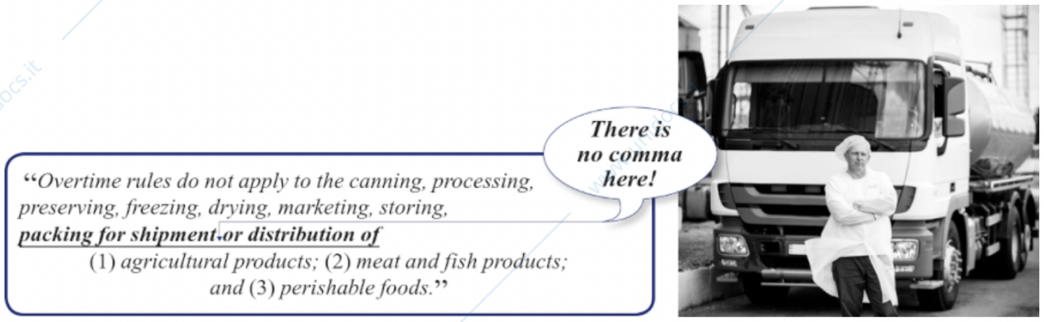
CASE UNIT 1 (INTRODUCTION TO COMMON LAW): THE FIVE MILLION DOLLAR COMMA

The now infamous **comma (,)** case of **O'Connor and Ors v Oakhurst Dairy; Dairy Farmers of America Inc, 2017**, demonstrates how punctuation and especially the "Oxford Comma" can have devastating consequences if not used correctly.
Oakhurst Dairy, a US company from Maine, manufactured and delivered milk products. The truck drivers started legal proceedings because they were not being paid overtime. Overtime means that you work more hours than your contract says or outside the period agreed, for example, being asked to work after 5pm.
In Maine, workers' overtime was regulated by state legislation. The relevant part of the legislation said:



When reading this long sentence, you can see that there is no comma after the word "shipment" so the phrase is "packing for shipment or distribution" and not "packing for shipment , or distribution". So this might mean packing for shipment *or* packing for distribution, not the act of distribution which is what the truck drivers were doing.

In English grammar, we call the last comma in a list a *serial comma*. It is also called the *Oxford comma*because Oxford University Press systematically use the comma in this way. It is a common style of punctuation in the UK. However, in the US, this last comma is optional.
The drafters of legislation in Maine did indeed ignore the Oxford comma. The result was the creation of ambiguity when it came to reading the legislation.

The truckdrivers' Counsel picked up on this ambiguity and sought (aimed) to challenge the interpretation of the legislation. They said that due to the absence of the comma between *shipment* and *or*, the truckdrivers were not covered by the provisions of the statute. The truckdrivers argued that they were distributing the milk products, not packing them, so were not referred to in the legislation. The Truckdrivers' "comma case" went all the way to the US Supreme Court in Washington. Both parties presented their side of the dispute to the Court.

The Comma Argument The Dairy Company argued that the drafting manual used by Maine's legislative drafters recommended they do not use the Oxford comma. Drafters are people who write (draft) laws and contracts.
The Truck Drivers agreed that the manual says this, but they added it was optional. The drafters were allowed to choose whether or not to use the Oxford Comma. They chose not to use it and as a result created ambiguity.

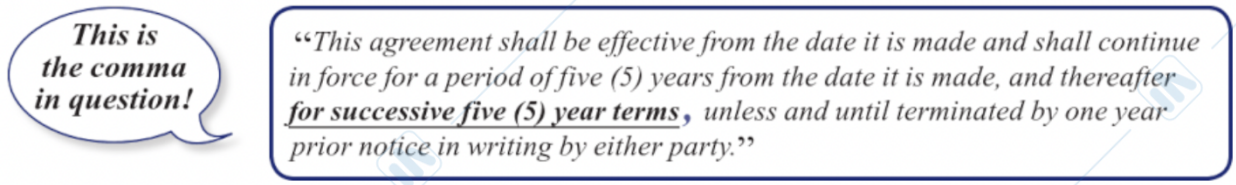
Conclusion: The Court decided in favour of the truck drivers. The Court ultimately concluded that despite the interesting arguments involving punctuation, the laws are written to protect citizens. Further, the Court said that where there is ambiguity in any law, the Courts will read the statutory

provision against the party seeking to rely on it – in this case the Dairy Company. This is an important Latin principle – the *contra proferentum.*
Contra proferentum means "against the one putting it forward" and so, ambiguities in documents (contracts, deeds etc) and or statutes should be interpreted against the drafter. The Courts feel comfortable doing this because it is assumed that the person producing the document should avoid any ambiguities when drafting it.

Why does this case matter?
Punctuation matters. A simple comma cost the dairy company five million dollars. When writing any contract, the drafter is responsible for making sure that there are no ambiguities in the contract. If there are, due to *contra proferentum*, the Court will find in favour of the other party to the contract. However, this is not the first time the comma became the culprit.

The Telecommunications Comma
One of the biggest cases involving a comma was Rogers Communications and Bell Aliant in 2007. They fought a legal battle worth a million Canadian dollars ($760,000) involving a contract for the replacement of utility poles across Canada.

