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36. After-acquired property

Dealing with after-acquired property where a bankrupt acquires property during the period of their bankruptcy

Chapter content

[Introduction and key principles](#)

[Bankrupt's duty to notify trustee of after-acquired property](#)

[Action to take following receipt of notification of after-acquired property](#)

[Claiming after-acquired property](#)

[Action to be taken once property claimed](#)

[Disposal of after-acquired property by bankrupt](#)

[Examples of after-acquired property](#)

[Rights of action as after-acquired property](#)

[Property which would not normally be claimed as after-acquired](#)

Introduction and key principles

36.1 Scope of the guidance

This chapter gives general advice and guidance relating to after-acquired property, including an overview of what does, and does not, constitute after-acquired property and the procedure for laying claim to after-acquired property.

36.2 What is after-acquired property?

In the context of insolvency legislation, after-acquired property refers to property (but not income) which is acquired by, or devolves upon, the bankrupt after the making of the bankruptcy order and before they are discharged. This property can be claimed by the trustee for the benefit of the bankruptcy estate. Even if the trustee only becomes aware of such property after the bankrupt's discharge, it may be claimed providing it was acquired by, or devolved upon, the bankrupt between the date of the bankruptcy order and the date of discharge.

36.3 Definition of “property” for the purpose of after-acquired property

The definition of “property” applied by the provisions of the Act relating to after-acquired property is the same as the definition applied elsewhere in the act, namely that “property” includes “money, goods, things in action, land and every description of property wherever situated and also obligations and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to, property” ¹.

In other words, any property of a type which would have been an asset had it been in the bankrupt's possession as at the date of the making of the order would be considered after-acquired property and could be claimed by the trustee.

1. section 307(2)

36.4 Exempt property and income not after-acquired property

Assets that would have been treated as exempt had they been in the bankrupt's possession as at the date of the making of the order and income would not normally be considered as after-acquired property over which a trustee could make a claim ¹.

1. Supperstone v Lloyd's Names Association Working Party [1999] BPIR 832

36.5 Disclaimer of after-acquired property claimed by trustee

Where the trustee lays claim to after-acquired property that is subsequently considered to be onerous, they will not be able to disclaim the property without leave of court ¹.

The application for leave to disclaim may be made without notice to any other party, and must be accompanied by a report giving details of the property, setting out the reasons why the property, having been claimed for the estate, is now to be considered for disclaimer and specifying the persons (if any) who have been informed of the trustee's intention to make the application. If the report states any person has consented to the disclaimer then the consent must be annexed to the report ².

For further information on disclaimers generally see chapter 42.

1. section 315(4)

2. rule 19.8

36.6 After-acquired property - second or subsequent bankruptcies

Where a subsequent bankruptcy order is made, any after-acquired property from a former bankruptcy which has not been distributed by the trustee by the date they receive notice of the subsequent bankruptcy petition will form part of the assets of the subsequent bankruptcy ¹.

1. section 334(3)

36.7 After-acquired property - deceased insolvents

The provisions in the Act relating to the power of the trustee to claim after-acquired property are extended to deceased insolvents, with the exception that the period during which property acquired qualifies as after-acquired for the purpose of the Act begins not with the making of the bankruptcy order, but with the death of the debtor ¹.

Deceased insolvents do not receive a discharge and, therefore, it is theoretically possible that after-acquired property could devolve on the insolvent some time after the making of the order. In reality, though, it is unlikely that new assets will come to light after the deceased's estate is settled.

1. Administration of Insolvency Estates of Deceased Persons Order 1986 schedule 1 Part II paragraph 22 amending Insolvency Act 1986 section 307

36.8 After acquired property – deceased bankrupts

Where a debtor dies after the presentation of a bankruptcy petition the proceedings will continue as conventional bankruptcy proceedings, and any order made will be a bankruptcy order note 1. The provisions of the Act regarding after-acquired property will apply as normal.

36.9 Responsibilities of the personal representative of the deceased

In cases both where the debtor dies prior to the presentation of a bankruptcy petition (and is subject to an Insolvency Administration Order), and where the debtor dies after the presentation of the petition (and is subject to a bankruptcy order), the duty to co-operate ¹ and inform the trustee of the acquisition of property ² rests with the deceased's personal representative.

