P 520; *Judson v Etheridge* (1833) 1 Cr & M 743; *Forth v Simpson* (1849) 13 QB 680. See also *Donatty v Crowther and Kelly* (1826) 11 Moore CP 479; *Orchard v Rackstraw* (1850) 9 CB 698; and PARA 843.

5 *Chase v Westmore* (1816) 5 M & S 180; *Blake v Nicholson* (1814) 3 M & S 167; *Re Southern Livestock Producers Ltd* [1963] 3 All ER 801 at 807, [1964] 1 WLR 24 at 30 per Pennycuik J.

See also *Cubbitt Building & Interiors Ltd v Fleetglade Ltd* [2006] EWHC 3413 (TCC), 110 ConLR 36, [2007] All ER (D) 268 (Jan), following *St Andrews Bay Development Ltd v HBG Management Ltd* 2003 SCLR 526 (adjudicator under the Housing Grants, Construction and Regeneration Act 1996 not entitled to exercise a lien on the decision until payment of his fees under the specific terms of his appointment, as this would be contrary to the terms of the agreement between the parties that the decision, once reached, was to be communicated forthwith, and also contrary to the terms of the statute).

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/2. LEGAL LIEN/(3) PARTICULAR LIENS/845. Instances where work has been done.

845. Instances where work has been done.

The following persons have been held to be entitled to particular liens for labour or expenditure upon chattels entrusted to them:

- 1 (1) an accountant, upon the books of account, for work done before the bankruptcy of the owner¹;
- 2 (2) an arbitrator, upon the award, for his fees²;
- 3 (3) an architect, upon plans prepared by him, for his charges³;
- 4 (4) an auctioneer, upon the goods sold, the deposit and the purchase money, for the price and for the charges of sale and commission⁴;
- 5 (5) a calico printer, upon goods in his possession, for printing⁵;
- 6 (6) a coachmaker, upon a carriage, for the cost of repairs⁶;
- 7 (7) a conveyancer, upon a draft settled or opinion written by him⁷;
- 8 (8) a dyer, upon goods dyed by him⁸;
- 9 (9) engineers, upon a barge, for putting in the machinery⁹;
- 10 (10) a farrier, upon a horse cured of disease¹⁰;
- 11 (11) a fuller, upon cloth dressed by him¹¹;
- 12 (12) a garage proprietor, upon a car repaired by him¹²;
- 13 (13) a horse breaker, upon a horse, for the cost of breaking it in¹³;
- 14 (14) a horse trainer, upon a horse, both for keep and training, unless by contract or custom the owner has rights of user inconsistent with the continued possession of the trainer¹⁴;
- 15 (15) an insurance broker, upon policies of insurance which he has effected¹⁵;
- 16 (16) a miller, upon flour or corn, for the cost of grinding¹⁶;
- 17 (17) the owner of a stallion, upon a mare, for the cost of covering¹⁷;
- 18 (18) a parliamentary agent, upon books and papers in his hands¹⁸;
- 19 (19) a printer, upon copies of a book, for his costs of printing it¹⁹;
- 20 (20) a shipwright, upon a ship, for building or repairing it²⁰;
- 21 (21) a tailor, upon clothes, for their price²¹; and
- 22 (22) a consultant engineer, upon a ship's bearings which had been entrusted to him to bring to England for remetalling, in respect of work performed by him not only on the bearings but also on other parts of the ship²².

1 *Re Hill, ex p Southall* (1848) 12 Jur 576 at 577 per Knight Bruce V-C; *Woodworth v Conroy* [1976] QB 884, [1976] 1 All ER 107, CA (see also 120 Sol Jo 697). See also *RG Kemp & Co v Ghelani* (9 March 1979, unreported), CA; *Singh v Thaper* (1987) Times, 7 August, CA; *DTC (CNC) Ltd v Gary Sergeant & Co (a firm)* [1996] 2 All ER 369, [1996] 1 WLR 797; and PARA 806.

2 *R v South Devon Rly Co* (1850) 15 QB 1043; *Re Coombs and Freshfield and Fernley* (1850) 4 Exch 839 at 841 per Parke B. See however, *Cubitt Building and Interiors Ltd v Fleetglade Ltd* [2006] EWHC 3413 (TCC), 110 ConLR 36, [2007] All ER (D) 268 (Jan), where it was held that an adjudicator of a dispute arising under a construction contract providing for a procedure complying with the Housing Grants, Construction and Regeneration Act 1996 s 108 was not entitled to exercise a lien on the decision until payment of fees, either as a matter of contract or at law, as it was impermissible for the arrangement about the payment of fees to frustrate or impede the statutory process.

3 *Hughes v Lenny* (1839) 5 M & W 183; and see BUILDING CONTRACTS, ARCHITECTS, ENGINEERS, VALUERS AND SURVEYORS vol 4(3) (Reissue) PARA 282.

4 *Williams v Millington* (1788) 1 Hy Bl 81; *Coppin v Craig* (1816) 7 Taunt 243. An auctioneer's lien on the deposit is confined to so much of the deposit as becomes the vendor's property, so that if the vendor has a duty to discharge incumbrances the auctioneer's lien may be inoperable: see *Skinner v Trustee of the Property of Reed (a bankrupt)* [1967] Ch 1194, [1967] 2 All ER 1286; and AUCTION vol 2(3) (Reissue) PARAS 224, 250.

- 5 A calico printer possibly has also a general lien for work done in his actual business: see PARA 828 note 10. As to general liens see PARAS 817, 828 et seq.
- 6 *Houlditch v Milne* (1800) 3 Esp 86 per Lord Eldon CJ; *Howes v Ball* (1827) 7 B & C 481.
- 7 *Hollis v Claridge* (1813) 4 Taunt 807; *Steadman v Hockley* (1846) 15 M & W 553. Cf PARA 841 note 10.
- 8 *Savill v Barchard* (1801) 4 Esp 53; *Green v Farmer* (1768) 4 Burr 2214; *Bennett v Johnson* (1784) 3 Doug KB 387. For many years dyers endeavoured to establish a right to a general lien, but it appears that this was established only in particular districts and not everywhere: see *Close v Waterhouse* (1802) 6 East 523n. See also *Cross Law of Lien and Stoppage in Transitu* (1840) p 337.
- 9 *Re Westlake, ex p Willoughby* (1881) 16 ChD 604.
- 10 *Rushforth v Hadfield* (1806) 7 East 224 at 229 per Lord Ellenborough CJ (by implication, when he points out that a farrier is not entitled to a general lien for shoeing a horse); *Scarfe v Morgan* (1838) 4 M & W 270 at 284 per Parke B.
- 11 *Rose v Hart* (1818) 8 Taunt 499; *Sweet v Pym* (1800) 1 East 4, where it is stated that by the custom of Exeter a fuller has a general lien.
- 12 See *Green v All Motors Ltd* [1917] 1 KB 625, CA; *Albemarle Supply Co Ltd v Hind & Co* [1928] 1 KB 307, CA; *Tappenden (t/a English and American Autos) v Artus* [1964] 2 QB 185, [1963] 3 All ER 213, CA; and **BAILMENT** vol 3(1) (2005 Reissue) PARA 78.
- 13 *Judson v Etheridge* (1833) 1 Cr & M 743; *Scarfe v Morgan* (1838) 4 M & W 270 at 283 per Parke B.
- 14 *Bevan v Waters* (1828) 3 C & P 520; *Forth v Simpson* (1849) 13 QB 680; *Green v Jockey Club* (1974) 119 Sol Jo 258. Cf *Ward v Fielden* [1985] CLY 2000. See also PARA 826.
- 15 *Fisher v Smith* (1878) 4 App Cas 1, HL.
- 16 *Re Matthews, ex p Ockenden* (1754) 1 Atk 235.
- 17 *Scarfe v Morgan* (1838) 4 M & W 270. See also *Re Southern Livestock Producers Ltd* [1963] 3 All ER 801 at 805, [1964] 1 WLR 24 at 28 per Pennycuik J; *Bell v Clare* (1989) 23 FCR 274, Aust Fed Ct.
- 18 *Ridgway v Lees* (1856) 25 LJ Ch 584.
- 19 *Blake v Nicholson* (1814) 3 M & S 167. Cf *Minerva Publishing Co v Minerva Press Ltd* [2001] All ER (D) 137 (Nov) (defendant printers' claim to exercise a lien over authors' manuscripts, photographs, and other original materials delivered to it by publishers not made out on the evidence). As to a publisher's lien upon an author's copyright for disbursements see *Brook v Wentworth* (1797) 3 Anst 881.
- 20 *Woods v Russell* (1822) 5 B & Ald 942.
- 21 *Blake v Nicholson* (1814) 3 M & S 167.
- 22 *Fraser v Equatorial Shipping Co Ltd and Equatorial Lines Ltd, The Ijaola* [1979] 1 Lloyd's Rep 103.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/2. LEGAL LIEN/(4) ENFORCEMENT/846. Rights of the person claiming lien.

(4) ENFORCEMENT

846. Rights of the person claiming lien.

At common law a legal lien merely conferred on the holder of the goods in respect of which it was claimed a passive right to detain the articles until the debt was paid¹. Such liens could not in the absence of statutory powers be enforced by sale² although there might be expense incurred in the retention of the property. Accordingly, a person who chose to insist on his right of retainer might do so, but would have no further right and must put up with any inconvenience which the retention might entail³. However, the harshness of this rule is mitigated by the court's discretion⁴ to order the sale of perishable goods⁵. The rights of a person claiming a lien may also be affected by the further discretionary jurisdiction to order the detention or preservation of property in the possession of a party to the proceedings, the delivery up of property⁶, and its inspection by other parties⁷. There is also discretion for the judge to allow the application of the income of property which is the subject of proceedings until the claim is decided⁸.

1 *Tappenden (t/a English and American Autos) v Artus* [1964] 2 QB 185 at 194-195, [1963] 3 All ER 213 at 215-216, CA, per Diplock LJ; and see PARA 817. A party having a lien over a ship is not ordinarily entitled, by reason of the lien alone, to detach and remove parts of the ship: *The Gregos* [1985] 2 Lloyd's Rep 347 at 361 per Sheen J. Cf *Fraser v Equatorial Shipping Co Ltd and Equatorial Lines Ltd, The Ijaola* [1979] 1 Lloyd's Rep 103. The right to retain possession involves the right to sue in trespass or conversion and to obtain damages: see **BAILMENT** vol 3(1) (2005 Reissue) PARAS 89-90; **DAMAGES** vol 12(1) (Reissue) PARA 860.

2 *Thames Iron Works Co v Patent Derrick Co* (1860) 1 John & H 93; and see *Bolwell Fibreglass Pty Ltd v Foley* [1984] VR 97 at 110, Vict SC, Full Ct, per Brooking J.

3 *Jones v Pearle* (1723) 1 Stra 557; *Ex p Shank* (1754) 1 Atk 234; *Clark v Gilbert* (1835) 2 Bing NC 343 at 356; *Legg v Evans* (1840) 6 M & W 36; *Thames Iron Works Co v Patent Derrick Co* (1860) 1 John & H 93; *Mulliner v Florence* (1878) 3 QBD 484, CA; *Bozon v Bolland* (1839) 4 My & Cr 354; *Molesworth v Robbens* (1845) 2 Jo & Lat 358; *Pelly v Wathen* (1849) 7 Hare 351 (affd (1851) 1 De GM & G 16, CA in Ch); *Lickbarrow v Mason* (1793) 6 East 20n at 24n, HL, per Buller J.

4 The discretion is not limited to those cases where a power of sale arises by statute or in equity: *Larner v Fawcett* [1950] 2 All ER 727, CA. As to the caution to be exercised in applying pre-CPR authorities see **CIVIL PROCEDURE** vol 11 (2009) PARA 33.

5 See CPR 25.1(c)(v). This rule extends also to cases where, for any other just or sufficient reason, it may be desirable to have the goods sold at once, but regard must be had to the rights of the persons in whom the legal property is vested: *Dangar Grant & Co v Gospel Oak Iron Co* (1890) 6 TLR 260. As to the caution to be exercised in applying pre-CPR authorities see **CIVIL PROCEDURE** vol 11 (2009) PARA 33.

6 See under the Torts (Interference with Goods) Act 1977 s 4: see CPR 25.1(e); and **TORT** vol 45(2) (Reissue) PARA 654.

7 See CPR 25.1(c)(ii). As to inspection by a non-party see CPR 25.5; and **CIVIL PROCEDURE** vol 11 (2009) PARA 323.

8 See CPR 25.1(c)(vi).

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/2. LEGAL LIEN/(4) ENFORCEMENT/847. Procedure.

847. Procedure.

A person claiming a legal lien must either claim it for a definite amount or give the owner particulars from which he himself can calculate the amount for which a lien is due¹.

The court may order an order permitting a party seeking to recover personal property to pay money into court pending the outcome of the proceedings and directing that, if he does so, the property is to be given up to him². This does not, however, affect the court's jurisdiction to grant relief in equity against the exercise of a solicitor's lien³.

1 *Singh v Thaper* (1987) Times, 7 August, CA (accountant; lien failed as amount allegedly due not sufficiently specified).

2 See CPR 25.1(m).

3 See *Ismail v Richards Butler (a firm)* [1996] QB 711, [1996] 2 All ER 506; followed in *Slatter v Ronaldsons (a firm)* [2001] All ER (D) 251 (Dec).

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/2. LEGAL LIEN/(4) ENFORCEMENT/848. General rule that retainer is the only right.

848. General rule that retainer is the only right.

The holder of property the subject of a lien is not normally permitted to make any claim for the use of the place in which the property is detained, or otherwise for keeping it¹. Unless the circumstances are such as to support a contract to that effect, it normally makes no difference that, by advertisement or otherwise, the holder notifies the owner that such a claim will be made unless the goods are removed and such expenses paid on or before a stated time. Any money paid by the owner under protest, in satisfaction of such claim, in order to regain possession of the goods, may be recovered by proceedings². Therefore, it follows that if the holder sells the goods he will be liable to the owner for wrongful interference with goods³ for their value; and this principle applies in the case of a solicitor's lien upon his client's papers, though a general lien⁴.

1 See PARA 820; and **BAILMENT** vol 3(1) (2005 Reissue) PARA 48. As to the distinction between the use of care and skill in maintenance and improvement see PARA 843. As to exceptions to the rule that retainer is the only right conferred by lien see PARA 849. See also *Morris v Beaconsfield Motors* [2001] EWCA Civ 1322, [2001] All ER (D) 335 (Jul) (motor repairer not entitled to charge storage charges when purporting to exercise a lien over car; but was entitled to recover expenditure paid by it to the Revenue to preserve the valuable numberplate because that had been to the benefit of the lienor).