The Contract clause said:



The dispute centred around the comma after the words "for successive five (5) year terms , unless…" with each party having its own interpretation of what that clause meant.
Bell Aliant's position was that a single year's notice of termination applied at any time. Rogers, on the other hand, argued that the notice of termination only applied after the first five-year term came to an end.

The interpretation of this clause was crucial to Rogers. They had an exceptionally good deal if their interpretation of the contract was correct because at the time, they signed the contract in 2002, they paid Bell Aliant only CAD$9.60 to lease each of the poles.

The cost of the poles had nearly doubled by 2004 and Bell Aliant wanted to terminate the contract to renegotiate at a new, higher price. Rogers resisted this.

The decision: Canada's Radio-Television and Telecommunications Commission first ruled in favour of Bell Aliant in 2006 but in 2007, reversed its decision after reading the French version of the contract. The latter did not include the same ambiguity. So the final ruling was in favour of Rogers.

THE COURT FOUND IN FAVOR OF THE TRUCK DRIVERS BECAUSE THE OVERTIME CLAUSE IN THE ACT WAS AMBIGUOUS

CASE STUDY UNIT 2 (CONTRACT LAW) COULD THE FLU SEE YOU IN COURT?

CASE STUDY: COULD THE FLU SEE YOU IN COURT?A COMMON LAW PRECEDENT-MAKING CASE IN THE LAW OF CONTRACTS

Carlill v Carbolic Smoke Ball Company [1892] EWCA Civ 1 is an important case in English contracts law. Carbolic Smoke Ball Company (Carbolic) – the manufacturer of a flu remedy – placed an advertisement in a newspaper claiming that its smoke ball would protect against influenza (flu). The smoke ball was a rubber sphere filled with carbolic acid (phenol). Vapour would be puffed into the nose through a connecting tube when the ball was squeezed. Carbolic's advertisement offered a reward of £100 to customers who caught the flu after using their smoke ball.

"*£100 reward will be paid by the Carbolic Smoke Ball Company to any person who contracts the increasing epidemic influenza* […] *after having used the ball three times daily for two weeks. £1,000 is deposited with the Alliance Bank, Regent Street, showing our sincerity in the matter. During the last epidemic of influenza many thousand carbolic smoke balls were sold as preventives against the disease, and in no ascertained case was the disease contracted by those using the carbolic smoke ball.*"

After seeing the advertisement, Mrs Carlill purchased one of the balls and used it three times daily for nearly two months. However, on 17 January 1892, she contracted the flu. She demanded the reward of £100 from Carbolic. Carbolic ignored her first letters sent by her husband, a solicitor. Following her third letter of demand, Carbolic wrote back denying that their product was defective and refused to pay.

Mrs Carlill brought a claim in Court. Her barrister argued that the advertisement constituted an offer and her reliance on it was a contract. Therefore, there was a breach of contract and Carbolic was liable for that breach. Carbolic, on the other hand, claimed that this was not a serious contract and was merely a sales gimmick (strategy).

The case made its way to the Court of Appeal. The three judges of the Court held that there was a fully binding contract because:
(1) the advertisement placed by Carbolic was not a *unilateral* offer to the world. Rather it was an **offer**restricted to those customers who bought the smoke ball because of the advertisement;
(2) the customer **accepted** the offer when they followed the user instructions given by Carbolic;
(3) the customers provided good **consideration** by purchasing or even merely using the smoke ball in that this benefited Carbolic through more sales;
(4) Carbolic's claim that it had deposited £1,000 with Alliance Bank was a representation that it had an **intention** to be legally bound to the terms of its offer.

Conclusion: Mrs Carlill was entitled to receive her £100 reward. Carbolic had a contract with whoever accepted their offer even if Carbolic did not know them personally.

Why does this case matter?
Carlill v Carbolic Smoke Ball Company made unilateral offers binding where the recipient of the offer follows the instructions of the offeror. Up until this case, offers were only usually made directly to one party in order to bind the offeror and offeree. Offers had to be made from one party to another not to the world at large. Previously, offers made without a target had been held to be too vague to constitute an offer. Now, when advertising a product or a service, a party needs to be careful about

the promises they make. Even where they do not know the identity of the party that accepts their offer, they will be bound to honour promises made.

Hoover Company

Another case which had disastrous results was the Hoover Free Flights promotion in the 1990s. The British division of Hoover Company (Hoover) offered two complimentary free return flights to America to customers who purchased any Hoover product valued at more than £100. The promotion was aimed at trying to boost Hoover's declining sales. Hoover did not expect the promotion to be such a huge hit. They were flooded with new customers who bought Hoover products specifically to take advantage of their free flight offer. Hoover realised that this promotion was going to cost them millions and so cancelled the promotion and refused to give customers, who had already filled out their ticket request coupons, their tickets. The customers started protesting and legal action against Hoover followed.

The Court held that Hoover was contractually bound to honour their advertisement. It cost Hoover many millions of dollars and Hoover had to sell the European branch of the business to its competitor, Candy. Hoover never recovered from this advertising disaster.

To avoid the Hoover outcome and overcome the precedent set by Carlill, advertising is now carefully worded. Offers are made conditional using the words *While stocks last* or *Subject to Terms and Conditions* or *See in Store for Terms of This Offer*. Conditional offers allow companies to control the financial consequences of their promotional discounts or complimentary gifts. Conditional offers are not unequivocal. The offeror of a conditional offer can legally impose limits such as "Until Stocks Last", "Offer expires on" or "One per customer" without breaching the contract.

