

Sweet & Maxwell's

Family Law Statutes

Fifth Edition

Editor
Nigel Gravells



Sweet & Maxwell

Sweet & Maxwell's Family Law Statutes

Edited by

Nigel P. Gravells, M.A. (Oxon)

Of the Middle Temple, Barrister

Professor of English Law, University of Nottingham

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PREFACE

Sweet & Maxwell's Family Law Statutes remains essentially a reference book for students of family law: it seeks to provide a collection of statutory materials which cover as comprehensively as possible the central topics of matrimonial law and child law.

The most significant development since the previous edition has been the enactment of the Children Act 1989, which has been described as "the most comprehensive and far-reaching reform of child law which has come before Parliament in living memory" and which came into force in October 1991. That Act largely implements the recommendations of the Law Commission on private child law (the rules governing the child/parent relationship) and the recommendations of the interdepartmental review of public child law (the powers and duties of the state in relation to the welfare of children).

The other major development concerns maintenance enforcement. The Maintenance Enforcement Act 1991 introduces improved methods of collection and enforcement for both child and non-child maintenance; in respect of the former the Act constitutes an interim measure pending the coming into force of the more radical changes contained in the Child Support Act 1991.

The inclusion of this recent legislation has necessitated, for reasons of space, the removal of some material in addition to that overtaken by the Children Act 1989. First, since the Children Act has produced a clearer distinction between child law on the one hand and the treatment of child offenders on the other hand, legislation on the latter topic has been removed. Secondly, the legislation dealing with the devolution of matrimonial/family property on death has been excluded: that topic is not commonly taught as part of family law courses. Thirdly, private international law materials have been excluded save insofar as they apply between the constituent parts of the United Kingdom.

The statutes are printed in chronological order and as amended by subsequent legislation: textual amendments are incorporated into the original statutes and the amending statutes are not printed separately. The sources of all amendments, both textual and non-textual, are indicated in the footnotes. In addition, the footnotes seek to provide both internal cross-referencing and selective references to legislation not included in this book.

The roles of editor and advisory editor have been combined for this edition; but the publishers have provided generous and invaluable assistance in the preparation of the manuscript.

University of Nottingham
February 14, 1992

Nigel P. Gravells

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Married Women's Property Act 1882

(45 & 46 VICT. c. 75)

Fraudulent investments with money of husband

10. If any investment in any such deposit or annuity as aforesaid, or in any of the public stocks or funds, or in any other stocks or funds transferable as aforesaid, or in any share, stock, debenture, or debenture stock of any corporation, company or public body, municipal, commercial, or otherwise, or in any share, debenture, benefit, right, or claim whatsoever in, to, or upon the funds of any industrial, provident, friendly, benefit, building, or loan society, shall have been made by a married woman by means of moneys of her husband, without his consent, the Court may, upon an application under section seventeen of this Act, order such investment, and the dividends thereof, or any part thereof, to be transferred and paid respectively to the husband; and nothing in this Act contained shall give validity as against creditors of the husband, to any gift, by a husband to his wife, of any property, which, after such gift, shall continue to be in the order and disposition or reputed ownership of the husband, or to any deposit or other investment of moneys of the husband made by or in the name of his wife in fraud of his creditors; but any moneys so deposited or invested may be followed as if this Act had not passed.

Moneys payable under policy of assurance not to form part of estate of the insured

11.¹ A married woman may [. . .]² effect a policy upon her own life or the life of her husband for her [own benefit]³; and the same and all benefit thereof shall enure accordingly.

A policy of assurance effected by any man on his own life, and expressed to be for the benefit of his wife, or of his children, or of his wife and children, or any of them, or by any woman on her own life, and expressed to be for the benefit of her husband, or of her children, or of her husband and children, or any of them, shall create a trust in favour of the objects therein named, and the moneys payable under any such policy shall not, so long as any object of the trust remains unperformed, form part of the estate of the insured, or be subject to his or her debts: Provided, that if it shall be proved that the policy was effected and the premiums paid with intent to defraud the creditors of the insured, they shall be entitled to receive, out of the moneys payable under the policy, a sum equal to the premiums so paid.

