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POSSESSION OF LAND

Nothing is more important in English land law than 'possession'. It is the foundation of all title, rights and remedies. But what exactly is it, and why does it still matter?

This book is about the meaning, significance and practical effect of the concept of possession in contemporary land law. It explains the different meanings of possession, the relationship between possession and title, and the ways in which the common law and equity do, and do not, protect possession.

The rights and remedies of freeholders, tenants and mortgage lenders, between themselves and against third parties, are all to some extent dependent on questions of status and possession. This book shows how. It is designed to provide an understanding of the basic principles for the student, and the answers to difficult problems for the practitioner.

MARK WONNACOTT is a property litigator at Maitland Chambers, Lincoln's Inn, London.

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CAMBRIDGE UNIVERSITY PRESS

Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paulo

Cambridge University Press
The Edinburgh Building, Cambridge CB2 2RU, UK

Published in the United States of America by Cambridge University Press, New York

www.cambridge.org
Information on this title: www.cambridge.org/9780521868990

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First published 2006

Printed in the United Kingdom at the University Press, Cambridge

A catalogue record for this publication is available from the British Library

ISBN-13 978-0-521-86899-0 hardback
ISBN-10 0-521-86899-8 hardback

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CONTENTS

<i>Preface and acknowledgments</i>	<i>page ix</i>
<i>Table of cases</i>	xi
<i>Table of statutes</i>	xxi
<i>Table of statutory instruments</i>	xxvii
1 Meaning of possession	1
Introduction	1
Different meanings	1
First meaning: a relationship with a corporeal estate	1
Second meaning: occupation	5
Third meaning: constructive possession	8
Summary of meanings	13
Problem of different meanings	13
Errors as a result	14
2 Protection of possession	19
Introduction	19
The possessory actions	19
Actions for recovery of land	20
Actions for trespass	22
Actions in nuisance	24
Possessory actions and occupation	25
Possession and wrongdoer's title	27
Possessory actions and <i>ius tertii</i>	30
3 Possession, title and freehold land	35
Introduction	35
Crown demesne	36
No allodial land	37

	Crown overlord	38	
	Possession proves title	40	
	Relativity of titles	42	
	The title proved by possession	44	
	Registered land	46	
4	Leases and licences	50	
	Introduction	50	
	Contract and estate	52	
	Estate owner not in possession of the lease	56	
	Possession and forfeiture	58	
	Relief from forfeiture	61	
	Terms for the grant of relief	62	
	Contractual licences	67	
	Protection of licences	69	
5	Mortgages and charges	74	
	Introduction	74	
	Legal mortgages	74	
	A legal mortgagee's right to possession	78	
	The legal mortgagee in possession	81	
	Equitable securities	83	
	A mortgaged lease: covenants	86	
	A mortgaged reversion: covenants	87	
6	Equity and trusts	91	
	Introduction	91	
	The relationship between common law and equity	91	
	Personal and proprietary equitable rights	94	
	Equity and an action to recover land	96	
	Equity, trespass and nuisance	100	
	Equity, trusts and injunctions	101	
	Equity and leases to minors	104	
7	Birth and death, dissolution and insolvency	107	
	Introduction	107	
	Birth	107	
	Death	108	
	Dispositions to the non-extant	111	

CONTENTS

vii

Private receivership	113
Court-appointed receivers	115
Bankruptcy and winding up	116
Disclaimer	119
Escheat	122
Dissolution	123
8 Adverse possession and prescription	125
Introduction	125
Conceptual similarities and differences	125
Touchstones of adverse possession	128
Adverse possession, prescription and consent	135
Adverse possession and leases	136
Adverse possession and restrictive covenants	138
Adverse possession and land registration	139
Possession of incorporeal hereditaments	142
9 Possession judgments	145
Introduction	145
In rem or in personam?	146
Possession judgments: the land or an estate?	152
The process of enforcement	153
Setting aside possession judgments	155
Setting aside execution	156
Suspended possession orders	157
Tolerated trespassers	158
10 Summary and conclusions	161
Meaning of possession	161
Protection of possession	162
Possession, title and freehold land	163
Leases and licences	164
Mortgages and charges	165
Equity and trusts	165
Birth and death, dissolution and insolvency	166
Adverse possession and prescription	167
Possession judgments	168
<i>Index</i>	170

PREFACE AND ACKNOWLEDGMENTS

At University College London, undergraduate lawyers are traditionally told the story of its first two Professors. John Austin, Professor of Jurisprudence and the Law of Nations, taught dry legal philosophy to an empty room. But, Andrew Amos, Professor of English Law, knew his market. His first lecture was on the rules of accretion to and diluvian from land, and his lectures were packed.

He knew then, as every property litigator knows now, that few things evoke more passion and litigation than possession of land. Every week, in county courts up and down the country, there are people spending £50,000 or more, fighting domestic boundary disputes, typically over six inches of residential back-garden, and counting the money well spent if the judge decides that the boundary is where they say it should be.

But English law has never produced a proper theory of possession.

What exactly is it to be ‘in’ possession of land? What is it that is possessed? What is its relationship with a freehold or leasehold title? How is it acquired, and how is it lost? How does the common law protect it? What difference does equity make? What happens when a mortgagee takes possession, or if the possessor becomes insolvent or ceases to exist? What exactly is the effect of a possession order? In short, how does it all fit together?

This book is an attempt to answer that question.