CASE UNIT 3 (TORTS AND INSURANCE LAW): **GINGER BEER WITH A DASH OF SNAILA LANDMARK CASE IN TORTS LAW**

Donoghue v Stevenson

In English common law, liability of manufacturers had been based in contract. The Courts applied contractual concepts to determine whether a party had breached an essential term of the contract and if so, whether that breach had caused the damage suffered by the Claimant. Where there were third parties who were not part of the contract, this created problems in **privity**. This all changed with the most famous of all cases in English common law – **Donoghue v Stevenson [1932] AC 562 (HL)**.

The Facts

Mrs Donoghue and her friend visited a café and ordered some drinks. Mrs Donoghue's friend ordered her a ginger beer (a popular beverage at the time). The ginger beer bottle was opaque making it difficult to see what was inside. When refilling Mrs Donoghue's glass, the remains of a decomposed snail floated out. It was not known how the snail found its way into the bottle when the manufacturer bottled the beverage at the factory. Mrs Donoghue developed gastroenteritis and brought legal proceedings to recover damages.

The problem that Mrs Donoghue faced right from the outset is that she had not paid for the bottle of ginger beer and therefore she could not bring an action for breach of warranty in a contract. Her solicitor therefore formulated a claim against the manufacturer of the ginger beer and the Lords had to decide whether a duty of care existed from the manufacturer to Mrs Donoghue as a matter of law.

The Lords held that despite Mrs Donoghue not having a contract with the manufacturer, they owed her a duty of care as the final user and that duty included making sure that the bottle did not contain anything that might cause her harm.

Why does this case matter?
This case laid down the foundation for **manufacturer's liability in torts**. The Lords held that a manufacturer owned a **duty of care** to their ultimate customer even if they did not have a direct contract with them. This case also established the **neighbour principle,** which has been used subsequently to determine the circumstances in which a defendant will owe a duty of care.

REAVIS V TOYOTA MOTOR SALES, USA, INC
(Cause no. DC -16-15296) 216 Dallas County, Texas District Court

A Jury in the Texas state court awarded $242.1 million, including $143.6 million in punitive damages to the Plaintiff (in the US, the Claimant il called the Plaintiff). The matter involved a defect in the front seats of the Claimant's Lexus ES300 which caused injury to the two youngest children after a rear-end collision with another car. The seats allegedly collapsed backwards onto the children sitting in the back seats, severely injuring the children aged 5 and 3, causing permanent traumatic brain injuries. The plaintiffs filed legal action against Toyota who manufactured the Lexus car and its appointed seller, Toyota Motor Sales USA Inc. They also joined the driver of the other car as a third defendant. Against Toyota, they alleged *inter alia*, strict product liability, negligence, gross negligence, breach of warranty, malice and gross neglect. They claimed both compensatory and punitive damages for the injuries sustained by their two children.

The case continued for two weeks and at the end of the trial, the jury of twelve found that the front seats were unreasonably dangerous and that Toyota failed to warn its customers about the dangers. In awarding the compensatory and punitive damages, the amounts were apportioned between three parties (Toyota Manufacturer, Seller of the Vehicle and the driver of the other car) in that ninety per cent to Toyota Motor Corp, five percent to Toyota Motor Sales and five percent to the other driver. On appeal in 2018, the verdict was upheld but the punitive damages were reduced so that the final total figure was $213 million.

CASE UNIT 4: **CASE STUDY: FIGHTING FOR PARTNERSHIP RIGHTSA PRECEDENT-MAKING CASE IN THE COMMON LAW Miah (Respondent) v Khan (Appellant) (House of Lords) [2000] 1WLR 2163 – The Facts**: originally, four people wished to open a new Indian restaurant in Newbury, UK. The arrangement was that one would be the head waiter, two would be the chefs and the last one, an employee.

Unfortunately, they did not have the start-up capital and so approached a fifth person, Mr Khan. Khan had capital and so he joined the Respondents. (Khan in these proceedings before the House of Lords was the **Appellant** and the group of four people that he entered into the contract with were the **Respondents**. Appellant means that he filed the appeal from the Court of Appeal where he had lost the case, to the House of Lords.)

The parties agreed that the Respondents would have the day-to-day management and running of the restaurant as they were already employed as waiters and chefs in other restaurants. They intended to leave these businesses. It was agreed that the Respondents collectively were one half of the partnership sharing 50% of the profits between them. The remaining 50% was for Khan. The new Indian Restaurant was to be in Newbury and the name "Nawab" was selected.
By 1 December 1993, the parties had found suitable premises, obtained local council approval for the restaurant, entered into a lease with the landlord, opened a partnership bank account, borrowed additional money from the bank and signed a building contract to get the premises ready. They also entered into contracts to buy the necessary cooking equipment and linen. Therefore, although most of the money in the partnership bank account belonged to Khan, approximately £51,000 had been spent on getting the restaurant ready to trade.