2 *Somes v British Empire Shipping Co* (1860) 8 HL Cas 338; *Bruce v Everson* (1883) Cab & El 18; *Dimsdale v London and Brighton Rly Co* (1862) 3 F & F 167 at 169n. See also *Ridyard v Roberts* (16 May 1980, unreported), CA. As to procedures for the disposal of uncollected goods see the Torts (Interference with Goods) Act 1977 ss 12, 13, Sch 1; and **BAILMENT** vol 3(1) (2005 Reissue) PARA 80.

3 *Le trover*, which is now included in wrongful interference with goods: see the Torts (Interference with Goods) Act 1977 s 1(a).

4 *Clark v Gilbert* (1835) 2 Bing NC 343 at 356. As to a solicitor's lien and his right to enforce it see **LEGAL PROFESSIONS** vol 66 (2009) PARA 996 et seq. As to general liens see PARAS 817, 828 et seq.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/2. LEGAL LIEN/(4) ENFORCEMENT/849. Exceptions to the general rule.

849. Exceptions to the general rule.

There are exceptions to the general rule that retainer is the only right conferred by lien¹. In the tea trade there is a usage that vendors are paid partly by an immediate deposit, while the vendor retains the tea or the warrants which represent it, and on non-payment of the balance may sell it and charge the purchaser with any deficiency, together with interest and other charges². Statutory power to sell goods subject to a lien is conferred on innkeepers³, carriers⁴, vendors of chattels⁵, dock undertakings⁶ and bailees in possession of uncollected goods⁷.

All persons entitled to general or particular liens may expressly stipulate for a power of sale and prescribe the terms of sale in the event of the lien remaining unsatisfied after a certain date, although such a stipulation may be more consistent with a pledge than with a lien⁸. In principle, and subject to the appropriate rules of contract⁹, there is nothing to prevent parties from attaching such conditions relating to sale at the time the lien arises¹⁰.

1 As to the general rule see PARA 848.

2 *Re Tate, ex p Moffatt* (1841) 2 Mont D & De G 170.

3 See the Innkeepers Act 1878 s 1; and **LICENSING AND GAMBLING** vol 67 (2008) PARA 214.

4 See the Railways Clauses Consolidation Act 1845 s 97 (modified by the Transport Act 1962 s 32, Sch 2 Pt IV). See also *Great Western Rly Co v Sharman* (1892) 61 LJQB 600, where it was said that a passive lien, being an imperfect remedy, could not be meant when given by Act of Parliament to be the exclusive remedy. As to a carrier's right to sell on non-payment see *Field v Newport, Abergavenny and Hereford Rly Co* (1858) 3 H & N 409; *North v London and South Western Rly Co* (1863) 14 CBNS 132; *Ivens v Great Western Rly Co* (1889) 53 JP 148; *Wallis v London and South Western Rly Co* (1870) LR 5 Exch 62 (disapproved in *Caledonian Rly Co v Guild* 1873 1 R (Ct of Sess) 198). See also *Manchester, Sheffield and Lincolnshire Rly Co v North Central Wagon Co* (1888) 13 App Cas 554, HL. As to the obligation of carriers to keep goods for a reasonable time see **CARRIAGE AND CARRIERS** vol 7 (2008) PARA 761.

5 See the Sale of Goods Act 1979 ss 39, 41, 42, 48; and **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 236 et seq.

6 See the Harbours, Docks, and Piers Clauses Act 1847 s 45. See also *Dresser v Bosanquet* (1863) 4 B & S 460 at 486, Ex Ch. Cf *The Freightline One* [1986] 1 Lloyd's Rep 266 (Port of London Authority's power of detention of vessel under the Port of London Act 1968 s 39).

7 See the Torts (Interference with Goods) Act 1977 ss 12, 13, Sch 1; and **BAILMENT** vol 3(1) (2005 Reissue) PARA 80.

8 See the authorities cited in PARAS 815, 832. See also **PLEDGES AND PAWNS** vol 36(1) (2007 Reissue) PARA 1 et seq. As to general liens see PARAS 817, 828 et seq; and as to particular liens see PARAS 818, 838 et seq.

9 Most notably, the rules relating to offer and acceptance (see **CONTRACT** vol 9(1) (Reissue) PARA 631 et seq), consideration (see **CONTRACT** vol 9(1) (Reissue) PARA 727 et seq) and economic duress (see **CONTRACT** vol 9(1) (Reissue) PARA 711).

10 See eg the Sale of Goods Act 1979 s 48(4). See also *Lamond v Davall* (1847) 9 QB 1030; and **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 283. As to the power of a company to forfeit shares to enforce a lien for debts due to the company see *Hopkinson v Mortimer, Harley & Co Ltd* [1917] 1 Ch 646; and **COMPANIES** vol 15 (2009) PARA 1214.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/2. LEGAL LIEN/(5) EXTINCTION OF LEGAL LIEN/850. Extinction.

(5) EXTINCTION OF LEGAL LIEN

850. Extinction.

Extinction of legal lien may occur by reason of tender¹, abandonment², taking alternative security³, loss of possession⁴ and in cases of liquidation⁵, receivership⁶ and bankruptcy⁷, where for any reason the lien has not yet fully taken effect at the relevant time. A course of dealing may also negative the existence or survival of a lien⁸.

1 See PARA 851.

2 See PARA 852.

3 See PARA 853.

4 See PARA 854.

5 See PARA 834.

6 See PARA 835.

7 See PARA 837.

8 See PARA 808 text and note 5.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/2. LEGAL LIEN/(5) EXTINCTION OF LEGAL LIEN/851. Tender.

851. Tender.

A tender by the debtor of the amount due to the creditor¹ puts an end to the creditor's lien², but a demand by the creditor for a larger sum than is covered by the lien is not a waiver of his lien³.

1 But not, in ordinary circumstances, a lesser amount: *Hardingham v Allen* (1848) 5 CB 793. See also *Jenkyns v Brown* (1849) 14 QB 496. As to the duty of the debtor to tender and as to when he may be excused from tendering see PARA 847.

2 *Cannee v Spanton* (1844) 8 Scott NR 714.

3 *Scarfe v Morgan* (1838) 4 M & W 270; *Dirks v Richards* (1842) 4 Man & G 574; *Albemarle Supply Co Ltd v Hind & Co* [1928] 1 KB 307, CA; and see *Griffith v Meat Industry Suppliers Ltd* (1983) 34 SASR 172 at 180-181, S Aust SC, per Sangster J. See also BAILMENT vol 3(1) (2005 Reissue) PARA 48; SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARAS 247, 272.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/2. LEGAL LIEN/(5) EXTINCTION OF LEGAL LIEN/852. Abandonment of legal lien.

852. Abandonment of legal lien.

Lien is waived or destroyed where:

- 23 (1) a claim has been abandoned for a number of years¹; or
- 24 (2) there is general conduct from which a waiver can be inferred²; or
- 25 (3) the party claims to retain goods on grounds different from those on which he rests his claim for lien, and makes no mention of lien³; or
- 26 (4) having a lien on goods for a general balance, the party claims a lien on them merely for a particular debt⁴.

Similarly, a lien is abandoned by the person having a lien if without authority he sells the goods concerned, and he is not then entitled to retain the purchase money⁵. A lien for a particular debt is not destroyed, however, by a claim to a lien for a general balance⁶. The concept of abandonment is also reflected in the principle that a lien may be superseded by contract or by a subsequent course of dealing inconsistent with the continuation of the lien⁷.

1 *Re Noble, ex p Douglas* (1833) 3 Deac & Ch 310.

2 See eg *Mulliner v Florence* (1878) 3 QBD 484, CA, where the bailee sold the goods and thereby lost his lien; *Hill & Sons v London Central Markets Cold Storage Co Ltd* (1910) 102 LT 715; *Jarl Trä AB v Convoys Ltd* [2003] EWHC 1488 (Comm), [2003] 2 Lloyd's Rep 459, [2003] All ER (D) 328 (Jun).

3 *Boardman v Sill* (1808) 1 Camp 410n; *Weeks v Goode* (1859) 6 CBNS 367; *Cannee v Spanton* (1844) 8 Scott NR 714; and see **BAILMENT** vol 3(1) (2005 Reissue) PARA 49. Mere omission to claim the lien when the goods are demanded is not a waiver: *White v Gainer* (1824) 9 Moore CP 41.

4 *Morley v Hay* (1828) 7 LJOSKB 104.

5 *Jones v Thurloe* (1723) 8 Mod Rep 172; *Clark v Gilbert* (1835) 2 Bing NC 343; *Mulliner v Florence* (1878) 3 QBD 484, CA.

6 *Albemarle Supply Co Ltd v Hind & Co* [1928] 1 KB 307, CA. See also the cases cited in PARA 851 note 3.

7 See *Fisher v Smith* (1878) 4 App Cas 1, HL (considered in *Heath Lambert Ltd v Sociedad de Corretaje de Seguros* [2006] EWHC 1345 (QB), [2006] 2 All ER (Comm) 543, [2006] 2 Lloyd's Rep 551); and PARA 808.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/2. LEGAL LIEN/(5) EXTINCTION OF LEGAL LIEN/853. Taking alternative security.

853. Taking alternative security.

If security is taken for payment at a future date of a debt for which the creditor has a legal lien upon property of the debtor, the lien is in some cases destroyed¹. The mere taking of a security does not necessarily destroy the lien². There must be something in the facts of the case or in the nature of the security taken which is inconsistent with, and destructive of, the lien³, as for instance a security taken on property already subject to the lien, or a security which gives time for payment or which gives a right to interest not otherwise payable⁴. Where bills are given as security the lien may be treated as merely suspended, and may revive if the bills are dishonoured⁵.

1 *Cowell v Simpson* (1809) 16 Ves 275 at 279; *Balch v Symes* (1823) Turn & R 87; *Hewison v Guthrie* (1836) 2 Bing NC 755. See also *Horncastle v Farran* (1820) 3 B & Ald 497; *Re Westlake, ex p Willoughby* (1881) 16 ChD 604.

2 *Re Taylor, Stileman and Underwood* [1891] 1 Ch 590 at 597, CA, per Lindley J (effect of additional security depends on intention of the parties, to be inferred from their respective positions and the surrounding circumstances; where solicitor takes additional security from client, the prima facie inference, depending on the nature of the security, may be that the original lien is extinguished); and see *Clifford Harris & Co v Solland International Ltd* [2005] EWHC 141 (Ch), [2005] 2 All ER 334, (2005) Times, 10 March (fact that the solicitor had no positive intention to waive does not suffice to defeat a waiver; if there is an inconsistency, the solicitor will be regarded as having waived his rights unless he has expressly reserved them; and the same principle applies to the right to a charging order under the Solicitors Act 1974 s 73). See also *Re Westlake, ex p Willoughby* (1881) 16 ChD 604.

3 *Solarte v Hilbers* (1832) 1 LJKB 196; *Mason v Morley* (1865) 34 Beav 471; *Angus v McLachlan* (1883) 23 ChD 330; *Bank of Africa v Salisbury Gold Mining Co* [1892] AC 281, PC. Thus before the Debtors Act 1869, when a debtor could be attached, such attachment did not deprive a solicitor of his right to a charging order for costs because the two remedies were consistent (*Lloyd v Mason* (1845) 4 Hare 132), nor does a judgment obtained by a solicitor against his client for costs deprive the solicitor of his general retaining lien over documents (*Re Aikin's Estate* [1894] 1 IR 225; considered in *Heath Lambert Ltd v Sociedad de Corretaje de Seguros* [2006] EWHC 1345 (QB), [2006] 2 All ER (Comm) 543, [2006] 2 Lloyd's Rep 551). As to waiver of a solicitor's lien see note 2; and **LEGAL PROFESSIONS** vol 66 (2009) PARA 1005.

4 *Re Morris* [1908] 1 KB 473 at 477, CA, per Buckley LJ.

5 *Stevenson v Blakelock* (1813) 1 M & S 535.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/2. LEGAL LIEN/(5) EXTINCTION OF LEGAL LIEN/854. Loss of possession.

854. Loss of possession.

A legal lien is lost if possession is lost¹. Thus redelivery of goods to the owner² or his agent³ destroys the lien⁴, and when once made cannot be recalled⁵, even if made by mistake⁶. However, if the redelivery is induced by fraud or is otherwise wrongfully obtained⁷, the lien revives if possession is recovered, even though the recovery is effected by stratagem⁸. There is no such thing as a notional lien, and the court has no power to allow an applicant to part with possession while retaining his rights as holder of a legal lien⁹. The same principle applies where a building contractor loses possession by affixing materials to the land¹⁰. However, a lien is not lost by delivery of a chattel to the owner for his temporary use under an agreement that the chattel should be returned after use and that the lien should continue¹¹. Nor is a lien lost by the deposit of chattels with a third person on behalf of the person entitled to the lien¹².

Where there is an agreement between a consignor of goods and a carrier for a general lien, such lien is not lost as against the consignor because the consignee refuses to accept delivery of the goods¹³.

The lien of an unpaid seller of goods may be defeated by a transfer of a document of title to the goods to a person who takes in good faith and for valuable consideration¹⁴. Although the public interest may require a legal lien to be overridden in the interest of a third person in other cases, this principle does not enable the court to disregard a lien in divorce proceedings on the ground that public interest requires the production of the retained documents¹⁵.

1 *Euro Commercial Leasing Ltd v Cartwright & Lewis* [1995] 2 BCLC 618 at 621 per Evans-Lombe J. As to an agent's loss of his lien see AGENCY vol 1 (2008) PARA 11; as to loss of a workman's lien see BAILMENT vol 3(1) (2005 Reissue) PARA 79; and as to loss of a shipowner's lien see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 1041. As to possession generally see PARA 823 et seq.

2 *Ex p Shank* (1754) 1 Atk 234; *Kruger v Wilcox* (1755) Amb 252, where a factor allowed the owner to sell goods through a broker and informed the broker that the owner would deal with the goods; *Dennant v Skinner and Collom* [1948] 2 KB 164 at 172, [1948] 2 All ER 29 at 34 per Hallett J. See also *Hartley v Hitchcock* (1816) 1 Stark 408; *Castling v Aubert* (1802) 2 East 325; and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARAS 205, 248. Whether possession has been parted with or not is a question of fact (*Bernal v Pim* (1835) 1 Gale 17), but a captain of a ship who is compelled by law to allow goods to be landed at the custom house does not lose his lien for freight, even though he has parted with possession of the goods (*Wilson v Kymer* (1813) 1 M & S 157).

3 *Pennington v Reliance Motor Works Ltd* [1923] 1 KB 127.

4 *Sweet v Pym* (1800) 1 East 4; *Hatton v Car Maintenance Co Ltd* [1915] 1 Ch 621. Cf *De Lorean Motor Cars v Northern Ireland Carriers* [1983] CLY 2594 (wrongful intermediate detention did not destroy carriers' lien where original collection and subsequent tender of goods were in conformity with contract). Where a policy had been deposited to secure a loan with a person who on the death of the owner was one of his executors, and the insurance office would not pay the policy money without the receipt of all the executors, the joining of the depositary-executor in such receipt did not put an end to his lien on the policy money: *Glaholm v Rowntree* (1837) 6 Ad & El 710. As to the termination of a lien under the Sale of Goods Act 1979 s 43 see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARAS 244-245.