Thanks are due to my former pupil-master, Robert Ham QC, and to Martin Hutchings, both of Wilberforce Chambers, who looked over the final version of the manuscript. Philomena Harrison, of Maitland Chambers, did likewise. My former pupil, Mark Sefton, of Falcon Chambers, saw and commented on an early draft, and Gabrielle Higgins, of Maitland Chambers, made useful observations about every page. They have all, at various times, been forced to take part in dull conversations about my hobby-horse, and, if those conversations were sometimes held

in one of the many wine bars near Lincoln's Inn, that can only have done a little to alleviate the tedium.

Thanks are also due to the various clients of Central Law Training Ltd. For ten enjoyable years, I provided continuing professional development lectures for them, up and down the country, on property law subjects. On many occasions, what had started as a discussion of a current legal problem, turned into a lecture on the history of the point, or some tangentially related point; and, if anyone thought that odd, at least nobody ever complained.

Many of the problems discussed in this book have a provenance in the real world. In most cases, it would not have occurred to me that there was a problem at all, had a solicitor not instructed me to provide a solution to it for a client. So thanks are due to them too; and, in particular, to Christopher Dalton, of the Mary Ward Legal Centre, a free-thinker, who is always willing to challenge legal dogma.

Finally, thanks are due to the Cambridge University Press, for agreeing to publish this book at all, and for putting up with the eccentricities of my word processing system.

TABLE OF CASES

- A-G v. Blake [2001] 1 AC 268; [2000] 3 WLR 625 103
 A-G (NSW) v. Brown (1847) 1 Legge 312; (1847) 2 SCR (NSW) App 30 (FC) 36
 Abbey National v. Cann [1991] 1 AC 56 44
 Adams v. Naylor [1944] 2 All ER 21 23
 AE Realisation, Re [1988] 1 WLR 200 121
 Ahmed v. Kendrick (1987) 56 P&CR 120 83
 Akici v. L. R. Butlin Ltd [2006] 1 WLR 201 6, 68, 129
 Alamo Housing v. Meredith [2003] EWCA Civ 495 72
 Alan Estates Ltd v. W. G. Stores Ltd [1981] 3 All ER 481 11
 Alghussein v. Eton College [1988] 1 WLR 587 58
 Allan v. Liverpool Overseers (1874) LR 9 QB 180 18, 23, 25
 Allan v. Roughley (1955) 94 CLR 98 28, 135
 Allen v. Woods (1893) 68 LT 143 97
 Allied Dunbar v. Fowle [1994] 1 EGLR 122 123
 Allied London Investments Ltd v. Hambro Life Assurance plc (1985) 50 P&CR 207;
 [1985] 1 EGLR 45 52
 Alston, Re [1892] P 143, Re 109
 Amec v. Jury's Hotels [2001] 1 EGLR 81 103
 Anchor Brewhouse v. Berkeley House [1987] 2 EGLR 173 6
 Angel v. Smith (1804) 9 Ves 335 115
 Anon (1699) 12 Mod 211 151
 Appah v. Parncliffe Investments Ltd [1964] 1 All ER 838 25
 Armory v. Delamire (1722) 1 Sta 505 41
 Ashburn Anstalt v. Arnold [1999] Ch 1 70
 Ashe v. Hogan [1920] 1 IR 104 56
 Asher v. Whitlock (1865) LR 1 QB 1 31–2, 43, 150
 Aslin v. Parkin (1758) 2 Burr 665 148
 Associated Deliveries Ltd v. Harrison [1984] 272 EG 321 62
 Aston Cantlow v. Wallbank [2003] UKHL 37; [2004] 1 AC 546 142
 Attorney-General v. Blake [2001] 1 AC 268; [2000] 3 WLR 625 103
 Attorney-General (NSW) v. Brown (1847) 1 Legge 312; (1847) 2 SCR (NSW) App 30
 (FC) 36