Delays & Dispute

Initially, the parties had planned to open the restaurant on 13 December 1993, but they had a few setbacks, one of which included a dispute with the builders who stopped working altogether. It was around this time that Khan discovered that the other partners had transferred the property rights under the lease to themselves, to his exclusion. This led to a breakdown in their relationship.
Nevertheless, the Respondents opened the Indian restaurant on 14 February 1994. Obviously, Khan was not included as a partner and so he started legal action, which went on appeal all the way to the House of Lords. (The House of Lords is now the Supreme Court).

The Decision of the House of Lords
The Lords held in favour of Khan. Lord Millet said:
"*there is no rule of law that the parties to a joint venture do not become partners until actual trading commences.*"

In other words, His Lordship was saying that a partnership may start even before the parties start to trade. He explained that opening a restaurant needs lots of preparation including finding premises, fitting them and so on, and it is inevitable that a partnership may start some time before the restaurant opens its doors for business.

Why does this case matter?
This case shows that partners in a partnership or joint venture need to be clear from the beginning if they intend to have a fixed date for the commencement of their business relationship. Courts can find that a partnership has come into existence before the business has started trading. The result may be that partners are able to share profits, earlier than expected. It also means, that where there is a loss – that loss will also be borne by all the partners. Flowing from this, it is also illustrative of the importance of written agreements. Whether we have a retail business or a multi-million-dollar joint venture to find a cure or vaccine, written agreements are fundamental. When the commencement date is stated in a written agreement, the Courts are more likely to accept that date as the date the partners intended to enter into the partnership and/or joint venture. It will be this date that governs the duties, obligations, profit sharing and responsibilities for losses.

Causten v Barnette 49 Wash 659, 96 P.225 (1908)
In 1908, the US Supreme Court of Washington had to decide whether **to grant an injunction** prohibiting the defendants including E.T. Barnette from transferring and disposing of shares in a company in a town in Alaska. Barnette had become enormously successful in a short time due to the gold rush, and owned the town, its bank and was its mayor.

His company dealt with lumber (forestry products) and the **plaintiff**, Causten, who had supported him many years before, claimed an interest not just in the company's lumber products but in the bank which owned the stock. He also declared that their contract gave him a one third interest in the revenue generated from the sale of general goods at a trading post Barnette had set up in the town. In addition, he claimed an interest in mining and other properties purchased by Barnette during the term of the contract.

The Supreme Court found that Causten did have an interest before and after the termination of the contract and gave him the **remedy of accounting**. Accounting involves a calculation by the court to determine the division of income, expenses, assets and liabilities between parties.
The Court said that Barnette would have been unable to engage in his enterprises if Causten had not provided him with the funds. The court also said that because Causten had taken such a large risk he was entitled to his share of the profits, and this included any "unanticipated opportunities and profits which accrued from the accidental discovery of gold in the locality of the trading post'.
The Court felt it was a common sense approach to the existence of the partnership.

CASE STUDY: THE CORPORATE VEIL OF PROTECTIONA PRECEDENT-MAKING CASE IN THE COMMON LAW *Salomon v A Salomon & Co Ltd* (House of Lords) [1896]

The Facts
Mr Salomon made leather footwear. His sons wanted to join the business by becoming partners. Salomon changed the business into a Company instead. He then sold the business to the Company. The price paid by the Company was later found to be in excess of the real value of the business.

His children and wife became **subscribers**. His two eldest sons were appointed Directors. The Company had 20,007 shares. Mr Salomon was given 20,001 of the shares and paid for them using his old business, A Salomon & Co Ltd. Each share was valued at £1 each.

On 1 June 1892, the old business was transferred to the Company. The Company also gave Mr Salomon £10,000 in debentures. **Debentures** are another name for a loan document which is used to lend money to a Company. Debentures are normally subject to a charge, which means that they are secured. Mr Salomon used his debentures to get a loan of £5,000 from Edmund Broderip.
Following the incorporation of the Company, there was a fall in boot sales. Eventually, Salomon's business got into financial trouble and failed. It defaulted on the interest payments on the debentures held by Mr Broderip. Broderip brought legal action to enforce his security and the company was placed into liquidation. Broderip successfully recovered his £5,000. After the payment, there were some assets left in the Company but these were only valued at £1,055. Salomon claimed these remaining assets as his own by enforcing his debentures. This left nothing for the unsecured creditors.

The Company's Liquidator argued that the security Salomon held should not be paid, and that Salomon should be liable for the Company's debts personally. In order words, the Liquidator invited the judges *to lift the Corporate Veil* and impose **personal liability** on Salomon. Salomon brought legal action to prevent this.
The Liquidator, who was acting on behalf of the Company, counter-claimed. He wanted Salomon to pay back the sums he received from the business and have the debentures cancelled. He also claimed that Salomon had breached his fiduciary duties owed to the Company because the Company paid an excessive price for Salomon's business.

The Liquidator claimed that the incorporation of the Company was fraudulent and Salomon's main intention was to defeat the Company's unsecured creditors.

The Decision of the House of Lords

The Lords held that the Company had been properly constituted in law and it is not within the "functions of judges to read into the statute limitation".

In other words, the Lords said Mr Salomon had acted properly and there was no evidence that he incorporated the business to defeat his unsecured creditors. In absence of fraud or *male fides* on the part of the directors, the Court will not lift the corporate veil.

Why does this case matter?

