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## The Meaning of Home: A Chimerical Concept or a Legal Challenge?

LORNA FOX\*

*'Home' is not an easy concept to pin down. Although the term is instantly familiar, and the physical reality of home is an important and omnipresent feature of our everyday lives, the legal conception of home has received surprisingly little attention. The relative neglect of home is particularly striking, however, in light of the substantial body of research which has been carried out on the subject of home in other disciplines. This article discusses the meanings of home which have evolved from interdisciplinary research. It is argued that this research could provide a starting point for the development of a more clearly articulated socio-legal understanding of the meaning and value of home to occupiers. It is suggested that a legal concept of the meaning of home would be useful, for instance, when considering the conflict of interests between the occupiers of a property 'as a home', and other parties with 'non-home' interests in the property, for example, creditors. This article seeks to identify some of the values of home which might inform a legal concept of home, and so be 'weighed in the balance' on the occupier's side when decisions involving conflicts between home interests and commercial interests are considered.*

The concept of home appears to be in need of legal counsel. Although the term is instantly familiar, and the physical reality is an important feature of our everyday lives, the legal concept of home has received surprisingly little attention. As laypersons we know that there is 'no place like home', that 'home is where the heart is', and that 'a man's home is his castle'. Yet the

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legal conception of home cannot be summed up so neatly. This is largely due to the particular qualities of home: *home* is essentially a subjective phenomenon, it is not easily quantifiable, and consequently the value of a home to its occupiers is not readily susceptible to legal proof. These factors present obvious impediments to the development of a coherent legal concept of home. On a practical level, however, disputes over and involving home are a constant and significant feature of our legal environment. If a legal concept of home could be developed, it could be utilized to inform the decision-making process where home is the scene or substance of legal disputes. The imbalance between the prevalence and significance of home in practical terms, and the relative neglect of conceptual questions relating to home within legal circles is particularly striking in light of the fact that, despite the apparently 'unscientific' nature of attachment to home, a substantial body of literature has emerged concerning the concept of home in the social science disciplines in recent decades.<sup>1</sup>

This article discusses the meanings of home which have evolved from interdisciplinary research. For the purposes of this discussion these values of home have been grouped into four broad categories: home as a physical structure, home as territory, home as a means of identity and self-identity for its occupiers, and home as a social and cultural phenomenon. Although this empirical and analytical research on the meaning of home to occupiers has taken an interdisciplinary approach, the findings of this body of research have not noticeably impacted on the legal domain, where little attention has been paid to the conceptual aspects of home. The object of this article is to consider whether the concept of home which has been developed in other disciplines could be usefully employed in a socio-legal context, in order to inform the major legal issues surrounding home, and facilitate the process of developing a meaningful concept of home in law.

## THE LEGAL SIGNIFICANCE OF 'HOME'

It is difficult to overstate the everyday importance of home in law. The significance of land law as an 'instrument of social engineering', and specifically of home as a legal entity is highlighted by the observation that:

All of us – even the truly homeless – live somewhere, and each therefore stands in some relation to land as owner-occupier, tenant, licensee or squatter. In this way land law impinges upon a vast area of social orderings and expectations, and exerts a fundamental influence upon the lifestyles of ordinary people.<sup>2</sup>

- 1 For example, I. Altman and C.M. Werner (eds.), *Home Environments* (1985); D.N. Benjamin (ed.), *The Home: Words, Interpretations, Meanings and Environments* (1995).
- 2 K.J. Gray and P.D. Symes, *Real Property and Real People* (1981) 4.

The centrality of home in human dealings, and the deep significance of rights and obligations relating to home, renders the lack of rigorous analysis directed towards the formulation of a legal concept of the value of home difficult to defend. This section considers the influence of 'home' on legal doctrine, and some of the contexts in which a clearly articulated concept of home could be usefully applied.

Although it is argued in this article that the legal concept of home is underdeveloped, the proposition that 'home' is significant as a special type of property, over and above its conception as the capital or investment asset of the house, is not totally absent from legal spheres. The idea of home is relevant in a number of legal contexts, and the legislature and the judiciary have, at various times and in different contexts, acknowledged the significance of the fact that a house is occupied *as a home*. The home in which occupiers are ordinarily resident is exempt from capital gains tax,<sup>3</sup> and no income tax is payable for the benefit of occupying a house as a home.<sup>4</sup> The family law issues concerning home range from issues of ownership and occupation of the matrimonial or family home<sup>5</sup> to the problems associated with home as the scene of domestic violence. The effect on occupiers of loss of their homes is taken into account in the context of compulsory purchase, where 'Home Loss' payments are made: '... to make some compensation to a man for the loss of his home, as opposed to the loss of any interest he might have in the particular dwelling which he formerly occupied.'<sup>6</sup>

In the past, home sentiments have influenced developments in land law. The strict settlement was a conveyancing device designed to keep land within the family, and so to protect the home for use and occupation by future generations.<sup>7</sup> Another illustration of the influence of home in law is the Irish right of residence, whereby a landowner could confer on a member of the family, often a widow or single unmarried relative, the right to live in a property as a home for life, but with no interest in the property as a capital asset.<sup>8</sup> Initiatives of this nature fell somewhat out of favour in England and Wales, however, in light of the policy of the 1925 property legislation. The 1925 legislation sought to promote the

3 Taxation of Chargeable Gains Act 1992, s. 222.

4 Income and Corporation Taxes Act 1988, Schedule A.

5 See Family Law Act 1996.

6 *R v. Corby District Council, ex p McLean* [1975] 1 W.L.R. 735, at 736, *per* Lord Widgery CJ.

7 This ability to tie up land for generations was overridden by Parliament in the Settled Land Acts 1882–90, revised and consolidated in England and Wales in the Settled Land Act 1925. This legislation ensured that property could be sold by a tenant for life, and the interests of subsequent owners could be overreached, converting their claim from an interest in the land itself, for example the home, to a subsequent interest in the capital sum obtained on sale.

8 See J. Wylie, *Irish Land Law* (1997), paras 20.13 and following. The conceptual basis of the right to residence has recently been reviewed in the Northern Ireland decision of *Jones v. Jones* (2 February 2001).

alienability of land by treating it like a mere piece of capital. Land was valued: '... as an investment rather than as a home, to be bought and sold as market conditions demand, with the beneficiaries being interested in the proceeds of sale rather than the property for its own sake.'<sup>9</sup> It is ironic that whilst, on the one hand, the twentieth century witnessed a huge surge in owner occupation,<sup>10</sup> on the other hand, the property law regulating owner occupiers after 1925 was dominated by the rhetoric of land as investment, and the assimilation of land with other types of capital.

It is noteworthy, however, that where policymakers have been specifically concerned to elevate the status of the home this can be achieved without major practical or theoretical difficulties, and without recourse to a 'concept of home'.<sup>11</sup> The real problem from a conceptual point of view emerges when legal decision makers are required to balance the interests of occupiers in their homes against other, particularly commercial, interests. The commercial interest in property as capital, or as an investment asset, comes into direct opposition with the interests, economic and non-economic, which occupiers may have in their homes in a number of instances. These include, for example, the case where a landlord seeks to retake possession of property against the wishes of a residential tenant. Another frequently occurring illustration of this clash of interests is the context of disputes between secured creditors and the occupiers of homes. The rights of creditors come into conflict with the interests of occupiers when a non-debtor occupies property on which another, usually the legal title holder, has secured a debt. If the debtor defaults on the loan, the creditor will usually seek to take possession and/or to sell the property in order to recoup the capital outlay. Although a creditor has no direct right of action against the non-debtor

9 Lord Mackey, 569 *H.L. Debs.* col 1722 (1 March 1996). Although the Trusts of Land and Appointment of Trustees Act 1996 was intended to reintroduce the idea that: '... most co-ownership of property is for the purpose of providing a home rather than for an investment' (id.), it remains to be seen whether this shift in emphasis will reverse the ideological tide of the trust for sale.

10 See, further, below.

11 See, for example, the decisions in *Williams v. Williams* [1976] Ch 278 at 285; *Re Evers Trust* [1980] 1 W.L.R. 1327; and *Abbey National v. Moss* [1994] 1 F.L.R. 307; on the 'collateral purpose doctrine' in the context of applications for the sale of co-owned property under section 30 of the Law of Property Act 1925. The legislative policy of the Trusts of Land and Appointment of Trustees Act 1996 was also influenced by recognition of the special importance attached to the home by its occupiers: '... the intention of most spouses when purchasing the matrimonial home in joint names is not to hold it as an investment for sale, or as an investment asset pending sale, but to use it and keep it as a home.' Lord Mishcon, 569 *H.L. Debs.* col. 1722 (1 March 1996). More recently, in *Le Foe v. Le Foe* [2001] EWCA Civ 1870, the Court of Appeal has acknowledged the importance of the emotional security provided by home. Ward LJ stated that he had sympathy for Mrs Le Foe, since: '[t]his has been her home and her mother's home. There is huge emotional investment in it' (para. 10). Ward LJ concluded, however, that Mrs Le Foe's emotional security was: '... an interest I cannot protect' (para. 13).

occupier, the exercise of such remedies against the property itself has obvious implications on those in occupation.