¹ In this section "children" includes illegitimate children: Family Law Reform Act 1969, s.19(1).

² Words repealed by the Law Reform (Married Women and Tortfeasors) Act 1935, s.5(2), Sched. 2.

³ Words substituted by the Law Reform (Married Women and Tortfeasors) Act 1935, s.5(1), Sched. 1.

Married Women's Property Act 1882

The insured may by the policy, or by any memorandum under his or her hand, appoint a trustee or trustees of the moneys payable under the policy, and from time to time appoint a new trustee or new trustees thereof, and may make provision for the appointment of a new trustee or new trustees thereof, and for the investment of the moneys payable under any such policy. In default of any such appointment of a trustee, such policy, immediately on its being effected, shall vest in the insured and his or her legal personal representatives, in trust for the purposes aforesaid [. . .]⁴ The receipt of a trustee or trustees duly appointed, or in default of any such appointment, or in default of notice to the insurance office, the receipt of the legal personal representatives of the insured shall be a discharge to the office for the sum secured by the policy, or for the value thereof, in whole or in part.

Questions between husband and wife as to property to be decided in a summary way

17.⁵ In any question between husband and wife as to the title to or possession of property, either party [. . .]⁶ may apply by summons or otherwise in a summary way [to the High Court or such county court as may be prescribed and the court may, on such an application (which may be heard in private), make such order with respect to the property as it thinks fit.

In this section "prescribed" means prescribed by rules of court and rules made for the purposes of this section may confer jurisdiction on county courts whatever the situation or value of the property in dispute.]⁷

⁴ Words repealed by the Statute Law (Repeals) Act 1969.

⁵ Extended by the Matrimonial Causes (Property and Maintenance) Act 1958, s.7, *post*, p. 81, by the Law Reform (Miscellaneous Provisions) Act 1970, s.2(2), *post*, p. 114, and by the Matrimonial Proceedings and Property Act 1970, s.39, *post*, p. 123. See also the Law Reform (Husband and Wife) Act 1962, s.1(2), *post*, p. 94.

⁶ Words repealed by the Statute Law (Repeals) Act 1969.

⁷ Words substituted by the Matrimonial and Family Proceedings Act 1984, s.43.

Law of Property Act 1925

(15 & 16 GEO. 5, c. 20)

PART I

GENERAL PRINCIPLES AS TO LEGAL ESTATES, EQUITABLE INTERESTS AND POWERS

Dispositions on Trust for Sale

Powers of court where trustees for sale refuse to exercise powers¹

30. —(1) If the trustees for sale refuse to sell or to exercise any of the powers conferred by either of the last two sections, or any requisite consent cannot be obtained, any person interested may apply to the court for a vesting or other order for giving effect to the proposed transaction or for an order directing the trustees for sale to give effect thereto, and the court may make such order as it thinks fit.

[(2) The county court has jurisdiction under this section [. . .]²]³

Undivided Shares and Joint Ownership

Rights of husband and wife

37. A husband and wife shall, for all purposes of acquisition of any interest in property, under a disposition made or coming into operation after the commencement of this Act, be treated as two persons.

PART II

CONTRACTS, CONVEYANCES AND OTHER INSTRUMENTS

Contracts

40. [*Repealed by the Law of Property (Miscellaneous Provisions) Act 1989, ss.2(8), 4, Sched. 2.*]⁴

¹ See the Insolvency Act 1986, ss.336–338, *post*, pp. 314–316.

² Words repealed by the High Court and County Courts Jurisdiction Order 1991 (No. 724), art. 2(8), Sched., Pt. I.

³ Subsection added (and subsection (1) numbered) by the County Courts Act 1984, s.148(1), Sched. 2, para. 2.

⁴ See now the Law of Property (Miscellaneous Provisions) Act 1989, s.2, *post*, p. 357.

Law of Property Act 1925
Conveyances and other Instruments

Conveyances to be by deed

52.—(1) All conveyances of land or of any interest therein are void for the purpose of conveying or creating a legal estate unless made by deed.