Salomon's case is still the leading authority for the separation of legal personality between subscribers, directors and the Company. This principle has been applied to subsidiary companies as well which are treated as separate entities to the parent company.

Following the Salomon landmark decision, Parliament and the Courts have tried to find exceptions to the principle of separate legal personality. These exceptions cover situations where crime or fraud has been committed. In such cases, the Courts will lift the corporate veil and directors will be held responsible.

Outside civil law, the English Courts have been proactive in lifting the Corporate Veil where there has been **Corporate Homicide**. The Court of Appeal in the **Herald of Free Enterprise** disaster held that a Company is capable of committing manslaughter.

Facts

The **Herald of Free Enterprise** was an eight-deck car and passenger ferry. The vessel was designed to load and unload quickly but there were no watertight compartments. The owners of the vessel were Townsend Thoresen and the vessel was operated by P&O European Ferries (Dover) Ltd and it was registered in Dover, UK. On 6 March 1987, the vessel left the port of Zeebrugge in Belgium but the bow door was left open. The vessel quickly filled with water and capsized within minutes. One hundred and ninety-three people died.

The causes of the accident were (i) that failure on the part of the employee to close the bow doors (ii) the supervisor's failure to make sure the bow doors were closed and (iii) the captain departing the port without knowing whether the bow doors were closed. The Court examined the work practices of Townsend Thoresen and found that there was a "disease of sloppiness" and negligence at every level of the Corporate ladder. The Court also criticised the design of the vessel holding that it too contributed to the accident.

In October 1987, the coroner's inquest gave a verdict of *unlawful killing* and seven people involved in the company were charged with **Gross Negligence Manslaughter**. The operating company, P&O European Ferries (Dover) Ltd was also charged with **Corporate Manslaughter**. In the end, the five most senior people were acquitted but this case established the precedent that Corporate Manslaughter is a criminal offence under English law.

The Court said that for company to be held liable, the controlling mind must be someone who is in a position of control of the company's affairs, so that it can be said that the company is thinking and acting through this person. If so, the actions and guilt of the person is transferred onto the Company.

CASE UNIT 6 (CEIMINAL LAW) STUDY: A FAMOUS MISCARRIAGE OF JUSTICE
A Landmark case in Criminal Law

One of the biggest mysteries in Australian criminal law revolves around the disappearance of baby Azaria from a camping site at the base of the sacred Aboriginal rock, Uluru. The trial of her parents Lindy and Michael Chamberlain was one of the most publicized murder trials in Australian history. Decades of legal battles, dismissed appeals, numerous coronial inquests led to the acquittal of both parents, with the legal ordeal being branded "a prime example of Australian miscarriage of justice".

Facts

The Chamberlain family was camping at the base of Uluru (formerly called Ayers Rock) on the night of 17 August 1980, when Alice Lynne 'Lindy' Chamberlain was heard exclaiming 'Michael, Michael, a dingo's got my baby!'. Mrs Chamberlain claimed that she saw a **dingo** (wild native dog found in Australia) leave the tent carrying her nine-week-old daughter in its mouth. A search party including Aboriginal trackers failed to find the baby's body although baby Azaria's jumpsuit was found about 4km away from the campsite a week later. There were bloodstains around the neck. There was a media frenzy over the case, which also included much speculation about the religious beliefs of the Chamberlains, who were Seventh Day Adventist Church members.

Trials and Inquests

A **First Coronial Inquest** was held in Alice Springs, Northern Territory in December 1980 and the results supported the Chamberlain's allegations with the Coroner reaching the conclusion that a dingo took baby Azaria. A Coronial inquest is not a criminal trial and therefore, the burden of proof is the civil standard of the **balance of probabilities.** An appeal was filed, and the Supreme Court of the Northern Territory quashed (cancelled) the findings and ordered a second inquest into the disappearance of baby Azaria.

At the Second Inquest the Coroner came to a very different conclusion. The Coroner held that even though the evidence was mostly **circumstantial** (there were no witnesses, no body, and no identification evidence directly linking the Chamberlains to the murder of their daughter), a jury could come to the conclusion that the Chamberlains had simulated the death by dingo. The allegation was that they buried the body of Azaria, removed the clothing, cut it, rubbed it in vegetation, and then deposited the clothing for it to be discovered later. At this stage, it was also alleged that the police had found blood in the family car. The Inquest led to an indictment being presented against Lindy who was charged with the murder of her baby daughter and her husband, Michael Chamberlain, was charged with being an accessory after the fact. The Chamberlains were to stand trial for murdering their daughter.

Both Lindy Chamberlain and Michael Chamberlain were found guilty on 29 October 1982. Lindy received a sentence of life imprisonment without parole and Michael Chamberlain received a suspended sentence of three years. Subsequent Appeals filed by Lindy Chamberlain in the Federal Court of Australia and the High Court were dismissed.

New Evidence came to light years later where it was revealed that the alleged blood stains in the car were a compound from industrial overspray and not human blood. On 2 February 1986, Azaria's matinee jacket was found next to a dingo lair in an isolated location near Uluru.
With the discovery of this new evidence, the convictions were no longer considered 'safe', and on 7 February 1986, Lindy Chamberlain was released from prison on remission.