The avenues available to a non-debtor occupier who seeks to protect his or her interest in retaining use and occupation of a property *as a home* depend on the particular dimensions of his or her interest in that property. Relevant factors may include whether the occupier has an ownership interest in the property,<sup>12</sup> whether the occupier is a spouse,<sup>13</sup> or has an 'emotional and sexual relationship' with the debtor,<sup>14</sup> whether the property is being used for purposes of matrimonial occupation,<sup>15</sup> or as a home.<sup>16</sup> Although a number of trends may be identified from the outcome of disputes between creditors and occupiers, policymakers have not explicitly considered the overall balance struck between the claims of creditors on secured property, and the interests of non-debtor occupiers in their homes.<sup>17</sup> Nevertheless, a

- 12 Where the occupier is a co-owner, the court's exercise of its discretion under s. 30 of the Law of Property Act 1925 and its successor, s. 14 of the Trusts of Land and Appointment of Trustees Act 1996 will determine whether the creditor can order sale of the property; the doctrine of notice, or s. 70(1)(g) of the Land Registration Act 1925 will determine priority between creditor and occupier; and the doctrine of undue influence will determine whether a surety or co-debtor occupier can avoid a transaction with a creditor.
- 13 Where the non-debtor occupier of the secured property is a spouse of the debtor, he or she may register a right of occupation as a charge against the creditor under s. 31 of the Family Law Act 1996.
- 14 For example, in the context of undue influence.
- 15 This has been considered in the context of the Charging Orders Act 1979, see *Harman v. Glencross* [1985] Q.B. 850.
- 16 Use and occupation of property as a *family home* is ostensibly protected in the context of bankruptcy proceedings, see ss. 336 and 335A of the Insolvency Act 1986; *Re Citro* [1991] Ch. 142 indicates a low point in the protection afforded to occupiers under these provisions, although the decisions in *Judd v. Brown* [1998] 2 F.L.R. 360; *Claughton v. Charalamabous* [1999] 1 F.L.R. 740; and *Re Raval* [1998] 2 F.L.R. 718 may indicate a slightly greater level of consideration for the fact that property is a family home in the context of bankruptcy, in circumstances of serious illness at least. See, also, the 'collateral purpose doctrine' which briefly appeared as a possible basis for protecting jointly owned property which was purchased for use and occupation as a home: see *Stevens v. Hutchinson* [1953] Ch. 299; and the argument accepted in *Stott v. Radcliffe* (C.A.) 19 February 1982, that the court 'should allow the trust to continue – and there should be no sale – so long as the purpose of the trust continues that the house should be used as a home for the two of them. But when the purpose of the trust comes to an end the house should be sold.'; *Re Ever's Trust* [1980] 1 W.L.R. 1327; *Williams v. Williams* [1976] Ch. 278, at 285, where the Court of Appeal stated that in the exercise of the section 30 LPA discretion, the court 'should regard the primary object as being to provide a home and not a sale' but which ultimately proved ineffective in protecting the interests of occupiers in the home against creditors; see *Re Soloman, A Bankrupt* [1967] Ch. 573; *Re Citro* [1991] Ch. 142 on the emergence of the doctrine's limitations in disputes involving creditors. See, further, L. Fox, 'Living in a Policy State' (2000) *Liverpool Law Rev.* 59–88.
- 17 See for example, J. Dewar, 'Land, Law and the Family Home' in *Land Law: Themes and Perspectives*, eds. S. Bright and J. Dewar, where the development of policy in relation to the 'family home' is described as: '... pragmatic and piecemeal, with

balance has had to be struck, as disputes in these various contexts have arisen, between the interests of creditors and those of occupiers. A common issue running through all categories of disputes between creditor and occupier is the need to balance the creditor's commercial interest in realizing the capital asset represented by the house, and the occupier's interest in avoiding sale so as to retain the property for use and occupation as a home. The outcome, however, almost invariably, is that the creditor's commercial interest in realizing the capital value of the property prevails over the occupier's interest in remaining in the home.

The arguments in support of creditors have been well rehearsed. These have included the need to ensure that creditors continue to provide a readily available supply of credit finance to fund housing, particularly in this era of mass owner occupation; the potential impact which adverse conditions for creditors might have in respect of transaction costs for consumers;<sup>18</sup> and the argument that homesharing occupiers take their share of the good times, and must take their share of the bad. The creditors' case is further enhanced by the fact that the creditors' interest in this transaction is relatively easy to ascertain. Secured creditors acquire an economic claim on the relevant property, often the debtor's home. The object of taking security is to ensure that, should the debtor default on repayment of the capital, creditors will be able to look to a range of remedies, such as possession and sale of the debtor's property, in order to ensure that their capital outlay is effectively recouped.<sup>19</sup> Therefore, although creditors are unlikely to pursue these remedies so long as the debtor does not default on his or her obligations, the existence of adequate remedies for the enforcement of security is regarded as necessary in order to ensure that those who lend capital are willing to fund the acquisition of homes. Any policy which places hurdles in the way of the creditors' ability to realize security may potentially have an adverse effect on the availability of credit finance, or impact upon the costs of credit for consumers. Consequently, since the viability of the substantial proportion of housing stock in owner occupation depends upon the availability of credit, the financial concerns of creditors are an important factor to be weighted in any formulation of government policy in this area.

On the other hand, however, we have the interests of occupiers. The occupier's interest in retaining property for use and occupation as a home is complex, raising both financial and non-financial issues. As those who have

apparently little cross-flow of concepts or policies between different legal conceptual categories' (p. 328).

- 18 'No one has great sympathy for lenders or banks . . . the point is that at the end of the day it is the borrower who pays, unless there is some speedy and efficient method of conveyancing.' (Lord Templeman, 437 *H.L. Debs.* col. 650 (15 December 1982).
- 19 In this respect, the proprietary remedies may operate as an inducement on the debtor to pay, as a sanction against non-payment, or as a remedy of last resort through possession and sale.

attempted to ascertain the meaning of home through empirical and theoretical research have acknowledged, the occupier's interest in home is:

a relative concept, not an absolute one that can be defined in a dictionary or by a linguist. Given that it transcends quantitative, measurable dimensions and includes qualitative subjective ones, it is a complex, ambiguous concept that generates confusion.<sup>20</sup>

It is often difficult to verbalize ideas about home, since they are highly personal, and not easily analysed.<sup>21</sup> In addition, the idea of a personal attachment to home can be portrayed as sentimental and emotive, and therefore trivialized, particularly when measured against the objective and quantifiable claims of creditors to the capital value of the property. These inherent difficulties could be regarded as providing an argument against attempting to develop a coherent legal concept of home, particularly for those who regard the occupier's interest as inconvenient, since establishing a valid basis for attaching weight to the interests of occupiers in their homes could potentially operate to subjugate the claims of creditors, whose economic clout weighs heavily on the balancing scales.

Although the significance of home is often acknowledged in this context, case law indicates that at the crucial stage of balancing the occupier's claim against that of a creditor, the courts do not attach sufficient weight to the occupier's claim to home to outweigh the commercial interest.<sup>22</sup> The absence of a legal conception by which the interests of occupiers are valued, particularly their non-economic interests in retaining a home for the purposes of continued use and occupation as a home on the basis that they have an attachment to the particular property, creates practical and analytical difficulties. From a practical perspective, it is difficult to make a persuasive argument in favour of the occupier. When balancing the interests of creditors in the capital represented by a property against an occupier's claim to retain the land for use and occupation as a home, however, policymakers have had little guidance regarding the weight to attach to interests in home. Nourse LJ has acknowledged that:

20 R.J. Lawrence, 'Deciphering Home: An Integrative Historical Perspective', in Benjamin, *op. cit.*, n. 1, p. 58.

21 D.G. Hayward, 'Home as an Environmental and Psychological Concept' (1975) 20 *Landscape* 2-9. Dovey also described the difficulties associated with the concept of home: '... *home* is not an empirical variable whose meaning we might define in advance of careful measurement and explanation. As a consequence, understanding in this area is plagued by a lack of verifiability that many will find frustrating.' (K. Dovey, 'Home and Homelessness' in Altman and Werner, *op. cit.*, n. 1, p. 34.

22 See, for example, the landmark decisions in *Re Citro* [1991] Ch. 142; *Barclay's Bank v. Hendricks* [1996] 1 F.L.R. 258; *Abbey National Building Society v. Cann* [1990] 1 All E.R. 1085; *City of London Building Society v. Flegg* [1986] Ch. 605, [1988] A.C. 54; *Bristol & West Building Society v. Henning* [1985] 1 W.L.R. 778; *Paddington Building Society v. Mendelsohn* (1985) 50 P.&C.R. 244.



The balancing which one is required to do between the interests of the creditors and the interests of the wives and families – who are of course entirely innocent parties – is by no means an easy thing to do. The two interests are not in any sense commensurable. On the one hand, one has the financial interests of the Crown, some banking institutions and a few traders. On the other, one has the personal and human interests of these two families. It is very hard to see how they can be weighed against each other, except in a way which involves some value judgment on the part of the tribunal.<sup>23</sup>

It might be added that this difficult balancing exercise is frustrated further by the analytical difficulties created by the absence of solid conceptual grounds on which to attach weight to the interests of occupiers. The value of home is not easily portrayed in tangible terms. Nevertheless, the fact that home is not an easy subject for legal analysis does not justify ignoring the values which it represents. Furthermore, as one author has indicated in an analogous context,<sup>24</sup> the phenomenon of home is ‘too prevalent and too significant to be deemed inappropriate and then forgotten.’<sup>25</sup>

It is important to emphasize that this argument in support of the concept of home is not intended to devalue the claims of creditors, nor to suggest that the interests of occupiers ought necessarily to prevail in conflicts with creditors. It is, however, argued that the value judgement which must inevitably influence this balancing exercise has been made without any clearly articulated conception of the occupier’s interest in the home. In what has recently been described as a climate of ‘unsustainable home ownership’,<sup>26</sup> the issues raised by conflicts between creditors and occupiers will continue to require the attention of the courts, and of legislative policymakers.<sup>27</sup> This article shall therefore seek to identify some of the values of home which might inform a legal concept of home, and so be ‘weighed in the balance’ on the occupier’s side when decisions involving conflicts between home interests and commercial interests are considered.

23 *Re Citro*, op. cit., n. 16, at p. 150, quoting from Hoffman J in the High Court.