- Bacchiochij v. Academic Agency Ltd [1998] 1 WLR 1313 6
 Bahamas International v. Threadgood [1974] 1 WLR 1514 68
 Bakewell Management v. Brandwood [2004] 2 AC 519 37, 39, 127
 Barclays Bank v. Bird [1954] 1 All ER 449 85
 Barclays Bank v. Prudential Assurance [1998] BPIR 427 121
 Barclays Bank v. Roberts [1954] 3 All ER 107 155
 Barclays Bank v. Tennet 1984, unreported, CA 79
 Barclays Bank v. Zaroovabili [1997] Ch 321; [1997] 2 All ER 19 89, 90
 Barnett v. O'Sullivan [1994] 1 WLR 1667 6
 Bath (Earl of) v. Sherwin (1709) 4 Bro PC 373 148
 Baxendale v. Instow Parish Council [1981] 2 All ER 620 8
 Becton Dickinson v. Zwebner [1980] QB 208 54
 Bell v. General Accident [1998] 1 EGLR 69 3
 Bellamy v. Sabine (1857) 1 Dr G & J 566 149
 Bertie v. Beaumont (1812) 16 East 33 8
 Beynon, Re [1901] P 141 109
 Billson v. Residential Apartments [1992] 1 AC 494; [1992] 2 WLR 15; [1992] 1 All ER 141 67
 Billson v. Residential Apartments (No.3) [1995] EGCS 155 67
 Birmingham Citizens Permanent Building Society v. Caunt [1962] Ch 883; [1962] 1 All ER 163 79, 81
 Bonner v. Tottenham and Edmonton BS [1899] 1 QB 161 54, 76
 Bowers v. Bowers, 3 February 1987, unreported 83
 BP Properties v. Buckler [1987] 2 EGLR 168 135
 Bradley, Re [1956] Ch 615 111
 Bradley v. Baylis (1881) 8 QBD 195 69
 Bristow v. Cormican (1878) 3 App Cas 641 7, 21, 27
 Britain v. Rossiter (1882) 11 QBD 123 93
 British South Africa Company v. Companhia de Mocambique [1893] AC 602 93
 Brown & Root v. Sun Alliance [1996] Ch 51 105
 Bruton v. Quadrant Housing Trust [2000] AC 406; [1997] 4 All ER 970 15, 17, 26
 Buckinghamshire CC v. Moran [1990] Ch 623; [1989] 2 All ER 225 127, 136
 Burrows v. Brent DC [1996] 1 WLR 1448 159
 Butler v. Kensington (1846) 8 QB 429 96
- Calabar Properties v. Seagull Autos [1981] QB 202; [1980] 1 All ER 839 61
 Calwell, ex parte (1828) 1 Mod 259 79
 Cambridge Water v. Eastern Counties Leather [1994] 2 AC 264 19
 Champion v. Palmer [1896] 2 IR 445 79
 Canas Property Co. v. KL Television Services [1970] 2 QB 433; [1970] 2 All ER 795 60
 Castle Phillips v. Piddington [1995] 1 FLR 783 54, 83
 Central London Commercial Estates v. Kato Kagaku [1998] 4 All ER 948 140

TABLE OF CASES

xiii

- Chan v. Cresdon Pty Ltd [1989] HCA 63; (1989) 168 CLR 242 102
 Chartered Trust plc v. Davies [1997] 2 EGLR 83 51
 Cheltenham & Gloucester BS v. Norgan [1966] 1 WLR 343; [1999] 1 All ER 449 81
 Cheltenham & Gloucester BS v. Obi [1994] 28 HLR 22 157
 China National Foreign Trade Transportation Corp. v. Evlogia Shipping Co. SA of
 Panama, The Mihaios Xilas [1979] 2 All ER 1044 59
 Cholmondeley v. Clonton (1817) 2 Mer 171 79
 Chudleigh's Case (1589–95) 1 Co Rep 114 96
 Chung Ping Kwan v. Lam Island Development Co. [1997] AC 38 140
 Church Commissioners v. Ibrahim [1997] 1 EGLR 13 67
 Church Commissioners v. Piskor [1954] Ch 553 44
 City of London v. Fell [1993] QB 589; [1994] 1 AC 458; [1993] 4 All ER 968; [1995] 69
 P&CR 461 52, 56
 Citibank Trust Ltd v. Ayivor [1987] 3 All ER 241; [1987] 1 WLR 1157 79
 Clements v. Richardson (1888) 11 LR Ir 535 55
 Commonwealth v. Anderson (1960) 105 CLR 303 25
 Copeland v. Stephens (1818) 1 Barn & Ald 593 11, 119
 Countryside Residential v. Tugwell [2000] 3 EGLR 59 72
 Cowper v. Laidler [1903] 2 Ch 337 103
 Crago v. Julien [1992] 1 EGLR 84 87
 Croydon (Unique) Ltd v. Wright [2000] L&TR 20 157
- Danford v. McAnulty (1883) 8 App Cas 456 21, 22
 Dawson v. Gent (1857) 1 H&N 745 32
 Dawson v. Pyne (1895) 6 NSW LR 116; 11 WN 179 32
 Deanplan v. Mahmoud [1993] Ch 151 55
 Dearman v. Simpletest (CCRTP/99/0473/2) 97
 Delaney v. T. P. Smith [1946] 2 All ER 23 28
 Diplock; Diplock v. Wintle, Re [1948] Ch 465 94
 Doe d. Hall v. Penfold (1838) 8 C&P 536; (173) ER 607 32, 42
 Doe d. Warners v. Browne (1807) 8 East 165 51
 Doe d. Whitfield v. Roe [1893] 1 QB 604 152
 Doe v. Dyebull (Mood & M 346) 43
 Doe v. Staple (1788) 2 TR 684 96
 Doe v. Wood (1819) Barn & Ald 724 72
 Dutton v. Manchester Airport [2000] QB 183 27
- Eaton v. Jaques (1780) 2 Doug 456 86
 Edgington v. Fitzmaurice (1885) 29 ChD 459 132
 Electricity Supply Nominees Ltd v. Thorn EMI Retail Ltd (1992) 63 P&CR 143; [1991]
 2 EGLR 46 54
 Epps v. Rothnie [1945] 1 KB 562 50