(2) This section does not apply to—

- (a) assents by a personal representative;
- (b) disclaimers made in accordance with [sections 178 to 180 or sections 315 to 319 of the Insolvency Act 1986],⁵ or not required to be evidenced in writing;
- (c) surrenders by operation of law, including surrenders which may, by law, be effected without writing;
- (d) leases or tenancies or other assurances not required by law to be made in writing;
- (e) receipts [other than those falling within section 115 below]⁶;
- (f) vesting orders of the court or other competent authority;
- (g) conveyances taking effect by operation of law.

Instruments required to be in writing

53.—(1) Subject to the provisions hereinafter contained with respect to the creation of interests in land by parol—

- (a) no interest in land can be created or disposed of except by writing signed by the person creating or conveying the same, or by his agent thereunto lawfully authorised in writing, or by will, or by operation of law;
- (b) a declaration of trust respecting any land or any interest therein must be manifested and proved by some writing signed by some person who is able to declare such trust or by his will;
- (c) a disposition of an equitable interest or trust subsisting at the time of the disposition, must be in writing signed by the person disposing of the same, or by his agent thereunto lawfully authorised in writing or by will.

(2) This section does not affect the creation or operation of resulting, implied or constructive trusts.

Creation of interests in land by parol

54.—(1) All interests in land created by parol and not put in writing and signed by the persons so creating the same, or by their agents thereunto lawfully authorised in writing, have, notwithstanding any consideration having been given for the same, the force and effect of interests at will only.

(2) Nothing in the foregoing provisions of this Part of this Act shall affect

⁵ Words substituted by the Insolvency Act 1986, s.439(4), Sched. 14.

⁶ Words substituted by the Law of Property (Miscellaneous Provisions) Act 1989, s.1(8), Sched. 1, paras. 1, 2.

15 & 16 Geo. 5, c. 20

the creation by parol of leases taking effect in possession for a term not exceeding three years (whether or not the lessee is given power to extend the term) at the best rent which can be reasonably obtained without taking a fine.

Judicial Proceedings (Regulation of Reports) Act 1926

(16 & 17 GEO. 5, c. 61)

Restriction on publication of reports of judicial proceedings¹

1.—(1) It shall not be lawful to print or publish, or cause or procure to be printed or published—

- (a) in relation to any judicial proceedings any indecent matter or indecent medical, surgical or physiological details being matters or details the publication of which would be calculated to injure public morals;
- (b) in relation to any judicial proceedings for dissolution of marriage, for nullity of marriage, or for judicial separation, or for restitution of conjugal rights, any particulars other than the following, that is to say:—
 - (i) the names, addresses and occupations of the parties and witnesses;
 - (ii) a concise statement of the charges, defences and counter-charges in support of which evidence has been given;
 - (iii) submissions on any point of law arising in the course of the proceedings, and the decision of the court thereon;
 - (iv) the summing-up of the judge and the finding of the jury (if any) and the judgment of the court and observations made by the judge in giving judgment:

Provided that nothing in this part of this subsection shall be held to permit the publication of anything contrary to the provisions of paragraph (a) of this subsection.

(2) If any person acts in contravention of the provisions of this Act, he shall in respect of each offence be liable, on summary conviction, to imprisonment for a term not exceeding four months, or to a fine not exceeding [level 5 on the standard scale]², or both such imprisonment and fine:

Provided that no person, other than a proprietor, editor, master printer or publisher, shall be liable to be convicted under this Act.

(3) No prosecution for an offence under this Act shall be commenced in England and Wales by any person without the sanction of the Attorney-General.

(4) Nothing in this section shall apply to the printing of any pleading, transcript of evidence or other document for use in connection with any judicial proceedings or the communication thereof to persons concerned in the proceedings, or to the printing or publishing of any notice or report in pursuance of the directions of the court; or to the printing or publishing of any matter in any separate volume or part of any bona fide series of law reports

¹ See also the Domestic and Appellate Proceedings (Restriction of Publicity) Act 1968, s.2, *post*, p. 100 the Magistrates' Courts Act 1980, s.71, *post*, p. 271, and the Children Act 1989, s.97(2), *post*, p. 436.