24 When examining the extent of agreement amongst scholars concerning the terminology of *home*.

25 D.N. Benjamin, ‘Afterword’ in Benjamin, op. cit., n. 1, p. 294.

26 J. Ford et al., *Home Ownership in a Risk Society: A social analysis of mortgage arrears and possessions* (2001).

27 Although there has been some retreat from the recession high point of mortgage possessions, it has been suggested in a recent analysis of mortgage arrears and possessions that ‘the contingent set of circumstances which generated the housing crisis of the early 1990s masked a set of more enduring socio-economic transformations which have raised the “normal” level of risk associated with home ownership compared to that which pertained in earlier periods’ (id. p. 44).

## THE SEARCH FOR A CONCEPT OF HOME

There is nothing especially new about the search for a concept of home. A substantial amount of work has been carried out in this area in recent decades<sup>28</sup> in a number of disciplines, including social and environmental psychology, phenomenology, sociology, and built environment studies. Cultural, socio-economic, and socio-political theorists have grappled with the concept of home, as have anthropologists, architectural and planning researchers, etymologists, and geographers. Numerous studies have investigated the affective value of home, that is, the emotional attachment that occupiers feel towards their homes, and a significant body of theory has developed from these studies. Generations of social scientists have laid the foundations for discourse on home, and these are now being built upon, as analysis of the meanings of home becomes increasingly sophisticated. For example, Jeanne Moore recently described 'a renewed enthusiasm for examining *home*, which is drawing from decades of psychological and sociological exploration.'<sup>29</sup> Nevertheless, neither this enthusiasm, nor the product of this interdisciplinary discourse, appear to have been fed into the legal system,<sup>30</sup> nor have they influenced policy making at the critical level of disputes between the rights of secured creditors, and the interests of occupiers in remaining in their homes. Indeed, the legal concept of home remains at the 'pre-scientific', 'speculative' stage, which social psychologists broke through in the mid-1970s. Research which has been carried out across a wide range of disciplines now stands to be built upon by socio-legal scholars, to construct a legal concept of home.

The etymology of the term 'home'<sup>31</sup> provides an interesting starting point for consideration of the significance of home as an affective environment. It has been suggested that there is no word quite as emotionally loaded as

28 'It is not surprising that research and interest in this area are burgeoning. First, people in every society usually have some type of residence. Although their form and permanence vary widely from one group to another, homes are more or less a universal. Second, in many societies, homes are one of the most important places. Homes offer physical amenities that sustain and support the residents, and they are often essential to the very survival of their occupants. Furthermore, homes are important centres for the development and manifestation of certain psychological meanings. Individuals develop identities and regulate privacy in homes; families establish, grow, bond themselves to a unit in homes and often bond themselves to the larger society through their homes. Thus homes are the repository of central and essential psychological and cultural processes.' I. Altman and C.M. Werner, 'Introduction' in Altman and Werner, op. cit., n. 1, p. xix.

29 J. Moore, 'Placing Home in Context' (2000) 20 *J. of Environmental Psychology* 207.

30 Altman and Werner, op. cit., n. 1, p. xx, describe cross-disciplinary contact as one of the challenges facing those interested in homes.

31 A term which is not in itself uncontroversial, see chapters by S. Brink, A. Rapoport, and R.J. Lawrence in Benjamin, op. cit. n. 1.

'home' in the Romance languages.<sup>32</sup> The emotional bond which has traditionally been acknowledged between occupiers and their homes is highlighted in Brink's historical work on the etymology of the expression 'home'.<sup>33</sup> Brink offers some examples of the types of feelings signified by linguistic references to home. He states that the Old Irish expression for home is associated with the meaning 'love', while the Old English, Greek, and German terms make reference to marriage and to sexual intercourse, with meanings such as 'to take home', 'to bring to bed'.<sup>34</sup> Brink concludes that 'the words – now and in ancient times – that are direct cognates with, or that relate to *home*, deal with dwelling and affection, perhaps the affection for one's dwelling place, one's home.'<sup>35</sup> This supports Brink's argument that historically, home did not simply refer to a concrete structure, but to an abstraction; that the term 'home' was not viewed as referring to the property itself, or at least, was 'not limited to the exclusively physical habitation itself, but include[d] concepts of dwelling and affection.'<sup>36</sup>

The danger of describing home as associated with affection or love, is that this style of argument is unlikely to resonate with lawyers.<sup>37</sup> The problem, however, is that there *is* a degree of sentimentality behind ideas about home. On the one hand, the popular usage of the term 'home' has been criticized as 'vague and fuzzy (and "warm" in feeling) ...'.<sup>38</sup> Rapoport qualifies this comment, however, with the suggestion that the very nature of this response should be analysed, since 'there is an implicit folk theory behind it that needs to be made explicit and examined.'<sup>39</sup> This challenge has permeated the study of home, as scholars have worked towards a more precise definition of the factors underlying feelings evoked by home environments. The motivation of much of this research has been the hypothesis that, while ideas about home may be based on romanticized, mythologized, idealized memories, that does not diminish the way in which these associations inform the psychology of home.<sup>40</sup> If an argument is to be made in support of home,

32 J. Hollander, 'It all depends' in A. Mack, *Home: A Place in the World* (1993).

33 S. Brink, 'Home: The Term and the Concept from a Linguistic and Settlement-Historical Viewpoint', in Benjamin, op. cit. n. 1, pp. 17–24.

34 id., pp. 19–20. See further, below, on the associations between family and home.

35 Brink, op. cit., n. 33.

36 D.N. Benjamin, 'Afterword' in Benjamin, op. cit. n. 1, p. 295.

37 Although it was suggested in the Parliamentary debates preceding the enactment of section 336 of the Insolvency Act 1986 that 'we were moving into an area where perhaps the heart should rule more than the head ...', Lord Lucas, 459 *H.L. Debs.* cols. 1266–7 (7 February 1985), judicial attitudes towards this provision were epitomized by the decision in *Re Citro*, op. cit., n. 16, where Nourse LJ held that the interests of creditors ought to prevail over those of occupiers in the family home, because 'one must be just before one is generous.' See, also, *Re Bailey* [1977] 1 W.L.R. 278, at 284, *per* Walton J.

38 J. Rapoport, 'A Critical Look at the Concept 'Home'' in Benjamin, op. cit. n. 1, p. 29.

39 id.

40 Hayward, op. cit., n. 21.

however, these factors must be crystallized into a more concrete, tangible format. It has been suggested that one way of conceptualizing home would be to consider the equation *home* = house + *x*;<sup>41</sup> that is, by separating the idea of home into, on the one hand, the physical structure of the house (clearly an important element in the equation since it provides physical shelter and the locus for the experience of home) and on the other, the 'x factor'.

The physical structure of the house presents no conceptual difficulties to lawyers, since it is a concrete, tangible entity. The conceptual challenge in relation to home is to unravel the enigmatic 'x factor'.<sup>42</sup> In short, the x factor represents the social, psychological, and cultural values which a physical structure acquires through use *as a home*. Whilst these values are inherently subjective, and may not be held by all occupiers, a number of qualities have repeatedly and consistently emerged from empirical research into occupiers' responses to home.<sup>43</sup> These feelings about home can be grouped into four main clusters of value-types: *home as a physical structure* offers material shelter; *home as a territory* offers security and control, a locus in space, permanence and continuity and privacy; *home as a centre for self-identity* offers a reflection of one's ideas and values, and acts as an indicator of personal status; and *home as a social and cultural unit* acts as the locus for relationships with family and friends, and as a

41 Rapoport, op. cit., n. 38. Hollander (op. cit., n. 32, p. 37) has claimed that the 'common – and, unlike many common expressions, vulgar – use of "home" as a euphemism of "house" is by and large the linguistic waste product of the American real estate industry'.

42 Merritt reached a similar conclusion in relation to the 'use-value' of real property, a quality which he described as the 'housing services' of a dwelling: 'I have searched for these services with patience and diligence, and regretfully conclude that they do not exist and therefore that all conventional analysis is based on an entity that is purely phantasmal. In the long pursuit of this chimera, the hunter always circles back to his starting point and finds no more, yet no less than a dwelling, located in space, within and beyond which individual human beings grouped in households engage in a complex set of activities.' S. Merritt, *Owner-Occupation in Britain* (1992) 65.

43 In 'The Meaning of Home: Literature Review and Directions for future research and theoretical development' (1991) 8 *J. of Architectural and Planning Research* 96–115, Despres bases her categories of meaning on six important behavioural studies: M.W. Baker, E. Kramer, and G. Gilbert, 'The Pier 1 Imports Study of the American Home', study no. 871025 (1987); M. Csikszentmihalyi and E. Rochberg-Halton, *The Meaning of things: Domestic Symbols and the Self* (1981); J. Hayward, 'Psychological concepts of home' (1977) *Challenge* 10–13; R.M. Rakoff, 'Ideology in Everyday Life: The Meaning of the House' (1977) 7 *Politics and Society* 85–104; R. Sebba and A. Churchman, 'The Uniqueness of Home' (1986) 3 *Architecture and Behaviour* 7–24; J. Sixsmith, 'The Meaning of Home: An exploratory study of environmental experience' (1986) 6 *J. of Environmental Psychology* 281–98. Since Despres's article, further empirical studies have included S.G. Smith, 'The essential qualities of a home' (1994) 14 *J. of Environmental Psychology* 31–46; T. Wikstrom, 'The Home and Housing Modernisation' in Benjamin, op. cit. n. 1.

centre of activities.<sup>44</sup> These headings are relatively loose categories, which although separated here in the interests of clarity do not form separate categories of meaning.<sup>45</sup> Indeed, it can justifiably be argued that home is a fluid concept, which may embrace some or all of these meanings to a particular occupier.