- Ernst & Young v. Butte Mining (No.2) [1997] 1 WLR 1485 60
 Escalus Properties v. Robinson [1996] QB 231; [1995] 2 EGLR 23 51, 61
 Esselte v. Pearl Assurance [1997] 1 WLR 981 6
 Essex Furniture plc v. National Provident Institution [2001] L&TR 32 64
 Evans v. Bartlam [1937] AC 473; [1937] 2 All ER 646 59
 EWA, Re [1901] 2 KB 643 55
- Factors (Sundries) Ltd v. Miller [1952] 2 All ER 630; [1952] 2 TLR 194 67
 Fairweather v. St Marylebone Property Co. [1963] AC 510 140, 141
 Federated Homes v. Mill Lodge Properties [1980] 1 WLR 594 139
 Fink v. Tranter [1905] 1 KB 427 85
 Fitzgerald v. Firbank [1897] 2 Ch 96 7
 Fitzhardinge v. Purcell [1908] 2 Ch 139 29, 32
 Foskett v. McKeown [2000] 1 AC 102 71
 Foster v. Warblington UDC [1906] 1 KB 648; [1904–7] All ER Rep 366 15, 26
 Fourmaids Ltd v. Dudley Marshall (Properties) Ltd [1957] Ch 317; [1957] 2 All ER 35
 78, 79
 Fred Drughorn v. Rederiaktiebolaget Transatlantic [1919] AC 203 50
 Fuller v. July Properties [1992] 1 EGLR 75; [1992] 64 P&CR 176 63
 Fuller's Theatre and Vaudeville Co. Ltd v. Rofe [1923] AC 435 59
- Gafford v. Graham [1998] EWCA Civ 666 92, 103
 General Finance v. Liberation Permanent BS (1878) 10 ChD 15 97
 Ghana Commercial Bank v. Chandiram [1960] AC 745 83
 Gill v. Lewis [1956] 2 QB 1; [1956] 1 All ER 844 64
 Gledhill v. Hunter (1880) 14 ChD 492 20, 22
 Goodman v. Saltash Corporation (1882) 7 App Cas 633 143
 Gordon, Re (1889) 61 LT 299 85
 Gosling v. Gaskell [1897] AC 575 114
 Goughs Garages v. Pugsley [1930] 1 KB 615 114
 Governors of the National Maternity Hospital v. McGouran [1994] 1 ILRM 521 69
 Graysim Holdings v. P & O Property Holdings [1996] 1 WLR 109 6
 Great Yarmouth v. Verrall [1969] 1 Ch 451; [1968] 1 All ER 70
 Grove v. Portal [1902] 1 Ch 727 143
 GS Fashions v. B&Q plc [1995] 4 All ER 899 152
- Halsall v. Brizell [1957] Ch 169 53
 Hammersmith & Fulham LBC v. Hill (1995) 27 HLR 368 157
 Hanif v. Robinson [1993] QB 419 153
 Hanson v. Stevenson (1818) 1 Barn & Ald 308 11, 119
 Hanstown Properties v. Green (1978) 246 EG 917 50–1
 Harvest Lane Motor Bodies Ltd, Re [1969] 1 Ch 457 123

TABLE OF CASES

xv

- Hastings Corporation v. Ivall (1874) LR 19 Eq Cas 558 32, 42
 Hawdon v. Khan (1920) 20 SR (NSW) 703; 37 WN 279 32
 Healey v. Healey [1915] 1 KB 938 100
 Healing Research Trustee, Re [1992] 2 All ER 481 54
 Heath v. Tang [1993] 1 WLR 1421; [1993] 4 All ER 694 116, 117
 Helman v. Horsham and Worthing Assessment Committee [1949] 1 All ER 776 25
 Hemingway Securities v. Dunraven [1995] 1 EGLR 61 57
 Hemmings v. Stoke Poges Golf Club [1920] 1 KB 720 153
 Henchman v. A-G (1834) 3 My & K 485 124
 Hesperides Hotels v. Aegean Turkish Holidays [1978] 1 All ER 277 23
 Highway Properties Ltd v. Kelly Douglas & Co. [1971] 17 DLR (3d) 710 51
 Hill v. Barclay (1811) 18 Ves 56 61
 Hill v. Griffin [1987] 1 EGLR 8 121
 Hill v. Tupper (1863) 2 H&C 121 72
 Hillgate House v. Expert Clothing [1987] 1 EGLR 651 156
 Hills (Patents) Ltd v. University College Hospital [1956] 1 QB 90 68, 129, 130
 Hindcastle v. Barbara Attenbrough Associates [1997] AC 70; [1996] 1 All ER 737; [1996] 1 EGLR 94 121
 Howard v. Fanshawe [1895] 2 Ch 581 61
 Hughes v. Waite [1957] 1 WLR 713 79
 Humble v. Hunter 12 QB 310 50
 Hunter v. Canary Wharf [1997] AC 655; [1997] 2 All ER 426 6, 14, 25, 26, 70, 73
 Hussein v. Mehlman [1992] 2 EGLR 87 51
 Hylton v. Heal [1921] 2 KB 438 152
- IDC v. Clark [1992] 2 EGLR 184 69
 Industrial Properties v. AEI [1977] QB 580 33
 Inntrepreneur v. Langton [2000] 1 EGLR 34 152, 158
 Inverugie Investments v. Hackett [1995] 1 WLR 213 66
 Iveagh v. Martin [1961] 1 QB 232 126
- J. Miller Ltd v. Lawrence and Bardsley [1966] 1 Lloyd's LR 90 70
 Jackson v. North Eastern Rly Co. (1877) 5 ChD 844 117
 Jackson v. Simons [1923] 1 Ch 373 8
 Jones v. Savery [1951] 1 All ER 820 157
 Joseph v. Lyons (1884) 15 QBD 280 93
- Keech v. Hall (1778) 1 Doug 21 17
 Keech v. Sandford (1726) Cas temp King 61 106
 Kene d. Angel (1796) 6 TR 740 148
 Kenny v. Preen [1963] 1 QB 499 2