1. section 291

2. rule 10.125

36.10 Property under a solicitor's lien

In a bankruptcy a solicitor's general lien is exercisable only on property passed to them before the estate vests in the trustee (i.e., the period when bankrupt is still the legal owner). A solicitor cannot, therefore, claim a lien against after-acquired property coming into their possession, even where the trustee has yet to claim it, as the trustee's title to the property dates back to the date it was acquired by, or devolved upon, the bankrupt. A lien would, however, be valid if the solicitor was unaware of the bankruptcy at the time that the property came into their possession ¹.

Where the official receiver encounters a solicitor claiming a lien over after-acquired property, and the property is of sufficient value to justify it, they should consider seeking legal advice to establish the validity of the lien and explore any means of challenging it.

1. re Brereton v Nicholls [1993] BCLC 593

Bankrupt's duty to notify trustee of after-acquired property

36.11 Bankrupt's duty to the trustee

In addition to their general duty to co-operate with the trustee, the Act makes special provision requiring that the bankrupt give notice to the trustee of the acquisition of any property during the period of bankruptcy (i.e., between the date of the bankruptcy order and the date of discharge – even if that discharge has been suspended) ¹.

The duty of the bankrupt to inform the trustee of after-acquired property is outlined in initial information pack sent to all bankrupts. Where there is a face-to-face meeting or telephone interview with the bankrupt, it is best practice for the Examiner to go through the provisions with the bankrupt or, at least, check that they have read and understood the relevant guidance.

1. section 333(2)

36.12 No duty to notify trustee of property acquired in the ordinary course of business

The provisions relating to the giving of notice in respect of after-acquired property do not relate to property acquired by the bankrupt in the normal course of business (i.e., the buying and selling of goods and the passing of business monies) ¹. In order to give the trustee some control over this, the Rules do require that the bankrupt provide the trustee, with information relating to the business showing the total of goods bought and sold and the profit or loss arising, on the request of the trustee.

The trustee has power to require fuller details (including accounts) where appropriate ². In this way the trustee can monitor the bankrupt's business and lay claim to profits, though this would be claimed as income, not as after-acquired property.

It is possible that an excessive amount of stock being carried by the business could be claimed as after-acquired property.

1. rule 10.125(4)

2. rule 10.125(5)

36.13 Process for bankrupt to notify trustee of after-acquired property

As detailed above, the bankrupt is under a duty to notify the trustee when they acquire property during the period of their bankruptcy. The notice must be given in writing by the bankrupt to the trustee within 21 days ¹ of the bankrupt becoming aware of the relevant facts ². The Rules make no special provision regarding the contents of the notice, though it might be expected that the information contained

therein would be sufficient to identify the property in question. The notice may be given by post, electronically, or may be personally delivered ^{3, 4, 5}.

1. rule 10.125(1)

2. rule 1.4

3. rule 1.42

4. rule 1.44

5. rule 1.45

36.14 Notification of after-acquired property – care to be taken

Whilst the Rules state that the bankrupt must provide the trustee with information in writing, it is not unknown (indeed, it is more likely) that the first notification will be by the means of a telephone call by the bankrupt to the official receiver's office. This "notification" may even be a passing comment on which the bankrupt will later seek to rely to argue that the notice claiming the property was out of time (see paragraph 36.20 below regarding the time limit for claiming property). Accurate contemporaneous notes of contact with the bankrupt are therefore essential.

Where the official receiver receives notification of after-acquired property by telephone, written confirmation should be requested but they should still immediately act on the information received, claiming the property without delay if appropriate.

36.15 Bankrupt not to dispose of after-acquired property

Having served notice on the trustee of the after-acquired property, the bankrupt is not, without the trustee's consent in writing, allowed to dispose of the property within a period of 42 days beginning with the date of the notice ¹. This is the period within which the trustee must make their decision on whether or not to claim the property for the benefit of the bankrupt's estate (see further guidance in paragraph 36.18).

Obviously, written consent of disposal should not be given by the official receiver, as trustee, until a proper assessment of the property has taken place.

1. rule 10.125(2)

36.16 Consequences of bankrupt's failure to co-operate in respect of after-acquired property

Where a bankrupt fails, without reasonable excuse, to comply with the obligation to notify the trustee of after-acquired, they are guilty of a contempt of court (see chapter 19 for further information on dealing with a contempt of court). The advantage of dealing with the matter in this way is that the court can order the bankrupt to provide the required information as part of the process of purging the contempt.