5 *Sweet v Pym* (1800) 1 East 4. See also *Jones v Pearle* (1723) 1 Stra 557; but cf *Euro Commercial Leasing Ltd v Cartwright & Lewis* [1995] 2 BCLC 618 (solicitors having general lien over client's money in client's account paid the money into their office account without an order of the court, contrary to the Insolvency Act 1986 s 11(3)(c) (now replaced by Sch B1 para 43(2)), but on discovering the error repaid an equivalent sum into the client's account; held that by reason of the latter payment, and assuming (which was doubtful) that reconstitution of the client's account created a fund constituting property of the client, a 'fresh general lien' attached to the money in the account as so reconstituted). *Sweet v Pym* is distinguished in *Euro Commercial Leasing Ltd v Cartwright & Lewis*, on the ground that cases on the loss of artificers' liens and innkeepers' liens by loss of possession of the subject chattel were not analogous to a case of a solicitor's general lien. As to general liens see PARAS 817, 828 et seq.

6 *Dicas v Stockley* (1836) 7 C & P 587. See also *Bligh v Davies* (1860) 28 Beav 211.

7 See *Mason v Morley* (1865) 11 Jur NS 459; and PARAS 820-825.

8 *Earl of Bristol v Wilshire* (1823) 1 B & C 514; *Hawse v Crowe* (1826) Ry & M 414. In these cases cheques subsequently dishonoured were fraudulently given to obtain possession of goods which had been sold on terms that they were to be paid for in cash. See also *Wallace v Woodgate* (1824) Ry & M 193.

9 *The Gaupen* [1925] WN 138; *Richards v Symons* (1845) 8 QB 90. The distinction between *The Gaupen* and *Albemarle Supply Co Ltd v Hind & Co* [1928] 1 KB 307, CA, (see note 11) seems to lie in the element of agreement in the latter case. The parties may by agreement modify a legal lien in ways which the court would not arbitrarily impose. As to contractual lien see PARA 808.

10 As to a building contractor's lien see **BUILDING CONTRACTS, ARCHITECTS, ENGINEERS, VALUERS AND SURVEYORS** vol 4(3) (Reissue) PARAS 90-91.

11 *Albemarle Supply Co Ltd v Hind & Co* [1928] 1 KB 307, CA (taxi allowed to be taken out daily to ply for hire); *Rose v CMS Operations Ltd* [2002] EWHC 59 (Ch), [2002] All ER (D) 20 (Jan) (racing cars taken to race meetings only when needed, looked after during those meetings by defendant's staff, and still effectively within its possession). See also *Reeves v Capper* (1838) 5 Bing NC 136. As to the need for continuous possession see PARA 826.

12 *Levy v Barnard* (1818) 8 Taunt 149. As to whether an innkeeper's lien is lost by delivery of the goods to an auctioneer for sale see **LICENSING AND GAMBLING** vol 67 (2008) PARA 213. Cf *Jones v Pearle* (1723) 1 Stra 557.

13 *Westfield v Great Western Rly Co* (1883) 52 LJQB 276.

14 See the Factors Act 1889 s 10; and the Sale of Goods Act 1979 s 47. See also **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARAS 163, 253.

15 *Hughes v Hughes* [1958] P 224, [1958] 3 All ER 179, CA; and see **LEGAL PROFESSIONS** vol 66 (2009) PARA 1003.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/3. EQUITABLE LIEN/(1) NATURE AND ESSENTIALS/855. Meaning of 'equitable lien'.

3. EQUITABLE LIEN

(1) NATURE AND ESSENTIALS

855. Meaning of 'equitable lien'.

'Equitable lien' means an equitable right, conferred by law upon one person, to a charge upon the real or personal property of another¹, until certain specific claims have been satisfied². To the extent that it operates by law and not by contract, an equitable lien is neither a 'security' within the Consumer Credit Act 1974³ nor required to be registered under the companies legislation⁴. An equitable lien is a form of equitable charge over the subject property⁵. Both an equitable lien and an equitable charge are enforceable by the same remedies, namely by the appointment by the court of a receiver and a judicial order for sale⁶ or, where the security is over a fund, by an order for payment from the fund⁷. An equitable lien, like an equitable charge, confers on the holder a proprietary right so that he is a secured creditor in a bankruptcy or winding up⁸. Like an equitable charge, an equitable lien is liable to be defeated under the Limitation Act 1980⁹.

Although lien is a word which is sometimes used in practice to describe a right which arises by agreement of parties, the word is more commonly, and correctly, used to refer to a right arising by operation of law¹⁰. It is not possible to state a general principle which will account for the diversity of situations in which an equitable lien arises¹¹ and there is lack of agreement as to the theoretical basis of the most common equitable liens, those of the vendor and purchaser under a contract of sale¹², let alone equitable liens generally¹³.

An equitable lien differs from a common law lien in that a common law lien is founded on possession and, except as modified by statute, merely confers a right to detain the property until payment¹⁴, whereas an equitable lien, which exists quite irrespective of possession, confers on the holder the right to a judicial sale¹⁵.

An equitable lien has been held to carry interest¹⁶.

1 An equitable lien might have subsisted as between tenants in common and been a bar to partition proceedings before 1926: *Swan v Swan* (1819) 8 Price 518. The position in similar circumstances since 1925 seems to be governed by the law as to trustees' liens: *Re Landi, Giorgi v Navani* [1939] Ch 828, [1939] 3 All ER 569, CA; and see **TRUSTS** vol 48 (2007 Reissue) PARA 905.

2 As to the nature of equitable lien see further PARA 804. For the distinction between equitable lien and mortgage see PARA 813.

3 I.e. the Consumer Credit Act 1974 s 189(1): see PARA 801 note 12; and **CONSUMER CREDIT** vol 9(1) (Reissue) PARA 200.

4 I.e. the Companies Act 1985 Pt XII (ss 395-424) (prospectively repealed by the Companies Act 2006 Sch 16, and replaced, as from a day to be appointed under s 1300(2), by the provisions of the Companies Act 2006 Pt 24 Chs 1, 3 (ss 860-877, 893-894 (not fully in force)): see **COMPANIES** vol 15 (2009) PARA 1277 et seq. Nor are legal liens required to be registered: see PARA 821.

5 *Re Stucley, Stucley v Kekewich* [1906] 1 Ch 67 at 83, CA, per Cozens Hardy LJ; *Re Bond Worth Ltd* [1980] Ch 228 at 250-251, [1979] 3 All ER 919 at 940-941 per Slade J; and see *Hewett v Court* (1983) 149 CLR 639 at 663, Aust HC.

6 *Swiss Bank Corp'n v Lloyds Bank Ltd* [1982] AC 584 at 595, [1980] 2 All ER 419 at 425, CA, per Buckley LJ (affd [1982] AC 604, [1981] 2 All ER 449, HL); *Re Stucley, Stucley v Kekewich* [1906] 1 Ch 67 at 76-77, CA, per Vaughan Williams LJ.

7 *Bowles v Rogers* (1800) 6 Ves 95n; and see *Hewett v Court* (1983) 149 CLR 639 at 663, Aust HC.

8 *Combe v Lord Swaythling* [1947] Ch 625 at 628, [1947] 1 All ER 838 at 839 per Wynn-Parry J.

9 See PARA 814. The distinction between the equitable lien and the legal lien (see PARA 820) in this respect must be noted.

10 *Re Bond Worth Ltd* [1980] Ch 228 at 250-251, [1979] 3 All ER 919 at 940-941 per Slade J.

11 See *Hewett v Court* (1983) 149 CLR 639 at 645, Aust HC, per Gibbs CJ.

12 As to such liens see PARA 859 et seq.

13 It has been said that equitable liens are founded upon general considerations of justice (*Rose v Watson* (1864) 10 HL Cas 672 at 681; *Wythes v Lee* (1855) 3 Drew 396; *Whitbread & Co Ltd v Watt* [1902] 1 Ch 835 at 840, CA); or upon the availability of specific performance and the maxim 'equity regards as done what ought to be done' (*Lord Napier and Ettrick v Hunter* [1993] AC 713 at 752, [1993] 1 All ER 385 at 409, HL, per Lord Browne-Wilkinson (a case of a lien arising by subrogation)); or upon the principle that the contract is one over which equity will assume jurisdiction (*Langen & Wind Ltd v Bell* [1972] Ch 685 at 692, [1972] 1 All ER 296 at 300 per Brightman J). Another view is that equity may raise liens upon the principle that he who seeks the aid of equity in enforcing a claim must admit equitable rights of others associated with the same subject matter: *Shirlaw v Taylor* (1991) 102 ALR 551 at 557-558, Aust Fed Ct, Full Ct. See also Phillips 'Equitable Liens--A Search for a Unifying Principle' in Palmer and Mckendrick (eds) *Interests in Goods* (1993) Ch 25; and Hardingham 'Equitable Liens for the Recovery of Purchase Money' [1985] Melb Uni LR 65.

14 See PARA 846.

15 See PARAS 846, 880.

16 See *Re Drax, Savile v Drax* [1903] 1 Ch 781, CA; *Lippard v Ricketts* (1872) LR 14 Eq 291.

UPDATE

855 Meaning of 'equitable lien'

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/3. EQUITABLE LIEN/(1) NATURE AND ESSENTIALS/856. Creation.

856. Creation.

An equitable lien arises either from the relationship of the parties¹, or as a result of subrogation² or estoppel³ or from a course of conduct⁴ or an express contract indicating an intention that such an equitable charge will be created⁵. Thus the history of a loan secured by deposit of share certificates may show an intention on the part of both parties that the lender should have an equitable lien even though he parts with the security⁶; and the terms of an issue of shares may create an equitable lien in favour of subscribers on money subscribed before allotment⁷. With a contract for work and materials it is impossible to exclude the availability of equitable relief in a case where the contracted work product and its components are to have characteristics specifically designed for the requirements of the purchaser⁸.

It has been held that a freezing direction made by a Beth Din (a Jewish court) operates in personam and not in rem and does not create any lien or other interest in favour of the party who obtains the order in respect of the assets of the party against whom it is made⁹.

1 Eg as between partners (see PARA 857) or between beneficiaries and trustees for waste (see PARA 858) or between vendor and purchaser (see PARA 859).

2 *Lord Napier and Ettrick v Hunter* [1993] AC 713, [1993] 1 All ER 385, HL; *Orakpo v Manson Investments Ltd* [1978] AC 95, [1977] 3 All ER 1, HL; and see PARAS 809, 874.

3 See *Hewett v Court* (1983) 149 CLR 639 at 645-646, Aust HC, per Gibbs CJ. See also PARA 876; **EQUITY** vol 16(2) (Reissue) PARA 607; **ESTOPPEL** vol 16(2) (Reissue) PARA 1091.

4 As to a course of dealing or conduct affecting a lien see *Fisher v Smith* (1878) 4 App Cas 1, HL; and PARA 808.

5 See PARAS 870, 878. As to the inference arising from deposit of documents as security see PARA 812.

6 *Re Crossman, Salaman v Crossman* [1939] 2 All ER 530.

7 *Re Nanwa Gold Mines Ltd, Ballantyne v Nanwa Gold Mines Ltd* [1955] 3 All ER 219, [1955] 1 WLR 1080. It was suggested that the Companies Act 1948 s 51(3) (repealed) might of itself create equitable rights by reason of its requirement that money be placed in a separate banking account, which seemed to show an intention to subject it to a trust or lien: see *Re Nanwa Gold Mines Ltd, Ballantyne v Nanwa Gold Mines Ltd* at 224 and 1085 per Harman J. An equitable lien is also frequently created by contract between a company and its members in the articles of association: see PARA 819 text and note 3.

8 *International Finance Corp'n v DSNL Offshore Ltd* [2005] EWHC 1844 (Comm), [2007] 2 All ER (Comm) 305.

9 See *Kastner v Jason, Sherman v Kastner* [2004] EWHC 592 (Ch), [2004] 2 Lloyd's Rep 233, [2004] All ER (D) 452 (Mar); affd [2004] EWCA Civ 1599, [2005] 1 Lloyd's Rep 397, [2004] All ER (D) 42 (Dec).

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/3. EQUITABLE LIEN/(1) NATURE AND ESSENTIALS/857. Partnership lien.

857. Partnership lien.

The liens affecting the partnership estate¹ which on dissolution respectively arise in favour of personal representatives, a trustee in bankruptcy, a retiring partner and the solvent or continuing partners², are discussed elsewhere in this work³. The purchaser in good faith of specific partnership assets takes free of any partnership lien⁴, but a purchaser of a share in the partnership takes subject to it⁵.

1 As to whether such liens affect only the estate existing at the date of dissolution or extend until the partnership is finally determined see *Payne v Hornby* (1858) 25 Beav 280; *Skipp v Harwood* (1747) 2 Swan 586.

2 See *Aberdare and Plymouth Co Ltd v Hankey* (1887) 3 TLR 493; *Mycock v Beatson* (1879) 13 ChD 384. See also the Partnership Act 1890 s 39; and **PARTNERSHIP** vol 79 (2008) PARA 206.

3 See **PARTNERSHIP** vol 79 (2008) PARAS 142-143.

4 *Re Langmead's Trusts* (1855) 7 De GM & G 353; *Re Bourne, Bourne v Bourne* [1906] 2 Ch 427, CA (where Fletcher Moulton LJ at 434 doubted whether it was correct to call the right a lien at all).

5 *Cavander v Bulteel* (1873) 9 Ch App 79.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/3. EQUITABLE LIEN/(1) NATURE AND ESSENTIALS/858. Waste.

858. Waste.

Where a person who only has a limited interest in an estate has committed waste, the remaindermen entitled to have the waste made good have a remedy by way of equitable lien for the amount of the injury against the profits receivable by the limited owner during his term, unless there has been collusion between them and the limited owner. This lien is effective even against incumbrancers of the limited interest, although their securities were effected before waste was committed, for a life tenant cannot by creating incumbrances on his life estate deprive the remaindermen of their right to a lien¹. This principle also applies to a trustee or executor who commits waste, and such a lien against any interest he may have under the will is preferred to the right of his mortgagee².

1 *Briggs v Earl of Oxford, Beavan v Earl of Oxford* (1855) 1 Jur NS 817; and see **SETTLEMENTS**. As to the right of the trustees of a settlement to retain capital or income as against a beneficiary who is indebted to the estate and for costs see *Re Pauling's Settlement Trusts, Younghusband v Coutts & Co Ltd (No 2)* [1963] Ch 576, [1963] 1 All ER 857 (distinguished in *X v A* [2000] 1 All ER 490, [2000] 1 EGLR 19); *Re Spurling's Will Trusts, Philpot v Philpot* [1966] 1 All ER 745, [1966] 1 WLR 920. See also **PARAS** 803, 873; **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) **PARA** 559; **TRUSTS**.