### *1. Home as a physical structure*

Whilst much of the academic interest in the concept of home has focused on the 'x factor', it is important to highlight the significance of the more tangible aspects of home. The house is the element of home which provides crucial physical shelter for its occupiers. In this respect: '... [h]omes offer physical amenities that sustain and support the residents, and they are often essential to the very survival of their occupants.'<sup>46</sup> It is the loss of this physical shelter, 'houselessness', which is often referred to as homelessness.

The clear connection between creditor/occupier disputes and homelessness is revealed by national survey data which indicates that a significant number of households accepted as 'homeless' by local authorities in England give mortgage default or rent arrears as the main reason for the loss of their last home.<sup>47</sup> Whilst these statistics chart the most extreme outcome,<sup>48</sup> it is important to bear in mind that loss of home can be a traumatic experience – even when it does not lead to *houselessness*.<sup>49</sup> Research has indicated that shelter is not the only significant attribute of home as a physical structure. Although the physical structure is the most tangible feature of home, home cannot be defined simply as a structure providing shelter. Empirical research<sup>50</sup> has suggested that: '[h]ome as a physical entity embraces not only the physical structure and style of architecture, but also the human space

44 There are also significant socio-cultural connotations connected with the idea of *home* as a place to own.

45 Somerville has argued for greater integration of the phenomenological and social psychology approaches, so that each individual meaning of home, such as privacy, or identity, can be internally explicated as a physical/psychological/social construct. P. Somerville, 'The Social Construction of Home' (1997) 14 *J. of Architectural and Planning Research* 226.

46 Altman and Werner, op. cit., n. 1, p. xix.

47 In 1998–99, of 105,470 households accepted as homeless by local authorities, approximately 7 per cent, that is, over 7,000 households cited mortgage default or rent arrears as the principal reason for their loss of home; *Social Trends* 30 (2000) Chart 10.15, 173. In 1994, 10 per cent of people who became homeless in England, Wales and Northern Ireland gave court orders consequent on mortgage default or rent arrears as the main reason for their homelessness; *Social Trends* 27 (1997) 178.

48 The experience of repossession leading to homelessness is clearly a 'worst case scenario' for occupiers following a dispute with a creditor.

49 More on loss of home, below.

50 Sixsmith, op. cit., n. 43.

available.<sup>51</sup> The physicality of the house enables the other attributes of home to be experienced by occupants. The physical structure of the house provides the locus for family life, a place of safety,<sup>52</sup> a place of privacy, continuity and a sense of permanence.<sup>53</sup>

Prior to the surge of interest in home amongst environmental psychologists in the 1970s,<sup>54</sup> scholarly literature often identified home with the physical structure of the house or residence.<sup>55</sup> The attractions of this approach, particularly to a rationally underpinned legal system, are obvious:

The rational attitude is biased towards the tangible. Yet the phenomenon of home ... is an intangible relationship between people and the places in which they dwell; it is not visible nor accurately measurable. Reason responds to intangibility by reducing terms such as *home* to precise and bounded definitions. Rationally considered, a home becomes reduced to a house the meaning and experience of home as a relationship becomes confused with the object through which it is currently manifest.<sup>56</sup>

Dovey does not argue that the rational approach is wrong, merely that it does not carry a monopoly on truth or progress.<sup>57</sup> It is significant, however, that psychological research has never shown the common assumption to be true – that the physical structure of a property is its most important aspect.<sup>58</sup> The non-physical and less tangible values of home have been established by numerous studies.<sup>59</sup> The results of this research have gone some way towards elucidating the ‘x factor’ of home. The following sections explore some of these additional values of home.

## 2. *Home as territory*

The concept of home as a physical structure is closely associated with the *territoriality* of home.<sup>60</sup> The territory of home as a type of setting satisfies a number of social and psychological needs: home is the sole area of control

51 *id.*, p. 292. Sixsmith adds that ‘warmth, telephones, everyday modern conveniences are important. One participant realized the significance of environmental services only after he had lived in a house which was extremely basic with regard to them.’

52 The idea of home as a place of safety is not, however, uncontroversial, but is open to challenge from gender theorists, who highlight the dangers which can exist in the home environment. This is considered further, below.

53 Somerville, *op. cit.*, n. 45, pp. 226–45.

54 Moore, *op. cit.*, n. 29, pp. 209–10.

55 D.N. Benjamin, ‘Afterword’ in Benjamin, *op. cit.*, n. 1.

56 Dovey, *op. cit.*, n. 21, p. 52.

57 *id.*, p. 53.

58 Hayward, *op. cit.*, n. 21.

59 See n. 43 and associated text.

60 This feature is heavily emphasized by Sebba and Churchman, *op. cit.*, n. 43, who argue that: ‘... the uniqueness of the home lies in its psychological and social meaning and in the opportunity it affords the occupants to exert control over the space and the behaviour within it’ (p. 21).

for the individual; home is the most appropriate physical framework for family and family life; home is a place of self-expression; and home provides a feeling of security.<sup>61</sup> Home provides the spatial framework of the occupier's life, and through its familiarity can foster a sense of belonging,<sup>62</sup> 'rootedness',<sup>63</sup> and continuity.<sup>64</sup> The occupier's response to these features of home has been articulated as instinctual – that: '[a]s with other members of the biosphere, too, humans display marked patterns of territoriality.'<sup>65</sup>

The territory of home has also been described as psychologically significant because it provides a 'locus in space' for its occupiers – a place to come back to.<sup>66</sup> Dovey has made a connection between this aspect of home territory – 'acquiring a fixed point' – and the occupier's sense of identity:<sup>67</sup> 'to be at home means to know where you are; it means to inhabit a secure centre and to be oriented in space.'<sup>68</sup> It has been suggested that colloquial idioms about home reflect a real and experienced response to the territorial characteristics of home. Following an empirical study on the 'essential qualities of home' in the early 1990s, Smith concluded that: '[s]uch common expressions as "a man's home is his castle" are supported by ... research findings, which suggest that this feeling of control within the home is salient for most people and is linked to the satisfaction of basic psychological needs.'<sup>69</sup> Smith further highlights the beneficial psychological outcomes for the occupier who can establish security and control within the territory of home.<sup>70</sup> This direct correlation between the territoriality of home, and the psychological health of occupiers has also been asserted by Porteous, who adds that the territorial satisfactions provided by home – identity, security, and stimulation – are not only beneficial, but necessary for psychological health.<sup>71</sup>

It is important to note, however, that not all home occupiers experience these positive elements of identity, security, and stimulation. When home becomes a place of danger, the positive associations of home: as a place of

61 Rapoport, op. cit., n. 38, p. 30; see, also, Sebba and Churchman, id.

62 Sixsmith, op. cit., n. 43; Smith, op. cit., n. 43, at p. 32.

63 Described as 'the physical experience of feeling anchored to a place' (Smith, id.).

64 '... having a place to return to, where one feels a sense of belonging, also engenders feelings of continuity, stability and permanence' (id.).

65 A. Buttner, 'Home, Reach, and The Sense of Place' in *The Human Experience of Space and Place*, eds. A. Buttner and D. Seamon (1980) 167.

66 Hayward, op. cit., n. 21, describes this 'geographic orientation' as changing the world from homogenized space to differentiated space.

67 See, further, below.

68 Dovey, op. cit., n. 21, p. 36.

69 Smith, op. cit., n. 43, at p. 32.

70 'When individuals control space and have privacy needs met, feelings of comfort and freedom are possible. This freedom implies being able to relax and do as one wishes' (id.).

71 J.D. Porteous, 'Home: the territorial core' (1976) 66 *Geographical Rev.* 383–90. This proposition is supported by research findings concerning the psychological effects of loss of home, which are discussed below.

safety, of security, of control over oneself and one's environment; become subverted, and the effect can be psychologically very damaging. This aspect of home has been emphasized by feminist theorists, who have highlighted the darker side of home as a common site of domestic violence and fear within families.<sup>72</sup> The negative aspects of home – as 'a prison and a place of terror as well as a haven or place of love'<sup>73</sup> – indicate that '[t]he concept of home as a sanctuary or place of secure retreat does not necessarily hold true for those in weaker positions in the domestic power relationships . . .'.<sup>74</sup> This perspective, along with the argument that the benefits of home are acquired at woman's expense,<sup>75</sup> has often led feminist critics to reject the values of home.<sup>76</sup> Another ambivalent feature associated with the idea of home as a 'haven' is the implicit suggestion that the outside world is a place to be feared. Saegert claims that:

[a]t deeper and less consciously accessible levels, being anchored in home may always be an ambivalent feeling. When the home is considered a haven, it implies the world requires being hidden from.<sup>77</sup>

This line of reasoning also reinforces the feminist public/private analysis which rejects the positive characteristics of home because it is regarded as a private sphere, and thus as a place of confinement for women.<sup>78</sup>

72 The issues raised by this discourse have been extensively discussed elsewhere, see for example, E. Stanko, 'Fear of Crime and the Myth of the Safe Home: A feminist critique of Criminology' in *Feminist Perspectives on Wife Abuse*, eds. K. Yello and M. Bograd (1988) 75-88; E. Saraga, 'Dangerous Places: The Family as a site of crime' in *The Problem of Crime*, eds. J. Muncie and E. McLaughlin (1996) 184-227; L. Moran, 'The poetics of safety: lesbians, gay men and home' in *Crime, Insecurity, Safety in the New Governance*, ed. A. Crawford (2001).

73 Moore, op. cit., n. 29, p. 212.

74 id.

75 That is, that: '[w]omen serve, nurture, and maintain so that the bodies and souls of men and children gain confidence and expansive subjectivity to make their mark on the world. This homely role deprives women of support for their own identity and projects.' (I.M. Young, 'House and Home: Feminist Variations on a Theme' in *Resistance, Flight, Creation: Feminist Enactments of French Philosophy*, ed. D. Olkowski (2000) p. 49.