Alternatively, the official receiver could consider applying for a public examination of the bankrupt with a joint application for a suspension of the bankrupt's period of discharge in the event of non-attendance at the public examination (see chapter 19 for further information on public examinations and suspension of discharge).

36.17 Late notification of after-acquired property

If the bankrupt notifies the official receiver of the acquisition of property outside the 21 days allowed in the Act, but the property has not been disposed of, or otherwise devalued, then it would be appropriate for the official receiver to claim the property and consider whether the delay in notification by the bankrupt was an innocent oversight or a type of non-co-operation.

If notification of the acquisition of the property comes from a third party outside the prescribed 21 days and the property has not been disposed of or otherwise devalued then, again, the official receiver should (if appropriate) claim the property. The bankrupt's failure to notify the trustee of the acquisition of the property may constitute grounds for a possible BRO/BRU and should be considered in that light.

See paragraph 36.30, below, where the property has been devalued or given away before notification is received.

Action to take following receipt of notification of after-acquired property

36.18 Enquiries and action to take following notification of after-acquired property

Following receipt of information indicating that the bankrupt has come into possession of after-acquired property, the official receiver, acting as trustee, should make appropriate (written) enquiries of the bankrupt confirming information given orally or by third parties, and, as soon as sufficient information is received (but, certainly within 42 days), claim the property if it is appropriate to do so.

Where appropriate, the official receiver should arrange for the property to be valued to ascertain whether there will be a net benefit to the estate.

36.19 Official receiver decides not to claim property

Where the official receiver takes the decision not to lay claim to the property, it would be good practice to give the bankrupt written notice of this decision.

Obviously, written notice of a decision not to claim the property should not be given by the official receiver, as trustee, until a proper assessment of the property has taken place.

Claiming after-acquired property

36.20 Trustee has 42 days to claim after acquired property

The official receiver, as trustee, has the power to claim, for the benefit of the bankrupt's estate, any property acquired by the bankrupt or devolved upon the bankrupt since the date of the bankruptcy order ¹.

The official receiver, as trustee, has 42 days, beginning with the day on which it first came to their knowledge that the property in question had been acquired by, or had devolved upon, the bankrupt in which to make the claim in writing ².

1. section 307(1)

2. section 309(1)(a)

36.21 42 day period to claim after-acquired property begins when trustee has ‘knowledge’ of the property

The Act makes no mention that the 42 day time limit for the trustee to claim the property starts at the day that the bankrupt serves notice on the trustee - it simply states that the 42 days begins “with the day on which it first came to the knowledge of the trustee that the property in question had been acquired by, or had devolved upon, the bankrupt” ¹.

Case law ² provides that the trustee should normally be held to have obtained ‘knowledge’ only when it has become clear to them, on cogent evidence verified to their reasonable satisfaction, that the property in question:

- was acquired by the bankrupt
- was acquired by them after the commencement of bankruptcy, and
- is capable of being claimed as after-acquired property

1. section 309(1)(a)

2. The Right Honourable Rhodri Viscount St Davids v Lewis [2015] EWHC 2826 (Ch)

36.22 Serving notice of a claim for after-acquired property

Where the official receiver, as trustee, wishes to lay claim to after-acquired property, they are required to serve notice in writing on the bankrupt ^{1,2}. The notice should generally be served by 1st class post and recorded delivery although, with the bankrupt’s consent, it can be served by electronic means if in all the circumstances the official receiver is satisfied that service by this means will be effective. Where there are any non-cooperation issues or the disclosure of the property came from a third party the official receiver may decide to use all available methods of service. The claim may be notified to others, as appropriate (for example a bank holding a sum of cash or the National Lottery claims department). Where the trustee takes possession of the property without serving the requisite notice, it is possible to remedy the situation by serving the notice retrospectively ³.

1. ASTCAA)

2. section 307(1))

3. Pike v Cork Gully [1997] BPIR 723)

36.23 Notice to be given to bank where after-acquired property under its control

The legislation ¹ provides that a bank cannot be held liable in relation to any transaction entered into (for example, the removal of funds from a bank account) where it does so prior to a notice of the claim of after-acquired property being served on it.

Where, therefore, monies or property that is after-acquired property is held by a bank, the official receiver should serve upon the bank notice of the claim using the standard form ².