² Words substituted by virtue of the Criminal Justice Act 1982, s.46.

16 & 17 Geo. 5, c. 61

which does not form part of any other publication and consists solely of reports of proceedings in courts of law, or in any publication of a technical character bona fide intended for circulation among members of the legal or medical professions.

Children and Young Persons Act 1933

(23 GEO. 5, c. 12)

ARRANGEMENT OF SECTIONS

PART I

PREVENTION OF CRUELTY AND EXPOSURE TO MORAL AND PHYSICAL DANGER

Offences

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 - 3 Allowing persons under sixteen to be in brothels
 - 4 Causing or allowing persons under sixteen to be used for begging
 - 5 Giving intoxicating liquor to children under five
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 - 10 Vagrants preventing children from receiving education
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- 20 Street trading

Entertainment and Performances

- 23 Prohibition against persons under sixteen taking part in performances endangering life or limb
- 24 Restrictions on training for performances of a dangerous nature

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- 25 Restrictions on persons under eighteen going abroad for the purpose of performing for profit

30 Interpretation of Part II

PART I

PREVENTION OF CRUELTY AND EXPOSURE TO MORAL AND PHYSICAL DANGER¹

Offences

Cruelty to persons under sixteen

1.—(1) If any person who has attained the age of sixteen years and [has responsibility for]² any child or young person under that age, wilfully assaults, ill-treats, neglects, abandons, or exposes him, or causes or procures him to be assaulted, ill-treated, neglected, abandoned, or exposed, in a manner likely to cause him unnecessary suffering or injury to health (including injury to or loss of sight, or hearing, or limb, or organ of the body, and any mental derangement), that person shall be guilty of a misdemeanour, and shall be liable—

- (a) on conviction on indictment, to a fine [. . .]³ or alternatively, [. . .],⁴ or in addition thereto, to imprisonment for any term not exceeding [ten]⁵ years;
 - (b) on summary conviction, to a fine not exceeding [the prescribed sum],⁶ or alternatively, [. . .],⁷ or in addition thereto, to imprisonment for any term not exceeding six months.
- (2) For the purposes of this section—
- (a) a parent or other person legally liable to maintain a child or young person [, or the legal guardian of a child or young person,]⁸ shall be deemed to have neglected him in a manner likely to cause injury to his health if he has failed to provide adequate food, clothing, medical aid or lodging for him, or if, having been unable otherwise to provide such food, clothing, medical aid or lodging, he has failed to take steps to procure it to be provided under [the enactments applicable in that behalf]⁹;
 - (b) where it is proved that the death of an infant under three years of

¹ For other statutory provisions designed to protect children, see *inter alia* the Betting, Gaming and Lotteries Act 1963, s.21, the Tattooing of Minors Act 1969, the Explosives (Age of Purchase) Act 1976, the Protection of Children Act 1978, the Horses (Protective Headgear for Young Riders) Act 1990, the Motor Vehicles (Safety Equipment for Children) Act 1991 and the Children and Young Persons (Protection from Tobacco) Act 1991.

² Words substituted by the Children Act 1989, s.108(5), Sched. 13, para. 2.

³ Words repealed by the Children Act 1975, s.108(1)(b), Sched. 4, Pt. III.

⁴ Words repealed by the Children and Young Persons Act 1963, s.64(1)(3), Sched. 3, para. 1, Sched. 5.

⁵ Word substituted by the Criminal Justice Act 1988, s.45.

⁶ Words substituted by virtue of the Magistrates' Courts Act 1980, s.32(2).

⁷ Words repealed by the Children and Young Persons Act 1963, s.64(1)(3), Sched. 3, para. 1, Sched. 5.

⁸ Words inserted by the Children Act 1989, s.108(4), Sched. 12, para. 2.

⁹ Words substituted by the National Assistance (Adaptation of Enactments) Regulations 1950 (S.I. 1951/174).