76 The negative values of home from a feminist perspective have been extensively explored, see, for example, B. Martin and C.T. Mohanty, 'Feminist Politics: What's Home Got to do with it?' in *Feminist Studies/Critical Studies*, ed. T. de Laurentis (1986) 191-211; T. de Laurentis, 'Eccentric Subjects: Feminist Theory and Historical Consciousness' (1990) 16 *Feminist Studies* 115-50; B. Honig, 'Difference, Dilemmas, and the Politics of Home' (1994) 61 *Social Research* 563-97.

77 S. Saegert, 'The role of housing in the experience of dwelling' in Altman and Werner, op. cit., n. 1, p. 290.

78 'The public-private dichotomy is not a mere statement of difference: the difference matters because the public is economically and politically more important than the private.' (K. Green and H. Lim, 'Weaving Along the Borders: Public and Private, Women and Banks' in *Feminist Perspectives on Equity and Trusts*, eds. S. Scott-Hunt and H. Lim (2001) 91.



Some recent feminist analysis has suggested, however, that 'home' should not be rejected wholesale, and that: '[d]espite the real dangers of romanticising home, there are also dangers in turning our backs on home'.<sup>79</sup> Young suggests that:

If house and home mean the confinement of women for the sake of nourishing male projects, then feminists have good reason to reject home as a value. But it is difficult even for feminists to exorcise a positive valence to the idea of home. We often look forward to going home and invite others to make themselves at home. House and home are deeply ambivalent values.<sup>80</sup>

The ambivalence in the relationship between women and their homes has been described as 'a mixture of affection, reciprocated towards the home as a nurturing environment, and resentment towards the demands of the home.'<sup>81</sup> Far from detracting from the argument of this paper, however, this ambivalence towards home adds weight to the case in support of the development of a more explicitly reasoned legal concept of home. Moore has suggested that:

More focus is needed on the spiritual, cultural and symbolic essence of *home* which writers in phenomenology have highlighted. However, the renewed focus on meaning will need to focus on ways in which *home* disappoints, aggravates, neglects, confines and contradicts as much as it inspires and comforts us. The challenge for future research is to empirically engage with this multifaceted concept without losing sight of the many layers of home.<sup>82</sup>

Any legal concept of home should therefore be capable of reflecting the range of experiences which take place in homes, and the complexity of the responses which emanate from experiences of living and dwelling and being 'at home'. Unfortunately there is not space in this article to deal with the very significant question of gender and home in any detail. For the purposes of this article, however, it is sufficient to say that a great deal of research has been done, and continues to be done, on the variety of experiences represented by home, and on the meanings of home from alternative perspectives. This research material exists as a useful tool to assist when considering the construction of a concept of home which reflects the full range of human experiences in home.

The significance of 'home as territory', and particularly the desire for the experience of security in the home, is heightened by the association between home and family. Evidence from a number of empirical studies has indicated that 'a critically important function of the home is the sense of security that it is supposed to offer'<sup>83</sup> and that the popular perception of home as a 'place of

79 Young, op. cit., n. 75, p. 75.

80 id., p. 49.

81 J. Darke, 'Women and the Meaning of Home' in *Housing Women*, eds. R. Gilroy and R. Woods (1994) 11.

82 Moore, op. cit., n. 29, p. 213.

83 J. Fichten, 'When Toxic Chemicals Pollute Residential Environments: The Cultural Meanings of Home and Home Ownership' (1989) 48 *Human Organisation* 313, at 316.

security and protection' is heightened when the family home is occupied by children.<sup>84</sup> The additional currency of the *family* home has been recognized to a certain extent in the context of creditor/occupier disputes. Parliament has passed a number of measures which ostensibly protect the family home.<sup>85</sup> Although these provisions have not generally translated into actual protection against creditors in the event of default,<sup>86</sup> they indicate the legislative tendency to focus on family as a trigger for protection of home. In a similar vein, judicial policy has also taken account of the fact that a property is a matrimonial home in the context of charging orders.<sup>87</sup> Although the outcome generally remains the same – creditors almost invariably prevail, and ultimately an order for sale is often granted – where any policy initiative has been directed at the interests of occupiers in the home, it has tended to reinforce the understanding of home as 'protected territory' on the grounds of its use and occupation by the *family*.

Another significant factor in relation to *home as territory* is the degree of privacy conferred by home. Research has repeatedly established the importance of the home territory as a site of privacy and autonomy for occupiers.<sup>88</sup> Porteous describes home as a 'haven for everyone in a public world where we are valued less for ourselves than for the roles we play. In essence, the possession of a home confers certain valuable rights of privacy and autonomy on the occupant.'<sup>89</sup> What's more, there is potential for development of the privacy aspect in the context of a legal concept of home. The right to respect for home under Article 8 of the European Convention on Human Rights<sup>90</sup> is embedded in the overall context of the Article, which states that: 'Everyone has the right to respect for his private and family life,

84 *id.*

85 Principally the Family Law Act 1996, which was preceded by the Matrimonial Homes Acts 1967 and 1983 and s. 336, Insolvency Act 1986, which makes special provision for the family home in the event of bankruptcy.

86 The provisions of the Family Law Act 1996 come into play against a creditor only when the non-debtor spouse has registered 'matrimonial home rights' as a charge prior to the credit transaction. A creditor is unlikely to come into conflict with such a charge because a simple search reveals the registration of the rights, and a creditor will then either request that the charge is removed, or that the non-debtor spouse is joined in the transaction. In circumstances of bankruptcy, the impotence of s. 336 was illustrated by judicial attitudes, for example, in *Re Citro*, *op. cit.*, n. 16.

87 See *Harman v. Glencross* [1986] 2 W.L.R. 637, at 648.

88 See Fichten, *op. cit.*, n. 83, p. 318.

89 Porteous, *op. cit.*, n. 71, p. 386.

90 Article 8 is included in Schedule 1 to the Human Rights Act 1998 as one of the 'Convention Rights' to be given effect in United Kingdom domestic law. The right to respect for: 'private and family life, his home and his correspondence.'; in Article 8(1) is qualified by Article 8(2), which provides that: 'There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.'

his home and his correspondence.' Since the rights protected under Article 8 are generally considered conjunctively, there is also, again, a clear connection between home life and family life. Article 8 is essentially concerned with privacy,<sup>91</sup> so consequently the references to family life, home, and correspondence are viewed in the context of their role in the private sphere.

Various attempts to date to invoke the Article 8 protection in the context of disputes between creditors and home occupiers have been unsuccessful.<sup>92</sup> Though the Court of Appeal appeared to acknowledge the potential relevance of Article 8 in this context in *Albany Home Loans v. Massey*,<sup>93</sup> post-incorporation attempts to invoke the Article 8 reference to home against a creditor have not yet been fruitful.<sup>94</sup> In *Ebert v. Venvil*,<sup>95</sup> Mrs Ebert sought to appeal orders granted to permit the sale of her home by her husband's trustee in bankruptcy. Although Aldous LJ acknowledged that: 'It is always traumatic to be evicted from the family house ... and one cannot but have very great sympathy for her', the applicability of Article 8 was dismissed with the statement that:

Mr Ebert has been adjudicated bankrupt. The case has been finally settled. He owned half the house. The only way his creditors could get recompense was by the house being sold. In those circumstances the European Convention has no application at all. The European Convention is not a charter which allows

91 'As a collective noun designating the rights involved in Article 8, the "right to privacy" is often used nowadays', P. van Dijk and G. van Hoof, *Theory and Practice of the European Convention on Human Rights* (3rd edn., 1998) 489.

92 See *Karia v. Franses*, Ch.D., 12 November 2001, where the applicant's contention that the proposed sale of his home by the trustee in bankruptcy would breach his rights under Article 8 were described as 'greatly exaggerated'. In *Birmingham Midshires Mortgage Services Ltd v. Sabherwal* (C.A.) 17 December 1999, the Court of Appeal considered the impact of Article 8 in a case concerning priority between the interests of a secured creditor and the occupier of a home. Although the Article 8 claim was rejected on the basis that the Human Rights Act 1998 was not yet in force, Walker LJ added that: 'I do not see that it gives Mr Beaumont any assistance in this case ... BMMS is not a public authority. The judge's order was made in accordance with law and it was necessary for the protection of BMMS's rights as a secured lender.'

93 The decision in *Massey* involved a married couple, joint mortgagors of the family home. Following default on the mortgage, the mortgagee applied for a possession order, however, Mrs Massey raised a successful defence of undue influence. The Court of Appeal was therefore required to consider whether the creditor's request for possession ought to be granted notwithstanding her continuing interest in the home. Schiemann LJ referred to Article 8 of the ECHR, and stated that: 'This, as it seems to me, whilst not enacted as part of our domestic law, provides a clue to the solution to the problems posed by this case.' [1997] 2 All E.R. 609, at 612.

94 Although Richman raised arguments based on Article 8 in *H. Richman*, 'Using the Human Rights Act to save the family home' (2001) 150 *New Law J.* 1102, these were speculative only, and she does not present any authority to indicate that the courts will be sympathetic to her proposed reasoning.

95 19 December 2000, C.A.

bankrupts to avoid paying the money which the courts have held to be owing to creditors ... It is a Convention protecting people from encroachment into their basic rights. It is not a document which allows people to avoid paying their debts.<sup>96</sup>

It is arguable that if an Article 8 argument were to be successfully raised in favour of the occupants of home, the resolution of the dispute between the parties could potentially turn on the issue of proportionality between the creditor's lawful action to realize security, and the occupier's interest in the home. A balancing task of this sort, however, would surely require a more clearly articulated conception of the values that a property holds for the occupier as a home than legal analysis currently offers. The potential for development along these lines adds weight to the call in this article for a more fully worked-out legal concept of home.