The **Morling Royal Commission** was set up to inquire into and report on the correctness of the Chamberlain convictions with Commissioner Morling finding that the convictions of the Chamberlain's could not have been proven **beyond reasonable doubt**. The Supreme Court of the Northern Territory agreed and said that the evidence relied upon by the jury was unreliable.
In September 1988, both Lindy and Michael Chamberlain received an official pardon, and their convictions were **quashed** (cancelled the official verdict) by the Supreme Court of the Northern Territory.

The battle for the Chamberlains was not over yet, with a third Paper Inquest taking place. It is called a paper inquest because the Coroner reviewed the case by going through the documentation and not hearing new expert evidence. In 1995 the Coroner returned an **open verdict**. An open verdict means that the finding is inconclusive.

On 12 June 2012**,** 32 years after the child went missing, **Coroner Elizabeth Morris** made a final ruling that a dingo *did* take Azaria from the campsite and caused her death and ordered that the Death Certificate be amended to reflect that baby Azaria died 'as a result of being attacked and taken by a dingo'. Consequently, Lindy Chamberlain was wrongfully convicted and has been exonerated of the murder of her daughter Azaria.

Why does this case matter?
This case illustrates what happens when the Prosecution only has **circumstantial evidence** and **inconclusive forensic evidence** to convict someone of a crime. Much of the investigation was tainted by witnesses contaminating the evidence found. For example, Police Constable Frank Morris, who was the first police officer to examine the clothes after a camper found them, stated during his evidence, that he had picked up the clothes to check the inside for human remains; then returned the clothes to the ground and photographed it. In doing so, he placed a singlet which had been found next to the jumpsuit, inside the jumpsuit, which meant that the original crime scene had been altered.

UNIT 7 PROPERTY LAW: CASE STUDY: WILL IT STAY OR WILL IT GO?A PRECEDENT-MAKING CASE IN THE COMMON LAW

An important distinction exists between a **fixture** and a **chattel** in property law and it is prudent for a seller and a buyer to specify which items are fixtures and which are chattels so as to avoid disputes and expensive legal proceedings. Whether an item or chattel attached to the land is a fixture and can be said to be part of the land or a chattel, has been the subject of much case law.

The leading case is **D'Eyncourt v Gregory (1866) LR 3 Eq 382**.

Gregory Gregory Esq, a wealthy Nottinghamshire businessman, built Harlaxton Manor in 1830. It was elaborately furnished with tapestries, ornamental marble statues of lions in the hall, staircase and garden, vases resting on niches and stone garden seats, all which he had collected while travelling in France and Italy. In his will, Mr Gregory left his real property to one person and his personal property to another person. When Mr Gregory died, the recipient of the real property claimed that these objects belonged to him. The Court in this case needed to decide whether these objects were chattels or fixtures.

The House of Lords held that the tapestries were **fixtures** as they were an integral part of the decoration of the room and were attached to the walls as if they were frescos or wallpaper. Likewise, the statues of the lions, the garden seats and the vases were also **fixtures** as they formed part of the overall architectural design of the property.

The Lords said that where there is evidence to demonstrate that objects have been positioned so as to improve the overall architectural design of a property, those objects become fixtures, even where there is no degree of annexation.
They also said that whether an item has become a fixture depends on the original owner's intention for the item which is measured against the **degree of annexation** and the **purpose of annexation**.

Why does this case matter?
The question of whether a chattel has become affixed to the land being sold or mortgaged is important. Title in any fixture passes to the buyer with the Title of the Land when the land or property is sold and therefore would pass to the new buyer. It is also important when a mortgagee wishes to foreclose on a mortgage and take possession of the land or property. Whether the chattel is a fixture would be of utmost importance to a mortgagee in possession.

One way to prevent this result would be to exclude the item as a fixture either in the Contract of Sale or in the Mortgage Agreement. That way, the original owner may legally remove it from the land, once they have lost or relinquished possession.
The distinction between chattel and fixture is also important in tenancy matters. There are rules which allow a tenant to remove items at the end of the Lease on the condition that any damage made to the property, as a result of the removal of the item, is made good by the tenant.

A tenancy case
A tenancy case involving fixtures and chattels is that of **Elitestone Ltd v Morris [1997] 1 WLR 687**. In this case, the Landlord issued proceedings for possession against Mr Morris. Mr Morris lived in one of a group of bungalows situated on the land. The wooden bungalow was not itself attached to land but rested on concrete pillars. The concrete pillars were attached to the land. Mr Morris asked the Court to make a declaration that the chalet bungalow was land and that he was entitled to protection available to renters under the Rent Act 1977.

When the case came to Court both parties agreed that if the bungalow was a chattel, then Mr Morris would not be protected by the Rent Act 1977. If, on the other hand, the bungalow was a fixture, then he would hold a protected tenancy and could not be evicted.

The House of Lords held that the bungalows were fixtures even though they were not physically attached to the land. The Lords said that an object could become a fixture when used *in situ* and could not be removed without physical destruction, either to the land or the item itself.
In other words, a house built in a way that could only be removed by destruction must have been intended to become part of the land. The test of whether a structure becomes part of the land itself depends on the **degree of annexation**, and a house which cannot be removed without being destroyed cannot have been intended to be a chattel but must have been intended to become part of the land.