1. section 307(4A)

2. ASTCAA

36.24 Time limit for claiming after-acquired property not extended where trustee subsequently appointed

It is important to remember that if an insolvency practitioner is appointed trustee of the estate in succession to the official receiver holding that office, and the notice of the devolved property was given by the individual to the official receiver, the insolvency practitioner is deemed to have had knowledge of the asset at the same time as the official receiver ¹ and, therefore, the 42 day period for claiming the property begins with the date that the official receiver as trustee became aware that the bankrupt had acquired the property, and not the date of the appointment of the subsequent trustee.

The official receiver as trustee should consider whether any insolvency practitioner to be appointed will be able to claim the property in the required 42 day period and if need be should make the claim themselves so that the after acquired property can be dealt with by the insolvency practitioner trustee. It is better to act in this way than to lose the property.

Similarly, if the official receiver in the 'home' office cannot be completely sure that a subsequent official receiver trustee will claim the property in the 42 day period, they should make the claim, in the knowledge that the realisation will be handled by someone else. It is better to act in this way than to lose the property.

1. section 309(1)(a)

36.25 Serving notice of a claim for after-acquired property out of time

The court may extend the 42 day period for claiming the after-acquired property ¹. The court has viewed that the 42 day period is a substantive provision, rather than a procedural time limit ² and, therefore, in order to agree to an extension, it will need to be persuaded that there has been good cause for the delay. The court will also take into consideration the effect of the delay on the bankrupt (particularly, where the bankrupt has already disposed of the property) ^{3, 4}. A simple administrative oversight is unlikely to be viewed as good cause by the court.

Where a failure on the part the bankrupt has, in some way, been a cause of the trustee's failure to serve the notice in time, the court may allow the service of the notice out of time ⁵.

1. section 376

2. *Franses v Oomerjee* [2005] BPIR 1320

3. *Solomons v Williams* [2001] BPIR 1123

4. *Vickers v Mitchell* [2004] All ER (D) 414

5. *Matthew (a Bankrupt)* [1996] CLY 3485

36.26 Claiming property where available information limited.

Where the information available to the official receiver is limited, and the end of the 42-day period is approaching, the official receiver (as trustee) may have to claim the property without full information. In the case of inheritances, this may lead the official receiver to claiming assets that are not valuable or are not economic to realise, but this is preferable to the alternative – which is the risk of a potentially valuable asset being lost to the estate. As an alternative, the official receiver may apply to court for an order extending the period for claiming the property until a certain act has been carried out (for example, until the bankrupt provides a copy of a will).

It is quite permissible for further enquiries to be made about the property after it has been claimed and, if necessary, the official receiver can subsequently disclaim the property – having obtained the requisite leave of court.

Action to be taken once property claimed

36.27 Property vests in trustee once claimed

Once notice claiming the after-acquired property has been served on the bankrupt the property vests in the trustee as part of the bankruptcy estate, and the trustee's title to the property goes back to the time that the bankrupt acquired the property ¹.

1. section 307(3)

36.28 Property to be protected and dealt with

Once the property has vested, the official receiver should take such action as is necessary to protect and realise the property including, where appropriate, the issue of letters to third parties such as a bank or the executor of a will ¹. Where appropriate, the official receiver should seek to insure the property. Where the after-acquired property is land, the official receiver should register their interest in line with the advice and information given in chapter 7.

1. NEXE

36.29 Realisation of the property

Essentially, once the property forms part of the estate, the official receiver should deal with it as they would with any other asset forming part of the estate. From this point in the process, there are no special procedures for dealing with the asset, and the information and guidance given elsewhere in the Operational Guidance should be followed.

Disposal of after-acquired property by bankrupt

36.30 Identification of person to whom after-acquired property has passed

If the bankrupt has disposed of the property before giving notice of its acquisition to the trustee, or in contravention of the rule barring disposal of the property, they are

under a duty forthwith to disclose to the trustee the name and address of the person to whom the property has passed, and to provide any other information necessary to enable the trustee to trace and recover the property ¹.

1. 10.125(3)

36.31 Claiming after-acquired property disposed of by bankrupt

Where property has been disposed of by the bankrupt before, or despite, them receiving notice of the trustee's claim, the trustee may serve notice on the person to whom the property has passed, claiming the property for the estate ¹.

