

Sweet & Maxwell's

Property Statutes

Sixth Edition

Editor

Nigel P. Gravells



Sweet & Maxwell

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Sweet & Maxwell's

Property Statutes

Edited by

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Property Statutes

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PREFACE

Sweet & Maxwell's Property Statutes is intended primarily as a reference book for students of property law: it seeks to provide a collection of statutory materials which covers as comprehensively as possible the central property law subjects – land law, conveyancing, trusts and succession. Although an increasing number of generations of students are becoming familiar with the recommendations and draft bills of the Law Commission on major areas of property law, in particular registered land and trusts of land, those recommendations remain unimplemented. Thus, as in previous editions, the core of the collection comprises the full texts (with minor exceptions) of the principal statutes of the 1925 property legislation (the Settled Land Act, the Trustee Act, the Law of Property Act, the Land Registration Act and the Administration of Estates Act) together with the Land Charges Act 1972. However, those statutes now constitute little more than half the book: the remainder comprises extracts from significant pre-1925 statutes and from the broad range of post-1925 statutes which build on the foundations laid in 1925 or which reflect the expanding scope of legislation on property law subjects.

Apart from the inclusion of relevant legislation enacted since the publication of the fifth edition, two features of the sixth edition may be noted. First, continuing the process begun in the fifth edition, a further opportunity has been taken to include some statutory material not included in previous editions – in order to provide a more complete perspective of the central property law subjects; thus the book now includes legislation relating to commons registration, to powers of attorney and to the recognition of trusts (pursuant to the Hague Trusts Convention); and it offers still fuller coverage of the general law of landlord and tenant. Secondly, largely prompted by the enactment of the Charities Act 1992, which introduces both new provisions and extensive amendments of the Charitable Trustees Incorporation Act 1872 and the Charities Act 1960, the sixth edition includes expanded coverage of the law relating to charities. Unfortunately, production was too far advanced to permit the inclusion of the text of the Charities Act 1993 (which consolidates the Charitable Trustees Incorporation Act 1872, the Charities Act 1960 and Part I of the Charities Act 1992); but it has been possible to include a table of derivations of the provisions of the 1993 Act.

The statutes are printed in chronological order as amended by subsequent legislation: textual amendments are incorporated in the original statutes and the amending provisions of subsequent legislation 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 extensive internal cross-referencing and more selective and detailed references to legislation not included in the book.

University of Nottingham
February 14, 1993

Nigel P. Gravells

CHARITIES ACT 1993— TABLE OF DERIVATIONS

Notes:

- (1) The information in the Table is based on the Charities Bill as amended by the Joint Committee on Consolidation Bills. The Bill is expected to receive the Royal Assent in March 1993; and it provides for the Act to come into force on 1 August 1993 (except for the provisions relating to charity accounts, reports and returns (sections 41–49, 69, Sched. 6, para. 21(3))).
- (2) The Charities Act 1993 consolidates the Charitable Trustees Incorporation Act 1872, the Charities Act 1960 and Part I of the Charities Act 1992.
- (3) References to sections of the Charitable Trustees Incorporation Act 1872, the Charities Act 1960 and the Charities Act 1992 are references to those sections as amended and reproduced in the text.
- (4) References to sections of the Charitable Trustees Incorporation Act 1872, the Charities Act 1960 and the Charities Act 1992 that are not reproduced in the text appear in square brackets.
- (5) The following provisions of the Charities Act 1960 and the Charities Act 1992 (reproduced in the text) remain in force –
Charities Act 1960 – sections 28(9), 38
Charities Act 1992 – sections 29 and 30 (as amended by the Charities Act 1993, s.98(1), Sched. 6, para. 29), 36
- (6) The following abbreviations are used in the Table –
CTIA 1872 – Charitable Trustees Incorporation Act 1872
CA 1960 – Charities Act 1960
CA 1992 – Charities Act 1992

