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FIFTH EDITION

by

ANTHONY RADEVSKY, LL.B.
of the Inner Temple, Barrister

and

DAMIAN GREENISH, B.A.
Solicitor
Senior Partner, Pemberton Greenish

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FOREWORD

Little more than 40 years have elapsed since the passing of the Leasehold Reform Act 1967. It was the first statute to give residential tenants the right to buy out their landlords compulsorily (at least if one disregards two very rarely invoked arcane provisions enacted in the 1920s). Within that relatively short period, on what lawyers would call “occasions too numerous to specify”, the right to enfranchise has been statutorily extended to many classes of residential properties, and many classes of tenant, which were previously excluded. This was partly by amendments to the 1967 Act, but it was also through the enactment (and subsequent amendment) of the Landlord and Tenant Act 1987 and the Leasehold Reform, Housing and Urban Development Act 1993.

When it was first enacted, the 1967 Act was an excellent example of Parliamentary drafting. Although it introduced a new right and new concepts, the 1967 Act was clearly worded and well structured. The many subsequent amendments have underlined the excellence of the original drafting, as the 1967 Act in its current form remains reasonably clear despite the introduction of such user-unfriendly provisions as section 1(1ZC) and section 1AA. Sadly, the same cannot be said about the drafting of the 1987 Act or the 1993 Act. The 1987 Act was such a mess that it was effectively repealed and re-enacted, and this was effected by a wholesale re-writing to an extent which is unprecedented at least to my knowledge. The drafting of the 1993 Act, particularly as a result of subsequent amendments, has frequently been commented on adversely by Judges; indeed, I described it as “inept” in para 11 of my opinion in *Earl Cadogan v Pitts* [2008] UKHL 71.

It is only fair to mention that the 1993 Act deals with a much more tricky area than the 1967 Act—enfranchisement of flats or blocks of flats, rather than of houses. Nonetheless, the relatively casual and superficial attitude to much of the original drafting of the 1993 Act, and, perhaps even more to subsequent amendments, and above all to the implications of such amendments, is more than regrettable. It does no favours to the people the legislation is intended to help, it is unfair on those whose rights are to be compulsorily acquired, and the fact that it leads to litigation means that it has unfortunate implications in terms of cost, effort and delay.

The statutes governing leasehold enfranchisement have inevitably had widespread repercussions in the field of UK property and they have had led to a number of significant cases in the courts of England and Wales, particularly impinging on real property law and statutory construction. The 1967 Act has also resulted in one of the more significant and far-ranging decisions of the European Court of Human Rights, namely *James v United Kingdom*, which is, even after

the passage of more than 20 years, arguably the leading case on article 1 of the first protocol to the European Convention.

When at the bar, I argued and advised on quite a few cases under the 1967 Act (including playing a minor part in *James*, where for the only time in my life I had the privilege of seeing the European Court of Human Rights at work). The book to which one turned whenever an enfranchisement problem presented itself was, of course, *Hague*, of which I frequently consulted the first and second editions. I thought it an admirable book—clear, concise, thoughtful, readable, thought-provoking, practical, and unafraid of expressing a view, including one critical of a judicial decision if it seemed wrong.

Having studied the proofs, I am delighted to be able to say that, in this new, fifth, edition, Anthony Radevsky and Damian Greenish have managed fully to live up to the very high standards set by the earlier editions with which I was so familiar. This is no mean feat particularly in the light of the enormous increase in the scope and complexity of the legislation since the beginning of 1993 (especially in the past ten years), and also in the light of the volume of decisions emanating from the courts and the tribunals on various aspects of the legislation. For anyone with a problem relating to enfranchisement, whether a landlord, a tenant, a lawyer or a surveyor, this book should be the first port of call—and it will very probably be unnecessary to look any further for the answer.

David Neuberger
House of Lords
15th March 2009

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PREFACE

It was originally our intention to publish the Fifth Edition of Hague at the beginning of 2008, to coincide with the 40th anniversary of the coming into force of the Leasehold Reform Act 1967. However, when it became clear that there was an unusually large number of important decisions in the pipeline, we opted for a 2nd supplement to the Fourth Edition. In the event, during the course of 2008 the House of Lords delivered its judgment in four important enfranchisement cases, *Majorstake Ltd v Curtis*, *Boss Holdings Ltd v Grosvenor West End Properties*, *Howard de Walden Estates Ltd v Aggio* and *Cadogan v Sportelli*; and there have been several further decisions of the Court of Appeal and Lands Tribunal which we have been able to incorporate in this new volume. In writing a legal textbook, it is always tempting to hold off publication while further developments are awaited, but the line has to be drawn somewhere. At the time of completing the manuscript, the commencement of the Housing and Regeneration Act 2008, and the Tribunals Courts and Enforcement Act 2007 is due to be made shortly. We intend to produce a supplement as and when necessary to keep this volume up-to-date.

We have kept the format of this edition broadly the same as previously, but have incorporated what were separate procedural chapters into a new Chapter 16, which covers both the 1967 and 1993 Acts. As before, we have sought to include all relevant statutory material and practice directions, so that it is not necessary for the reader to search elsewhere for them.

We are delighted to welcome Alison Readman as our new indexer. We wish to thank all those who have made suggestions and contributions, including our colleagues at Falcon Chambers and Pemberton Greenish and particularly Amy Ridley, who did many hours of proof reading. We are also very grateful to Julian Clark of Messrs Gerald Eve and Frances Joyce of Messrs W.A. Ellis for their help in updating the valuation examples.

The law is stated as at May 29, 2009.

Anthony Radevsky
Falcon Chambers
Falcon Court
London, EC4

Damian Greenish
Pemberton Greenish
45 Pont Street
London SW1X 0BX

TABLE OF CASES

ADC Estates Ltd v Camden LBC. <i>See</i> Camden LBC v ADC Estates Ltd	
Ackerman v Lay; sub nom. Lay v Ackerman [2008] EWCA Civ 1428; [2009] 1 E.G. 77 (C.S.); [2009] N.P.C. 1; [2009] 1 P. & C.R. DG15 ... 1–38, 3–10, 5–13, 25–17, 30–11, 30–15	
Acton v Birmingham South West Circuit Methodist Church Manse Trust [2006] 3 E.G.L.R. 101; [2006] 39 E.G. 184; [2007] R.V.R. 78, Lands Tr	19–07
Acton v Pearl Property Ltd Unreported LRA/34/2001, Lands Tr	6–39
Adams v Ward Unreported LON/LVT/2043/06	9–15
Admirals Walk 2000 Ltd v Flagship Estates Ltd Unreported 2001, LVT	28–15
Aeberli v Fund 24 Trustees of the 1983 Portman Settlement Unreported 1998, LVT	33–04
Agavil Investment Co Ltd v Corner Unreported October 3, 1975	6–39
Aldavon Co Ltd v Deverill [1999] 2 E.G.L.R. 69; [1999] 32 E.G. 92, CC	5–10, 30–13
Allnatt London Properties Ltd v Newton [1984] 1 All E.R. 423; (1983) 45 P. & C.R. 94; (1983) 265 E.G. 601, CA (Civ Div)	17–01
Anspach v Charlton Steam Shipping Co; sub nom. Anspach v Charlton Steam Shipping Co [1955] 2 Q.B. 21; [1955] 2 W.L.R. 601; [1955] 1 All E.R. 693; (1955) 99 S.J. 203, CA	3–39
Arbib v Earl Cadogan; Earl Cadogan v 55/57 Cadogan Square Freehold Ltd; Earl Cadogan v Moussaieff; Day v 32 Rosary Gardens (Freehold) Ltd; Cadogan (9 Astell Street), Re [2005] 3 E.G.L.R. 139; [2005] R.V.R. 401; [2005] 41 E.G. 204 (C.S.), Lands Tr	9–11, 9–12, 9–30, 9–43
Arieli v Duke of Westminster (1984) 269 E.G. 535; [1984] R.V.R. 45; [1983] 1 E.G.L.R. 81, CA (Civ Div)	7–17
Arrowdell Ltd v Coniston Court (North) Hove Ltd [2007] R.V.R. 39, Lands Tr	9–12, 9–46, 16–10, 16–14, 27–10, 33–06
Arrowgame Ltd v Vantage Volante Ltd Unreported 2007, LVT	23–13, 29–09
Ashbridge Investments Ltd v Minister of Housing and Local Government [1965] 1 W.L.R. 1320; [1965] 3 All E.R. 371; (1965) 129 J.P. 580; 63 L.G.R. 400; (1965) 109 S.J. 595, CA	2–02
Associated Deliveries Ltd v Harrison (1985) 50 P. & C.R. 91; (1984) 272 E.G. 321, CA (Civ Div)	5–15
Austerberry v Oldham Corp (1885) L.R. 29 Ch. D. 750, CA	6–20
Austin v Dick Richards Properties Ltd [1975] 1 W.L.R. 1033; [1975] 2 All E.R. 75; (1975) 29 P. & C.R. 377; (1975) 119 S.J. 321, CA (Civ Div)	3–11
BCLA Ltd v Demetriou Unreported 2006	25–15
BP Pension Trust v Blake (1982) 264 E.G. 721; [1982] 2 E.G.L.R. 225, Lands Tr	8–05, 8–10, 8–11, 9–16, 16–10, 16–14
Bainbridge v Congdon [1925] 2 K.B. 261, DC	3–22
Barnes v Gorsuch (1981–82) 2 H.L.R. 134; (1982) 43 P. & C.R. 294; (1982) 263 E.G. 253, CA (Civ Div)	21–12
Barnett & Block v National Parcels Insurance Co Ltd [1942] 1 All E.R. 221	2–12
Baron v Phillips (1979) 38 P. & C.R. 91; (1978) 247 E.G. 1079, CA (Civ Div)	3–01, 3–10, 3–11
Barrable v Westminster City Council (1984) 271 E.G. 1273, Lands Tr	8–04, 8–09, 8–10, 8–11
Barras v Aberdeen Steam Trawling & Fishing Co Ltd [1933] A.C. 402; [1933] All E.R. Rep. 52; (1933) 45 Ll. L. Rep. 199; 1933 S.C. (H.L.) 21; 1933 S.L.T. 338, HL	1–62
Bates v Pierrepont (1979) 37 P. & C.R. 420; (1978) 251 E.G. 1059, CA (Civ Div) ...	7–07, 7–14, 17–11
Beck v Newbold [1952] 2 Q.B. 752; [1952] 2 All E.R. 412; [1952] 2 T.L.R. 332; (1952) 96 S.J. 547, CA	3–22
Becker Properties Ltd v Garden Court NW8 Property Co Ltd [1998] 1 E.G.L.R. 121; [1998] 12 E.G. 135, Lands Tr	16–13, 27–06, 27–08