UNIT 8 (INTELLECTUAL PROPERTY LAW) CASE STUDY: FREEDOM TO SHARE? FAMOUS LANDMARK CASES IN INTELLECTUAL PROPERTY LAW

Copyright – Napster

Napster was a pioneer peer-to-peer (P2P) file sharing system, which operated from June 1999 to July 2001. Napster kept a centralized database which enabled users to share digitalized files. Napster users were able to download Mp3 format audio tapes between their own devices using Napster's file sharing technology. Napster did not make any money, the service was free.

At its peak, Napster had an estimated 80 million registered users with its customers being given access to a wide range of songs including old songs, unreleased recordings, studio recordings and songs from live concerts.

In the first half of 2000, the metal heavy band Metallica found a demo version of their song, *I Disappear*circulating on the Napster network before its release. On 13 March 2000, they commenced legal action to stop the Napster program, alleging that the Napster technology breached their copyright. A few months later, a rapper, Dr Dre**,** also **filed a lawsuit** against Napster. Following the example set by these artists, A&M Records, and other record companies affiliated with the **Recording Industry Association of America (RIAA),** sued Napster alleging that Napster was guilty of contributory and vicarious copyright infringement under the Digital Millennium Copyright Act.

Napster lost the case in the District Court and appealed to the **Ninth Circuit Court of Appeals**. The evidence against Napster demonstrated that even though the Napster program was capable of operating without infringing copyright, Napster deliberately chose not to use this system. Instead Napster kept a centralized database which linked digital files with customers. Napster did not "police" the system for infringement.

In July 2001, following legal proceedings, the Ninth Circuit Court of Appeals ordered the closure of the Napster server. Napster was held liable for breach of copyright and was ordered to pay $US26 million dollars in damages for breaches relating to past copyright breaches with another $US10 million dollars to be paid as damages for future loss of royalties. In the meantime, Napster managed **to settle the claims** brought by Metallica and Dr Dre in March 2001.

Following the judgment and the enormous amount of damages ordered as a result of the Court's judgement, Napster went into bankruptcy. Other services including AudioGalaxy, Kazaa, Madster and eDonkey2000 which followed Napster were shut down or changed due to similar copyright issues.

However, despite all this, the Napster brand has managed to survive in a variety of incarnations. Because the name alone was such a valuable trademark, it was sold during US bankruptcy proceedings to pay the damages. The name has since been used by a legal pay-per-song service, then a music-on-demand service for apps, radio and other music brands, and is currently owned by a virtual reality concerts company.

Why does this case matter?
With constant technological changes, the Courts are continually moving the boundaries of what is or is not an infringement of copyright.

In **Bridgeman Art Library v Corel Corp. 36 F Supp 2d 191 (S.D.N.Y 1999)** a decision of the US District Court for the Southern District of New York, found that exact photographic copies of public domain images could not be protected by copyright in the US because the copies failed the originality test. The Court said that even though making an accurate photographic reproduction calls for a great deal of skill, experience and effort, the key element which protects a piece of artistic work, that is originality, was missing. Originality is a necessary ingredient in US copyright laws.

Facts of the case

Corel Corporation sold a CD ROM called Professional Photos CD ROM Masters in the US, UK, and Canada containing digitalised images of out of copyright paintings by European masters. Corel claimed that it had obtained these images from another company called "Off the Wall Images". The Claimant, Bridgeman Art Library, also possessed a large library of photographs of paintings by European masters in the form of transparencies and in digital form. Bridgeman, whose images were exclusively sourced from the museums which held the original works, was in the business of licensing copies of the photographs to publishers and other companies who wished to reproduce the image.

Bridgeman sued Corel for breach of its copyright in the photographs. In the proceedings, the US Court applied a mix of US & UK Law. For example, when determining whether the photographs were capable of being protected by copyright, the court applied UK law. Alternatively, when the Court had to decide whether there was an infringement of copyright, it applied US law. Eventually, the Court held that since the photographs were an exact reproduction of works available in the public domain, there was no copyright material in their reproductions and therefore no infringement. The defendant Corel succeeded in defeating the lawsuit.

This case has caused much concern for museums around the world, as many receive fees from licensing photographic reproductions of their collections. Since November 2017, many prominent art historians and critics have argued that fees charged by museums for reproductions should be abolished as these fees prevent the dissemination of knowledge, which is after all, the true aim of museums and galleries. There has been a movement towards open access to images of publicly owned without copyright art pieces to be made available to the general public for free. The Rijksmuseum in the Netherlands has been a pioneer in moving access of its collection into the public domain.

CASE STUDY UNIT 9 (ADR AND LITIGATION): **CASE STUDY: OIL WARSTHE LARGEST CIVIL VERDICT IN AMERICAN HISTORY**

Pennzoil is an American oil company founded in LA in 1913. In 1984, Pennzoil was negotiating with Getty Oil (Getty) to buy a large shareholding in Getty to get rights to oil deposits belonging to them. Pennzoil's lawyers prepared a five-page Memorandum of Agreement setting out the terms of a "proposed" deal between the parties.