Although many of the attributes of home as territory<sup>97</sup> can arguably be achieved in other types of territory, home has been regarded as particularly significant because it provides 'a special setting in which one makes commitments to those relationships.'<sup>98</sup> The 'special' aspect of home as a territory is thus derived not only from the values represented: family, privacy, security, control; but also from the sense of belonging, rootedness, and continuity which home is thought to foster. This conception of home as a place of security and a locus for personal orientation is also associated with another cluster of values relating to home: home as identity.

### 3. *Home as identity*

The values of 'home as identity' are principally associated with the symbolic significance of home for its occupiers. There are two main constituent elements to home as identity: on the one hand, the psycho-analytical perspective addresses the importance of home in an occupier's self-identity, that is, 'home as a symbol of one's self'. The intimacy of the connection between home and self-identity is reflected in the claim that '[a]fter the body itself, the home is seen as the most powerful extension of the psyche.'<sup>99</sup> The most extreme illustration of this perspective is perhaps Carl Jung's claims that he dreamt of himself as a house.<sup>100</sup> On a more typical level, however, it has been suggested that the experience of home as an 'identity shell' is widely experienced by occupiers.<sup>101</sup> Beyond the physical and territorial needs that are satisfied by the experience of home, homes: 'provide

96 *id.*, paras. 16–18.

97 As a place of privacy, as a location for the development of relationships with others, or as a locus in space.

98 Hayward, *op. cit.*, n. 43, p. 12.

99 Despres, *op. cit.*, n. 43, p. 100.

100 C. Jung, *Memories, Dreams and Reflections*, (1969) 253. See, further, C. Cooper, 'The House as Symbol', (1974) 5 *Design and Environment* 30–37.

101 See H. Dittmar, *The Social Psychology of Material Possessions* (1992) 113.

autonomy and a space to develop an identity, and they are 'cultivators' and symbols of the self.'<sup>102</sup>

The means by which home becomes an identity shell is also regarded as a function of the occupier's presence, and of their self-identity. Home has been described as:

a world in which a person can create a material environment that embodies what he or she considers significant. In this sense the home becomes the most powerful sign of the self of the inhabitant who dwells within.<sup>103</sup>

This analysis regards home as both a product of the occupier's self-identity, and the place in which the occupier has the freedom to express that identity. Another perspective on the role of home as an element of the occupier's identity addresses the way in which an identity in the home enables its occupiers to project their own self-identities into the future, since '[k]nowing that we have the power to remain in a place and change it permits us to act upon and build our dreams.'<sup>104</sup> This aspect of the concept of *home* has obvious implications in relation to security of tenure and repossession by creditors. The involuntary loss of home at the hands of a creditor could potentially undermine an occupier's self-identity, even to the extent that since 'people's sense of both personal and cultural identity is intimately bound up with place identity, loss of home or 'losing one's place' may often trigger an identity crisis.'<sup>105</sup>

The second central element of 'home as identity' is based on the socio-psychological theory that home is an integral element of the occupier's social identity. The prevalence of this tendency to identify home with one's social identity is highlighted by the reality that:

In the most basic sense, a person needs to have a home, an address, a place with which to be identified officially and legally, in order to transact most personal business, to vote, or to claim various benefits. Not having a residence carries a stigma, whether one is described in the newspaper's police blotter as having 'no known address' or as being among 'the homeless'. Moreover, the particular home one occupies is both a source and a tangible expression of the identity of its occupants, as environmental psychologists have found.<sup>106</sup>

The social identity theory in relation to home, in particular the use of home to signify status, (and to avoid stigma) is closely associated with the issues

102 id. See, also, J. Pallasmaa, 'Identity, Intimacy, and Domicile – Notes on the Phenomenology of Home' in Benjamin, op. cit., n. 1, at p. 135, which claims that, as a consequence of this process of self-identity through home, home becomes 'a collection and concretization of personal images of protection and intimacy, which help one recognise and remember who one is.'

103 M. Csikszentmihalyi and E. Rochberg-Halton, 'Home as Symbolic Environment' in *The Meaning of Things – Domestic Symbols and the self*, eds. M. Csikszentmihalyi and E. Rochberg-Halton (1981) 123.

104 Dovey, op. cit., n. 21, p. 43.

105 Buttner, op. cit., n. 65, p. 167.

106 Fitchen, op. cit., n. 83, p. 317.

surrounding home ownership, which are considered further below.<sup>107</sup> There are also significant points of contact between the family dimension and the social identity of home. Whilst home has been demonstrated to represent a significant symbol of the self- and social-identity of occupiers, it has been suggested that, in addition, '[h]ome is a projection and basis of identity, not only of an individual but also of the family.'<sup>108</sup> It has been noted above that whilst the concept of home has not noticeably engaged the attention of policy makers, the additional currency added to home by the presence of family appears to lend greater weight. It is arguable, however, that the associations which have emerged between family and home, in relation to the values of home from occupiers' perspectives, may indeed vindicate the legislative and judicial policies which favour *family* homes. These policies, which evolved without explicit consideration of the broader context of home, may, however, have been informed by the implicit emphasis on family within socio-cultural ideas about home.

#### 4. *Home as a social and cultural unit*

Some of the most recent research on home has focused on the concept of home as a social and cultural unit.<sup>109</sup> In a recent article, Moore observes that while 'there is a renewed enthusiasm for examining *home*, which is drawing from decades of psychological and sociological exploration',<sup>110</sup> a salient factor of the current phase of analysis concerning home has been 'the need to draw together the personal and the cultural.'<sup>111</sup> In its broadest and most traditional sense, home, in a social and cultural context, referred to 'the homeland'.<sup>112</sup> In fact, the close cultural association between home, family, and place of domicile is relatively recent.<sup>113</sup> It was not until the seventeenth and eighteenth centuries that home came to be associated with 'the personal and domestic, with "family life".'<sup>114</sup> Research into modern social and cultural meanings of home has indicated, however, that it is the association with *family* that gives the contemporary home cultural centrality.<sup>115</sup> Fitchen's research into responses to *home* has indicated that '[e]ven when

107 See, also, Ford, op. cit., n. 26, pp. 148–9 on the stigma of mortgage repossession and the movement from home owner to council tenant.

108 Pallasmaa, op. cit., n. 102, p. 137.

109 See Moore, op. cit., n. 29, p. 207.

110 id.

111 id.

112 id., p. 208.

113 Lawrence, op. cit., n. 20, pp. 58–9.

114 Hayward, op. cit., n. 21, p. 3. Prior to this, the term *home* was associated with a person's place or country of birth.

115 'Although the form of the family is undergoing change, the *idea* of family remains fundamental. By its association with family, the home, too, would hold cultural centrality.' (Fitchen, op. cit., n. 83, p. 315.)

children are not explicitly the focus, the family unit is apparent.’<sup>116</sup> Another study<sup>117</sup> reflected the popularly held view that ‘it is the presence of children and the activity of family life that makes a house into a home.’<sup>118</sup>

Empirical research on home also indicates that other values of home, for example the perception of the home environment as providing protection and representing security, are also influenced by cultural factors. Sebba and Churchman<sup>119</sup> found that *security* was the most frequently mentioned quality of the home environment by young children.<sup>120</sup> The image of home as a place of refuge is prevalent in many societies, and this is arguably bolstered by cultural representations of home. One example, drawn from a United States context, is provided by Fichten:

An image of home as a refuge from the dangers of the outside world has deep historical roots in this society, perhaps captured in the mythical pioneer image of the rough cabin on the prairie, in which the husband-father is pictured protecting his family and its new home from the dangers of wilderness life. Though the nature of the perceived dangers has changed over time, the home is still thought of as the haven, where people, especially children, are safe.<sup>121</sup>

The practical, emotional and psychological impact of loss of this ‘haven’, for example through repossession and sale by a creditor, is heightened by the socio-cultural connection between occupier and home. The environment that the occupiers are at risk of losing is the ‘culturally cherished institution of home.’<sup>122</sup>

## LOSS OF HOME

The previous sections have identified some of the values that could be taken into account in the development of a concept of home. Such a legal concept of home could, if developed, have wide ranging application. The context of disputes between creditors and occupiers, however, provides a stark example of the way in which the values of home to an occupier are actually minimized, especially when weighed against the more tangible claims of creditors. This occurs despite the fact that the net result for the occupier, if the creditor’s claim to the house as security prevails, is often the loss of their home. Empirical studies which have focused on the psychological impact of losing one’s home<sup>123</sup> identify extreme responses including alienation and

116 *id.*, at p. 316.

117 Rakoff, *op. cit.*, n. 43, at p. 93.

118 *id.*

119 Sebba and Churchman, *op. cit.*, n. 43.

120 See, also, Smith, *op. cit.*, n. 43.

121 Fichten, *op. cit.*, n. 83, p. 316.

122 *id.*, p. 315.

123 In the context of urban dislocation following slum clearance.

grief amongst the dispossessed.<sup>124</sup> In 'Grieving for a Lost Home', Marc Fried considers the crisis of uncontrollably losing one's home,<sup>125</sup> and concludes that 'for the majority it seems quite precise to speak of their reactions as expressions of *grief*.'<sup>126</sup> Victims of home loss reported a range of responses, including:

feelings of painful loss, the continued longing, the general depressive tone, frequent symptoms of psychological or social or somatic distress, the active work required in adapting to the altered situation, the sense of helplessness, the occasional expressions of both direct and displaced anger, and tendencies to idealise the lost place.<sup>127</sup>

The motivation for Fried's investigation was 'the realization that relocation was a crisis with potential danger to mental health ...'.<sup>128</sup> Fried concludes that the additional values of home to an occupier, as a physical structure, as territory, as identity and as a social and cultural unit – the 'x factor' – caused some occupiers to experience a grief response on the loss of home.<sup>129</sup>

This analysis is consistent with the findings of Ford et al.,<sup>130</sup> who conducted a qualitative study of the experiences and perceptions of thirty families with children who had experienced mortgage repossession. The experience of mortgage repossession leading to loss of home caused feelings of sadness, loss, insecurity, and in some cases, damage to health. It is also argued that the experience of loss of home through mortgage repossessions has a detrimental effect on the occupier's psycho-social well-being and, in turn, health, since:

losing a home through mortgage possession involves more than just losing a property. Of course the material aspects of losing a mortgaged home are very important ... buying a property constitutes a capital investment and an important financial asset; something to ensure financial security in old age and something to 'pass on' to the children. But losing a home in this way means more than that to most people. The possession of a property constitutes a significant loss of a home that is invested with meaning and memories. Not only that but ... the bureaucratic procedures associated with the administrative processes of possession mean that people have to ensure long periods of *insecurity and uncertainty*. A whole set of events is set in train that is *out of*

124 See Lawrence, op. cit., n. 20, pp. 61–2; and M. Fried, 'Grieving for a Lost Home' in *The Urban Condition – People and Policy in the Metropolis* ed. J. Duhl (1963).