Bedford Estates Trustees v Rock (Valuation Officer); sub nom. Russell (Trustees of the Bedford Estates) v Rock (Valuation Officer) (1983) 267 E.G. 449; [1983] R.A. 113; [1983] J.P.L. 610, Lands Tr	2-16
Belvedere Court Management Ltd v Frogmore Developments Ltd [1997] Q.B. 858; [1996] 3 W.L.R. 1008; [1996] 1 All E.R. 312; (1996) 28 H.L.R. 398; [1996] 1 E.G.L.R. 59; [1996] 05 E.G. 131; [1995] E.G. 159 (C.S.); [1995] N.P.C. 158, CA (Civ Div)	1-10, 17-08
Benedictus v Jalaram (1989) 58 P. & C.R. 330; [1989] 1 E.G.L.R. 251; [1988] E.G. 173 (C.S.), CA (Civ Div)	6-39, 28-22
Betty's Cafes Ltd v Phillips Furnishing Stores Ltd (No.1) [1959] A.C. 20; [1958] 2 W.L.R. 513; [1958] 1 All E.R. 607; (1958) 102 S.J. 228, HL	10-02
Bickel v Duke of Westminster [1977] Q.B. 517; [1976] 3 W.L.R. 805; [1976] 3 All E.R. 801; (1977) 34 P. & C.R. 22; [1976] J.P.L. 574; (1976) 120 S.J. 604, CA (Civ Div)	17-28
Bickmore v Dimmer [1903] 1 Ch. 158, CA	7-12
Biles v Caesar [1957] 1 W.L.R. 156; [1957] 1 All E.R. 151; (1957) 101 S.J. 108, CA	24-01, 24-04, 26-05, 30-15
Binions v Evans [1972] Ch. 359; [1972] 2 W.L.R. 729; [1972] 2 All E.R. 70; (1972) 23 P. & C.R. 192; (1972) 116 S.J. 122, CA (Civ Div)	6-12
Bircham & Co (Nominees) (No.2) Ltd's Application Unreported 2005, LVT	35-25, 35-26, 35-30, 35-31
Bircham & Co (Nominees) (No.2) v Clarke Unreported LRA/63/2005 November 9, 2005	9-30
Birmingham Corp v West Midland Baptist (Trust) Association Inc; sub nom. West Midland Baptist (Trust) Association Inc v Birmingham Corp [1970] A.C. 874; [1969] 3 W.L.R. 389; [1969] 3 All E.R. 172; (1969) 133 J.P. 524; 67 L.G.R. 571; (1969) 20 P. & C.R. 1052; (1969) 113 S.J. 606, HL	16-15, 19-08
Bishopsgate Foundation v Curtis [2004] 3 E.G.L.R. 57; [2004] 46 E.G. 152, CC	22-05, 30-16
Bistern Estate Trust's Appeal, Re [2000] 2 E.G.L.R. 91, Lands Tr	3-08, 9-47
Black v Trustees of the Eyre Estate Unreported 1995, LVT	6-28
Blacker v Wimbledon and Putney Commons Conservators [2004] 3 E.G.L.R. 67; [2004] 51 E.G. 90, CC	14-51
Blackmun v Trustees of Portman Collateral Settlements Unreported 2003, LVT	1-38, 33-10
Blackpool Corp v Starr Estate Co Ltd [1922] 1 A.C. 27, HL	14-51
Blackstone Investments Ltd v Middleton-Dell Management Co Ltd [1997] 1 E.G.L.R. 185; [1997] 14 E.G. 135; [1997] R.V.R. 145; (1997) 161 J.P.N. 796, Lands Tr	27-06
Blaiberg v Keeves [1906] 2 Ch. 175, Ch D	18-02
Blendercrown Ltd v Church Commissioners for England [2004] 1 E.G.L.R. 143, Lands Tr	6-39, 9-12, 27-02, 27-06, 27-09
Boaks v Greater London Council [1978] R.V.R. 171, Lands Tr	5-17
Bolhah v Jigwood Securities Continuation [1987] 2 C.L. 173, CC	4-08
Boss Holdings Ltd v Grosvenor West End Properties Ltd; Mallett & Sons (Antiques) Ltd v Grosvenor West End Properties Ltd [2008] UKHL 5; [2008] 1 W.L.R. 289; [2008] 2 All E.R. 759; [2008] H.L.R. 29; [2008] 2 P. & C.R. 20; [2008] L. & T.R. 10; [2008] 1 E.G.L.R. 51; [2008] 15 E.G. 174; [2008] R.V.R. 313; [2008] 5 E.G. 167 (C.S.); (2008) 152(6) S.J.L.B. 31; [2008] N.P.C. 9	1-63, 2-04, 2-05
Botterill v Hampstead Garden Suburbs Trust Ltd [2008] P.L.S.C.S. 16	35-36
Boyer v Warbey (No.1) [1953] 1 Q.B. 234; [1953] 1 All E.R. 269, CA	16-06
Bradshaw v Pawley [1980] 1 W.L.R. 10; [1979] 1 All E.R. 273; (1980) 40 P. & C.R. 496; (1979) 253 E.G. 693, Ch D	8-05
Brewer v Duke of Westminster Unreported 1985, CC	7-17
Brick Farm Management Ltd v Richmond Housing Partnership Ltd; sub nom. Richmond Housing Partnership Ltd v Brick Farm Management Ltd [2005] EWHC 1650 (QB); [2005] 1 W.L.R. 3934; [2006] H.L.R. 3; [2005] 3 E.G.L.R. 57; [2005] 48 E.G. 224; (2005) 155 N.L.J. 1483; [2005] N.P.C. 108; [2006] 1 P. & C.R. DG5	4-02, 22-02, 22-07, 26-08
Brick Farm Management Ltd v Richmond Housing Partnership Ltd [2006] EWHC 1004 (Ch); [2007] L. & T.R. 1; [2006] 2 E.G.L.R. 46; [2006] 27 E.G. 236	30-17
Briddon v Field [1975] 1 E.G.L.R. 201	8-07, 8-13
Britton v Estmanco Ltd Unreported 2001, CC	21-10
Broomfield Freehold Management Ltd v Meadow Holdings Ltd; sub nom. Broomfield House, 179 Stanmore Hill, Middlesex, HA7 3ER, Re Unreported LRA/148/2006	26-11
Browborne Management Co Ltd's Application, Re Unreported 1997, LVT	35-28
Brown v Brash [1948] 2 K.B. 247; [1948] 1 All E.R. 922; 64 T.L.R. 266; [1948] L.J.R. 1544; (1948) 92 S.J. 376, CA	4-08