2 *Morris v Livie* (1842) 1 Y & C Ch Cas 380; *Cole v Muddle* (1852) 10 Hare 186; *Barnett v Sheffield* (1852) 1 De GM & G 371. See also *Dowse v Gorton* [1891] AC 190, HL. As to the lien on the share of a defaulting executor in his testator's estate see **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) **PARA** 492.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/3. EQUITABLE LIEN/(2) VENDOR AND PURCHASER/859. Vendor's lien.

(2) VENDOR AND PURCHASER

859. Vendor's lien.

A vendor of land¹ has a legal lien² on the land sold until the execution of the conveyance. He also has a legal lien on the title deeds in his possession³. However, in equity the vendor's lien for the unpaid whole or part of the purchase money subsists until actual payment⁴, even where the conveyance has been executed and the purchase money is expressed in the conveyance to have been paid and received⁵, or the proprietorship register, in the case of registered land, records a receipt⁶. For this reason the vendor's equitable lien, which prevails⁷, has supplanted the vendor's legal lien for all practical purposes and the vendor's lien is here regarded as an equitable lien. The unpaid vendor's lien was founded upon the principle that he who has obtained possession of property under a contract for valuable consideration will not be allowed to keep it without payment of the consideration⁸.

The vendor's lien was an overriding interest for the purpose of the Land Registration Act 1925 (now repealed)⁹ and may, it seems, override first registration or a registered disposition under the Land Registration Act 2002 if the unpaid vendor remains in actual occupation¹⁰.

It has been said that the existence of the lien depends upon the vendor's right to specific performance or upon the contract being of such a nature that it will be specifically enforced¹¹. The vendor's lien also extends to money advanced by an unpaid vendor for improvements¹² as well as to interest from the time the lien comes into existence on such unpaid purchase money or advances or such parts of it as remain unpaid¹³. Where the assignee of a bond debt charged upon real and personal estate has omitted to enforce payment out of the personal estate, he is nevertheless entitled to a valid equitable lien on the real estate¹⁴.

It is immaterial to the lien whether the purchase money is a sum in gross or an annuity for the vendor's life¹⁵, or is payable by instalments¹⁶, unless a contrary intention is shown by the parties¹⁷. The vendor becomes entitled to his lien as soon as the contract is entered into and it does not depend upon completion of the contract¹⁸. The lien subsists even if the vendor executes an outright conveyance and parts with possession of the property and the title deeds¹⁹. The lien may be expressly or impliedly excluded by the contract between the parties²⁰. Whether the lien exists in a given case is to be objectively ascertained from the transaction between the parties, their subjective intention being irrelevant²¹. The lien may arise even though the purchase money is not payable until a future date, for instance at a definite time after the vendor's death²². It is not defeated by an agreement that the purchaser will not, without the consent of the vendor and the purchaser's surety, lease or assign the property until the original purchase price has been paid²³. Nor is the vendor's lien impliedly excluded by conditions of sale providing the vendor with alternative specific remedies on the purchaser's default²⁴. However, if the vendor has accepted a purchaser's covenant to pay royalties in satisfaction of his claim for the price, he is not an 'unpaid' vendor and has no lien²⁵.

If a vendor who knows that the purchase money is trust money allows one of the trustees to retain part of it without the knowledge of the co-trustees or the beneficiaries, he has no lien on the estate for the part so retained²⁶.

1 As to the sale of land generally see **SALE OF LAND**. The lien extends to personalty: see PARA 860.

2 As to legal lien see PARAS 802, 817 et seq.

3 *Oxenham v Esdaile* (1829) 3 Y & J 262.

4 *Hearle v Botellers* (1604) Cary 25; *Chapman v Tanner* (1684) 1 Vern 267; *Mackreth v Symmons* (1808) 15 Ves 329; *Lysaght v Edwards* (1876) 2 ChD 499 at 506; *Kettlewell v Watson* (1884) 26 ChD 501, CA; *Pollexfen v Moore* (1745) 3 Atk 272 at

273; *Coppin v Coppin* (1725) 2 P Wms 291; *Croly v O'Callaghan* (1842) 5 I Eq R 25; *Re Birmingham, Savage v Stannard*[1959] Ch 523 at 529, [1958] 2 All ER 397 at 400 per Upjohn J.

5 *Saunders v Leslie* (1814) 2 Ball & B 509; *Winter v Lord Anson* (1827) 3 Russ 488; *Earl of Jersey v Briton Ferry Floating Dock Co*(1869) LR 7 Eq 409; *Harrison v Southcote and Moreland* (1751) 2 Ves Sen 389 at 393; *Austen v Halsey* (1801) 6 Ves 475; *Elliot v Edwards* (1802) 3 Bos & P 181. As to how far a receipt in a conveyance creates an estoppel see **DEEDS AND OTHER INSTRUMENTS** vol 13 (2007 Reissue) para 224; **ESTOPPEL** vol 16(2) (Reissue) PARA 1025. A direction to the common agent of both parties to pay the vendor out of money due by the agent to the purchaser is not equivalent to payment and does not affect the vendor's lien: *Wrout v Dawes* (1858) 4 Jur NS 396. See also *Young v White* (1844) 7 Beav 506.

6 *London and Cheshire Insurance Co Ltd v Laplagrene Property Co Ltd*[1971] Ch 499 at 509, 511, [1971] 1 All ER 766 at 775-776 per Brightman J.

7 See the Supreme Court Act 1981 s 49(1); and **EQUITY** vol 16(2) (Reissue) PARA 500. As from a day to be appointed under the Constitutional Reform Act 2005 s 148(1), the Supreme Court Act 1981 is retitled the Senior Courts Act 1981: see the Constitutional Reform Act 2005 Sch 11 Pt 1 para 1 (not yet in force).

8 *Mackreth v Symmons* (1808) 15 Ves 329 at 340 per Lord Eldon LC. See also *Re Beirnsstein, Barnett v Beirnsstein* [1925] Ch 12 at 17-18 per Lawrence J.

9 *London and Cheshire Insurance Co Ltd v Laplagrene Property Co Ltd*[1971] Ch 499 at 509, 511, [1971] 1 All ER 766 at 775-776 per Brightman J.

10 See the Land Registration Act 2002 Sch 1 para 2, Sch 3 para 2; and **LAND REGISTRATION** vol 26 (2004 Reissue) PARAS 863 et seq, 960 et seq.

11 *Capital Finance Co Ltd v Stokes* [1969] 1 Ch 261 at 278, [1968] 3 All ER 625 at 629, CA, per Harman LJ; *London and Cheshire Insurance Co Ltd v Laplagrene Property Co Ltd* [1971] Ch 499 at 514, [1971] 1 All ER 766 at 779 per Brightman J; *Re Bond Worth Ltd* [1980] Ch 228 at 251, [1979] 3 All ER 919 at 941 per Slade J. Cf *Hewett v Court* (1983) 149 CLR 639 at 650, 664-668, Aust HC, where the proposition is denied.

12 *Re Baker and Harley, ex p Linden* (1841) 1 Mont D & De G 428.

13 *Rose v Watson* (1864) 10 HL Cas 672; *Re Stucley, Stucley v Kekewich*[1906] 1 Ch 67, CA. Cf *Re Drax, Savile v Drax*[1903] 1 Ch 781, CA. As to the court's power to award interest under its equitable jurisdiction see generally *Wallersteiner v Moir (No 2)*[1975] QB 373, [1975] 1 All ER 849, CA; *Mathew v TM Sutton Ltd*[1994] 4 All ER 793.

14 *Justice v Fooks* (1887) 57 LT 868.

15 *Tardiff v Scrughan* (1769) cited in 1 Bro CC at 423; *Richardson v M'Causland* (1817) Beat 457; *Clarke v Royle* (1830) 3 Sim 499; *Matthew v Bowler* (1847) 6 Hare 110; *Remington v Deverall* (1795) 2 Anst 550. See also *Kelaghan v Daly*[1913] 2 IR 328, where a farm was sold subject to the right of the vendor's sister under a covenant to be maintained out of the farm.

16 *Nives v Nives*(1880) 15 ChD 649.

17 *Buckland v Pocknell* (1843) 13 Sim 406; *Dixon v Gayfere (No 3)* (1855) 21 Beav 118.

18 *Re Birmingham, Savage v Stannard*[1959] Ch 523, [1958] 2 All ER 397; *London and Cheshire Insurance Co Ltd v Laplagrene Property Co Ltd*[1971] Ch 499, [1971] 1 All ER 766; *Barclays Bank plc v Estates and Commercial Ltd (in liquidation)* [1997] 1 WLR 415, 74 P & CR 30, CA.

19 *Barclays Bank plc v Estates and Commercial Ltd (in liquidation)* [1997] 1 WLR 415, 74 P & CR 30, CA.

20 *Dean v Byrnes* (1864) 13 WR 299, PC; *Capital Finance Co Ltd v Stokes*[1969] 1 Ch 261, [1968] 3 All ER 625, CA; *Burston Finance Ltd v Speirway Ltd*[1974] 3 All ER 735, [1974] 1 WLR 1648; *Re Bond Worth Ltd*[1980] Ch 228 at 251, [1979] 3 All ER 919 at 941, per Slade J; *Qayoumi v Oakhouse Property Holdings plc*[2002] EWHC 2547 (Ch) at [20], [2003] 1 BCLC 352, [2002] All ER (D) 469 (Jul) per Rimer J; and see PARAS 882-884.

21 *Barclays Bank plc v Estates and Commercial Ltd (in liquidation)* [1997] 1 WLR 415, 74 P & CR 30, CA. See also *Winter v Lord Anson* (1827) 3 Russ 488.

22 *Winter v Lord Anson* (1827) 3 Russ 488.

23 *Elliot v Edwards* (1802) 3 Bos & P 181.

24 *Re Birmingham, Savage v Stannard*[1959] Ch 523, [1958] 2 All ER 397 (power for the vendor to resell after service of notice on the purchaser). As to the extinction of an equitable lien see PARA 882 et seq.

25 *Barker v Stickney*[1919] 1 KB 121, CA.

26 *White v Wakefield* (1835) 7 Sim 401.

UPDATE

859 Vendor's lien

NOTE 7--Appointed day is 1 October 2009: SI 2009/1604.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/3. EQUITABLE LIEN/(2) VENDOR AND PURCHASER/860. When the lien arises and its extent.

860. When the lien arises and its extent.

A vendor's lien for unpaid purchase money arises at the moment when the contract is signed¹. The vendor's lien applies to freehold and leasehold² property, and extends to chattels affixed to the freehold³. It must be distinguished from a mortgage in that a mortgage is a security created by the contract between the parties, whereas the vendor's lien is an equitable charge arising by operation of law⁴. The vendor's equitable lien also extends to choses in action and other personal property where a court of equity would decree specific performance of a contract for purchase⁵, but not to goods which are subject to the vendor's legal lien under the Sale of Goods Act 1979⁶. However, if the sale of the chattels personal forms an unseverable part of a contract for the sale of other property to which the equitable lien applies, the chattels personal will be subject to the vendor's equitable lien⁷. An unpaid vendor's lien may co-exist with a security which, from its inception, is either wholly void or otherwise completely unenforceable, such as where there has been failure to register under the Land Registration Act 2002 or the companies legislation⁸.

A lien may also arise in favour of a contractor under a contract for work, labour and materials over the unfinished product to secure progress payments under the contract⁹.

1 *Re Birmingham, Savage v Stannard* [1959] Ch 523, [1958] 2 All ER 397; *London and Cheshire Insurance Co Ltd v Laplagrene Property Co Ltd* [1971] Ch 499, [1971] 1 All ER 766; *Barclays Bank plc v Estates and Commercial Ltd* [1997] 1 WLR 415, 74 P & CR 30, CA. The right to enforce this lien by bringing a claim does not normally arise until the date of completion: see *Re Birmingham, Savage v Stannard* at 529 and 400. See also **LIMITATION PERIODS**.

2 *Winter v Lord Anson* (1827) 3 Russ 488; *Matthew v Bowler* (1847) 6 Hare 110; *Elliot v Edwards* (1802) 3 Bos & P 181.

3 *Re Vulcan Ironworks Co* [1888] WN 37 (trade machinery).

4 *Re Beirnsstein, Barnett v Beirnsstein* [1925] Ch 12 at 17 per Lawrence J; cf *Hopkinson v Mortimer, Harley & Co Ltd* [1917] 1 Ch 646. The lien is a creature of law and does not depend on the contract: *Re Bond Worth Ltd* [1980] Ch 228 at 250-251, [1979] 3 All ER 919 at 940-941 per Slade J; *Re Welsh Irish Ferries* [1986] Ch 471 at 477-478, [1985] 3 WLR 610 at 613-614 per Nourse J; and see **PARA 859** text and notes 10-13. The lien is not registrable under the Companies Act 1985 Pt XII (ss 395-424) (prospectively repealed by the Companies Act 2006 s 1295, Sch 16, and replaced, as from a day to be appointed under s 1300(2), by the provisions of the Companies Act 2006 Pt 24 Chs 1, 3 (ss 860-877, 893-894 (not fully in force)): see **COMPANIES** vol 15 (2009) **PARA 1277** et seq.

5 *Davies v Thomas* [1900] 2 Ch 462, CA (proceeds of trust for sale); *Re Stucley, Stucley v Kekewich* [1906] 1 Ch 67 at 79, 84, CA (reversionary interest in trust fund); *Collins v Collins (No 2)* (1862) 31 Beav 346 (right to payment of debt); *Re Albert Life Assurance Co, ex p Western Life Assurance Society* (1870) LR 11 Eq 164 at 178 (insurance policy); *International Finance Corp'n v DSNL Offshore Ltd* [2005] EWHC 1844 (Comm), [2007] 2 All ER (Comm) 305 (rig modules including purpose built components designed to the specific requirements of the purchaser). No lien arises on the assignment of the copyright in a book where the consideration is the payment of future royalties: *Barker v Stickney* [1919] 1 KB 121, CA. An unpaid vendor of a patent has a lien on the patent: *Dansk Rekylriffel Syndikat Akt v Snell* [1908] 2 Ch 127; but see *British Association of Glass Bottle Manufacturers Ltd v Forster & Sons Ltd* (1917) 86 LJ Ch 489, CA, per Cozens-Hardy MR. A vendor of shares may be entitled to a lien even though the money is not immediately payable: see *Langen and Wind Ltd v Bell* [1972] Ch 685, [1972] 1 All ER 296. As to specific performance of contracts to purchase see generally **SPECIFIC PERFORMANCE**.