- King's Leasehold Estates, Re (1873) LR 16 Eq 521 51
 Kingsalton v Thames Water Developments [2002] 1 P & CR 15 2, 47
 Kooltrade v. XTS Ltd [2001] FSR 158 155
 Kumah v. Osbornes (a firm) [1997] 1 EGCS 1 80
- Ladupt Ltd v. Williams & Glyn's Bank [1985] 2 All ER 577 152
 Lambeth LBC v. Blackburn [2001] EWCA Civ 912 134
 Lanecrest v. Asiwaju [2005] EWCA Civ 117; [2005] 1 EGLR 40 93
 Leeds Industrial co-op v. Slack [1924] AC 851 103
 Leeds Permanent BS v. Mansfield, 16 June 1993, unreported 65
 Leicester BS v. Shearley [1950] 2 All ER 738 147
 Leicester (Earl of) v. Wells-next-the Sea UDC [1973] Ch 110 102
 Leigh and Sullivan v. Aliakman Shipping [1986] 1 AC 785 100
 Letang v. Cooper [1965] 2 QB 232 92
 Liverpool Corporation v. Chorley Union Assessment Committee [1912] 1 KB 270 8
 Lodge v. Wakefield [1995] 2 EGLR 124 132
 London Diocesan Fund v. Phithwa [2005] 1 WLR 3956 50
 Long v. Tower Hamlets LBC [1996] 2 All ER 683 3
 Lord Advocate v. Balfour 1907 SC 1360 38
 Lowe v. J. W. Ashmore Ltd [1971] Ch 545 38
 Lowe's Will Trust, Re [1973] 1 WLR 882 122
 Luganda v. Service Hotels Ltd [1969] 2 Ch 209 68
 Lyons v. Anderson (1886) 13 R 1020 51
- Mabo v. Queensland (No. 2) (1992) 175 CLR 1 37
 Malone v. Laskey [1907] 2 KB 141 6
 Manchester Airport v. Dutton [2000] QB 133 72
 Mander v. Falcke [1891] 2 Ch 554 57, 87, 138
 Mann v. Stephens (1846) 15 Sim 377 138
 Mannai Investment Co. Ltd v. Eagle Star Life Assurance Co. Ltd [1997] AC 749; [1997] 3 All ER 352 50
 Marchant v. Charters [1977] 1 WLR 1181 68
 Marshall v Charteris [1920] 1 Ch 520 20, 116, 154
 Matadeen v. Caribbean Insurance Co. Ltd [2002] UKPC 69 83
 Matthews v. Usher [1900] 2 QB 535 97
 MCC Proceeds Inc. v. London Bros International [1998] 4 All ER 675 101
 McCabe v. Bank of Ireland (1880) 14 AC 413 148
 McClymont v. Primecourt Property Management [2000] EGCS 192 72
 McPhail v. Persons Unknown [1973] Ch 447 157
 Metall & Rohstoff v. Donaldson Lufkin & Jenrette [1990] 1 QB 391 155
 Midland Bank v. McGrath [1996] EGCS 61 79

TABLE OF CASES

xvii

- Midtown v. City of London Real Property Co. [2005] 1 EGLR 65 97
 Milirrpum v. Nabalco [1970–1] 17 FLR 141 37
 Minet v. Johnson (1886–90) All ER 586 152
 Mobil Oil Co. Ltd v. Rawlinson [1981] 43 P&CR 221 79, 80
 Monks v. Dykes (1839) 4 M & W 567 25
 Morrison Low v. Patterson [1985] SLT 255 159
 Moule v. Garrett (1871–2) LR 7 Ex 101; [1861–73] All ER Rep 135 54
 Mount Cook Land v. Hartley [2000] EGCS 26 64, 66
- Nana Ofori Atta v. Nana Abu Bonsra [1958] AC 95 149
 National Carriers v. Panalpina (Northern) [1981] AC 675 51
 National Westminster Bank plc v. Skelton [1993] 1 All ER 242 79, 80
 Neeld, Carpenter v. Inigo-Jones, Re [1960] Ch 455 96
 New York-Kentucky Oil & Gas v. Miller 187 Ky 742, 220 SW 535 (1920) 8
 Newcastle-under-Lyme Corp. v. Wolstanton Ltd [1947] Ch 92; [1946] 2 All ER 447 71
 Newdigate Gallery Ltd, Re [1912] 1 Ch 468 115
 Nicholls v. Ely Beet Sugar Factory [1931] 2 Ch 84 32
 Nile Rhapsody, Re [1992] 2 Lloyds LR 399 94
 Nisbet and Potts Contract, Re [1906] 1 Ch 386 138
 Norwich Union Life Insurance Society v. Low Profile Fashions Ltd (1992) 64 P&CR
 187; [1992] 1 EGLR 86 52
 Noyes v. Pollock (1886) 32 ChD 53 82
 NRMA Insurance Ltd v. B&B Shipping & Marine Salvage Co. Pty Ltd (1947) 47 SR
 (NSW) 273 32
 Nynehead v. Fibreboard [1999] 1 EGLR 8 51
- Ocean Accident and Guarantee v. Ilford Gas Company [1905] 2 KB 493 29, 30, 85
 Ocean Estates Ltd v. Pinder [1969] 2 AC 19 21
 O'Connor v. Foley [1906] 1 IR 20 56
 Ord v. Upton [2000] 1 All ER 193 117
 Owers, Re [1941] Ch 389 111
- Paine & Co. v. S Neots & Coke Co. [1939] 3 All ER 812 7
 Paradise Beach v. Price–Robinson [1968] AC 1072 10
 Park Air Services, Re [2000] 2 AC 172 119
 Parker v. British Airways Board [1982] 1 QB 1004 12, 41
 Paterson v. Gas Light and Coke Co. [1896] 2 Ch 476 6
 Patterson v. Reilly (1882) 10 LR Ir 304 79
 Payman v. Lanjani [1985] Ch 457 59
 Peabody Donatum Fund v. Hay (1986) 19 HLR 145 157
 Peaceable d. Uncle v. Watson (1811) 4 Taunt. 16 45