- Brown & Root Technology Ltd v Sun Alliance and London Assurance Co Ltd* [2001] Ch. 733; [2000] 2 W.L.R. 566; (1998) 75 P. & C.R. 223; [1997] 1 E.G.L.R. 39; [1997] 18 E.G. 123; (1997) 94(7) L.S.G. 29; (1997) 141 S.J.L.B. 38; [1996] N.P.C. 183; (1997) 73 P. & C.R. D33, CA (Civ Div) 4-01, 5-10, 24-01, 26-05, 29-04, 30-15
- Bryanston Property Co Ltd v Edwards* [1944] K.B. 32, CA 3-39
- Brynlea Property Investments Ltd v Ramsey* [1969] 2 Q.B. 253, CA 5-02, 5-05, 5-06
- Buckley v SRL Investments; Buckley v Cator and Robinson* (1971) 22 P. & C.R. 756, Lands Tr 5-09, 8-04
- Burford Estate & Property Co v Creasy* [1986] 1 E.G.L.R. 231; (1985) 277 E.G. 73, LVT ... 8-10, 16-07
- Burman v Mount Cook Land Ltd* [2001] EWCA Civ 1712; [2002] Ch. 256; [2002] 2 W.L.R. 1172; [2002] 1 All E.R. 144; [2002] H.L.R. 45; [2002] L. & T.R. 19; [2002] 1 E.G.L.R. 61; [2002] 06 E.G. 156; [2001] 48 E.G. 128 (C.S.); (2001) 98(46) L.S.G. 37; (2002) 99(3) L.S.G. 26; (2002) 146 S.J.L.B. 12; [2001] N.P.C. 166; [2002] 1 P. & C.R. DG16 25-12, 26-05, 30-15, 30-23
- Burntwood Court Ltd v St Leonard's Properties Ltd* Unreported 2002, CC 25-10
- Burr v Eyre* [1998] 2 E.G.L.R. 92; [1998] 20 E.G. 132, CC 1-62, 2-18
- Burton Finance Ltd v Kolup Investments* (1979) 251 E.G. 1290, Lands Tr 8-10, 8-12, 8-13
- Byrne v Rowbotham* (1969) 210 E.G. 823, CA (Civ Div) 4-07
- Cadogan v 26 Cadogan Square Ltd* Unreported March 4, 2009, LVT 32-02
- Cadogan v Cecil* Unreported LRA/10/2000, Lands Tr 9-11, 9-43
- Cadogan v Chelsea Properties Ltd* (No.2) Unreported 2008, LVT 32-05
- Cadogan v Erkman* Unreported December 22, 2008 LRA/56&68/2007, Lands Tr 9-43, 16-14, 16-15
- Cadogan v Gwynne* Unreported 2002, CC 21-04
- Cadogan v 2 Herbert Crescent Freehold Ltd* 32-19
- Cadogan v 44/46 Lower Sloane Street Management Co Ltd* Unreported LRA/29/2003 27-16
- Cadogan v McGirk; sub nom. Viscount Chelsea and Cadogan Estates Ltd v McGirk* [1996] 4 All E.R. 643; (1997) 29 H.L.R. 294; (1997) 73 P. & C.R. 483; [1996] 2 E.G.L.R. 75; [1996] 39 E.G. 175; [1996] N.P.C. 65; (1996) 72 P. & C.R. D47, CA (Civ Div) 1-62, 20-04, 21-04, 29-05, 30-07, 30-18, 32-02, 32-20, 33-04, 33-05, 33-09
- Cadogan v Mills* Unreported March 5, 2008, LVT 6-16
- Cadogan v Search Guarantees Plc. See Earl Cadogan v Search Guarantees Plc*
- Cadogan v Strauss. See Earl Cadogan v Strauss*
- Cadogan Estates Ltd v Hows* [1989] 48 E.G. 167; [1991] R.V.R. 132; [1989] E.G. 131 (C.S.), Lands Tr 8-09, 8-10, 8-11, 8-12, 8-13, 9-10, 9-11, 9-12, 9-43
- Cadogan Estates Ltd v Shahgholi* [1999] 1 E.G.L.R. 189; [1998] R.V.R. 266, Lands Tr 16-13, 33-04, 33-05, 33-08
- Cadogan Holdings Ltd v Pockney* [2005] R.V.R. 197, Lands Tr 9-43
- Calthorpe Estate Trustees v Pabari* [1991] 2 E.G.L.R. 219; [1991] 47 E.G. 1101, Lands Tr 9-19
- Calthorpe Estate, Edgbaston, Birmingham, Re; sub nom. Anstruther Gough Calthorpe v Grey* (1973) 26 P. & C.R. 120, Ch D 16-01, 19-13, 35-02, 35-25, 35-26, 35-27, 35-29
- Camden LBC v ADC Estates Ltd; sub nom. ADC Estates Ltd v Camden LBC* 88 L.G.R. 956; (1991) 61 P. & C.R. 48; [1990] 3 P.L.R. 121; [1990] R.V.R. 177; [1991] J.P.L. 327; (1991) 155 L.G. Rev. 311; [1990] E.G. 80 (C.S.), CA (Civ Div) 26-10
- Camden LBC v Shortlife Community Housing Ltd* (1993) 25 H.L.R. 330; 90 L.G.R. 358; [1992] E.G. 31 (C.S.); [1992] N.P.C. 52, Ch D 3-04
- Canas Property Co v KL Television Services* [1970] 2 Q.B. 433; [1970] 2 W.L.R. 1133; [1970] 2 All E.R. 795; (1970) 21 P. & C.R. 601; (1970) 114 S.J. 337, CA (Civ Div) 5-15
- Capil and Wider v Bridge and Bridge* Unreported LRA/53/2000, Lands Tr 9-11
- Capital & Counties Bank Ltd v Rhodes* [1903] 1 Ch. 631, CA 6-36
- Capital and Provincial Property Trust v Rice* [1952] A.C. 142; [1951] 2 All E.R. 600; [1951] 2 T.L.R. 557; (1951) 95 S.J. 513, HL 3-39
- Cardiff Corp v Robinson* [1957] 1 Q.B. 39; [1956] 3 W.L.R. 522; [1956] 3 All E.R. 56; (1956) 120 J.P. 500; 54 L.G.R. 506; 1 R.R.C. 83; 49 R. & I.T. 571; (1956) 100 S.J. 588, DC 4-08
- Cargill v Phillips* 1951 S.C. 67; 1951 S.L.T. 110, IH (2 Div) 2-14
- Carl v Grosvenor Estate Belgravia* [2000] 3 E.G.L.R. 79; [2000] 38 E.G. 195, Lands Tr 9-46, 9-59, 9-63, 16-13
- Carter v SU Carburettor Co* [1942] 2 K.B. 288, CA 3-37
- Carthew v Estates Governors of Alleyn's College* (1974) 28 P. & C.R. 489, Lands Tr 8-05, 8-06, 8-10, 8-13