6 See the Sale of Goods Act 1979 ss 39, 61(1); and **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) **PARA 236** et seq. See also *Re Wait* [1927] 1 Ch 606 at 636, 638-639, CA, per Atkin LJ; *Transport and General Credit Corp'n Ltd v Morgan* [1939] Ch 531, [1939] 2 All ER 17; *Re Stapylton Fletcher Ltd* [1995] 1 All ER 192 at 213-214 per Paul Baker QC. As to legal lien see **PARAS 802, 817** et seq.

7 *Re Dyton, Appleton v Hole* (1952) 102 L Jo 669.

8 *Burston Finance Ltd v Speirway Ltd* [1974] 3 All ER 735 at 738, [1974] 1 WLR 1648 at 1652 per Walton J. See also *Thurstan v Nottingham Permanent Benefit Building Society* [1902] 1 Ch 1, CA (affd sub nom *Nottingham Permanent Benefit Building Society v Thurston* [1903] AC 6, HL); *Ghana Commercial Bank v Chandiram* [1960] AC 732, [1960] 2 All ER 865, PC.

- 9 See *Hewett v Court* (1983) 149 CLR 639, Aust HC.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/3. EQUITABLE LIEN/(2) VENDOR AND PURCHASER/861. The Bills of Sale Acts.

861. The Bills of Sale Acts.

An equitable lien arising by express written agreement must be registered under the Bills of Sale Acts¹ wherever it relates to chattels², but not where it refers to fixtures annexed to land³.

1 As to the Bills of Sale Acts see **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 1630.

2 *Coburn v Collins* (1887) 35 ChD 373; and see **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 1645.

3 *Re Vulcan Ironworks Co Ltd* (1888) 4 TLR 312.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/3. EQUITABLE LIEN/(2) VENDOR AND PURCHASER/862. Persons bound by vendor's lien.

862. Persons bound by vendor's lien.

The vendor's lien binds not only the purchaser and his personal representative¹, persons claiming under him as volunteers and his creditors², but also, subject to registration³, those claiming under him for value⁴.

¹ See *EXECUTORS AND ADMINISTRATORS* vol 17(2) (Reissue) PARA 761 et seq. As to the liability to discharge the lien as between persons interested in the estate see *EXECUTORS AND ADMINISTRATORS* vol 17(2) (Reissue) PARA 424.

² *Grant v Mills* (1813) 2 Ves & B 306 at 309; *Fawell v Heelis* (1773) Amb 724 at 726; *Blackburn v Gregson* (1785) 1 Bro CC 420; *Re Birmingham*, *Savage v Stannard* [1959] Ch 523, [1958] 2 All ER 397 (devise of house in course of acquisition by testatrix; devisee taking subject to vendor's lien).

³ See PARA 813 text and notes 4-5.

⁴ At common law the criterion was notice, and the lien bound the purchaser of a legal estate if he had notice that the purchase price had not been paid: *Elliot v Edwards* (1802) 3 Bos & P 181. As against purchasers of equitable interests the normal rules of priority applied: see *Rice v Rice* (1854) 2 Drew 73; *Elliot v Edwards* (1802) 3 Bos & P 181; *Mackreth v Symmons* (1808) 15 Ves 329; *Gibbons v Baddall* (undated) 2 Eq Cas Abr 682; *Walker v Preswick* (1755) 2 Ves Sen 622; *Cator v Earl of Pembroke* (1783) 1 Bro CC 301 (affd (1787) 2 Bro CC 282); *Harris v Tubb* (1889) 42 ChD 79; *Grant v Mills* (1813) 2 Ves & B 306; *Bowles v Rogers* (1800) 6 Ves 95n. See *EQUITY* vol 16(2) (Reissue) PARAS 568-569.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/3. EQUITABLE LIEN/(2) VENDOR AND PURCHASER/863. Land acquired by public authority.

863. Land acquired by public authority.

The vendor's lien also arises where land is acquired by a public authority, either compulsorily or by agreement¹, for the purchase price², for compensation for severance when it forms part of the purchase money³, for damages for non-construction of accommodation works⁴ and for the costs of a claim for specific performance⁵. On the other hand, a vendor has been held to have a lien for his costs upon the sum deposited by the purchasing authority⁶ where that authority has complied with statutory provisions as to deposit and bond and has in fact discharged the bond⁷. It has been suggested that where a statute requires land to be sold and disposed of absolutely and the vendor expressly reserves a lien the sale may be void⁸.

1 As to the enforcement of this lien see PARA 881.

2 *Walker v Ware, Hadham and Buntingford Rly Co* (1865) LR 1 Eq 195; *Bishop of Winchester v Mid-Hants Rly Co* (1867) LR 5 Eq 17; *Wing v Tottenham and Hampstead Junction Rly Co* (1868) 3 Ch App 740; *Marshall v Scarborough and Whitby Rly Co* [1889] WN 73; *Lycett v Stafford and Uttoxeter Rly Co* (1872) LR 13 Eq 261. See also *Re Stucley, Stucley v Kekewich* [1906] 1 Ch 67, CA; and **COMPULSORY ACQUISITION OF LAND**.

3 *Walker v Ware, Hadham and Buntingford Rly Co* (1865) LR 1 Eq 195.

4 *Earl of St Germans v Crystal Palace Rly Co* (1871) LR 11 Eq 568.

5 *Bishop of Winchester v Mid-Hants Rly Co* (1867) LR 5 Eq 17.

6 Ie under the Lands Clauses Consolidation Act 1845 s 85: see PARA 883; and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARAS 639-641. The lien does not cover the costs of a statutory Lands Tribunal hearing: see *Earl of Ferrers v Stafford and Uttoxeter Rly Co* (1872) LR 13 Eq 524; and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 748.

7 *Re London and South Western Railway Extension Act, ex p Stevens* (1848) 2 Ph 772; *Re Neath and Brecon Rly Co* (1874) 9 Ch App 263.

8 *Re Thackwray and Young's Contract* (1888) 40 ChD 34.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/3. EQUITABLE LIEN/(2) VENDOR AND PURCHASER/864. Purchaser's lien.

864. Purchaser's lien.

A purchaser of land who has paid a deposit or money on account of the purchase price to the vendor¹ and has then lawfully repudiated his contract² has, in addition to a legal lien on any title deeds in his possession³, an equitable lien on the vendor's interest in the land agreed to be sold for all sums paid by him under the contract on account of the purchase money, together with interest on it⁴. The lien extends to interest paid on the unpaid balance of the purchase money⁵ and to the costs of a claim for specific performance⁶. It also extends to the purchaser's costs of investigating title where a good title is shown to the property contracted to be sold⁷, including the costs of an application to the court in respect of any requisitions or objections, or any claim for compensation, or any other question arising out of or connected with the contract⁸. In all these cases the lien is the same in effect as if the vendor had executed a mortgage of the property in the purchaser's favour for the amount covered by the lien⁹. A purchaser has no lien for money paid by him under an illegal contract¹⁰.

1 The purchaser is regarded as a secured creditor for his deposit; this is the basis of his lien, so if he pays the deposit to a stakeholder and not to the vendor he has no lien: *Combe v Lord Swaythling* [1947] Ch 625, [1947] 1 All ER 838. The lien extends to personalty: see PARA 867.

2 A purchaser through whose own default the purchase is defeated has no lien: *Dinn v Grant* (1852) 5 De G & Sm 451.

3 *Oxenham v Esdaile* (1829) 3 Y & J 262. If no title deeds relating to the property are in the possession of the purchaser's solicitors and the contract is not yet completed, no lien in their favour subsists for the costs of completing the purchase, and consequently, if the purchaser dies, the costs are not a charge on the property: *Re Birmingham, Savage v Stannard* [1959] Ch 523, [1958] 2 All ER 397. As to legal lien see PARAS 802, 817 et seq.

4 *Burgess v Wheate* (1759) 1 Eden 177 at 211; *Wythes v Lee* (1856) 2 Jur NS 130; *Westmacott v Robins* (1862) 4 De GF & J 390 at 399; *Rose v Watson* (1864) 10 HL Cas 672; *Aberaman Ironworks v Wickens* (1868) 4 Ch App 101; *Rodger v Harrison* [1893] 1 QB 161, CA; *Levy v Stogdon* [1898] 1 Ch 478 (affd [1899] 1 Ch 5, CA); *Whitbread & Co Ltd v Watt* [1902] 1 Ch 835, CA; *Kitton v Hewett* [1904] WN 21; *Lee-Parker v Izzet* [1971] 3 All ER 1099 at 1106, [1971] 1 WLR 1688 at 1692 per Goff J.

5 *Rose v Watson* (1864) 10 HL Cas 672.

6 *Middleton v Magnay* (1864) 2 Hem & M 233; *Turner v Marriott* (1867) LR 3 Eq 744.

7 *Re Yeilding and Westbrook* (1886) 31 ChD 344; *Kitton v Hewett* [1904] WN 21.

8 See the Law of Property Act 1925 s 49 (amended by the County Courts Act 1984 s 148(1), Sch 2 Pt II para 2(1), (3); and SI 1991/724). See also *Re Furneaux and Aird's Contract* [1906] WN 215, decided with respect to a summons under the corresponding provisions of the Vendor and Purchaser Act 1874 (repealed). A purchaser has a lien on his purchase money paid into court for compensation for the vendor's delay in giving possession: *Thomas v Buxton* (1869) LR 8 Eq 120; and see SALE OF LAND vol 42 (Reissue) PARA 220.

9 *Rose v Watson* (1864) 10 HL Cas 672 at 683.

10 *Ewing v Osbaldiston* (1837) 2 My & Cr 53 at 88.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/3. EQUITABLE LIEN/(2) VENDOR AND PURCHASER/865. Sub-purchaser.

865. Sub-purchaser.

A sub-purchaser has an equitable lien on any interest which the purchaser may possess in the property being sold and, if the purchaser has rescinded and the vendor has repaid the purchaser's deposit, the sub-purchaser will accordingly have such a lien on that deposit for any sums he may himself have paid¹.

¹ *Aberaman Ironworks v Wickens* (1868) 4 Ch App 101.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/3. EQUITABLE LIEN/(2) VENDOR AND PURCHASER/866. Purchaser's lien where vendor a fiduciary.

866. Purchaser's lien where vendor a fiduciary.

When the vendor is a mortgagee selling under a power of sale, the purchaser's lien does not exist against the mortgagor, but only against the mortgagee to the extent of his interest in the property; but, if the vendor is a trustee, it may affect the interest of his beneficiary¹.

¹ *Wythes v Lee* (1855) 3 Drew 396.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/3. EQUITABLE LIEN/(2) VENDOR AND PURCHASER/867. Property affected by purchaser's lien.

867. Property affected by purchaser's lien.

The purchaser's lien, like the vendor's lien, is not confined to land alone, but extends also to personal property¹ to the same extent and subject to the same qualifications as were considered in relation to the vendor's lien². The lien attaches from the moment of payment, provided that the sale is not rescinded through the purchaser's own default³.

1 *Barker v Cox* (1876) 4 ChD 464 (funds in trustees' hands); *Imperial Ottoman Bank v Trustees, Executors and Securities Insurance Corp'n* (1895) 13 R 287 (debentures); *Swainston v Clay* (1863) 3 De GJ & Sm 558 at 569, where the purchaser of an unfinished ship, to be completed by the vendor under a contract by which an advance made to him was to be taken as part payment of the purchase money, was given a contractual lien for the advance as against the vendor's trustee in bankruptcy. See also *Hewett v Court* (1983) 149 CLR 639 at 646, 654, 663-668, Aust HC.

2 See PARA 860.

3 See PARA 884.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/3. EQUITABLE LIEN/(2) VENDOR AND PURCHASER/868. Effect of delay or rescission.

868. Effect of delay or rescission.

The purchaser's lien is not lost when the contract is rescinded by the purchaser if he is entitled to rescind by the terms of the contract¹. Nor is it lost by the purchaser, even if he has destroyed his right to specific performance by delay in completing the purchase, so that where a vendor has become bankrupt before completion the purchaser may still enforce his lien to the extent of his deposit².

¹ *Whitbread & Co Ltd v Watt* [1902] 1 Ch 835, CA.

² *Levy v Stogdon* [1898] 1 Ch 478; affd [1899] 1 Ch 5, CA. It has been held that the purchaser was entitled to a lien although the contract was not specifically enforceable: see *Middleton v Magnay* (1864) 2 Hem & M 233; *Barker v Cox* (1876) 4 ChD 464; *Levy v Stogdon*; *Chattey v Farndale Holdings Inc* [1997] 1 EGLR 153, CA; and see *International Finance Corp'n v DSNL Offshore Ltd* [2005] EWHC 1844 (Comm), [2007] 2 All ER (Comm) 305. See also *Hewett v Court* (1983) 149 CLR 639, Aust HC, in which a majority held that the availability of specific performance was not a prerequisite of a purchaser's lien.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/3. EQUITABLE LIEN/(2) VENDOR AND PURCHASER/869. Transfer of lien.

869. Transfer of lien.

The benefit of the lien of a vendor or purchaser may be transferred even by parol¹. The assignee will take subject to any prior charge of a similar nature which may have been created by the incumbrancer². On the bankruptcy of a party entitled to a lien, his interest in it passes to his trustee in bankruptcy³. The benefit of an equitable lien may be assigned with the debt in respect of which it arises⁴.

1 *Dryden v Frost* (1838) 3 My & Cr 670. See also *White v Wakefield* (1835) 7 Sim 401; *Burn v Carvalho* (1839) 4 My & Cr 690; *Morrell v Wootten* (1852) 16 Beav 197. As to the extinguishment of an equitable lien see PARAS 882-886.

2 *Porter v Hubbart* (1673) 3 Rep Ch 78 at 79; *Matthews v Wallwyn* (1798) 4 Ves 118; *Chambers v Goldwin* (1804) 9 Ves 254; *Mangles v Dixon* (1852) 3 HL Cas 702; *Earl of Macclesfield v Fitton* (1683) 1 Vern 168; cf *Jamieson v English* (1820) 2 Mol 337. See also **CHOSES IN ACTION** vol 13 (2009) PARA 60.

3 *Hudson v Granger* (1821) 5 B & Ald 27; and see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 390 et seq.

4 *Bull v Faulkner* (1848) 2 De G & Sm 772. Cf PARA 820.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/3. EQUITABLE LIEN/(3) LIEN FOR EXPENDITURE ON THE PROPERTY OF ANOTHER/870. General rule.

(3) LIEN FOR EXPENDITURE ON THE PROPERTY OF ANOTHER

870. General rule.

A person who expends money for the benefit of another or on the property of another acquires no lien from the mere fact of having made the expenditure, even if he may himself have some interest in the property¹. The maritime doctrine of salvage does not apply in such cases². Thus it has been held that a wife has no lien for premiums paid voluntarily and without request on a policy on her husband's life subject to a settlement under which she takes the first life interest³. It has also been held that:

- 27 (1) a bankrupt has no lien for premiums paid on a life policy after the bankruptcy as against his trustee in bankruptcy⁴;
- 28 (2) a partnership firm has no lien against property purchased by one partner and paid for out of the partnership money⁵;
- 29 (3) a person who has expended money on property which he has bought without a title has no lien⁶;
- 30 (4) a solicitor who has lent money in his client's name, his client being an executor, to pay off a debt on the testator's estate has no lien⁷;
- 31 (5) a subsequent mortgagee has no lien as against a prior⁸ or subsequent⁹ incumbrancer;
- 32 (6) a person who takes goods out of pawn at the owner's request has no lien for money advanced to get them out of pledge¹⁰.