125 In the context of urban dislocation, following slum clearance.

126 Fried, op. cit., n. 124, p. 151.

127 id.

128 id., p. 152.

129 Fried acknowledges that the response to loss of home varies depending on the occupier: 'Grieving for a lost home is evidently a widespread and serious social phenomenon following in the wake of urban dislocation. It is likely to increase social and psychological "pathology" in a limited number of instances; and it is also likely to create new opportunities for some, and to increase the rate of social mobility for others. For the greatest number, dislocation is unlikely to have either effect but does lead to intense personal suffering despite moderately successful adaptation to the total situation of relocation' (op. cit., n. 124, p. 167).

130 Ford et al., op. cit., n. 26, chs. 6 and 7.



*their control* ... according to the psychosocial literature on the social determinants of health it is these experiences (uncertainty and lack of control) that are coming to be regarded as among the most crucial determinants of poor health in contemporary societies.<sup>131</sup>

Ford et al. thus conclude that mortgage arrears and possessions impact on the repossessed occupier's 'emotional capital', and further, that the impact of loss of home on an occupier's emotional and consequently on his physical health<sup>132</sup> justifies their claim that unsustainable home ownership is a public health issue.

Another study by Porteous which examines the destruction of communities is also analogous with loss of home through repossession, and supports the argument that the repossessed occupier experiences a sense of loss that cannot be redressed by simply relocating that occupier, or family, in another housing environment. Porteous claims that 'this domicile has negative social and psychological effects on its human victims.'<sup>133</sup> This research established that, in the context of forced relocation of home, '[c]hange almost invariably involves loss, and bereavement-like symptoms of grief are common among those uprooted and relocated.'<sup>134</sup> It is particularly interesting to note that Porteous relates this grief to the loss of a particular home, since: '[r]elocates often improve their living standard dramatically, but pay for this in terms of considerable social and psychological disruption.'<sup>135</sup> It is arguable that this type of evidence should be weighed in the balance when policymakers are considering the argument that occupiers can be compensated for loss of home by preserving a portion of the equity in the property for them to 'start again'.<sup>136</sup>

This research evidence, however, is afflicted by the same difficulties which affect arguments in support of the concept of home:

the problem lies with the fact that we are dealing with environmental intangibles – attachment, grief, loss – which are immeasurable, difficult to articulate, and thus easy to ignore by the cost-benefit brigade.<sup>137</sup>

131 *id.*, p. 163.

132 Ford et al. base this deduction on the proposition, made by commentators on the sociology of emotions, that 'social events and circumstances can have bodily correlates' (*id.*); thus, that emotional stress can have detrimental effects on physical health.

133 J.D. Porteous, 'Domicide: The Destruction of Home' in Benjamin, *op. cit.*, n. 1, p. 153.

134 *id.*, p. 159.

135 *id.*

136 Where, for instance, there remains some equity in the property which may be released on sale by the creditor and accrued to the debtor, or a co-owning occupier who has priority over the debtor, or in the context of a statutory regime such as the New Zealand Property (Relationships) Act 2001, whereby a 'specified sum' is preserved on sale by a creditor to assist those who are repossessed in re-establishing themselves.

137 Porteous, *op. cit.*, n. 133, p. 153.

Furthermore, the search for a concept of home is hampered by the fact that, '[b]eing intangible, qualities of home are often only identified when they are lost'.<sup>138</sup> Buttimer claims, however, that:

[w]hether all these values are *consciously* articulated in legal or behavioural terms does not seem to be the crucial point. In fact, they are often not brought to consciousness until they are threatened: normally they are part of the fabric of everyday life and its taken for granted routines.<sup>139</sup>

It is suggested, however, that the socio-economic changes which have highlighted disputes between creditors and occupiers, and which have led to the current phenomenon of *unsustainable home ownership*,<sup>140</sup> now require a more explicit articulation of the respective interests of creditors and occupiers in domestic property, in order to enable their respective claims to the house as security and house as home to be justifiably balanced.

## THE IDEOLOGY OF HOME OWNERSHIP AND THE CONCEPT OF HOME

The ideology of home ownership has compounded the meaning and values associated with home. Indeed, the political and economic policies which have promoted the ideology of home ownership in the United Kingdom and beyond<sup>141</sup> have influenced the socio-cultural relationship between 'home' and 'home ownership'. Some commentators have argued that home embodies greater significance when the property in question is *owned* by its occupiers, and that the values of home ought therefore to carry greater weight in the context of owner occupation. Fitchen, for example, suggests that 'the cultural meanings of home are compounded by the additional cultural meanings of home ownership';<sup>142</sup> culturally, if not in reality, home ownership is perceived as conferring greater freedom and independence, and as giving the home owner a greater degree of control. Furthermore, the status conferred by home ownership may be relevant in the context of an occupier's self-identity.<sup>143</sup>

138 Dovey, *op. cit.*, n. 21, p. 56.

139 Buttimer, *op. cit.*, n. 65, p. 167.

140 See Ford et al., *op. cit.*, n. 26.

141 The history of government policies encouraging home ownership have been extensively rehearsed, see A. Offer, *Land Ownership, Law, Ideology and Urban Development in England*, (1981); C. Gurney, 'The meaning of home in the decade of owner occupation: Towards an Experiential Perspective', School of Advanced Urban Studies, University of Bristol (1990); Merritt, *op. cit.*, n. 42; and for a recent analysis, Ford et al., *id.* The pursuance of comparable policies in the United States is discussed in an excellent essay by H. Marcuse, 'The Ideologies of Ownership and Property Rights' in *Housing Form and Public Policy in the US*, ed. R. Plunz (1980).

142 Fitchen, *op. cit.*, n. 83, p. 318.

143 'Owning one's own home grants membership in a respected category of people in part because it demonstrates one's commitment to the work ethic. The owned home,

In an interesting study, Rakoff<sup>144</sup> indicates a focus by occupiers on the economic ideology of home, amongst middle income occupiers at least, many of whom regarded their houses as 'a commodity or an investment opportunity, something to be bought and sold with an eye to profit as well as use ...'.<sup>145</sup> It is noteworthy, however, that even whilst valuing their homes as investment assets, 'this view was clearly of secondary importance in the larger meaning-system of the house. A series of more elusive meanings carried greater weight for these people.'<sup>146</sup> These 'more elusive meanings' included family associations, identity issues such as personal status and success, a place of permanence and security and a refuge from the outside world. Rakoff claims that '[t]he house, particularly the owner-occupied house, seemed to be a powerful symbol of order, continuity, physical safety, and a sense of place or physical belonging.'<sup>147</sup> Of particular significance, however, is the observation that:

people continually returned to the premise that ownership was necessary for actualising any or all of [these meanings]. Even the renters agreed that ownership made real and possible the control, the security, the status, the family life that all of these people were seeking in and through their houses. This centrality of ownership was usually expressed in terms of freedom.<sup>148</sup>

The proposition that home ownership enhances the occupier's experience of home is supported by studies carried out by Smith, who emphasises home ownership as conferring a sense of continuity,<sup>149</sup> and Saunders, who claims that data on tenure and meanings of home indicates that home ownership provides greater ontological security for occupiers.<sup>150</sup> Thus, as these studies demonstrate, home ownership actually enhances many of the 'x factor' qualities which essentially distinguish a house from a home.

the largest single expenditure most people ever make, requires many years of earning and saving, and represents a long-term commitment to the work ethic' (id., p. 320).

144 Rakoff, op. cit., n. 43.

145 id., p 93. This argument has also been raised in the context of creditor/occupier disputes, as policymakers assert that occupiers must bear the bad times, since they take their share of the good times.

146 id.

147 id., p. 94.

148 id.

149 'Evidence of the importance of continuity was found in references to the desirability of permanence and ownership of the home environment. Ownership was cited as a positive feature of the present home by home owners and the lack of ownership was described as a negative feature of the present home by renters. Lack of ownership was also a feature of places not regarded as homes. Hence, ownership and the security of tenure which ownership entails appear to be linked with home environments.' Smith, op. cit., n. 43, p. 44.

150 P. Saunders, *A Nation of Home Owners* (1990); see, also, M. Bulos and W. Chaker, 'Sustaining a Sense of Home and Personal Identity' in Benjamin, op. cit., n. 1, p. 232.

This proposition has been challenged, however, by research evidence that where people tend to *choose* rental homes, rather than becoming owner occupiers,<sup>151</sup> they do not generally feel any less 'at home' in their properties.<sup>152</sup> It is suggested, instead, that data which indicates that home owners derive greater satisfaction as occupiers in their homes is biased by the 'ideological framework underpinning these policies and trends which explicitly ties the tenure status of housing to the meaning of home.'<sup>153</sup> Marcuse supports this theory, based on his analysis of the American position.<sup>154</sup> In an excellent piece of deconstruction on home ownership versus renting, he argues that the characteristics associated with *home*, such as control, status, and privacy, are *not* inherently enhanced by home ownership. Marcuse also raises a further argument that the factors which are cited in support of the proposition that home ownership provides a more meaningful home experience – security of tenure, control, and so on – could be, if governments chose to do so as a matter of policy, built into the law in relation to the homes of tenants, thus ensuring that these characteristics of home could be experienced in the same way by renters. The overriding argument is that owner occupation, as a form of tenure, does not inherently make for a better home.

