31. Tracing – in outline

General Reading on this topic: **Hudson, chapter 19**

The law relating to tracing is not straightforward. There is a need to distinguish between common law tracing and equitable tracing. These lectures will focus on equitable tracing for the most part.

There is a second distinction to be made: that is, between ‘following’ claims and ‘tracing’ claims. A following claim requires simply that a specific piece of property is followed and identified by its original common law owner, thus being returned to that original owner. A tracing claim concerns the identification of property or value in which the claimant has some pre-existing interest which the court is then asked to recognise.

Tracing is a process. It does nothing more than trace a right in an original piece of property into subsequent items of property or value. Tracing is concerned specifically with tracing value, not necessarily specific items of property. That is, it identifies property. There is then the further issue as to the form of remedy which should be granted or the form of trust which arises on institutional principles.

Reading: **Hudson, section 19.1**

**Boscawen v. Bajwa [1995] 4 All ER 769 - tracing is the process of identification, the appropriate claim is something else.**