Expenditure by a mortgagor on the mortgaged property does not give him a lien on it in priority to the mortgagee¹¹. Thus a mortgagor who pays a premium on a policy acquires no lien against the mortgagee¹². Nor does a mortgagor of renewable leaseholds who buys the reversion acquire a lien for the purchase money as against the mortgagee of the lease¹³. The liquidator of a company who, under the court's sanction, spends money to secure a fund which the company has mortgaged acquires no lien as against the mortgagee for the money so spent¹⁴.

1 *Burridge v Row* (1842) 1 Y & C Ch Cas 183; *Wallis v Smith* (1882) 21 ChD 243, CA; *Re Leslie, Leslie v French* (1883) 23 ChD 552; *Falcke v Scottish Imperial Insurance Co* (1886) 34 ChD 234, CA; *Strutt v Tippet* (1889) 62 LT 475, CA. Cf *Re Pike, Burke v Burke* (1888) 23 LR Ir 9; *Peruvian Guano Co v Dreyfus Bros & Co* (1887) reported in [1892] AC 170n at 174n, HL, per Lord Macnaghten. As to cases of trover and trespass, now included in wrongful interference with goods, where the owner has been required by the court to make an allowance in respect of the expenditure see the Torts (Interference with Goods) Act 1977 ss 1(a), (b), 6; and TORT vol 45(2) (Reissue) PARAS 545, 623-624. See also *Re Vandervell's Trusts (No 2), White v Vandervell Trustees Ltd* [1974] Ch 269 at 299, [1974] 1 All ER 47 at 58 per Megarry J (revsd on a different point [1974] Ch 269, [1974] 3 All ER 205, CA); cf *Hooper v Cooke* (1856) 25 LJ Ch 467 (no lien for money expended in repair of dilapidated premises by owner of rentcharge as against owner of subsequent rentcharge). As to the exceptions to the rule see PARA 873; and MORTGAGE vol 77 (2010) PARA 101 et seq.

2 *Falcke v Scottish Imperial Insurance Co* (1886) 34 ChD 234, CA; *Murray v Pinkett* (1846) 12 Cl & Fin 764, HL; *Burridge v Row* (1842) 1 Y & C Ch Cas 183 at 191 per Knight Bruce V-C; *Clack v Holland* (1854) 19 Beav 262 at 277 per Romilly MR; *Hartford v Jones* (1698) 1 Ld Raym 393; *Nicholson v Chapman* (1793) 2 Hy Bl 254; *Castellain v Thompson* (1862) 13 CBNS 105; *Aitchison v Lohre* (1879) 4 App Cas 755, HL. As to salvage see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 876 et seq.

3 *Re Jones' Settlement, Stunt v Jones* [1915] 1 Ch 373. The position is entirely different if premiums are paid at the request of the person liable to pay; and in this case a lien arises by subrogation: see *Re McKerrell, McKerrell v Gowans* [1912] 2 Ch 648. See also PARA 874; and INSURANCE vol 25 (2003 Reissue) PARA 560.

4 *Tapster v Ward* (1909) 101 LT 503, CA.

5 *Walton v Butler* (1861) 29 Beav 428.

6 *Ridgway v Roberts* (1844) 4 Hare 106.

7 *Christian v Field* (1842) 2 Hare 177.

8 *Re Power's Policies*[1899] 1 IR 6, CA; *Landowners' West of England and South Wales Land Drainage and Inclosure Co v Ashford*(1880) 16 ChD 411 at 433; *White v Metcalfe*[1903] 2 Ch 567. There are certain exceptions in favour of a person who advances money to save property from destruction for the benefit of all who are interested in it; and it has been said that '[t]here are cases in which the court has properly given a salvage creditor priority over all other incumbrancers': *Angell v Bryan* (1845) 2 Jo & Lat 763 per Sugden LC. See also *Shearman v British Empire Mutual Life Assurance Co*(1872) LR 14 Eq 4 (overruled by *Falcke v Scottish Imperial Insurance Co*(1886) 34 ChD 234, CA); *West v Reid* (1843) 2 Hare 249; *Gill v Downing*(1874) LR 17 Eq 316.

9 *Brooke v Stone* (1865) 34 LJ Ch 251.

10 *Jones v Cliff* (1833) 5 C & P 560.

11 *Langton v Langton* (1855) 7 De GM & G 30 at 41; *Saunders v Dunman*(1878) 7 ChD 825; *Drew v Josolyne*(1887) 18 QBD 590, CA.

12 *Falcke v Scottish Imperial Insurance Co*(1886) 34 ChD 234, CA; *Norris v Caledonian Insurance Co*(1869) LR 8 Eq 127. As to the respective rights of a mortgagee and mortgagor in relation to the proceeds of a fire insurance policy see the Law of Property Act 1925 s 108(3), (4). See **INSURANCE** vol 25 (2003 Reissue) PARAS 633, 639; **MORTGAGE** vol 77 (2010) PARA 199. See also *Garden v Ingram* (1852) 23 LJ Ch 478.

13 *Leigh v Burnett*(1885) 29 ChD 231.

14 *Re Asphaltic Wood Pavement Co, Lee and Chapman's Case*(1885) 30 ChD 216 at 225, CA. See also *Re Ormerod, Grierson & Co* [1890] WN 217.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/3. EQUITABLE LIEN/(3) LIEN FOR EXPENDITURE ON THE PROPERTY OF ANOTHER/871. Concurrent interests.

871. Concurrent interests.

On principles similar to the general rule relating to lien for expenditure on the property of another, it has been held that a tenant in common has no lien against the share of his co-tenant for payments made for the benefit of the estate¹ and that one joint owner has no lien for money lent to another².

Since 1925³, however, the trusts which arise in such cases would seem to place the owners of concurrent interests in the same position as other trustees and thus to afford them or either of them as trustee or trustees a prior lien for money properly expended in the preservation of the property⁴. The extent of the lien in such cases may be measured by the increased value of the estate as a result of the expenditure and not by the sums actually expended⁵.

1 *Ex p Young* (1813) 2 Ves & B 242; *Re Nicholson, ex p Harrison* (1814) 2 Rose 76; *Re Drury and Hudson, ex p Leslie* (1833) 3 LJ Bcy 4; *Green v Briggs* (1848) 6 Hare 395 at 401; *Kay v Johnston* (1856) 21 Beav 536, overruling *Doddington v Hallet* (1750) 1 Ves Sen 497. See also *Leigh v Dickeson* (1884) 15 QBD 60, CA; *Johnson v Wild* (1890) 44 ChD 146. However, in partition actions allowance could be made for such improvements: see *Re Jones, Farrington v Forrester* [1893] 2 Ch 461 at 475; and **EQUITY** vol 16(2) (Reissue) PARA 467.

2 *Kay v Johnston* (1856) 21 Beav 536.

3 See the Law of Property Act 1925 s 34 (amended by the Trusts of Land and Appointment of Trustees Act 1996 ss 5, 25(2), Sch 2 para 3(2)-(5), Sch 4); and **REAL PROPERTY** vol 39(2) (Reissue) PARA 211.

4 See **PARAS** 873, 877; and **TRUSTS** vol 48 (2007 Reissue) PARA 905.

5 *Gross v French* (1975) 238 Estates Gazette 39, CA.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/3. EQUITABLE LIEN/(3) LIEN FOR EXPENDITURE ON THE PROPERTY OF ANOTHER/872. Life interests.

872. Life interests.

It has been held that a tenant for life has no lien as against the remainderman for money spent on improvements to the estate¹. However, he will obtain a lien if he advances money at the trustees' request². Moreover, it seems that he may have a lien if he spends money on the preservation of the property where the owner is under a statutory obligation to repair a dangerous structure³, since a tenant for life is in the position of a trustee when exercising his powers in that respect⁴.

As from 1 January 1997, the creation of settlements for the purposes of the Settled Land 1925 is, subject to certain exceptions, prohibited⁵.

1 *Caldecott v Brown* (1842) 2 Hare 144; *Floyer v Bankes* (1869) LR 8 Eq 115; *Norris v Caledonian Insurance Co* (1869) LR 8 Eq 127. As to the carrying out and payment for improvements under statutory powers see **AGRICULTURAL LAND** vol 1 (2008) PARA 613 et seq; **SETTLEMENTS** vol 42 (Reissue) PARA 809. As to the court's jurisdiction to order recoupment of the cost of improvements carried out see **SETTLEMENTS** vol 42 (Reissue) PARA 812 et seq.

2 *Todd v Moorhouse* (1874) LR 19 Eq 69. A tenant for life is entitled to his lien in this case even if the money might have been raised by other means.

3 *Re Davis' Estate and Crystal Palace and West End Railway Act, ex p Davis* (1858) 3 De G & J 144.

4 See the Settled Land Act 1925 s 107 (amended by the Trustee Act 2000 s 40(1), Sch 2 Pt II para 17); and **SETTLEMENTS** vol 42 (Reissue) PARA 775.

5 See the Trusts of Land and Appointment of Trustees Act 1996 s 2; and **LIMITATION PERIODS** vol 68 (2008) PARA 1022; **SETTLEMENTS**.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/3. EQUITABLE LIEN/(3) LIEN FOR EXPENDITURE ON THE PROPERTY OF ANOTHER/873. Exceptions to the general rule.

873. Exceptions to the general rule.

A lien or charge in favour of a person who expends money for the benefit of or on the property of another¹ will arise if there is a contract, express or implied², such as (1) where premiums are paid under contract with the beneficial owner of a policy to maintain it³; or (2) if the person incurring the expenditure is entitled to a trustee's indemnity by common law⁴, by subrogation⁵ or by reason of an incumbrancer's right to add to his charge money properly expended on his security⁶. A trustee is entitled to an indemnity and a lien on the trust assets for his proper expenses in the administration of the trust⁷. A receiver or receiver and manager appointed by the court has an indemnity over the assets of the company to which he is appointed and is a secured creditor with a lien for his expenses, remuneration and costs⁸. Upon his discharge from office, a provisional liquidator has a lien over the assets of the company for his remuneration and proper expenses and is entitled to satisfy his lien out of the assets in his hands before accounting for the balance⁹. The principle is that where a person seeks to enforce a claim to an equitable interest in property, the court has a discretion to require as a condition of giving effect to that interest that an allowance be made for costs incurred and for skill and labour expended in connection with the administration of the property¹⁰. Even in these cases the right to a lien is strictly limited, and consideration is given to the nature of the property concerned and the urgency or otherwise of the expenditure¹¹. A lien may also arise in consequence of family relationships¹² or mistake¹³ or in certain cases of salvage¹⁴.

¹ See PARA 870.

² See generally *Re Leslie, Leslie v French* (1883) 23 ChD 552. Where an owner of land has invited or expressly encouraged another to expend money on part of his land on the faith of an assurance or promise that that part of the land will be made over to the person so expending his money, a court of equity will prima facie require the owner by appropriate conveyance to fulfil his obligation; and when, eg for reasons of title, no such conveyance can effectively be made, a court of equity may declare that the person who has expended the money is entitled to an equitable charge or lien for the amount so expended: see *Chalmers v Pardoe* [1963] 3 All ER 552 at 555, [1963] 1 WLR 677 at 681-682, PC.

³ See *Re Leslie, Leslie v French* (1883) 23 ChD 552; *Aylwin v Whitty* (1861) 30 LJ Ch 860.

⁴ See *Re Leslie, Leslie v French* (1883) 23 ChD 552; cf *Strutt v Tippet* (1889) 62 LT 475, CA; and see TRUSTS vol 48 (2007 Reissue) PARA 905. See also *Re Smith's Estate, Bilham v Smith* [1937] Ch 636, [1937] 3 All ER 472; *Re Spurling's Will Trusts, Philpot v Philpot* [1966] 1 All ER 745 at 756, [1966] 1 WLR 920 at 932 per Ungood-Thomas J. See further *The Galam (Cargo Ex)* (1863) 2 Moo PCCNS 216 at 235 per Lord Kingsdown; *Re Nepean's Settled Estate* [1900] 1 IR Eq 298; *Hope v Winter* (1710) 2 Eq Cas Abr 690; *Angell v Bryan* (1845) 2 Jo & Lat 763; and PARA 870 note 8. Where a deed of arrangement is avoided by reason of the debtor's bankruptcy, any expenses properly incurred by the trustee under the deed in the performance of any of the duties imposed on him by the Deeds of Arrangement Act 1914 must be allowed or paid to him by the trustee in bankruptcy as a first charge on the estate: s 21. Expenses are strictly limited to those incurred by him in the performance of the duties specifically imposed on him by the Act, but he may be allowed reasonable compensation for other services rendered by him, whilst trustee of the deed, which have resulted in the benefit of the estate: *Re Geen, ex p Parker* [1917] 1 KB 183.

⁵ As to the doctrine of subrogation see PARA 874; EQUITY vol 16(2) (Reissue) PARAS 770-775; INSURANCE vol 25 (2003 Reissue) PARA 195 et seq. See also Fisher and Lightwood's Law of Mortgage Ch 43.

⁶ *Re Leslie, Leslie v French* (1883) 23 ChD 552 at 560. See also *Clack v Holland* (1854) 19 Beav 262; *Gill v Downing* (1874) LR 17 Eq 316; and PARA 870 note 8. See further INSURANCE vol 25 (2003 Reissue) PARA 560 note 7. However, where a bank to which a customer had mortgaged land to secure his overdraft advanced further money to the customer for the purpose of preserving the security, the bank had no lien for salvage in respect of such money: *Yourell v Hibernian Bank Ltd* [1918] AC 372, HL.

⁷ *Stott v Milne* (1884) 25 ChD 710 at 715, CA, per Lord Selbourne LC; *Re Beddoe, Downes v Cottam* [1893] 1 Ch 547 at 558, CA, per Lindley LJ; *St Thomas's Hospital Governors v Richardson* [1910] 1 KB 271 at 283, CA, per Farwell LJ.

⁸ *Scott v Nesbitt* (1808) 14 Ves 438; *Bertrand v Davies* (1862) 31 Beav 429 at 436; *Re Berkeley Applegate (Investment Consultants) Ltd (in liquidation), Harris v Conway* [1989] Ch 32 at 50-51, [1988] 3 All ER 71 at 82-83 per Edward Nugee QC;

Mellor v Mellor [1992] 4 All ER 10, [1992] 1 WLR 517; and see *Shirlaw v Taylor* (1991) 102 ALR 551 at 559-560, Aust Fed Ct, Full Ct.