Cascades and Quayside Ltd v Cascades Freehold Ltd [2007] EWCA Civ 1555; [2008] L. & T.R. 23	25-13
Castle v Chisholm Unreported 2003, CC	30-10
Castlebeg Investments' (Jersey) Appeal, Re [1985] 2 E.G.L.R. 209; (1985) 275 E.G. 469, Lands Tr	9-19, 9-21
Castlebeg Investments (Jersey) Ltd v Lynch (1989) 57 P. & C.R. 493; [1988] E.G. 163 (C.S.); [1988] E.G.L.R. 233, Lands Tr	9-19, 9-21
Castlegroom Ltd v Enoch (Preliminary Issue: Jurisdiction) [2003] 3 E.G.L.R. 46; [2003] 48 E.G. 128, LVT	26-11
Castlegroom Ltd v Enoch [2003] 2 E.G.L.R. 54; [2003] 31 E.G. 69, CC	26-11
Cawthorne v Hamdan [2007] EWCA Civ 6; [2007] Ch. 187; [2007] 2 W.L.R. 185; [2007] 2 All E.R. 116; [2007] 2 P. & C.R. 1; [2007] L. & T.R. 14; [2007] 1 E.G.L.R. 67; [2007] 11 E.G. 162; [2007] 5 E.G. 306 (C.S.); (2007) 104(6) L.S.G. 31; [2007] N.P.C. 8 ...	1-56, 26-06, 28-15
Central Estates (Belgravia) Ltd v Woolgar (No.1); Liverpool Corp v Husan [1972] 1 Q.B. 48; [1971] 3 W.L.R. 571; [1971] 3 All E.R. 647; [1971] 3 All E.R. 651; 70 L.G.R. 117; (1971) 22 P. & C.R. 988; (1971) 22 P. & C.R. 994; (1971) 115 S.J. 656, CA (Civ Div)	5-15, 17-06
Chada v Norton Estate Trustees [1985] 2 E.G.L.R. 229; (1985) 276 E.G. 312, LVT	16-07
Challis v Watson [1913] 1 K.B. 547, KBD	16-02
Chapman, Re (1885) L.R. 29 Ch. D. 1007, Ch D	18-02
Cheapside Land Development Co v Messels Service Co; sub nom. Messels Service Co v Cheapside Land Development Co; United Scientific Holdings v Burnley BC [1978] A.C. 904	3-25
Chelsea Properties Ltd v Earl Cadogan and Cadogan Estates Ltd Unreported 2007, Lands Tr	16-14, 33-06
Cheryl Investments Ltd v Saldanha; Royal Life Saving Society v Page [1978] 1 W.L.R. 1329; [1979] 1 All E.R. 5; (1979) 37 P. & C.R. 349; (1978) 248 E.G. 591; (1978) 122 S.J. 777, CA (Civ Div)	22-05
Cheshire CC v Woodward [1962] 2 Q.B. 126; [1962] 2 W.L.R. 636; [1962] 1 All E.R. 517; (1962) 126 J.P. 186; 60 L.G.R. 180; (1962) 13 P. & C.R. 157; [1962] R.V.R. 148; (1962) 106 S.J. 222, DC	2-03
Chilcott v Clinton Devon Estates (1974) 27 P. & C.R. 282, Lands Tr	8-10, 8-13
Church Commissioners for England v Woods (1970) 215 E.G. 301; [1970] E.G.D. 509, CA	3-27, 3-31, 5-19
Cik v Chavda [2008] P.L.S.C.S. 263, Lands Tr	9-43, 27-08, 33-05
City & Country Properties Ltd v Plowden Investments Ltd [2007] L. & T.R. 15, CC	25-13, 30-08
Clemence v Grosvenor Estate Belgravia Unreported 1998, LVT	9-59
Cockburn v Smith [1924] 2 K.B. 119, CA	2-07
Cohen v Jonesco [1926] 2 K.B. 1, CA	17-05
Colliers CRE Plc v Portman Estate Nominees (One) Ltd Unreported 2006, CC	2-04
Collin v Duke of Westminster [1985] Q.B. 581; [1985] 2 W.L.R. 553; [1985] 1 All E.R. 463; (1985) 17 H.L.R. 246; (1985) 50 P. & C.R. 380; [1985] 1 E.G.L.R. 109; (1985) 273 E.G. 881; [1985] R.V.R. 4; (1985) 82 L.S.G. 767; (1985) 129 S.J. 116, CA (Civ Div)	5-09, 5-11, 5-12
Collins v Howard de Walden Estates Ltd [2003] EWCA Civ 545; [2003] H.L.R. 70; [2003] 3 E.G.L.R. 35; [2003] 37 E.G. 137; (2003) 100(18) L.S.G. 37; (2003) 147 S.J.L.B. 508 ...	2-09
Collins v Jones (1982) 261 E.G. 1001; [1981] 2 E.G.L.R. 108, Lands Tr	8-10
Commission for the New Towns v Berman (1973) 226 E.G. 617	35-26
Compania de Electricidad de la Provincia de Buenos Aires Ltd, Re [1980] Ch. 146; [1979] 2 W.L.R. 316; [1978] 3 All E.R. 668; (1978) 122 S.J. 145, Ch D	5-12
Connaught Court RTM Co Ltd v Abouzaki Holdings Ltd Unreported 2008, Lands Tr	21-10
Conqueror Property Trust v Barnes Corp [1944] K.B. 96, KBD	3-39
Corbett v Plowden (1884) L.R. 25 Ch. D. 678, CA	7-49
Cornish v Brook Green Laundry [1959] 1 Q.B. 394; [1959] 2 W.L.R. 215; [1959] 1 All E.R. 373, CA	3-03, 7-13, 9-36
9 Cornwall Crescent London Ltd v Kensington and Chelsea RLBC [2005] EWCA Civ 324; [2006] 1 W.L.R. 1186; [2005] 4 All E.R. 1207; [2005] H.L.R. 40; [2006] 1 P. & C.R. 3; [2005] L. & T.R. 19; [2005] 2 E.G.L.R. 131; [2005] 14 E.G. 128 (C.S.); (2005) 149 S.J.L.B. 391; [2005] N.P.C. 47	25-10, 26-06, 26-10, 26-12, 30-07, 30-15, 30-20
Cottingham-Munday v Dover BC (1971) 220 E.G. 817, Lands Tr	10-13

County and Metropolitan Developments v Brewer (formerly Swanston) Trust (1971) 22 P. & C.R. 1135; [1971] J.P.L. 632, Lands Tr	8-04, 8-09
Court v Robinson [1951] 2 K.B. 60; [1951] 1 All E.R. 209, CA	3-39
Covent Garden Group Ltd v Naiva; sub nom. Naiva v Covent Garden Group Ltd (1995) 27 H.L.R. 295; [1994] E.G. 174 (C.S.); [1994] N.P.C. 131; (1994) 68 P. & C.R. D18; [1995] 1 E.G.L.R. 243, CA (Civ Div)	6-39, 16-12
Crean Davidson Investments Ltd v Earl Cadogan [1998] 2 E.G.L.R. 96; [1998] 20 E.G. 136, CC	21-04, 25-10, 25-12
Creditforce Ltd v Lay Unreported 2007, CC	2-05
Cressingham Properties Ltd, Re [1999] 2 E.G.L.R. 117; [1999] 27 E.G. 123, Lands Tr	6-39
Cresswell v Duke of Westminster [1985] 2 E.G.L.R. 151; (1985) 275 E.G. 461; [1985] R.V.R. 144, CA (Civ Div)	2-07, 2-08, 5-05, 25-12
Crofton Investment Trust v Greater London Rent Assessment Committee [1967] 2 Q.B. 955; [1967] 3 W.L.R. 256; [1967] 2 All E.R. 1103; [1967] R.V.R. 284; (1967) 111 S.J. 334, DC	16-10
Croydon County BC v Hardiman and Wates Ltd 184 E.G. 131; [1962] R.A. 565; [1962] R.V.R. 636; 9 R.R.C. 382; [1962] J.P.L. 810, Lands Tr	16-14, 16-15
Cunliffe v Goodman [1950] 2 K.B. 237; [1950] 1 All E.R. 720; (1950) 66 T.L.R. (Pt. 2) 109; (1950) 94 S.J. 179, CA	10-02, 21-08
Cunningham v Morrison-Bell [1986] 1 E.G.L.R. 211; (1986) 278 E.G. 741, Lands Tr	8-07, 8-09, 8-10, 8-11, 16-14
Custins v Hearts of Oak Benefit Society [1969] 209 E.G. 239; [1969] J.P.L. 210, Lands Tr	1-24, 9-04, 9-13
Cymru Investments Ltd v Watkins Unreported 1996, Lands Tr	16-12
DAF Motoring Centre (Gosport) v Hatfield & Wheeler (1982) 263 E.G. 976; [1982] 2 E.G.L.R. 59, CA (Civ Div)	10-02
Daejan Investments Ltd v The Holt (Freehold) Ltd [2008] P.L.S.C.S. 146, Lands Tr	9-43, 26-06, 27-08, 33-05
Daejan Properties Ltd v Bellringer Investments Ltd Unreported 2002, CC	30-07
Daejan Properties Ltd v De Wolfe Unreported 2001, CC	25-18, 30-10
Daejan Properties Ltd v Weeks [1998] 3 E.G.L.R. 125; [1998] 36 E.G. 146, Lands Tr	27-04
Dangey v General Management Ltd (1973) 227 E.G. 993, Lands Tr	8-10, 8-12
Davies v Howard v Walden Estates Ltd Unreported 1998, LVT	32-05
Davis v The Wellcome Trust Ltd Unreported 2002, LVT	26-10
De Campomar v Petteward's Estate Trustees [2005] 1 E.G.L.R. 83; [2005] 15 E.G. 124, Lands Tr	16-11
DeLaforce v Evans (1971) 22 P. & C.R. 770; (1970) 215 E.G. 315; [1971] J.P.L. 342, Lands Tr	9-11
Denison Close Ltd v The New Hampstead Garden Trust Ltd Unreported 2002, LVT	26-11
73 Denmark Villas Hove Ltd v Elbaccush [2006] P.L.S.C.S. 164, CC	28-15
25 Dennington Park Road Management Ltd v Maryland Estates Ltd Unreported 1997, LVT	27-06, 27-10
Des Salles d'Épinoix v Kensington and Chelsea RLBC [1970] 1 W.L.R. 179; [1970] 1 All E.R. 18; (1969) 113 S.J. 980, QBD	4-08
Devonshire Reid Properties Ltd v Trenaman [1997] 1 E.G.L.R. 45; [1997] 20 E.G. 148, Lands Tr	27-06
DPP v Ottewell; sub nom. R. v Ottewell (Peter) [1970] A.C. 642; [1968] 3 W.L.R. 621; [1968] 3 All E.R. 153; (1968) 52 Cr. App. R. 679; (1968) 132 J.P. 499; (1968) 112 S.J. 687, HL	1-62
Divis v Middleton (1983) 268 E.G. 157, Lands Tr	9-21
Dixon v Allgood [1987] 1 W.L.R. 1689; [1987] 3 All E.R. 1082; (1988) 20 H.L.R. 191; (1988) 56 P. & C.R. 42; [1988] 02 E.G. 59; [1988] R.V.R. 21, HL	2-09, 3-21
Dixon v Allgood Unreported 1998, Lands Tr	8-04, 8-07, 8-10, 8-11
Dodds v Walker [1981] 1 W.L.R. 1027; [1981] 2 All E.R. 609; (1981) 42 P. & C.R. 131; (1981) 125 S.J. 463, HI	30-16
Doe, d Lyster v Goldwin (1841) 2 Q.B. 143	5-06
Doe, d Beadon v Pyke (1816) 5 M. & S. 146	6-36, 7-50
Doe, d Mann v Walters (1830) 10 B. & C. 626	5-06
Donath v Second Duke of Westminster's Trustees [1997] 1 E.G.L.R. 203; [1997] 13 E.G. 120, LVT	27-08, 27-09, 27-12
Dudley and District Benefit Society v Emerson [1949] Ch. 707; [1949] 2 All E.R. 252; 65 T.L.R. 444; [1949] L.J.R. 1441; (1949) 93 S.J. 512, CA	7-49