The Getty Board rejected the offer by ten (10) votes to five (5). Negotiations and even a mediation failed to resolve the fall-out between Gordon Getty and the Getty Board. However, Gordon Getty had given assurances that he was going to surpass the Getty Board if the sale was

not approved. And this he apparently did. A Press Statement released to announce the deal between Getty and Pennzoil, contained the following statement:

"*The transaction is subject to execution of a definitive merger agreement, approval by the shareholders of Getty Oil and completion of various governmental filing and waiting period requirements*". *Texaco I, 729 S.W. 2d at 789*

In other words, this statement indicated that the deal was not finalized but that it was a deal **subject to Agreement**, despite Gordon Getty and others having celebrated the conclusion of the sale, and treating it as a done deal. In reality, the only remaining issue to finalize for the parties was the price Pennzoil was to pay for Getty Oil and this is where most of the directors had fallen out.

This transaction was particularly complex as it involved four (4) parties instead of the normal two (2) in commercial transactions, namely – Pennzoil, Getty Oil, the Getty Family Trust, and the Getty Museum. In the beginning it was hailed as one of the biggest deals in history and involved many teams of lawyers. It also brought disgruntled family members to the forefront as they tried to block the transaction. Led by Gordon Getty's niece, other members of the Getty Family were not happy with Gordon Getty's plan to sell Getty, and so they petitioned and obtained an injunction from the Court to stop the sale at least until the Court had time to hear their concerns.
Upon reading the Press Release and obtaining preliminary advice, another large oil company, Texaco, was led to believe that no deal had been made and so set in motion its own strategy to acquire Getty. Attracted to the higher bid offered by Texaco, Getty accepted. This time the Texaco lawyers drafted up an Agreement in definite terms - something the Pennzoil lawyers had overlooked.

Pennzoil was upset about the deal between Texaco and Getty, and commenced legal proceedings against Texaco in the State Court of Texas. The action was for the *tort of intentionally interfering* with the Getty-Oil Pennzoil Contract. Pennzoil alleged Texaco had *tortiously induced Getty to abandon its contrac*t with Pennzoil. It claimed that because of this inducement, Getty had breached its agreement. The trial lasted five and half months and created an estimated 24,000 pages of Court transcripts and a further 15,000 pages of transcript of pre-trial depositions in the case.
At first instance, the jury awarded Pennzoil $7.53 billion in compensatory damages and $3 billion in punitive damages for a total judgement of $10.53 billion plus prejudgment interest. This was the largest civil verdict in 'history'. The *Wall Street Journal* called the verdict "The Texas Common Law Massacre".

Under Texan civil law, Pennzoil was able to place a lien over all the real property assets belonging to Texaco to secure its judgement debt. A **lien** is the right to keep possession of a debtor's goods or property until they pay a debt. Here this included Texaco's gas stations and refineries. This lien was to remain in place until Texaco gave a bond of $13 billion to cover the judgement, interest, and costs. Pennzoil was also able to obtain a writ of execution, which ordered the State officials to seize and sell Texaco's properties to satisfy the judgment debt.

The case was appealed through various state courts and the federal court decisions ended up in the US Supreme Court. On 6 April 1987, the Supreme Court ordered Texaco to deposit the bond.
In the meantime, there was another saga playing out in the financial sphere. Texaco's bankers took steps to protect themselves as they were worried about Texaco's ability to pay any damages if it lost the case. The banks put restrictions on the Texaco's ability to move funds around and imposed minimum account balances, eventually blatantly refusing to lend them money. The panic and media attention meant Texaco began to lose out on many deals with other oil companies. As a result, Texaco was not able to provide the bond as ordered by the US Supreme Court.

Six days after the Supreme Court order, Texaco filed a Chapter 11 bankruptcy, making it the largest bankruptcy in history at that time. Eventually, the case was settled for $3 billion in total which Texaco agreed to albeit, reluctantly.
And by the way, the two lawyers acting for Pennzoil, Mr Jamail and Mr Kerr, were allegedly paid $355 million and $10 million dollars respectively in contingency legal fees even though some rumours claim that Mr Jamail received a hefty $600 million.

Complete the summary of the outcome of the case and its impact on Texaco.

Pennzoil initiated **proceedings** against Texaco for inducing Getty to abandon its contract with Pennzoil. The jury awarded Pennzoil more than $10 million in **compensatory** and punitive damages. Pennzoil placed a **lien** over Texaco's real property assets and obtained a **writ of judgement** to seize and sell Texaco's properties until Texaco paid a **bond** of $13 million to cover the judgement, interest and costs. On appeal, the Supreme Court ordered Texaco to pay the bond. The banks protected themselves by restricting Texaco's liquidity and ability to move funds around, and refused them loans. As a result, Texaco was unable to pay the bond and entered Chapter 11 bankruptcy. The case was eventually **settled** for $3 billion.

Why does this case matter?
This case is significant because prior to the Pennzoil case, it was generally accepted that pre-contractual negotiations were made on a "*without prejudice*" basis and parties were permitted to walk away from the negotiations, without any liability as there was no binding agreement. The Pennzoil case changed the way parties engage in and negotiate agreements, and although this is a US case, the Courts in the UK also find it persuasive. Therefore, parties negotiating are expected to exercise the utmost care and act with integrity and ethically. Negotiating merely in the hope of attracting a higher offer from a competitor or for ulterior motives will not be looked upon favourably by the Courts and may even lead to disaster.