The additional *home* benefits which, it has been argued, accrue to owner occupiers – freedom, continuity, security – are clearly associated with the security of tenure which is assumed to accompany home ownership.<sup>155</sup> In considering the extent to which home ownership enhances the experience of home, it is important to bear in mind 'the fact that one's abilities to maintain an identity between house and home – that is, to actually dwell in the place one regards as home – are strongly related to the socio-political economy of the country in question.'<sup>156</sup> The 'security' which allegedly results from owner occupation must be considered in the context of the 'increasing proportion of owner-occupiers in Britain, North America, and other industrialized countries who are unable to meet their mortgage payments and eventually become depossessed.'<sup>157</sup> The suggestion that home ownership offers greater 'ontological security' to occupiers has also been challenged.<sup>158</sup> In Gurney's paper on the meaning of home he argues that:

151 In Switzerland, for example.

152 See chapters by Rapoport and Lawrence, in Benjamin, op. cit., n. 1.

153 Lawrence, op. cit., n. 20, p. 60.

154 'Home ownership has a mystique, independent of any real difference it makes legally or economically. This mystique has been a major influence on housing policy in the United States.' (Marcuse, op. cit., n. 141, p. 41.)

155 It is noteworthy, for example, that Rakoff's study was published in 1977, in advance of the home ownership crisis of the 1980s and 1990s.

156 D. Stea, 'House and Home: Identity, Dichotomy, or Dialectic?' in Benjamin, op. cit., n. 1, p. 183.

157 Lawrence, op. cit., n. 20, p. 60.

158 Gurney, op. cit., n. 141.

Alongside the growth in home ownership . . . has come an increase in disrepair, mortgage arrears and repossessions, and homelessness. The financial benefits of this tenure are a double-edged sword. As more and more 'marginal borrowers' have taken on mortgages to pass property on to their children, or as financial investments, the negative effects of home ownership have become apparent. One thing is certain. Households facing mortgage arrears, or essential repairs they can not afford seem unlikely to derive the feelings of niche and belonging from home described by Saunders.<sup>159</sup>

Gurney, writing in 1990 at a high point of mortgage repossessions, considered the meaning of home for those owner occupiers who faced the prospect of losing their homes at the hands of creditors, and concluded that:

[e]ven if a home of one's own does foster feelings of ontological security, the continual worry and struggle to avoid being 'behind with the mortgage' seems likely to deaden the effect of such a psychological boost.<sup>160</sup>

Moreover, recent analysis of contemporary patterns of home ownership<sup>161</sup> indicates that these issues will be of on-going relevance when conceptualizing home.

## CONCLUSIONS

Obviously home is a difficult concept to pin down. It presents challenges of definition and measurement, and, as an ultimately experiential phenomenon,<sup>162</sup> is difficult to prove. The meaning of home to occupiers may encompass a wide range and variety of responses.<sup>163</sup> Drawing on an extensive body of research in the social sciences, this article has shown that *home* represents a complex and multi-dimensional amalgam of financial, practical, social, psychological, cultural, politico-economic, and emotional interests to its occupiers. Within the legal system, however, and particularly when weighed against the concrete financial claims of creditors, these values have not been recognized by policy makers, nor translated into a coherent legal concept which could inform the task of balancing the interests of creditors against the claims of occupiers to the continued use of property as their home.

Although it is often argued that creditors must prevail on economic policy grounds, the importance of home, and the impact of losing one's home on occupiers, demands a more explicit analysis of the other side of the equation.

159 *id.*, p. 8.

160 *id.*, p. 10.

161 Ford et al., *op. cit.*, n. 26.

162 Buttner (op. cit., n. 65, p. 171) claims that: 'The meanings of place to those who live in them have more to do with everyday living and doing rather than thinking.' Dovey (op. cit., n. 21, p. 51) also claims that 'Home . . . is an insider's experience, and it is always unique.'

163 This point is emphasised by Gurney, *op. cit.*, n. 141.

There is no ambiguity surrounding the value of the property to the creditor. Surely, however, if this value is to be 'balanced' against the value of the home to the occupier, some effort should be made, from a conceptual point of view, to develop a clearer concept of the value of home in law. The chimera of home that currently lurks in the shadows of policy reasoning is easily ignored, or trivialized. A more coherent concept of home should, at the very least, ensure that legislative and judicial policy decisions which undermine the interests of occupiers in their homes are more explicitly reasoned.

Questions remain as to *how* a concept of home should be constructed. That task is somewhat beyond the remit of this paper, and would require considerable careful thought. One aspect which will undoubtedly demand attention, and provoke controversy, is the relationship between home and family. It is interesting to note the prevalence of *family* in studies extrapolating the values of home amongst occupiers. Family emerges as a significant indicator in each of the main types of value considered above. The desire for security within a home territory is enhanced by the presence of family, and particularly of children; the right to privacy in the home is realized through association with 'family life'; home as identity has family connotations; and family is identified as the most significant socio-cultural facet of home. These references to the importance of family in relation to the meaning of home, by the occupiers of homes, support the legislative and judicial policy leanings towards protecting family homes, over and above homes in general. Despite this, there is no evidence to suggest that these policies have been based on any explicit and systematic examination of the meaning of home to occupiers.<sup>164</sup>

The idea of adding value to home on the basis that it is a *family* home would appear to be both attractive to policy makers, and supportable on the basis of the research discussed in this article. A legal concept of home that focuses on the family home could, however, create practical difficulties. If the concept of home is focused around the status of *family* home, it will require a definition of a qualifying 'family unit'. This could raise a number of further policy issues in relation to non-traditional family arrangements. The difficulties surrounding the formulation of such a definition have been well documented in recent literature concerning the 'functional family'.<sup>165</sup> Potential areas of difficulty might include the acceptability of discrimination

164 It is reasonable to infer, however, that the tendency to confer greater legal protections on family homes may be implicitly derived from the socio-cultural perceptions of home as family home discussed above.

165 A.H. Young, 'The Changing Family, Rights Discourse and the Supreme Court of Canada' (2001) 80 *Cnd. Bar Rev.* 749–92; L. Glennon, 'Fitzpatrick v. Sterling Housing Association Ltd – an endorsement of the functional family?' (2000) 14 *International J. of Law, Policy and the Family* 226, N. Bala, 'The evolving Canadian definition of the family: towards a pluralistic and functional approach' (1994) 8 *International J. of Law, Policy and the Family* 293.

on the basis of marital status or sexual orientation.<sup>166</sup> Another question which would inevitably flow from a concept of home that prioritizes family would be whether a single person would be, or ought to be regarded as capable of establishing a home.<sup>167</sup> These issues would have to be addressed in any explicit conceptualization of home as family home.

Overarching all of this, and arguably hindering the development of a legal concept of home, is the argument that the concept of home is not 'real', but rather 'that there is a complex ideology of *home* which includes our expectations and desires ... that *home* is both an imposed ideal and a potent cultural and individual ideal.'<sup>168</sup> This does not, however, diminish the argument in support of a concept of home. Although epigrams such as 'home is where the heart is' and 'there's no place like home' portray attachment to home as sentimental, these expressions, and the responses they describe, are informed by important cultural, social, and psychological attachments.<sup>169</sup> One of the difficulties, however, from a legal perspective, is the inherent intangibility of these responses towards home. Dovey's observation that '[t]he rational attitude is biased towards the tangible. Yet the phenomenon of home ... is an intangible relationship between people and the places in which they dwell; it is not visible nor accurately measurable'<sup>170</sup> goes some way to explain why the rationally underpinned legal system has tended to prefer the interests of creditors in the economic value of the house to the non-economic interests of occupiers in their home. Although an occupier's interest in property *as a home* is intangible, that is certainly not an insurmountable hurdle to the recognition of legally defensible rights. It would, however, be necessary for policymakers to embark on a process of disentangling the real from the ideal, and to explicitly consider whether an occupier's intangible attachment to home ought to add weight to their claims when seeking to defend proceedings brought by creditors.

The purpose of this article has been to advance an argument in support of the development of a legal concept of home. Happily, lawyers would not have to start this process 'from scratch'. The rich body of knowledge and research literature which has been developed in other disciplines, and which has matured from the 'speculative'<sup>171</sup> to increasingly sophisticated and

166 Lord Wilberforce acknowledged the undesirability of this approach, extra-judicially, some time ago: 'It seems rather questionable now, in this day and age – when the general tendency of the courts is to assimilate the position of common law spouses, cohabitees, partners and so on to that of spouses – to separate them in this very definite way.' 460 *H.L. Debs.* col. 1271 (5 March 1985).

167 Although O.F. Bollnow, *Mensch und Raum* (1990) claims that it is possible for a single person to establish a home, Wikstrom, *op. cit.*, n. 43, p. 277, disagrees.

168 Moore, *op. cit.*, n. 29, at p. 212.

169 Fitchen (*op. cit.*, n. 83, p. 317) argues that this ideal expression is informed by the reality that '[h]ome is an affective anchor with sacred connotations'.

170 Dovey, *op. cit.*, n. 21, p. 52.

171 Hayward, *op. cit.*, n. 43, uses this expression to describe his own earlier work (*op. cit.*, n. 21).

scientific studies, is primed to inform the process of developing a legal concept of home. Though the formulation of a coherent concept of home would by no means be an easy challenge, it is a challenge that ought to be met. Amongst other uses, the development of such a concept would assist policymakers when called upon to attach appropriate weight to the values of home, and therefore to truly balance the interests of occupiers in the home against those of creditors.