Dugan-Chapman v Grosvenor Estates [1997] 1 E.G.L.R. 96; [1997] 10 E.G. 152, CC	2-03, 2-05, 2-12, 2-14, 5-05
Duke of Norfolk v Bell; Barbinder Trust v Bell (1982) 263 E.G. 445, LVT	8-05, 8-10, 8-13
Duke of Westminster (Deceased) v Regis Group (Barclays) Ltd [2007] 3 E.G.L.R. 81; [2007] 38 E.G. 204; [2008] W.T.L.R. 1587, Lands Tr	9-39
Duke of Westminster v Birrane [1995] Q.B. 262; [1995] 2 W.L.R. 270; [1995] 3 All E.R. 416; (1995) 27 H.L.R. 321; [1995] 1 E.G.L.R. 89; [1995] 11 E.G. 141; [1994] E.G. 178 (C.S.); (1995) 92(3) L.S.G. 37; (1995) 139 S.J.L.B. 17; [1994] N.P.C. 141; (1994) 68 P. & C.R. D27, CA (Civ Div)	2-08, 2-09
Duke of Westminster v Johnston; sub nom. Johnston v Duke of Westminster; Duke of Westminster v Voggenauer; Duke of Westminster v Malnick; Duke of Westminster v Williams [1986] A.C. 839; [1986] 3 W.L.R. 18; [1986] 2 All E.R. 613; (1986) 18 H.L.R. 408; (1987) 53 P. & C.R. 36; [1986] 2 E.G.L.R. 87; (1986) 279 E.G. 501; (1986) 83 L.S.G. 2160; (1986) 136 N.L.J. 583; (1986) 130 S.J. 468, HL	3-27, 3-31, 7-17
Duke of Westminster v Oddy (1984) 15 H.L.R. 80; (1984) 270 E.G. 945; [1984] R.V.R. 112; (1984) 81 L.S.G. 1443; (1984) 128 S.J. 316, CA (Civ Div)	5-13, 7-14, 7-15, 7-20, 7-22
Duke of Westminster v Rendall Unreported 1986, CC	5-19
Dulwich College Estate's Application, Re (1972) 224 E.G. 1039; [1972] E.G.D. 906	35-04, 35-17
Dulwich Estate v Baptiste [2007] EWHC 410 (Ch); [2007] 8 E.G. 137 (C.S.)	35-25
Dunn v Fido; sub nom. Howkins v Jardine [1950] 2 All E.R. 685; 66 T.L.R. (Pt 2) 611; [1950] W.N. 419; (1950) 94 S.J. 579, CA	4-02
Durley House Ltd v Cadogan [2000] 1 W.L.R. 246; [2000] L. & T.R. 255; [2000] 1 E.G.L.R. 60; [2000] 09 E.G. 183; [1999] E.G. 120 (C.S.); (1999) 96(41) L.S.G. 37; (1999) 96(43) L.S.G. 34, Ch D	9-36
Dymond v Arundel-Timms (1991) 23 H.L.R. 397; [1991] 21 E.G. 107; [1990] E.G. 147 (C.S.); [1991] 1 E.G.L.R. 109, CA (Civ Div)	5-04, 5-05, 17-06
ER Ives Investment Ltd v High [1967] 2 Q.B. 379; [1967] 2 W.L.R. 789; [1967] 1 All E.R. 504; (1966) 110 S.J. 963, CA	6-14
Earl Cadogan v Cadogan Square Ltd Unreported 2007, LVT	27-05
Earl Cadogan v Guinness [1936] Ch. 515; [1936] 2 All E.R. 29; [2008] B.T.C. 7107, Ch D	3-03, 19-06
Earl Cadogan v Search Guarantees Plc; sub nom. Cadogan v Search Guarantees Plc; Search Guarantees Ltd v Earl Cadogan [2004] EWCA Civ 969; [2004] 1 W.L.R. 2768; [2005] 1 All E.R. 280; [2005] H.L.R. 4; [2005] L. & T.R. 1; [2004] 3 E.G.L.R. 55; [2004] 42 E.G. 162; [2004] 33 E.G. 71 (C.S.); (2004) 101(35) L.S.G. 34; (2004) 148 S.J.L.B. 945; [2004] N.P.C. 129	4-04, 4-05, 5-19, 20-08
Earl Cadogan v Sharp Unreported 1998, Lands Tr	9-11, 9-12, 9-43
Earl Cadogan v 27/29 Sloane Gardens Ltd [2006] L. & T.R. 18; [2006] 2 E.G.L.R. 89; [2006] 24 E.G. 178, Lands Tr	27-16
Earl Cadogan v Sportelli. See Pitts v Earl Cadogan	
Earl Cadogan v Strauss; sub nom. Cadogan v Strauss [2004] EWCA Civ 211; [2004] H.L.R. 33; [2004] 2 P. & C.R. 16; [2004] L. & T.R. 26; [2004] 2 E.G.L.R. 69; [2004] 19 E.G. 166; (2004) 101(10) L.S.G. 27	3-49, 5-04, 5-05
Easterby v Sampson (1830) 6 Bing. 644	17-09
Ecclesiastical Commissioners for England's Conveyance, Re; sub nom. Law of Property Act 1925, Re [1936] Ch. 430; (1957) 7 P. & C.R. 298, Ch D	6-28
Edgware Estates Ltd v Coblenz [1949] 2 K.B. 717, CA	3-39
Effra Investments v Stergios (1982) 264 E.G. 449, LVT	7-12, 7-15, 9-54, 16-07
Elizabeth Court (Bournemouth) Ltd v Revenue and Customs Commissioners [2008] EWHC 2828 (Ch); [2008] S.T.I. 2317; [2008] 42 E.G. 166 (C.S.)	1-65
Ellerby v March (Valuation Officer) [1954] 2 Q.B. 357; [1954] 3 W.L.R. 53; [1954] 2 All E.R. 375; (1954) 118 J.P. 382; 52 L.G.R. 397; 47 R. & I.T. 335; (1954) 98 S.J. 404, CA ...	16-14
Ellis v Duke of Westminster Unreported 1982, CC	2-18
Embling v Wells and Campden Charity's Trustees (1978) 247 E.G. 909; [1978] 2 E.G.L.R. 208, Lands Tr	8-10, 8-11, 8-13
Emerson v Grosvenor Estate Belgravia Unreported 1998, LVT	33-09
Epsom Grand Stand Association v Clarke (1919) 35 T.L.R. 525	2-05
Erkman v Cadogan Unreported 2007, LVT	24-01
Estates Governors of Alleyn's College v Williams; sub nom. Estates Governors of Alleyn's College of God's Gift at Dulwich v Williams (1995) 70 P. & C.R. 67; [1994] 23 E.G. 127; [1994] E.G. 1 (C.S.); [1994] N.P.C. 11, Ch D	35-25