Any notice in this respect must be served by the trustee within 28 days of them becoming aware of the identity and address of the person to whom the property has passed ². This period may be extended by the court ³, but the court is unlikely to be persuaded to extend the period unless it can be shown that there is 'good cause' to do so. An administrative oversight is unlikely to be viewed as sufficient 'good cause'.

1. rule 10.126(1)

2. rule 10.126(2)

3. section 376

36.32 Third party acquires property in good faith

Where a third party obtains after-acquired property in good faith, for value and without notice of the bankruptcy the trustee will have no power to recover the property ¹. In these circumstances the trustee may, of course, lay claim to the funds received by the bankrupt in respect of the disposition of the property. Where it is not possible to lay claim to these funds, the official receiver should consider applying for an order suspending the discharge from bankruptcy until the value of the property lost has been restored to the estate, if possible ².

1. section 307(4)(a)

2. section 279(3)(b)

36.33 Misconduct relating to the disposal of after-acquired property

Where a bankrupt disposes of after-acquired property before, or despite, them receiving notice of the trustee's claim or having failed to notify the trustee that they have acquired the property, then this may be a matter of misconduct for which the official receiver should consider making a criminal referral.

Examples of after-acquired property

36.34 National Lottery wins

Where the official receiver receives information to suggest that a bankrupt may have had a win on the National Lottery, they can make enquiries of the National Lottery. In order to provide information confirming or denying the win, Camelot will need to have sight of the bankruptcy order and confirmation of the official receiver's appointment as trustee, or an authority completed by the bankrupt.

The National Lottery usually pays out monies relating to wins within two or three days of the win. Where a payment has yet to be made, Camelot can withhold payment on the request of the official receiver where the bankruptcy order confirming the official receiver's appointment or bankrupt's authority is provided.

36.35 Inheritances as after-acquired property

One of the most likely circumstances where the official receiver will make use of the provisions relating to claiming after-acquired property will be where the bankrupt receives a bequest under a will. The key date in this respect is the date of the death of the person who made the will. So long as the person dies prior to the bankrupt's discharge, the property bequeathed can be claimed even where it is not received by the bankrupt until after their discharge. Where, however, the property is left to the bankrupt under a protective trust the trustee will not be able to claim the property. A protective trust is usually created in relation to real estate property and gives the beneficiary of the trust a time-bound interest (such as a right to occupy to a certain date) in the property without having the right to sell it. Where the official receiver encounters a protective trust, and the property is of sufficient value to justify it, they should seek legal advice to establish the validity of the trust and explore any means of challenging it. Where a person dies intestate (that is, without making a will that covers all, or any, of their property), the portion of their estate not covered by a will is distributed according to provisions in the Administration of Estates Act 1925. Where a bankrupt is entitled to property under such a distribution, this entitlement arises on the death of the person to whom the intestacy process applies. If, therefore, the

death occurs during the period of bankruptcy any property distributed to the bankrupt may be claimed as after-acquired property.

36.36 Redundancy payments and payment in lieu of notice

A redundancy payment represents compensation for loss of a job, rather than loss of earnings ^{1,2}. This is easily rationalised when it is considered that the award is made based on fixed rules (particularly, length of service and past salary) regardless of whether or not the redundant person secures alternative employment. The level of the award will be the same even if that alternative employment is immediately secured and obtained at a higher wage.

A redundancy payment received during the period of bankruptcy would, therefore, be considered as after-acquired property (rather than income) and should be claimed by the trustee accordingly

Similarly, a payment in lieu of notice (which is compensation paid where the employer elects not to give the statutory period of notice) is not considered to be income and should be claimed as after-acquired property where received during bankruptcy ³.

Compensation notice pay (CNP) is a form of payment in lieu of notice and would also be claimed as after-acquired property (rather than income).

1. *Hindle v Percival Boats* [1969] 1 WLR 174

2. *Wilson v National Coal Board* [1981] SLT

3. *Wadling v Oliphant* (1875) 1 QBD 145

36.37 Compensation for change in contract of employment

Where a bankrupt receives compensation for a change in their contract of employment (usually, this will be in respect of a reduction in income), this should be claimed as after-acquired property, even where repayment conditions are attached to the award.