Provision of Charities Act 1993	Derivation
1	CA 1960 s.1
2	CA 1960 s.3
3	CA 1960 ss.4, [43(1)], 45(6)
4	CA 1960 ss.5, [43(1)]
5	CA 1992 s.3
6	CA 1992 s.4
7	CA 1992 s.5
8	CA 1960 s.6
9	CA 1960 s.7
10	[CA 1992 s.52]
11	[CA 1992 s.54]
12	[CA 1992 s.53]
13	CA 1960 s.13
14	CA 1960 s.14
15	[CA 1960 s.15]
16	CA 1960 s.18
17	CA 1960 s.19
18	CA 1960 s.20
19	CA 1960 ss.20A, [43(1)]
20	CA 1960 s.21
21	CA 1960 s.16
22	CA 1960 s.17
23	CA 1992 s.31
24	CA 1960 s.22
25	CA 1960 s.22A
26	CA 1960 s.23
27	CA 1960 s.23A
28	CA 1992 s.18
29	CA 1960 s.24
30	[CA 1960 ss.25, 43(1)]
31	[CA 1960 s.26]
32	CA 1960 s.26A
33	CA 1960 s.28
34	CA 1960 s.28A
35	CA 1960 s.21A; [CA 1992 s.14(2)]
36	CA 1992 s.32
37	CA 1992 s.33
38	CA 1992 s.34
39	CA 1992 s.35
40	CA 1992 s.37
41	CA 1992 s.19
42	CA 1992 s.20
43	CA 1992 s.21
44	CA 1992 s.22
45	CA 1992 s.23
46	CA 1960 s.32(1),(2); CA 1992 s.24
47	CA 1992 s.25
48	CA 1992 s.26
49	CA 1992 s.27
50	CTIA 1872 s.1
51	CTIA 1872 s.2
52	CTIA 1872 s.3
53	CTIA 1872 s.4
54	CTIA 1872 s.5
55	CTIA 1872 s.6
56	CTIA 1872 s.6A
57	CTIA 1872 s.7
58	CTIA 1872 s.8
59	CTIA 1872 s.10

Provision of Charities Act 1993	Derivation
60	CTIA 1872 s.12
61	CTIA 1872, s.12A
62	CTIA 1872 s.14
63	CA 1960 s.30
64	CA 1960 s.30A
65	CA 1960 s.30B
66	CA 1960 s.30BA
67	CA 1960 s.30BB
68	CA 1960 s.30C
69	CA 1960 s.8
70	CA 1992 s.38
71	CA 1992 s.39
72	CA 1992 s.45
73	CA 1992 s.46
74	CA 1992 s.43
75	CA 1992 s.44
76	[CA 1960 s.10]
77	[CA 1960 s.11]
78	[CA 1960 s.12]
79	[CA 1960 s.37]
80	[CA 1992 s.12]
81	[CA 1960 s.33]
82	[CA 1960 s.34]
83	[CA 1960 s.35]
84	[CA 1960 s.9]; CA 1992 s.25(2)
85	[CA 1992 s.51]
86	CA 1960 ss.4(8B), 18(14), [43(2A),(3)]
87	[CA 1992 s.56]
88	[CA 1960 s.41; CA 1992 s.56]
89	[CA 1960 s.40; CA 1992 s.56]
90	[CA 1992 s.57]
91	[CA 1960 s.40A; CA 1992 s.76]
92	[CA 1960 s.42]
93	[CA 1960 s.36]
94	[CA 1992 s.55]
95	[CA 1992 s.75]
96	CA 1960 s.45
97	CA 1960 ss.16(5), 46; CA 1992 s.1
98	—
99	—
100	[CA 1960 s.49; CA 1992 s.79]
Sched. 1	[CA 1960 Sched. 1]
Sched. 2	CA 1960 Sched. 2
Sched. 3	[CA 1960 Sched. 3]
Sched. 4	[CA 1960 Sched. 4]
Sched. 5	CA 1992 Sched. 2

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Prescription Act 1832¹

(2 & 3 WILL. 4, c. 71)

Claims to right of common and other profits à prendre, not to be defeated after thirty years' enjoyment by merely showing the commencement; after sixty years' enjoyment the right to be absolute, unless had by consent or agreement