Estates Governors of Alleyn's College of God's Gift at Dulwich v Williams. <i>See</i> Estates Governors of Alleyn's College v Williams	
Estates Trustees of the Dulwich Estate's Appeal, Re Unreported 1998	35-42
Estates Trustees of the Dulwich Estate's Application, Re Unreported 1997, LVT	35-25, 35-26, 35-27, 35-28
Eton College v Bard [1983] Ch. 321; [1983] 3 W.L.R. 231; [1983] 2 All E.R. 961; (1984) 47 P. & C.R. 47; (1983) 267 E.G. 442; (1983) 127 S.J. 492, CA (Civ Div)	3-03, 16-02
Eton College v Nassar [1991] 2 E.G.L.R. 271	35-04
Eyre v Rothman Unreported 1990, CC	7-18
Eyre Estate v Alliance Unreported 2004, Lands Tr	9-37
Eyre Estate v Rose Unreported 1998	3-12
Eyre Estate Trustees v Shack [1995] 1 E.G.L.R. 213; [1995] 24 E.G. 153, LVT	9-42, 9-44
Fairview, Church Street, Bromyard, Re [1974] 1 W.L.R. 579; [1974] 1 All E.R. 1233; (1974) 27 P. & C.R. 348, Ch D	3-02
Falcon Pipes v Stanhope Gate Property Co (No.1) (1967) 204 E.G. 1243; (1967) 117 N.L.J. 1345	5-02
Falmouth House Ltd v Rahmizadeh [2008] EWHC 214 (Ch); [2008] N.P.C. 17	20-02
Farr v Millerson's Investments (1971) 22 P. & C.R. 1055; [1971] J.P.L. 523, Lands Tr	8-05, 8-07, 8-10, 8-12, 8-13, 9-11, 9-13
Farrell v Alexander [1977] A.C. 59; [1976] 3 W.L.R. 145; [1976] 2 All E.R. 721; (1976) 32 P. & C.R. 292; (1976) 120 S.J. 451, HL	1-62
Farrow v Orttewell [1933] Ch. 480, CA	5-05
Fattal v John Lyon Free Grammar School Governors; sub nom. Fattal v Keepers and Governors of the Possessions Revenues and Goods of the Free Grammar School of John Lyon [2004] EWCA Civ 1530; [2005] 1 W.L.R. 803; [2005] 1 All E.R. 466; [2005] 1 P. & C.R. 29; [2005] L. & T.R. 11; [2005] 1 E.G.L.R. 51; [2005] 04 E.G. 168; [2005] R.V.R. 339; [2004] 50 E.G. 85 (C.S.); (2004) 148 S.J.L.B. 1433; [2004] N.P.C. 177	9-37, 16-17
Federated Homes Ltd v Mill Lodge Properties Ltd [1980] 1 W.L.R. 594; [1980] 1 All E.R. 371; (1980) 39 P. & C.R. 576; (1979) 254 E.G. 39; (1980) 124 S.J. 412, CA (Civ Div)	6-28
Field v Gover [1944] K.B. 200, CA	3-22
Flat 3 @ 23/25 Weymouth St, Re Unreported 2001, LVT	33-05
Fleischmann v John Lyon's Charity Unreported 1995, CC	7-12, 7-16, 9-53
Fletcher, Re; sub nom. Reading v Fletcher [1917] 1 Ch. 339, CA	6-36
Fokschaner v John Lyon's Charity Unreported 1995, LVT	9-08, 9-18
Foster v Lyons & Co Ltd [1927] 1 Ch. 219, Ch D	6-22
Fowell v Radford (1970) 21 P. & C.R. 99; (1969) 119 N.L.J. 1166; (1969) 114 S.J. 34, CA (Civ Div)	2-09, 4-07
Francis v Reginald Clifford & Co Ltd (1981) 261 E.G. 61, LVT	8-11, 8-13
Freehold Management (Traders) v Plumley (1987) 284 E.G. 237; [1987] 2 E.G.L.R. 214, Lands Tr	8-10, 8-11, 8-13, 9-20
Frost (Inspector of Taxes) v Feltham [1981] 1 W.L.R. 452; [1981] S.T.C. 115; 55 T.C. 10; [1980] T.R. 429; (1980) 124 S.J. 885, Ch D	4-07, 4-11
Frost's Application, Re [1970] 1 W.L.R. 1145; [1970] 2 All E.R. 538; (1970) 21 P. & C.R. 499; (1970) 114 S.J. 531, Ch D	17-21
Gage v Duke of Westminster Unreported 1984, CC	7-14
Gaidowski v Gonville and Caius College, Cambridge [1975] 1 W.L.R. 1066; [1975] 2 All E.R. 952; (1975) 30 P. & C.R. 120; (1975) 238 E.G. 259; (1975) 119 S.J. 491, CA (Civ Div)	1-09, 2-01, 2-09, 2-18, 14-03, 14-17, 14-18, 16-06
Gaingold Ltd v WHRA RTM Co Ltd [2006] 1 E.G.L.R. 81; [2006] 03 E.G. 122, Lands Tr	21-08
Gajapatiraju v Revenue Divisional Officer Vizagapatam; sub nom. Gajapatiraju v Vizagapatam (Revenue Divisional Officer) [1939] A.C. 302; [1939] 2 All E.R. 317, PC (Ind)	9-03, 9-28, 9-29, 19-09
Gajewski v Anderton and Kershaw (1971) 217 E.G. 885	8-06, 8-10
Galbraith v Church Commissioners for England Unreported 1979, CC	2-09
Gale (Deceased), Re; sub nom. Gale v Gale [1966] Ch. 236; [1966] 2 W.L.R. 571; [1966] 1 All E.R. 945; (1966) 110 S.J. 148, CA	17-05
Gallagher Estates v Walker (1974) 28 P. & C.R. 113, CA (Civ Div)	9-10, 9-12, 16-17
Garden City Estate of Letchworth, Re Unreported 1972	35-29
Garden Court NW8 Property Co Ltd v Becker Properties Ltd Unreported 1995, CC	21-02
Gardenblock Property Management Ltd v The Trustee of John Lyon's Charity Unreported 1997, LVT	27-05, 27-06