9 *Re Joseph Phillips Ltd* [1964] 1 All ER 441 at 444 per Buckley J; *Booth v Thomson (Provisional Liquidator of Highland Engineering Ltd)* 1972 SLT 141; and see *Shirlaw v Taylor* (1991) 102 ALR 551, Aust Fed Ct, Full Ct.

10 *Re Berkeley Applegate (Investment Consultants) Ltd (in liquidation), Harris v Conway* [1989] Ch 32 at 50-51, [1988] 3 All ER 71 at 82-83 per Edward Nugee QC.

11 *Scott v Nesbitt* (1808) 14 Ves 438 at 445; *Sayers v Whitfield* (1829) 1 Knapp 133; *Fraser v Burgess* (1860) 13 Moo PCC 314; cf *Re Tharp* (1852) 2 Sm & G 578n, where it is pointed out that different principles apply to West Indian estates, with which the cases cited in this note are all concerned. It is submitted that since the repeal of the West Indian Incumbered Estates Acts 1862 and 1864 the importance of these cases is confined to the statement in the text.

12 See PARA 875.

13 See PARA 876.

14 See PARA 877.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/3. EQUITABLE LIEN/(3) LIEN FOR EXPENDITURE ON THE PROPERTY OF ANOTHER/874. Lien by subrogation.

874. Lien by subrogation.

The principle of lien by subrogation¹ applies not only where a person has advanced money at the request of trustees², but also where money is advanced to a prospective purchaser to pay the contract price. The lender is entitled by subrogation, as soon as the vendor has been paid, to the lien which the vendor would have had if the price had remained unpaid³. Thus, a lender has been entitled to be subrogated to the right of the vendor to claim a lien on property in respect of purchase moneys which the lender was defrauded into advancing and which but for the payment made by reason of the lender's advance would have remained unpaid⁴. Similarly the lender was subrogated to the earlier chargee's right to subrogation⁵ to the lien which the vendor would have had if the price (or the relevant part of it) had remained unpaid⁶.

The doctrine of subrogation confers on an insurer an equitable proprietary lien or charge on the moneys recovered by the insured person from a third party in respect of the insured loss⁷.

1 See PARA 809.

2 See PARAS 872 note 2, 873 note 5; and **EQUITY** vol 16(2) (Reissue) PARA 770. See also PARA 870 note 3. As to the rights of subrogation in favour of a surety see **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARAS 1138-1146; and as to the doctrine of subrogation see generally *Banque Financière de la Cité v Parc (Battersea) Ltd* [1999] 1 AC 221, [1998] 1 All ER 737, HL. See also Fisher and Lightwood's Law of Mortgage Ch 43; David Wright 'The Rise of Non-Consensual Subrogation' (1999) 63 Conv 113; David Wright 'Proprietary Remedies and The Role of Insolvency' (2000) 23 Univ NSW LJo 143.

3 *Nottingham Permanent Benefit Building Society v Thurstan* [1903] AC 6, HL; *Re Connolly Bros Ltd (No 2)*, *Wood v Connolly Bros Ltd* [1912] 2 Ch 25, CA; *Bird v Philpott* [1900] 1 Ch 822. However, an unpaid vendor's lien appears to be incapable of assertion wherever the Consumer Credit Act 1974 s 106 (see **CONSUMER CREDIT** vol 9(1) (Reissue) PARA 222) is applied to any security provided in relation to a regulated agreement: *Orakpo v Manson Investments Ltd* [1978] AC 95, [1977] 3 All ER 1, HL.

4 *Halifax plc v Omar* [2002] EWCA Civ 121, [2002] 2 P & CR 377, [2002] All ER (D) 271 (Feb).

5 Ie for the lender to take the benefit by sub-subrogation.

6 See *UCB Group Ltd v Hedworth* [2003] EWCA Civ 1717, [2003] 3 FCR 739, [2003] All ER (D) 71 (Dec). Where the lender obtains the security for which he has bargained then the lien is lost; but if the lender does not receive the security for which he bargained, eg if he obtains only a voidable security, then he is deemed to keep the lien alive: *UCB Group Ltd v Hedworth*.

7 *Lord Napier and Ettrick v Hunter* [1993] AC 713, [1993] 1 All ER 385, HL; applied in *England v Guardian Insurance Ltd* [1999] 2 All ER (Comm) 481. It is questionable whether the lien in favour of the insurer attaches to the right of action vested in the insured person to recover from the third party: see *Lord Napier and Ettrick v Hunter*.

UPDATE

874 Lien by subrogation

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/3. EQUITABLE LIEN/(3) LIEN FOR EXPENDITURE ON THE PROPERTY OF ANOTHER/875. Lien arising from family relationships.

875. Lien arising from family relationships.

It seems that where the person on whose behalf money is spent is the husband or wife of the person who incurs the expenditure, a lien may arise from the relationship of the parties. Thus a wife who spends her own money in payment of building society and hire purchase instalments has an equitable lien on the proceeds of sale of the property¹. It seems also that a child who spends money on the parent's property will have a lien arising from the relationship of parent and child². Conversely, if a parent spends money on the child's property, then, even though the parent is a trustee for the child, the parent will be debarred from claiming a lien in circumstances where the presumption of advancement arises³.

1 *Re Sims Question* [1946] 2 All ER 138.

2 This seems to be the corollary of the reasoning contained in the judgments in *Re Sims Question* [1946] 2 All ER 138 and *Re Roberts, Public Trustee v Roberts* [1946] Ch 1.

3 *Re Roberts, Public Trustee v Roberts* [1946] Ch 1. As to the presumption of advancement see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 43.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/3. EQUITABLE LIEN/(3) LIEN FOR EXPENDITURE ON THE PROPERTY OF ANOTHER/876. Mistake.

876. Mistake.

In certain cases a person who has expended money on property, under the erroneous belief that he is entitled to or has an interest in it, will on principles of equitable estoppel be allowed a lien¹ for substantial and lasting improvements to the property², but not for improvements which were merely matters of taste or personal convenience³. Therefore, where the owner of property stands by and allows a person to spend money on it in the expectation that he will receive the benefit of it, that person is entitled to a lien⁴. No such lien will arise unless it can be shown that the owner knows that the stranger is acting in the belief that he has a title and that the belief is founded on an erroneous impression of facts⁵.

1 *Ramsden v Dyson* (1866) LR 1 HL 129; *Neesom v Clarkson* (1845) 4 Hare 97 (husband and wife); *Ludlow v Grayall* (1822) 11 Price 58 (intending purchaser); *Middleton v Magnay* (1864) 2 Hem & M 233 (intending lessee). See also *Rennie v Young* (1858) 2 De G & J 136; *Re Foster*, *Hudson v Foster (No 2)* [1938] 3 All ER 610; *Re Vandervell's Trusts (No 2)*, *White v Vandervell Trustees Ltd* [1974] Ch 269 at 299, [1974] 1 All ER 47 at 58 per Megarry J (revsd on a different point [1974] Ch 269, [1974] 3 All ER 205, CA). See **EQUITY** vol 16(2) (Reissue) PARAS 608-610. As to mistake of law and mistake of fact in the law of restitution see **RESTITUTION** vol 40(1) (2007 Reissue) PARA 28 et seq.

2 *Mulhallen v Marum* (1843) 3 Dr & War 317 at 337, where a court of equity avoided the deed under which the defendant was entitled; *Fee v Cobire* (1847) 11 Ir Eq R 406 at 410, which concerned 'lasting and permanent improvements'.

3 *Mill v Hill* (1852) 3 HL Cas 828 at 869.

4 *Unity Joint Stock Mutual Banking Association v King* (1858) 25 Beav 72; cf *Millard v Harvey* (1864) 10 Jur NS 1167. See generally **EQUITY** vol 16(2) (Reissue) PARA 909; **ESTOPPEL** vol 16(2) (Reissue) PARA 1091.

5 *East India Co v Vincent* (1740) 2 Atk 83; *Dann v Spurrier* (1802) 7 Ves 231; *Duke of Beaufort v Patrick* (1853) 17 Beav 60; *Dillwyn v Llewelyn* (1862) 4 De GF & J 517; *Ramsden v Dyson* (1866) LR 1 HL 129; *Plimmer v Wellington Corp'n* (1884) 9 App Cas 699, PC; *Falcke v Scottish Imperial Insurance Co* (1886) 34 ChD 234 at 242, CA. See also *Inwards v Baker* [1965] 2 QB 29, [1965] 1 All ER 446, CA; *ER Ives Investments Ltd v High* [1967] 2 QB 379, [1967] 1 All ER 504, CA; *Pascoe v Turner* [1979] 2 All ER 945, [1979] 1 WLR 431, CA; *A-G of Hong Kong v Humphreys Estate (Queen's Gardens) Ltd* [1987] AC 114, [1987] 2 All ER 387, PC. As to the position between husband and wife see **MATRIMONIAL AND CIVIL PARTNERSHIP LAW** vol 72 (2009) PARA 283.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/3. EQUITABLE LIEN/(3) LIEN FOR EXPENDITURE ON THE PROPERTY OF ANOTHER/877. Cases of salvage; trustees, incumbrancers, creditors and managers.

877. Cases of salvage; trustees, incumbrancers, creditors and managers.

Where trustees, incumbrancers, creditors, managers and other persons have made payments to save property from destruction for the benefit of those interested in its preservation, a lien arises in their favour for the amount of the expenditure against the property¹. An equitable lien in the nature of a salvage lien is allowed to managers, whether they are part owners or not, of works or estates, for expenses properly incurred and advances made in the working or management of them². However, the lien does not secure an agent against possible liabilities which have not yet accrued, nor is he entitled to assert it against money coming into his hands outside his agency³. Similarly, the director of a company may have a lien on property purchased by the company out of money advanced by him⁴.

1 See *Cleary v M'Andrew* (1863) 2 Moo PCCNS 216; and PARA 873 note 4. See also the cases cited in PARA 870 note 8.

2 *Scott v Nesbitt* (1808) 14 Ves 438 at 444 per Lord Eldon LC; *Sayers v Whitfield* (1829) 1 Knapp 133 at 148-149. See also PARA 873 note 11. As to the legal lien of an agent or sub-agent see **AGENCY** vol 1 (2008) PARAS 114-118.

3 *Dyson v Peat* [1917] 1 Ch 99.

4 *Re Imperial Salt and Alkali Co, ex p Morrell* (1853) 2 WR 122, in which the conveyance recited incorrectly that the purchase price was advanced by the company, but presumably the recital was regarded as irrelevant as between the director and the company. A director has no lien for remuneration owing to him: see **COMPANIES** vol 14 (2009) PARA 608.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/3. EQUITABLE LIEN/(4) COVENANTS TO SETTLE SPECIFIC PROPERTY/878. Covenants to settle property.

(4) COVENANTS TO SETTLE SPECIFIC PROPERTY

878. Covenants to settle property.

Following the maxim that equity regards as done that which ought to be done¹, an equitable lien is raised in favour of the covenantee where a covenantor binds himself for good consideration to charge property or the income of property already in his possession², or such as he may afterwards acquire of a specific kind, or such as may be derived from a specific source³, or such as he may point out by a subsequent instrument as that which was intended to be charged⁴. The result is the same even though the property is not in possession, where the covenant or agreement is founded on valuable consideration⁵. Where the covenant is to make a charge at a future time, when the covenantor will be in possession of land acquired for the very purpose of the charge, a lien will arise against it⁶. Where the covenant is to pay money to trustees to be laid out in the purchase of land, or to purchase and settle land, and the covenantor purchases land but neither settles it nor pays the money, the land will be taken to have been purchased in performance of the covenant and will be subject to a lien in favour of the covenantee⁷. Since 1925 a covenant to settle specified land has required registration as a land charge⁸; and, subject to certain exceptions, since 1 January 1997 it has not been possible to create a strict settlement of land for the purposes of the Settled Land Act 1925⁹.

1 As to this maxim, and as to the doctrine of performance, see **EQUITY** vol 16(2) (Reissue) PARAS 561-562, 611-612.

2 *Legard v Hodges* (1792) 1 Ves 477; *Ravenshaw v Hollier* (1835) 7 Sim 3; *Galavan v Dunne* (1879) 7 LR Ir 144. Where an intending husband and wife agreed to transfer certain securities belonging to the wife into the names of herself and her son in trust for her, the wife was held to have a lien on other property coming to her husband's hands for the value of the securities which he had disposed of in breach of the agreement: *Hastie v Hastie* (1876) 2 ChD 304, CA.

3 *Metcalfe v Archbishop of York* (1836) 1 My & Cr 547; *Lyde v Mynn* (1833) 1 My & K 683; *Buller v Plunkett* (1860) 7 Jur NS 873; *Warde v Warde* (1852) 16 Beav 103.

4 *Watson v Sadleir* (1829) 1 Mol 585.

5 *Re Earl of Lucan, Hardinge v Cobden* (1890) 45 ChD 470; *Tew v Earl Winterton* (1792) 3 Bro CC 489 at 493 (bond in pre-nuptial settlement to convey sufficient real estate to secure the wife a certain annuity in lieu of dower); *Prebble v Boghurst* (1818) 1 Swan 309 at 321 (pre-nuptial bond to settle property of which the husband might become seised).

6 *Wellesley v Wellesley* (1839) 4 My & Cr 561.

7 *Sowden v Sowden* (1785) 1 Bro CC 582; *Lechmere v Earl of Carlisle* (1733) 3 P Wms 211; *Wilcocks v Wilcocks* (1706) 2 Vern 558; *Tooke v Hastings* (1689) 2 Vern 97.

8 See the Land Charges Act 1972 ss 2(1), (4), 4(6) (amended by the Local Land Charges Act 1975 s 17(1)(b); the Finance Act 1975 s 52, Sch 12 paras 2, 18(1), (2), (5); the Inheritance Tax Act 1984 s 276, Sch 8 paras 3, 13). See also PARA 813; and **LAND CHARGES** vol 26 (2004 Reissue) PARAS 622, 628, 643.

9 See the Trusts of Land and Appointment of Trustees Act 1996 s 2; and **LIMITATION PERIODS** vol 68 (2008) PARA 1022; **SETTLEMENTS**.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/3. EQUITABLE LIEN/(4) COVENANTS TO SETTLE SPECIFIC PROPERTY/879. Cases where no lien arises.

879. Cases where no lien arises.

A simple covenant or agreement to charge land does not create a lien upon the covenantor's real estate where no particular land is mentioned. Nor does it create such a lien where the agreement is only for a personal security with power to call for a real security, or where it otherwise appears to be intended to rely only upon the covenant¹, or where there is no consideration². Therefore, a covenant or promise in writing to give a security by mortgage, or to sell land when required³, does not create a lien in favour of the covenantee or promisee.

1 *Collins v Plummer* (1708) 1 P Wms 104.