- Pearson v. IRC [1981] AC 733 2
 Pelicano v. MEPC [1994] 1 EGLR 104 121
 Pemberton v. Southwark LBC [2000] 1 WLR 1762 158, 160
 Peninsular Maritime Ltd v. Padseal [1981] 259 EG 860 62
 Penn v. Bristol West BS [1995] 2 FLR 938 83
 Performing Right Society Ltd v. London Theatre of Varieties Ltd [1924] AC 1 98, 102
 Perry v. Woodfarm Homes Ltd [1975] IR 104 140
 Peterborough BS v. Steed [1993] Ch 116 47
 Pettit v. Pettit [1970] AC 777 74
 Poles v. Peake, [1998] *The Times*, 12 July 143
 Portland Managements Ltd v. Harte [1976] 1 All ER 225 28
 Powell v. McFarlane (1979) 38 P&CR 452 134
 Prasad v. Wolverhampton BC [1983] 2 All ER 140 5
 Prior of Bruton v. Ede, YB Edward IV (1930) 47 Seldon Society 31 15
 Progressive Mailing House Pty Ltd v. Tabali Pty Ltd (1985) 157 CLR 17 50, 51
 Prudential v. London Residuary Body [1992] 2 AC 386 51
 Pye v. Graham [2003] 1 AC 419 10, 132
- R v. Oxfordshire CC, ex p. Sunningwell PC [2000] 1 AC 335 41
 R v. St Pancras Assessment Committee (1877) 2 QBD 581 8
 R v. Tao [1977] QB 141 6
 R v. Wandsworth CC, ex p. Wandsworth LBC [1975] 1 WLR 1314; [1975] 3 All ER 390
 147, 154
 R (Beresford) v. Sunderland City Council [2004] 1 AC 889 136
 Radaich v. Smith (1959) 101 CLR 209 15
 Rains v. Buxton (1880) 14 ChD 537 130
 Razzaq v. Pala [1997] 1 WLR 1336; [1997] 2 EGLR 53 117
 Red House Farms v. Catchpole [1977] 2 EGLR 125 131
 Refuge Assistance v. Pearlberg [1938] Ch 687 114
 Rendall v. Andreae (1892) 8 TLR 615 111
 Rexhaven v. Nurse (1994) 28 HLR 241 152
 Rhone v. Stephen [1994] AC 310 53, 138
 Richards v. Richards (1731) 15 East 293 32
 Rimmer v. Webster [1902] 2 Ch 163 17
 Ripka Properties v. Maggiore Bakeries [1984] VR 629 51
 Roberts v. Tayler (1845) 1 CB 117 31
 Rodger v. Comptoir d'Escompte de Paris (1871) LR 3 PC 465 156
 Roe v. Read (1799) 8 TR 118 95, 99
 Royal Bank of Scotland plc v. Farley [1996] BPIR 638 116, 117
 Royal Trust Co. of Canada v. Markham [1975] 1 WLR 1416 81
 Ryan v. Clark 14 QB 65 29
 Rye v. Rye [1962] AC 496; [1962] 1 All ER 146 105

- Sacker, Re (1889) 22 QBD 179 115
 Saunders v. Vautier (1841) 4 Beav 115; 41 ER 482 96
 Scarf v. Jardine (1887) 7 App Cas 345; [1881–5] All ER Rep 651 58
 Scmlla Properties Ltd v. Gesso Properties (BVI) Ltd [1995] EGCS 52; [1995] BCC 793
 7, 39, 122
 Scott v. Scott (1854) 4 HLC 1065; 10 ER 779 88, 97
 Scribes West v. Relsa Anstalt (No. 3) [2005] 1 EGLR 22 97, 99
 Selous Street Properties v. Oronel Fabrics (1984) 270 EG 743; (1984) 134 NLJ 886 54
 Sen v. Hedley [1991] Ch 425; [1991] 2 WLR 1308 13
 Sharp v. San Paulo Rly Co (1873) LR 8 Ch App 597 99
 Shaw v. Applegate [1977] 1 WLR 970 92
 Shelfer v. City of London Electric Lighting [1895] 1 Ch 287 103
 Shevill v. Builder's Licensing Board (1982) 56 ALJR 793 51
 Shilo Spinners v. Harding [1973] AC 691 57
 Silverman v. AFCO [1988] 1 EGLR 51; [1988] 56 P&CR 185 63
 Simmons v. Dobson [1991] 1 WLR 1 WLR 720 41
 Simpson v. Fergus (2000) 69 P&CR 398 131
 Sindall v. Cambridgeshire CC [1994] 1 WLR 1016 103, 133
 Smith v. Spaul [2003] QB 983; [2003] 2 WLR 495 86
 Sowman v. David Samuel Trust Ltd [1978] 1 WLR 22 61, 114
 Spectrum Investment Co. v. Holmes [1981] 1 WLR 221 140
 Spencer's Case (1583) 5 Co Rep 16a 52, 67, 138
 Standard Pattern v. Ivey [1962] Ch 432; [1962] 2 WLR 656; [1962] 1 All ER 452 62
 Stirling v. Leadenhall Residential [2001] 3 All ER 645 159
 Stokes v. Costain Property Investments [1983] 1 WLR 907 1
 Strathblaine Estates, Re [1948] Ch 228 124
 Street v. Mountfort [1985] 1 AC 809 14, 15, 16, 17, 68
 Stroud v. Birt (1697) Comyns Rep 7 28
 Sun Life Assurance Society plc v. Tantofex (Engineers) Ltd [1999] L&TR 568; [1999] 2
 EGLR 135 55
 Swordheath v. Bolt [1992] 2 EGLR 68 62