Gaskell's Settled Estates, Re [1894] 1 Ch. 485, Ch D	7-12
Ghaidan v Godin-Mendoza; sub nom. Mendoza v Ghaidan; Ghaidan v Mendoza; Godin-Mendoza v Ghaidan [2004] UKHL 30; [2004] 2 A.C. 557; [2004] 3 W.L.R. 113; [2004] 3 All E.R. 411; [2004] 2 F.L.R. 600; [2004] 2 F.C.R. 481; [2004] H.R.L.R. 31; [2004] U.K.H.R.R. 827; 16 B.H.R.C. 671; [2004] H.L.R. 46; [2005] 1 P. & C.R. 18; [2005] L. & T.R. 3; [2004] 2 E.G.L.R. 132; [2004] Fam. Law 641; [2004] 27 E.G. 128 (C.S.); (2004) 101(27) L.S.G. 30; (2004) 154 N.L.J. 1013; (2004) 148 S.J.L.B. 792; [2004] N.P.C. 100; [2004] 2 P. & C.R. DG17	1-38
Gidden v Mills [1925] 2 K.B. 713, KBD	3-10
Gidlow-Jackson v Middlegate Properties Ltd [1974] Q.B. 361; [1974] 2 W.L.R. 116; [1974] 1 All E.R. 830; (1974) 27 P. & C.R. 378; (1973) 117 S.J. 854, CA (Civ Div) .. 3-27, 3-28, 3-31, 3-33, 3-40	
Gildredge Properties v Mount Cook Land Ltd Unreported 2003, CC	34-21
Glass v Kencakes; West Layton v Dean [1966] 1 Q.B. 611; [1965] 2 W.L.R. 363; [1964] 3 All E.R. 807; (1965) 109 S.J. 155, QBD	5-15
Glen International Ltd v Triplerose Ltd [2007] EWCA Civ 388; [2007] L. & T.R. 28; [2007] 2 E.G.L.R. 81; [2007] 26 E.G. 164	34-16
Goledge Properties Ltd v Thornbury Court Ltd [2008] EWCA Civ 864; [2009] L. & T.R. 1; [2008] 45 E.G. 102; [2008] N.P.C. 98	26-11
Golden Lion Hotel (Hunstanton), Ltd v Carter [1965] 1 W.L.R. 1189; [1965] 3 All E.R. 506; (1965) 109 S.J. 648, Ch D	6-36
Goldsmith's Co v Guardian Assurance Co Ltd (1970) 216 E.G. 595, Lands Tr	9-14
Goldstein v Conley [2001] EWCA Civ 637; [2002] 1 W.L.R. 281; [2001] L. & T.R. 30; (2001) 98(25) L.S.G. 46	16-11, 27-09, 33-04, 33-07, 33-08
Goldstein v Conley Unreported October 29, 2002, Lands Tr	6-39
Gordon v Church Commissioners For England Unreported 2007, Lands Tr	32-05
Gorman v Porthleven Harbour and Dock Co Unreported 1970, CC	3-04
Graham v Philcox [1984] Q.B. 747; [1984] 3 W.L.R. 150; [1984] 2 All E.R. 643; (1984) 48 P. & C.R. 354; (1984) 81 L.S.G. 1764; (1984) 128 S.J. 470, CA (Civ Div)	6-17
Grainger v Gunter Estate Trustees (1977) 246 E.G. 55, Lands Tr	8-10, 8-13
Gratton-Storey v Lewis; sub nom. Lewis v Gratton-Storey (1987) 19 H.L.R. 546; (1988) 55 P. & C.R. 326; (1987) 283 E.G. 1562; (1987) 84 L.S.G. 3259; (1987) 137 N.L.J. 789; (1987) 131 S.J. 1391, CA (Civ Div)	11-01
Graystone Property Investments Ltd v Margulies (1984) 47 P. & C.R. 472, CA (Civ Div)	2-07
Green v Alexander Johnson (A Firm); sub nom. Green v Holmes [2005] EWCA Civ 775; [2005] P.N.L.R. 45; (2006) 22 Const. L.J. 336; [2005] N.P.C. 85	3-03
Green v Asheo Horticulturist, Ltd [1966] 1 W.L.R. 889; [1966] 2 All E.R. 232; (1966) 110 S.J. 271, Ch D	6-17
Gregson v Cyril Lord Ltd [1963] 1 W.L.R. 41; [1962] 3 All E.R. 907; [1962] R.V.R. 730; (1962) 106 S.J. 899, CA	21-08
Griffith v Owen [1907] 1 Ch. 195, Ch D	15-05
Griffiths v Birmingham City DC [1987] C.L.Y. 2172, CC	3-21
Grime v Robinson (1972) 24 P. & C.R. 427, Lands Tr	6-19, 6-23
Grosvenor Estate Belgravia Unreported 1973	35-27
Grosvenor Estate Belgravia v Adams; sub nom. Flat 2, 10 Eaton Place, London SW1, Re [2008] R.V.R. 173; [2008] P.L.S.C.S. 91, Lands Tr	16-13
Grosvenor Estate Belgravia v Almira Enterprises SA Unreported 1998, LVT	9-59
Grosvenor Estate Belgravia v Azmoudeh Unreported 2002, LVT	33-09
Grosvenor Estate Belgravia v Cochrane [1991] 2 E.G.L.R. 83, CA	3-10
Grosvenor Estate (Mayfair) London's Application, Re [1995] 2 E.G.L.R. 202, LVT	35-06, 35-17
Grosvenor Estates Ltd v Prospect Estates Ltd; sub nom. Prospect Estates Ltd v Grosvenor Estates Ltd [2008] EWCA Civ 1281; [2009] 2 E.G. 86; (2008) 152(46) S.J.L.B. 30; [2008] N.P.C. 126; [2009] 1 P. & C.R. DG6	2-05
Grosvenor West End Properties v Whiston Properties Ltd [2002] 2 E.G.L.R. 87; [2002] 26 E.G. 143, Lands Tr	33-03
Grover Court Ltd v Grover Court Properties Ltd Unreported 1996, CC	28-23
Gurvidi v Mangat (1972) 116 S.J. 255, CA (Civ Div)	10-08
Hadfield v Greater London Council (1968) 207 E.G. 627, CA	14-04
Hailbury Investments Ltd v Westminster City Council [1986] 1 W.L.R. 1232; [1986] 3 All E.R. 440; (1987) 151 J.P. 1; 85 L.G.R. 73; [1986] 2 E.G.L.R. 174; [1986] R.A. 187; (1986) 83 L.S.G. 3513; (1986) 130 S.J. 802, HL	6-28
Hall v Davies (1970) 22 P. & C.R. 780	8-08

Hall v Rosen (LF) Settlement's Trustees (1984) 269 E.G. 329, LVT	8–10, 16–11
Halsall v Brizell [1957] Ch. 169; [1957] 2 W.L.R. 123; [1957] 1 All E.R. 371; (1957) 101 S.J. 88, Ch D	6–14, 6–17
Hameed v Hussain (1977) 242 E.G. 1063, Lands Tr	11–16
43 Hamilton Terrace London NW8, Re Unreported December 4, 1996	16–13
Hancock v Margrove Properties Ltd (1974) 229 E.G. 1231	8–13
Hannon v 169 Queens Gate Ltd [2000] 1 E.G.L.R. 40; [2000] 09 E.G. 179, Ch D	27–06
Hareford Ltd v Barnet LBC [2005] 2 E.G.L.R. 72; [2005] 28 E.G. 122; [2005] 23 E.G. 140 (C.S.), CC	2–05
Haresign v St John the Baptist's College (Oxford). <i>See</i> Haresign v St John's College (Oxford)	
Haresign v St John's College (Oxford); sub nom. Haresign v St John the Baptist's College (Oxford) (1980) 255 E.G. 711, Lands Tr	8–10, 8–11, 8–13, 9–16
Harper v Harris (1968) 112 S.J. 954	2–01, 3–01, 4–01
Harris v Plentex, Ltd (1980) 40 P. & C.R. 483; (1980) 248 E.G. 447, Ch D	4–03, 16–02
Harrow School Road Trust, Re Unreported 1971	35–31, 35–42
Harvey v Crawley Development Corp [1957] 1 Q.B. 485; [1957] 2 W.L.R. 332; [1957] 1 All E.R. 504; (1957) 121 J.P. 166; 55 L.G.R. 104; (1957) 8 P. & C.R. 141; (1957) 101 S.J. 189, CA	9–06, 9–31
512 Haslucks Green Road and 21 other houses in West Midlands, Re Unreported LRA/185 et./2008, Lands Tr	9–15, 9–16
Haw v Peek (1969) 210 E.G. 347, Lands Tr	1–24, 9–04, 9–13
Hayes v Poole Corp Unreported 1968, CC	3–02
Haynes v King [1893] 3 Ch. 439, Ch D	6–22
Hembry v Trustees of Henry Smith's Charity; MacDonald v Trustees of Henry Smith's Charity (1987) 19 H.L.R. 533; (1987) 284 E.G. 369, CA (Civ Div)	3–27, 3–31
Hemphurst Ltd v Durrels House Ltd Unreported 2008, LVT	20–09
Herbert v Byrne (No.1) [1964] 1 W.L.R. 519; [1964] 1 All E.R. 882; (1964) 108 S.J. 196, CA	3–10
Higgs v Nieroba Unreported 2005, Lands Tr	6–28
Hildron Finance Ltd v Greenhill Hampstead Ltd; sub nom. 1–138 Greenhill, Prince Arthur Road, London, NW3 5TY, Re [2008] 1 E.G.L.R. 179; [2008] 4 E.G. 168 (C.S.), Lands Tr	9–43, 27–02, 27–08, 27–16, 33–05
Hill v Booth [1930] 1 K.B. 381, CA	3–30
Hodgson's Settled Estate, Re; sub nom. Altamont v Forsyth [1912] 1 Ch. 784, Ch D	6–14
Holding and Management (Solitaire) Ltd, Re; sub nom. Holding and Management (Solitaire) Ltd v 1–16 Finland Street RTM Co Ltd [2008] L. & T.R. 16; [2008] 1 E.G.L.R. 107; [2008] 2 E.G. 152; [2007] 45 E.G. 162 (C.S.), Lands Tr	21–03
Holding and Management (Solitaire) Ltd v 1–16 Finland Street RTM Co Ltd. <i>See</i> Holding and Management (Solitaire) Ltd, Re	
45 Holdings Ltd v Grosvenor (Mayfair) Estate Unreported 2008, LVT	27–09
Hollington v Rhodes [1951] 2 All E.R. 578n; [1951] 2 T.L.R. 691; [1951] W.N. 437, Ch D	3–03
Hordern v Viscount Chelsea [1997] 1 E.G.L.R. 195; [1997] 07 E.G. 144, LVT	32–01, 33–04
Horsham v CEFN Estates (1983) 267 E.G. 527; [1983] 2 E.G.L.R. 198, LVT	8–10, 9–16
Hounsden Ltd v Verkan Co Ltd Unreported 2001, CC	25–10
Howard de Walden Estates Ltd v Aggio; sub nom. Aggio v Howard de Walden Estates Ltd; 26 Cadogan Square Ltd v Earl Cadogan; Earl Cadogan v 26 Cadogan Square Ltd [2008] UKHL 44; [2009] 1 A.C. 39; [2008] 3 W.L.R. 244; [2008] 4 All E.R. 382; [2009] H.L.R. 8; [2008] 2 P. & C.R. 19; [2008] L. & T.R. 25; [2008] 2 E.G.L.R. 57; [2008] 34 E.G. 94; [2008] R.V.R. 236; [2008] 26 E.G. 116 (C.S.); (2008) 152(26) S.J.L.B. 32; [2008] N.P.C. 75 ... 1–14, 1–38, 1–63, 4–04, 20–08, 21–04, 22–03, 22–05, 28–15, 29–02, 30–07, 32–02, 32–05	
Howard de Walden Estates Ltd v Subhandberdin Unreported 2008, CC	25–10, 30–07
Howard de Walden Estates v von Dioszeghy Unreported LRA/9/2000, Lands Tr	9–11, 9–43
Howell's Application, Re [1972] Ch. 509; [1972] 2 W.L.R. 1346; [1972] 3 All E.R. 662; (1972) 23 P. & C.R. 266; (1972) 116 S.J. 446, Ch D	17–21
Howkins v Jardine [1951] 1 K.B. 614; [1951] 1 All E.R. 320; [1951] 1 T.L.R. 135; (1951) 95 S.J. 150; (1951) 95 S.J. 75, CA	4–02
Huff v Trustees of the Sloane Stanley Estate Unreported 1997, LVT	16–11, 32–05, 32–18
Huff v Trustees of the Sloane Stanley Estate Unreported 1998, LVT	33–04
Hunt v John Lyon's Charity Unreported 1990, CC	4–07
Hurst v Earl Grosvenor Unreported 1979, CC	5–19