2 *Re Earl of Lucan, Hardinge v Cobden* (1890) 45 ChD 470; and see GIFTS vol 52 (2009) PARAS 267-270.

3 *Williams v Lucas* (1789) 2 Cox Eq Cas 160; *Berrington v Evans* (1839) 3 Y & C Ex 384.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/3. EQUITABLE LIEN/(5) ENFORCEMENT/880. Remedies of unpaid vendor of land.

(5) ENFORCEMENT

880. Remedies of unpaid vendor of land.

A vendor's lien and other equitable liens upon real estate are enforceable by sale¹, but not until they have been established by a judgment of the court binding the persons affected by the lien². The court may also enforce a lien by appointing a receiver pending sale³ or by injunction operating to restore possession of the property⁴. The court will not, however, enforce a lien in favour of the trustees of a charitable trust if the effect of enforcement would be to destroy the object of the trust⁵. Where a purchaser becomes bankrupt before payment of the purchase money, the vendor may nevertheless enforce his lien by a resale, and, if the proceeds after payment of the proper expenses are insufficient to discharge the original purchase money, he may prove against the bankrupt's estate for the balance⁶.

The lien of an unpaid vendor also gives him the alternative right to rescind the contract and recover possession of the land⁷, but he cannot enforce his lien by foreclosure⁸.

1 *Hope v Booth* (1830) 1 B & Ad 498; *Mackreth v Symmons* (1808) 15 Ves 329; *Westmacott v Robins* (1862) 4 De GF & J 390 at 396; *Swainston v Clay* (1863) 3 De GJ & Sm 558. As to the form of the order for sale see **MORTGAGE** vol 77 (2010) PARA 671.

2 *A-G v Sittingbourne and Sheerness Rly Co* (1866) LR 1 Eq 636. A court order for specific performance may contain a declaration of the vendor's lien with liberty to apply to enforce the lien: *Walker v Ware, Hadham and Buntingford Rly Co* (1865) LR 1 Eq 195. See also **SPECIFIC PERFORMANCE** vol 44(1) (Reissue) PARA 933.

3 *Munns v Isle of Wight Rly Co* (1870) 5 Ch App 414. See also **SPECIFIC PERFORMANCE** vol 44(1) (Reissue) PARA 965.

4 *Williams v Aylesbury and Buckingham Rly Co* (1873) 28 LT 547; *Allgood v Merrybent and Darlington Rly Co* (1886) 33 ChD 571. See **CIVIL PROCEDURE** vol 11 (2009) PARA 469.

5 *Darke v Williamson* (1858) 25 Beav 622. As to proof by a secured creditor see the Insolvency Rules 1986, SI 1986/1925, r 6.109 et seq; and **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 561 et seq. A judgment for specific performance does not create a debt for which there is a vendor's lien within the meaning of the insolvency provisions: *Re Burr, ex p Clarke* (1892) 67 LT 465, CA.

6 *Re Perkins, ex p Mexican Santa Barbara Mining Co* (1890) 24 QBD 613, CA.

7 *Lysaght v Edwards* (1876) 2 ChD 499 at 506.

8 *Munns v Isle of Wight Rly Co* (1870) 5 Ch App 414.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/3. EQUITABLE LIEN/(5) ENFORCEMENT/881. Enforcement against public authority.

881. Enforcement against public authority.

The vendor's lien has been held to apply to compulsory sales under the Lands Clauses Acts, even though the undertaking for which the land was acquired is in active operation and open for public use¹. It seems that, on the application of a vendor, the court may restrain the authority from continuing in possession and using the land until the purchase money has been paid².

¹ *Walker v Ware, Hadham and Buntingford Rly Co* (1865) LR 1 Eq 195; *Wing v Tottenham and Hampstead Junction Rly Co* (1868) 3 Ch App 740; *Raper v Crystal Palace and South-London Rly Co* (1868) 16 WR 413; *Williams v Great Eastern Rly Co* (1868) 16 WR 821; and see PARAS 863, 883 note 6. As to the Lands Clauses Acts see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 509.

² *Allgood v Merrybent and Darlington Rly Co* (1886) 33 ChD 571; *Bishop of Winchester v Mid-Hants Rly Co* (1867) LR 5 Eq 17. Cf *Pell v Northampton and Banbury Junction Rly Co* (1866) 2 Ch App 100; *Munns v Isle of Wight Rly Co* (1870) 5 Ch App 414; *Latimer v Aylesbury and Buckingham Rly Co* (1878) 9 ChD 385, CA; *Lycett v Stafford and Uttoxeter Rly Co* (1872) LR 13 Eq 261.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/3. EQUITABLE LIEN/(6) EXTINCTION OF EQUITABLE LIEN/882. Abandonment of equitable lien.

(6) EXTINCTION OF EQUITABLE LIEN

882. Abandonment of equitable lien.

An equitable lien may be abandoned if the person entitled to the lien so intends, and the intention to abandon may be inferred from his conduct and the surrounding circumstances¹. A solicitor's relationship with his client is such that if he takes security for a debt he will lose his lien unless he expressly reserves his lien².

¹ *Bank of Africa v Salisbury Gold Mining Co*[1892] AC 281 at 284, PC; *Smith v Evans* (1860) 28 Beav 59 at 65.

² *Re Taylor, Stileman and Underwood, ex p Payne Collier*[1891] 1 Ch 590, CA; and see *Clifford Harris & Co v Solland International Ltd*[2005] EWHC 141 (Ch), [2005] 2 All ER 334, (2005) Times, 10 March. See also **LEGAL PROFESSIONS** vol 66 (2009) PARA 1005. As to taking security see further PARA 883.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/3. EQUITABLE LIEN/(6)
EXTINCTION OF EQUITABLE LIEN/883. Taking security.

883. Taking security.

Most instances of the abandonment of an equitable lien arise from the taking of other security for his debt by the person claiming the lien. Unless an agreement to the contrary is shown¹, this normally affords evidence that the lien has been abandoned, for there is a presumption against the creditor being afforded double security². The nature of the second security is relevant in considering the intention to abandon the lien. Thus a mere personal security taken from a purchaser does not of itself deprive the vendor of his lien whether it takes the form of a draft, promissory note or bill of exchange³, even if negotiated by the vendor⁴, or of a covenant or mortgage bond⁵. Similarly, the lien is not lost merely by the giving of a bond where the contract is for the consideration to be in cash or, at the purchaser's option, such security as is agreed⁶.

On the other hand, if the property is sold in consideration of a security⁷, or if the contract between the parties, or the inference to be clearly drawn from the circumstances, shows an intention that the vendor should rely on the security only and not upon the property, the lien will be lost⁸. The test of the existence of a lien must be objectively ascertained from the transaction between the parties, their subjective intention being irrelevant⁹.

¹ See the cases cited in PARA 882 notes 1-2.

² *Nairn v Prowse* (1802) 6 Ves 752. As to lien co-existing with void security see the cases cited in PARA 860 note 8. As to the taking of security by a solicitor see PARA 882 text and note 2.

³ *Hughes v Kearney* (1803) 1 Sch & Lef 132; *Grant v Mills* (1813) 2 Ves & B 306; *Gibbons v Baddall* (undated) 2 Eq Cas Abr 682; *Re Lightoller, ex p Peake* (1816) 1 Madd 346; *Gunn v Bolckow, Vaughan & Co* (1875) 10 Ch App 491. See also *Re J Defries & Sons Ltd*, *Eichholz v J Defries & Sons Ltd* [1909] 2 Ch 423; *Henderson v Arthur* [1907] 1 KB 10, CA.

⁴ *Re Wright, ex p Loaring* (1814) 2 Rose 79; *Re J Defries & Sons Ltd*, *Eichholz v J Defries & Sons Ltd* [1909] 2 Ch 423.

⁵ *Tardiff v Scrugan* (1769) cited in 1 Bro CC at 423; *Elliot v Edwards* (1802) 3 Bos & P 181; *Nairn v Prowse* (1802) 6 Ves 752; *Mackreth v Symmons* (1808) 15 Ves 329; *Hope v Booth* (1830) 1 B & Ad 498. Cf *Fowel v Heelis* (1773) 1 Bro CC 422n; *Cood v Cood and Pollard* (1822) 10 Price 109, Ex Ch; *Collins v Collins* (No 2) (1862) 31 Beav 346.

⁶ *Pell v Midland and South Wales Rly Co* (1869) 17 WR 506. The same principles apply on compulsory purchase. The lien is not lost by the payment of the valuation and giving of the bond under the Lands Clauses Consolidation Act 1845 if the price and compensation subsequently determined exceed the deposit: *Walker v Ware, Hadham and Buntingford Rly Co* (1865) LR 1 Eq 195. As to this bond see PARAS 863, 881; and COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 641.

⁷ *Winter v Lord Anson* (1827) 3 Russ 488; *Clarke v Royle* (1830) 3 Sim 499; *Buckland v Pocknell* (1843) 13 Sim 406.

⁸ *Parrott v Sweetland* (1835) 3 My & K 655; *Winter v Lord Anson* (1827) 3 Russ 488 at 492; *Re Albert Life Assurance Co, ex p Western Life Assurance Society* (1870) LR 11 Eq 164; *Re Brentwood Brick and Coal Co* (1876) 4 ChD 562, CA; *Re London and Lancashire Paper Mills Co Ltd* (1888) 58 LT 798; *Bank of Africa v Salisbury Gold Mining Co* [1892] AC 281, PC. Although payment was to be made as in *Re Brentwood Brick and Coal Co* out of money arising out of certain sources which never became available, *Re Patent Carriage Co, Gore and Durant's Case* (1866) LR 2 Eq 349 was distinguished on the ground that the agreement was to be void on non-payment within a fixed time; cf *Re Durrow Brick and Tile Works Co* [1904] 1 IR 530, CA. See also *Capital Finance Co Ltd v Stokes* [1969] 1 Ch 261, [1968] 3 All ER 625, CA; *Burston Finance Ltd v Speirway Ltd* [1974] 3 All ER 735, [1974] 1 WLR 1648; *Orakpo v Manson Investments Ltd* [1978] AC 95 at 115, [1977] 3 All ER 1 at 16, HL, per Lord Edmund-Davies.

⁹ *Barclays Bank plc v Estates and Commercial Ltd (in liquidation)* [1997] 1 WLR 415, 74 P & CR 30, CA.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/3. EQUITABLE LIEN/(6) EXTINCTION OF EQUITABLE LIEN/884. Instances where equitable lien has been lost.

884. Instances where equitable lien has been lost.

The equitable lien was held to have been lost:

- 33 (1) where the parties agreed to postpone payment of the purchase money until a resale¹;
- 34 (2) where the vendor took a bond and a mortgage of part of the property sold²;
- 35 (3) where the consideration was an annual rent payable by a railway company³, or the payment of an annuity for two or more lives secured by the bond of the purchaser⁴;
- 36 (4) where the vendor concurred in a mortgage by the purchaser of the property to a person who lent part of the purchase money⁵;
- 37 (5) where the vendor took a mortgage for part of the purchase money, and a promissory note payable on demand for the remainder⁶; or
- 38 (6) where the vendor on completion of a contract obtained all that he had bargained for⁷.

It also seems that the lien is destroyed if the bond or covenant, instead of being given by the purchaser alone, is joined in by sureties⁸. The result is the same if the vendor takes from the purchaser, as special security for the purchase money, a sum of stock or, probably, a mortgage upon another estate of the purchaser⁹, although such a mortgage is not conclusive evidence of an intention to give up the lien¹⁰. It appears to be settled that both vendor and purchaser lose their liens if by their own act or default the contract is not completed¹¹.

1 *Re Parkes, ex p Parkes* (1822) 1 GI & J 228.

2 *Capper v Spottiswoode* (1829) TamL 21.

3 *Earl of Jersey v Briton Ferry Floating Dock Co* (1869) LR 7 Eq 409. See also *Winter v Lord of Anson* (1827) 3 Russ 488.

4 *Dixon v Gayfere* (1857) 1 De G & J 655.

5 *Cood v Cood and Pollard* (1821) 9 Price 544; affd (1822) 10 Price 109, Ex Ch.

6 *Bond v Kent* (1692) 2 Vern 281.

7 *Capital Finance Co Ltd v Stokes* [1969] 1 Ch 261, [1968] 3 All ER 625, CA, which concerned a contract for sale in consideration of one-quarter of the purchase money in cash and the balance by way of legal charge. See also *Paul v Speirway Ltd (in liquidation)* [1976] Ch 220 at 234, [1976] 2 All ER 587 at 599 per Oliver J.

8 *Cood v Cood and Pollard* (1822) 10 Price 109, Ex Ch.

9 *Nairn v Prowse* (1802) 6 Ves 752.

10 *Mackreth v Symmons* (1808) 15 Ves 329 at 348 per Lord Eldon LC; and see PARA 883.

11 *Oxenham v Esdaile* (1829) 3 Y & J 262; *Esdaile v Oxenham* (1824) 3 B & C 225; *Dinn v Grant* (1852) 5 De G & Sm 451; *Ridout v Fowler* [1904] 2 Ch 93, CA. For an instance where a lien is preserved as to part and lost as to the remainder see *Mackreth v Symmons* (1808) 15 Ves 329. See also *Re Ryland, ex p Ladd, ex p Mole* (1834) 3 Deac & Ch 647 (tenant rejecting lease after expenditure on property); *Re Durrow Brick and Tile Works Co* [1904] 1 IR 530, CA (vendor's lien lost by placing third persons in false position).

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/3. EQUITABLE LIEN/(6)
EXTINCTION OF EQUITABLE LIEN/885. Statutory limitation period.

885. Statutory limitation period.

It seems that an equitable lien should be regarded as a charge within the meaning of the Limitation Act 1980. Thus no claim may be brought to recover any principal sum of money secured on real or personal property by an equitable lien after the expiration of 12 years from the date when the right to receive the money accrued¹.

¹ See the Limitation Act 1980 s 20(1); PARA 814; and **LIMITATION PERIODS** vol 68 (2008) PARA 1105. A vendor's lien on personal estate was formerly not subject to any statutory or other limitation: *Re Stucley, Stucley v Kekewich* [1906] 1 Ch 67, CA.

Halsbury's Laws of England/LIEN (VOLUME 68 (2008) 5TH EDITION)/3. EQUITABLE LIEN/(6) EXTINCTION OF EQUITABLE LIEN/886. Partnership distribution.

886. Partnership distribution.

A partnership lien is lost if by agreement the assets of the partnership are distributed among the partners so as to become their separate property¹, unless the distribution is made expressly subject to the lien².

1 See *Holroyd v Griffiths* (1856) 3 Drew 428; and **PARTNERSHIP** vol 79 (2008) PARAS 142-143.

2 See *Holderness v Shackels* (1828) 8 B & C 612; and **PARTNERSHIP** vol 79 (2008) PARAS 142-143.