 Tang Man Sir v. Capacious Investments [1996] 1 All ER 193 58, 61
 Tehidy Minerals v. Norman [1971] 2 QB 528 37
 Territory of New Mexico v. US Trust Co. of New York (1898) 172 US 171 142
 Terunnanse v. Terunnanse [1968] AC 1086 16
 Thames Investments v. Benjamin [1984] 1 WLR 1381 148
 Thellusson v. Liddard [1902] 2 Ch 635 88
 Thomas v. Sorrell (1673) Vaugh 139 69
 Thompson and Cottrell's Contract, Re [1943] 1 All ER 169 121
 Thompson v. Elmbridge BC [1987] 1 WLR 1425 158
 Thompson v. Ward (1871) LR 6 CP 377 68

- Three Stars Property Holdings v. Driscoll [1988] CLY 2795 67
 Tichborne v. Weir (1892) 67 LT 735 137
 Tickner v. Buzzacot [1965] Ch 426 57
 Todd v. Case (1810) 10 Ves 273 103
 Tolhurst v. Associated Portland Cement Manufacturers [1903] AC 414 70
 Torbett v. Faulkener [1952] TLR 659 16
 Tulapam Properties v. De Almeida [1981] 2 EGLR 55; 6
 Tulk v. Moxhay (1848) 2 Ph 774 138
 Turner v. Walsh [1909] 2 KB 484 88
- UCB v. Hedworth (No. 2) [2003] EWCA Civ 1717 54, 83, 85
 United Bank of Kuwait v. Sahib [1997] Ch 107 84
 United Scientific Holdings v. Burnley BC [1978] AC 904 92, 93
- Venetian Glass v. Next Properties [1980] 2 EGLR 42 11
- Weddell v. Pearce & Major [1988] 1 Ch 26 98
 Weg Motors v. Hale [1962] Ch 49 78
 Wells, Swiburne-Hanham v. Howard, Re [1933] 1 Ch 29 124
 Western Bank Ltd v. Schindler [1977] Ch 1; [1976] 1 All ER 393 80
 Whale v. Hitchcock (1876) 34 LT 136 32
 Wheeler v. Keeble [1920] 1 Ch 57 62
 Wibberley v. Insley [1999] 1 WLR 894 43, 126
 Williams & Glyn's Bank v. Boland [1981] AC 487 83
 Williams v. Williams and Nathan [1937] 2 All ER 559 155
 Wily v. Fuller [2000] FCA 1512 99
 Woolwich Equitable BS v. Preston [1938] Ch 179 80
 Wuta-Ofei v. Danquah [1961] 3 All ER 596 29
 Wykeham Terrace, Brighton, Re [1971] Ch 208 148
- Yarmarine, Re [1992] BCLC 276 120

TABLE OF STATUTES

Abolition of Feudal Tenure (Scotland) Act 2000	38
s. 2	7
Abolition of Tenures Act 1660	35, 39
Access to Justice Act 1999	
s. 11	67
Administration of Estates Act 1925	
s. 9	109
s. 21	111
s. 45	122
s. 45(1)	7
Sch. 1 para. 12	111
Administration of Justice Act 1970	
s. 36	81
Agricultural Holdings Act 1986	
s. 2	70
Sch. 14	89
Bills of Sale Act 1878	84
Bills of Sale Act 1882	84
Chancery Amendment Act 1858	
s. 2	103
Charging Orders 1979	
s. 3(4)	84
Common Law Procedure Act 1852	21
s. 169	97
s. 211	61, 66
s. 212	61, 62
Common Law Procedure Act 1860	
s. 19	97
Companies Act 1985	
s. 36C	113

s. 320	121
s. 651	123
s. 652	123
s. 653(2)	123
s. 654	120, 123
s. 655	123
s. 656	120
s. 657	120
s. 680	124
Consumer Credit Act 1974	
s. 39(1)	81
Conveyancing Act 1881	138
s. 14	61
s. 26	75
s. 58	139
Sch. 3	75
County Courts Act 1846	94
s. 138	157
County Courts Act 1984	
s. 23	94
s. 49	117
s. 126	155
s. 138	61
s. 138(2)	62
s. 139	61
s. 140	61
Criminal Law Act 1977	
s. 6	153
Crown Estates Act 1961	
s. 3(8)	122
Crown Lands Act 1623	61
De Viris Religiosis 1279	137
Forcible Entries Act 1381	153
Forfeiture Act 1870	
s. 1	7, 122
Grantees of Reversions Act 1540	
s. 2	138
Housing Act 1985	158
Housing Act 1988	158