1.² No claim which may be lawfully made at the common law, by custom, prescription, or grant, to any right of common or other profit or benefit to be taken and enjoyed from or upon any land of our sovereign Lord the King, [. . .]³ or any land being parcel of the Duchy of Lancaster or of the Duchy of Cornwall, or of any ecclesiastical or lay person, or body corporate, except such matters and things as are herein specially provided for, and except tithes, rent, and services, shall, where such right, profit, or benefit shall have been actually taken and enjoyed by any person claiming right thereto without interruption for the full period of thirty years, be defeated or destroyed by showing only that such right, profit, or benefit was first taken or enjoyed at any time prior to such period of thirty years, but nevertheless such claim may be defeated in any other way by which the same is now liable to be defeated; and when such right, profit, or benefit shall have been so taken and enjoyed as aforesaid for the full period of sixty years, the right thereto shall be deemed absolute and indefeasible, unless it shall appear that the same was taken and enjoyed by some consent or agreement expressly made or given for that purpose by deed or writing.

In claims of right of way or other easement the periods to be twenty years and forty years

2.⁴ No claim which may be lawfully made at the common law, by custom, prescription, or grant, to any way or other easement, or to any watercourse, or the use of any water, to be enjoyed or derived upon, over, or from any land or water of our said Lord the King, [. . .]⁵ or being parcel of the Duchy of Lancaster or of the Duchy of Cornwall, or being the property of any ecclesiastical or lay person, or body corporate, when such way or other matter as herein last before mentioned shall have been actually enjoyed by any person claiming right thereto without interruption for the full period of twenty years, shall be defeated or destroyed by showing only that such way or other matter was first enjoyed at any time prior to such period of twenty years, but nevertheless such claim may be defeated in any other way by which the same is now liable to be defeated; and where such way or other matter as herein last before mentioned shall have been so enjoyed as aforesaid for the full period of forty years, the right thereto shall be deemed absolute and indefeasible, unless it shall appear that the same was enjoyed by some consent or agreement expressly given or made for that purpose by deed or writing.

¹ Saved by the Law of Property Act 1925, s.12, *post*, p. 137.

² Certain interruptions in prescriptive claims to rights of common are disregarded: Commons Registration Act 1965, s.16(1), *post*, p. 418.

³ Words repealed by the Statute Law Revision Act 1890.

⁴ As to the acquisition of *public* rights of way (which cannot be acquired under this Act), see the Highways Act 1980, ss.31–33.

⁵ Words repealed by the Statute Law Revision Act 1890.

Claim to the use of light enjoyed for twenty years

3.⁶ When the access and use of light to and for any dwelling house, workshop, or other building shall have been actually enjoyed therewith for the full period of twenty years⁷ without interruption, the right thereto shall be deemed absolute and indefeasible, any local usage or custom to the contrary notwithstanding, unless it shall appear that the same was enjoyed by some consent or agreement expressly made or given for that purpose by deed or writing.

Before-mentioned periods to be deemed those next before suits

4.⁸ Each of the respective periods of years hereinbefore mentioned shall be deemed and taken to be the period next before some suit or action wherein the claim or matter to which such period may relate shall have been or shall be brought into question, and no act or other matter shall be deemed to be an interruption, within the meaning of this statute, unless the same shall have been or shall be submitted to or acquiesced in for one year after the party interrupted shall have had or shall have notice thereof, and of the person making or authorising the same to be made.

In actions on the case, the claimant may allege his right generally, as at present. In pleas to trespass and certain other pleadings the period mentioned in this Act may be alleged. Exceptions, etc. to be replied specially

5. In all actions upon the case and other pleadings, wherein the party claiming may now by law allege his right generally, without averring the existence of such right from time immemorial, such general allegation shall still be deemed sufficient, and if the same shall be denied, all any every the matters in this Act mentioned and provided, which shall be applicable to the case, shall be admissible in evidence to sustain or rebut such allegation; and in all pleadings to actions of trespass, and in all other pleadings wherein before the passing of this Act it would have been necessary to allege the right to have existed from time immemorial, it shall be sufficient to allege the enjoyment thereof as of right by the occupiers of the tenement in respect whereof the same is claimed for and during such of the periods mentioned in this Act as may be applicable to the case, and without claiming in the name or right of the owner of the fee, as is now usually done; and if the other party shall intend to rely on any proviso, exception, incapacity, disability, contract, agreement, or other matter hereinbefore mentioned, or on any cause or matter of fact or of law not inconsistent with the simple fact of enjoyment, the same shall be specially alleged and set forth in answer to the allegation of the party claiming, and shall not be received in evidence on any general traverse or denial of such allegation.