36.38 Shares

If a bankrupt receives shares from a Save As You Earn scheme (SAYE) during the period of bankruptcy, the shares may be claimed as after-acquired property. Any dividends payable in relation to those shares can then be claimed in the normal way

as the shares will, as a result of the claim, have vested in the estate. There is no need for a separate after-acquired claim in respect of the dividends. Similarly, dividends being received in relation to shares held by the bankrupt as at the date of the making of the bankruptcy order would be automatically due to the trustee as assets arising from the possession of the shares vesting in the estate.

36.39 Property adjustment under matrimonial proceedings

Where a property adjustment order (or similar) is made after the date of the bankruptcy order against a bankrupt's spouse or civil partner requiring them to settle property on, or transfer property to, the bankrupt, the official receiver, as trustee, should claim the awarded property as after-acquired property. This may be subject to the wording of the order where, for example, there is some element protecting the interests of children.

The official receiver should ensure that both parties, and the court, are aware of their interest in any property awarded to the bankrupt.

36.40 Engagement and wedding rings

The general principle in law is that an engagement ring constitutes a gift conditional on an event taking place^{1,2}. In other words, ownership of the ring does not pass to recipient until the marriage (or, as the case may be, civil partnership) takes place. If the marriage does not take place then the ring remains the property of the person who provided it. In the case, therefore, that a bankrupt is given an engagement ring prior to the making of the order, and the marriage takes place during the period of bankruptcy then the ring may be claimed as after-acquired property.

The ring should, of course, have sufficient value to warrant the costs of valuation and sale, and official receivers should not take engagement rings as a matter of course. Having claimed the ring, it may be possible to effect the sale of the ring to a family member or other third party introduced by the bankrupt. Wedding rings generally have little intrinsic financial value tending, as they do, to be simple gold bands. Consideration has been given to the symbolism of a wedding ring and, given these circumstances; it is unlikely to be appropriate for the Official Receiver to claim a wedding ring as after-acquired. In circumstances where the wedding ring is unusual and has an intrinsic financial value (for example, it may be set with precious stones) then the official receiver may consider claiming the ring and providing a replacement gold band.

1. *Jacobs v Davis* [1917] 2KB 532

2. *Cohen v Sellar* [1926] 1KB 536

36.41 Loans as after-acquired property

After-acquired property is not limited to windfalls, and the relevant provision of the Act can be taken to apply to a commercial transaction – in particular the obtaining of a loan ¹.

Where the official receiver becomes aware that an undischarged bankrupt has obtained a loan, this should be claimed as after-acquired property in the usual way. This advice does not apply to Student Loans.

1. Hardy v Pallen [1997] BCC 815

36.42 Capital sums invested in a business

If a capital sum acquired by the bankrupt is invested in their business, the trustee may claim this or the assets acquired with such monies if they can be traced. There may be a problem if the investment made in the business had been used to finance current trading without the acquisition of assets. Where, for this reason, it is not possible to lay claim to the funds, the official receiver should consider applying for an order suspending the discharge from bankruptcy until the value of the property lost has been restored to the estate.

Rights of action as after-acquired property

36.43 Rights of action

The only circumstance where a right of action itself would be claimable as after-acquired property would be where the event leading to the action had occurred during the period of bankruptcy. Depending on the value of any potential claim and the proximity of discharge, it might be better that the claim is left with the bankrupt for them to pursue with any payment received by the bankrupt (other than the element which is personal to the bankrupt) later claimed as after-acquired property. The official receiver, as trustee, should write and inform the bankrupt that the right of action will not be claimed for the benefit of the estate. The official receiver should also inform the bankrupt in the letter that should any payment be made as a consequence of successfully pursuing the claim the bankrupt must inform the official receiver within 21 days of receipt of the payment ¹.

1. rule 10.25(1)

36.44 Right of action event post bankruptcy - payment received after discharge

Where the event leading to the right of action happens during the period of bankruptcy and the right of action was claimed as after acquired property, any related (non-personal) award would be due to the estate even if it were awarded or paid after discharge, as it is the right of action and not the monies, which constitutes the property.

36.45 Right of action – personal award payment received pre-discharge

Where damages relating to a personal action are paid to the bankrupt during the period of bankruptcy they may only be claimed as after-acquired property if they were to change character during the period of bankruptcy– for example, if they were invested in property, or used to purchase another asset ¹.