Hynes v Twinsectra Ltd (1996) 28 H.L.R. 183; (1996) 71 P. & C.R. 145; [1995] 2 E.G.L.R. 69; [1995] 35 E.G. 136; [1995] E.G. 42 (C.S.), CA (Civ Div)	5-15
Indiana Investments Ltd v Taylor [2004] 3 E.G.L.R. 63; [2004] 50 E.G. 86, CC	21-10
Ingall v Moran [1944] K.B. 160	24-04
Ingle v Vaughan Jenkins [1900] 2 Ch. 368, Ch D	6-36
IRC v Clay; IRC v Buchanan [1914] 3 K.B. 466, CA	9-29
IRC v Jamieson; sub nom. Wills v IRC [1964] A.C. 1445; [1963] 3 W.L.R. 156; [1963] 2 All E.R. 1030; 41 T.C. 43; (1963) 42 A.T.C. 184; [1963] T.R. 209; (1963) 107 S.J. 570, HL	17-01
International Tea Stores Co v Hobbs [1903] 2 Ch. 165, Ch D	6-17
Jacobs v Chaudhuri [1968] 2 Q.B. 470; [1968] 2 W.L.R. 1098; [1968] 2 All E.R. 124; (1968) 19 P. & C.R. 286; (1968) 112 S.J. 135, CA (Civ Div)	5-06
James v Heim Gallery (London) Ltd (1981) 41 P. & C.R. 269; (1980) 256 E.G. 819, CA (Civ Div)	5-11
James v United Kingdom (A/98); sub nom. Trustees of the Duke of Westminster's Estate v United Kingdom (8793/79); James v United Kingdom (8793/79) (1986) 8 E.H.R.R. 123; [1986] R.V.R. 139, ECHR	1-35, 1-36, 1-37, 1-38
Jarvis v Adelaide Investments (Hove) Ltd Unreported 1995, LVT	33-08
Jenkin R Lewis & Son, Ltd v Kerman [1971] Ch. 477; [1970] 3 W.L.R. 673; [1970] 3 All E.R. 414; (1970) 21 P. & C.R. 941; (1970) 114 S.J. 769, CA (Civ Div)	7-28, 17-14
John Hunter & Son (Transport) Ltd v Assessor for Lanarkshire (1963) 1 R.I.C.S. 27; [1963] R.A. 320, LVAC	3-23
John Lyon's Charity v Brett Unreported 1998	9-10, 9-11, 9-41, 9-43
John Lyon's Charity v Hunt Unreported 1995, LVT	9-37
John Lyon's Charity v Rapp Unreported 2002, CC	3-11, 3-12
John Lyon's Charity v Rapp Unreported 2002, LVT	9-36
John Lyon's Charity v Shalson Unreported LRA/54/1999 and LRA/7/2000, Lands Tr	6-26
John Lyon's Free Grammar School v Mayhew; sub nom. Keepers and Governors of the Possessions, Revenues and Goods of the Free Grammar School of John Lyon v Mayhew (1997) 29 H.L.R. 719; [1997] 1 E.G.L.R. 88; [1997] 17 E.G. 163, CA (Civ Div)	5-02, 5-08, 5-11, 5-13
John Lyon's Free Grammar School v Secchi; sub nom. Keepers and Governors of the Possessions, Revenues and Goods of the Free Grammar School of John Lyon v Secchi; Keepers and Governors of the Possessions, Revenues and Goods of the Free Grammar School of John Lyon v Berman; John Lyon's Free Grammar School v Berman (2000) 32 H.L.R. 820; [2000] L. & T.R. 308; [1999] 3 E.G.L.R. 49; [1999] 49 E.G. 100; [1999] E.G. 118 (C.S.); [1999] N.P.C. 121; (2000) 79 P. & C.R. D10, CA (Civ Div) ...	5-05, 25-10, 25-12, 30-06, 30-07, 30-08
John Lyon's Free Grammar School v Vignaud; sub nom. Keepers and Governors of the Possessions, Revenues and Goods of the Free Grammar School of John Lyon v Vignaud [1993] 2 E.G.L.R. 122; [1993] 26 E.G. 128, CC	7-22, 9-54
Johnson v Sheffield City Council (1982) 43 P. & C.R. 272; (1981) 260 E.G. 931; [1983] R.V.R. 20, Lands Tr	5-17
Johnston v Duke of Westminster. <i>See</i> Duke of Westminster v Johnston	
Jones v Phipps (1867-68) L.R. 3 Q.B. 567, QB	5-06
Jones v Wrotham Park Settled Estates; sub nom. Jones v Wentworth Securities [1980] A.C. 74; [1979] 2 W.L.R. 132; [1979] 1 All E.R. 286; (1979) 38 P. & C.R. 77; (1979) 123 S.J. 34, HL	1-27, 1-62, 9-06, 9-35, 11-14, 11-22, 16-17, 17-01, 17-08, 27-08
Joseph v Joseph [1967] Ch. 78; [1966] 3 W.L.R. 631; [1966] 3 All E.R. 486; (1966) 110 S.J. 673, CA	17-01
Joseph Rowntree Memorial Trust Housing Association Ltd v Attorney General [1983] Ch. 159; [1983] 2 W.L.R. 284; [1983] 1 All E.R. 288; (1983) 133 N.L.J. 126; (1983) 127 S.J. 137, Ch D	4-02, 22-07
Joy v Eppner [1925] 1 K.B. 362, KBD	3-39
Kammins Ballrooms Co Ltd v Zenith Investments (Torquay) Ltd (No.1) [1971] A.C. 850; [1970] 3 W.L.R. 287; [1970] 2 All E.R. 871; (1971) 22 P. & C.R. 74; (1970) 114 S.J. 590, HL	26-03
Kemp v Josephine Trust (1971) 22 P. & C.R. 804, Lands Tr	8-05, 8-06, 8-09, 8-10