Housing Act 1989	
s. 89	157
Insolvency Act 1986	
s. 44	113
s. 178(2)	119
s. 179	119
ss. 201–205	123
s. 220	124
s. 279	118
s. 282(1)	118
s. 283(3A)	118
s. 283(3)(a)	118
s. 284	116
s. 287	117
s. 306	117
s. 306(1)	117
s. 308A	118
s. 315	119
s. 315(3)	119
s. 317	119
Judicature Act 1873	92
s. 25	93
s. 25(5)	97
s. 25(8)	102
Judicature Act 1875	
s. 10	93
Land Charges Act 1972	139
s. 2(5)	57
s. 5	149
Land Registration Act 1875	45
Land Registration Act 1897	45
Land Registration Act 1925	45
s. 24	53
s. 75	57, 140
s. 75(1)	140
s. 75(2)	140
s. 75(3)	49, 139, 140
s. 82(1)	45
s. 82(2)	45
s. 82(3)	2

Land Registration Act 2002

- s. 2(a)(iv) 144
- s. 11(7) 47
- s. 23 77
- s. 29 49, 139
- s. 51 75, 77
- s. 60 142
- s. 79 37
- s. 87 149
- s. 96 42, 141
- s. 96(1) 141
- s. 131 2
- Sch. 4 para. 2(1) 47
- Sch. 4 para. 3 48
- Sch. 6 para. 4 141
- Sch. 6 para. 5 142
- Sch. 6 para. 6 141
- Sch. 6 para. 9(2) 49, 139
- Sch. 8 para. 1 48
- Sch. 12 141

Land Transfer Act 1875 76

Land Transfer Act 1897 12, 109

Landlord and Tenant Act 1730 61

Landlord and Tenant Act 1954

- s. 67 82, 114

Landlord and Tenant (Covenants) Act 1995

- s. 1 99
- s. 3 138
- s. 5 54
- s. 15 88, 90
- s. 15(1) 99
- s. 15(3) 87
- s. 15(4) 87
- s. 15(6) 87
- s. 17 55, 58

Landlord and Tenant Law Amendment Act (Ireland) 1860

- s. 3 50

Law of Distress (Amendment) Act 1908 57

Law of Property Act 1925

- s. 1(1)(a) 74
- s. 1(1)(b) 74
- s. 1(2) 75, 144

s. 41	93
s. 51(1)	11
s. 54	112
s. 54(2)	112
s. 63	88
s. 77	53
s. 78(1)	139
s. 85(1)	77
s. 85(2)	77, 87
s. 86(2)	87
s. 87(1)	77
s. 87(1)(b)	86
s. 95(4)	77
s. 98	30, 97
s. 99	89
s. 100	88
s. 109(2)	113
s. 136	35
s. 141(2)	88, 99
s. 142	138
s. 146	61
s. 146(2)	61
s. 149	11
s. 149(3)	3
s. 184	109
s. 202	39, 75
s. 205(1)	7, 74
Sch. 2	53
Law of Property Act 1969	
s. 16(1)	137
s. 23	41
Law of Property (Miscellaneous Provisions) Act 1994	
s. 14(1)	109
Limitation Act 1980	
s. 15	49
s. 17	126
s. 20	126
s. 38(1)	144
Sch. 1 paras 5–6	45, 132
Powers of Attorney Act 1971	
s. 4	114

Prescription Act 1832	127
s. 5	144
Protection from Eviction Act 1977	153
Quia Tempores Terrarum 1290	7, 122
Real Property Act 1845	
s. 2	11
Real Property Limitation Act 1833	10
Statute of Frauds 1677	12
Statute of Merchants 1285	10
Statute of Uses 1536	12
Supreme Court Act 1981	
s. 38	62
s. 49	102
s. 50	103
Trustee Act 1925	
s. 26	110
s. 44	101
Trusts of Land and Appointment of Trustees Act 1996	
s. 12	105
s. 14	106
Sch. 1 para. 1(1)	104, 107
Wills Act 1540	12
s. 9	13
s. 11	13
Wills (Soldiers and Sailors) Act 1918	
s. 3	13

TABLE OF STATUTORY INSTRUMENTS

Administration of Estates of Deceased Persons Order 1966 (SI 1966/1999)	
Sch. 1 para. 12	111
Civil Procedure Rules (SI 1998/3132)	
r. 52.10(2)	155
r. 55.6	149
r. 55.10	145
Part 4 PD Table 1	152
Part 19	155
Part 19A PD 2	85
Part 39.3	155
Part 40.9	155
Part 52.7	156
Part 56 PD 2.4	151
Part 56 PD para 2.1	155
Part 69	154
County Court Rules (SI 1981/1687)	
Ord. 26 r. 5	150
Ord. 26 r. 17	153
Insolvency Rules 1986 (SI 1986/1925)	
r. 6.10	116
r. 6.40	116
r.6.186	121
Land Registration Rules 2003 (SI 2003/1417)	
r. 189	141
rr. 187–194	141
Rules of the Supreme Court (SI 1965/1776)	
Ord. 45 r. 3(1)	153
Ord. 45 r. 3(2)	154
Ord. 45 r. 3(3)(a)	155
Ord. 45 r. 5	154
Ord. 46 r. 2	150