1. In re Wilson ex parte Vine (1878) LR 8 Ch D 364

36.46 Damages following assignment of a right of action

It is open to the official receiver, as trustee, to assign a right of action back to the bankrupt where it is appropriate to do so. Where a right of action is assigned back to a bankrupt, the trustee's rights transfer to the bankrupt under the assignment and it would, therefore, not be possible, or appropriate, to lay claim to any resultant award. When undertaking the assignment of a right of action, the trustee might negotiate a payment to be made at a later date, as part of the assignment. Such a payment would vest automatically in the trustee, rather than being after-acquired property, as this would simply relate to the sale of a bankruptcy asset (that is, the right of action).

Property which would not normally be claimed as after-acquired

36.47 Property not considered being after-acquired property

Whilst all property acquired by a bankrupt between the making of the order and discharge may be described as after-acquired property for the purpose of the provisions of the bankrupt's duty to notify the trustee ¹, not all property is claimable by the trustee. In some cases, this is because the 'property' is instead income and in other cases it is because the trustee is in some way prohibited from claiming it.

1. section 333

36.48 Property that would not form part of the estate cannot be claimed as after-acquired

The trustee may not claim as after-acquired property ^{1,2}:

- such tools, books, vehicles and other items of equipment as are necessary to the bankrupt for use personally by them in their employment
- such clothing, bedding, furniture, household equipment and provisions as are necessary for satisfying the basic domestic needs of the bankrupt and their family
- property held by the bankrupt on trust for any other person
- the right of nomination to a vacant ecclesiastical benefice
- a dwelling house which has re-vested in the bankrupt under the "three-year" rule

1. section 283(2)

2. section 283(3)

36.49 Exempt property as after-acquired property – excess value

Where a bankrupt acquires property which would be exempt had it been in their possession at the date of bankruptcy (tools of trade, household effects) and it appears to the trustee that the realisable value of the property exceeds the cost of a reasonable replacement then the trustee may claim the property on those terms (i.e., that the sale proceeds are used to provide the reasonable replacement) ¹.

See chapter 24 for matters to be taken into consideration before claiming exempt property of excess value.

Where property of excess value is claimed, the claim should be under section 308, rather than section 307 (as for other types of after-acquired property) – though all other requirements (particularly, the time limit) ² are equally applicable to this type of claim. The standard form of claim ³ should be amended to show the section under which the claim is being made.

1. section 308

2. section 309(1)(b)

36.50 Claiming surplus proceeds of sale of exempt property

If the bankrupt sells property that has been treated as exempt, or would have been treated as exempt had it been in the bankrupt's possession at the date of bankruptcy, then such sale proceeds as are not required to provide a suitable replacement may be claimed as after-acquired property. The official receiver should claim "such monies as are not required to provide a suitable replacement for [the item sold]", monitor the situation to ensure that a replacement item is purchased and lay claim to any amount not used in the purchase of the replacement item.

36.51 Pensions

It is extremely unlikely that it would be appropriate to claim a payment under a bankrupt's pension as after-acquired property, even where a lump sum is paid to the bankrupt. The vast majority of pension schemes (private and occupational) encountered by official receivers are excluded from the estate by reason of statute and, for those that are not (primarily, those relating to bankruptcies where the petition was presented before 29 May 2000), it is likely that the pension policy or arrangement existed prior to the making of the bankruptcy order, making the pension an asset at the time of bankruptcy and automatically vesting any related payments in the trustee.

This would apply equally to a death benefit due from the pension of a third party.

Pension payments already being received by the bankrupt as at the date of the making of the bankruptcy order, or which become due to the bankrupt during the period of bankruptcy, should be considered as income in any IPA/IPO assessment.

36.52 Tax refunds

Where a bankrupt receives a tax refund under the nil tax (NT) coding procedure operated by HM Revenue and Customs it should not be claimed as after-acquired property. Instead, it should be claimed based on the authority ¹ given by the bankrupt at the initial stages of the case.

In the unlikely event that the bankrupt receives a tax refund for a period after the ending of the NT coding period, but before discharge from bankruptcy, this may be claimed under an IPO or IPA. In reality, this is only likely to occur where the bankrupt is subject to a suspension of their period of discharge from bankruptcy.

1. TNDIS

36.53 Property transferred to bankrupt by trustee

Where the legal title to a solely owned property, or beneficial interest to a jointly-owned property, has been transferred back to the bankrupt under the low-cost conveyancing scheme (see chapter 28 for more information on this) it would not be appropriate for the property to be reclaimed by the trustee as after-acquired property. Once the property has been transferred there is an understanding that, subject to mortgage commitment, the bankrupt is entitled to enjoy unhindered ownership of the property without the official receiver, as trustee, making a claim over it.

If, during the negotiation of the transfer, the official receiver becomes aware that the transfer is to be funded out of property acquired by the bankrupt after the date of the making of the bankruptcy order then, of course, the official receiver, as trustee, may lay claim to the funds as after-acquired property – even if this may defeat the property transfer. If, in these circumstances, the property transfer has already been completed the official receiver, as trustee, should consider securing an equivalent interest in the property (see chapter 7).

36.54 Official receiver can not claim a re-vested property as after-acquired

Where a property re-vests in a bankrupt under the provisions in the Act relating to the family home, it can not subsequently be claimed as after-acquired property. This might happen where a property re-vests in a bankrupt following the expiration of the three-year period in which the trustee must deal with the property and, in the interim, the bankrupt has been made bankrupt again – remaining bankrupt as at the time of the re-vesting ¹.

The re-vested property would, of course, form part of the estate of any bankruptcy commencing after the date of re-vesting and the trustee of that bankruptcy would be free to deal with it in the normal way.

1. section 307(2)(aa)

36.55 Council “right to buy” as after-acquired property

It is unlikely that a bankrupt will be able to exercise a “right to buy” a council property during the term of his/her bankruptcy, due to restrictions in the relevant legislation ¹. It is, therefore, unlikely that the exercising of this right could give rise to an asset that may be claimed as after-acquired property.

36.56 Copyright and royalties

Copyright is effective from the date that the work to which it relates is created. If a bankrupt creates a work during the period of their bankruptcy it is open to the trustee to lay claim to the copyright as after-acquired property. Where royalties are being received by a bankrupt in relation to a copyright held as at the date of the making of the bankruptcy order, or claimed as after-acquired property, such payments should properly be claimed as assets in the bankruptcy.

36.57 Student loans

No part of a student loan may be claimed as after acquired property ¹.

1. The Education (Student Support) Regulations 2008 regulation 94(1)(a)

36.58 Employment bonuses

Where a bankrupt receives a bonus from his employer, this should be claimed by the trustee under an IPA/IPO, rather than as after-acquired property - as a payment in this respect comes under the definition of income in the Act ¹.

1. section 310(7)

36.59 Claims under the Inheritance (Provision for Family and Dependents) Act 1975

A claim under the Inheritance (Provision for Family and Dependents) Act 1975 is a claim to an interest in a deceased estate on the grounds that the disposition of that estate effected by the deceased's will or the law relating to intestacy, does not make reasonable financial provision for the applicant. Such a claim is considered personal and as such does not form part of the bankrupt's estate and does not vest in the official receiver as trustee.

Any financial sum awarded may be claimed when received by the bankrupt as after acquired property, if the monies change character.

36.60 Awards from the Criminal Injuries Compensation Authority

Where a person is injured as a result of a violent criminal act they have a right to seek compensation under the Criminal Injuries Compensation Scheme, which, in appropriate cases, pays a sum of compensation for the pain and suffering and, also, for any resultant loss of earnings. It has been ruled that an award under this scheme does not fall under the definition of property under the Act and it is personal to the bankrupt and consequently cannot be claimed as after-acquired property ¹. Should the monies awarded 'change character' during the period of bankruptcy (by, for example, the purchase of a capital asset), that purchased item may be claimed.

1. re Campbell (a bankrupt) [1997] Ch 14

36.61 Build up of funds in the bankrupt's bank account

Where there has been a gradual build up of funds in the bankrupt's bank account it is likely that the source of those funds will have been a from a surplus of income and the official receiver, as trustee, should consider laying claim to those monies in the account that are in excess of those necessary to satisfy the basic domestic needs of the bankrupt and their family. Where the trustee wishes to lay claim to monies of this nature, the claim should be under an IPA or IPO, rather than as after-acquired property, and an IPA/IPO to claim the monthly surplus should also be considered. Where the source of the funds is from some other (non-income) source (for example, small gambling wins), then the monies can be claimed as after-acquired property.