Presumption to be allowed in claims herein provided for

6. In the several cases mentioned in and provided for by this Act, no presumption shall be allowed or made in favour or support of any claim, upon proof of the exercise or enjoyment of the right or matter claimed for any less period of time or number of years than for such period or number

⁶ See the Rights of Light Act 1959, *post*, p. 357.

⁷ The Rights of Light Act 1959, s.1, which temporarily extended the period to 27 years, was repealed by the Statute Law (Repeals) Act 1974, s.1, Sched., Pt. IV.

⁸ See the Rights of Light Act 1959, s.3(6), *post*, p. 358, and the Commons Registration Act 1965, s.16(2), *post*, p. 419.

mentioned in this Act as may be applicable to the case and to the nature of the claim.

Proviso for infants, etc.

7.⁹ Provided also, that the time during which any person otherwise capable of resisting any claim to any of the matters before mentioned shall have been or shall be an infant, idiot, non compos mentis, feme covert, or tenant for life, or during which any action or suit shall have been pending, and which shall have been diligently prosecuted, until abated by the death of any party or parties thereto, shall be excluded in the computation of the periods hereinbefore mentioned, except only in cases where the right or claim is hereby declared to be absolute and indefeasible.

What time to be excluded in computing the term of forty years appointed by this Act

8. Provided always, that when any land or water upon, over, or from which any such way or other convenient watercourse or use of water shall have been or shall be enjoyed or derived hath been or shall be held under or by virtue of any term of life, or any term of years exceeding three years from the granting thereof, the time of the enjoyment of any such way or other matter as herein last before mentioned, during the continuance of such terms, shall be excluded in the computation of the said period of forty years, in case the claim shall within three years next after the end or sooner determination of such term be resisted by any person entitled to any reversion expectant on the determination thereof.

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⁹ This section does not apply to a woman married since the passing of the Married Women's Property Act 1882; see also the Law Reform (Married Women and Tortfeasors) Act 1935.

Wills Act 1837¹

(7 WILL. 4 & 1 VICT. C. 26)

Meaning of certain words in this Act

1. The words and expressions herein-after mentioned, which in their ordinary signification have a more confined or a different meaning, shall in this Act, except where the nature of the provision or the context of the Act shall exclude such construction, be interpreted as follows; (that is to say,) the word “will” shall extend to a testament, and to a codicil, and to an appointment by will or by writing in the nature of a will in exercise of a power, [and also to an appointment by will of a guardian of a child]² [. . .]³ and to any other testamentary disposition; and the words “real estate” shall extend to manors, advowsons, messuages, lands tithes, rents, and hereditaments, [. . .]³ whether corporeal, incorporeal, or personal, and to any undivided share thereof, and to any estate, right, or interest (other than a chattel interest) therein; and the words “personal estate” shall extend to leasehold estates and other chattels real, and also to monies, shares of government and other funds, securities for money (not being real estates), debts, choses in action, rights, credits, goods, and all other property whatsoever which by law devolves upon the executor or administrator, and to any share or interest therein; and every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing; and every word importing the masculine gender only shall extend and be applied to a female as well as a male.

2. [*Repealed by the Statute Law Revision Act 1874.*]

All property may be disposed of by will

3.⁴ It shall be lawful for every person to devise, bequeath, or dispose of, by his will executed in manner herein-after required, all real estate and all personal estate which he shall be entitled to, either at law or in equity, at the time of his death, and which if not so devised, bequeathed, or disposed of would devolve [. . .]⁵ upon his executor or administrator; and the power hereby given shall extend [. . .]⁵ to all contingent, executory, or other future interests in any real or personal estate, whether the testator may or may not be ascertained as the person or one of the persons in whom the same respectively may become vested, and whether he may be entitled thereto under the instrument by which the same respectively were created or under any disposition thereof by deed or will; and also to all rights of entry for conditions broken, and other rights of entry; and also to such of the same estates, interests, and rights respectively, and other real and personal estate, as the testator may be entitled to at the time of his death, notwithstanding that he may become entitled to the same subsequently to the execution of his will.

4-6. [*Repealed by the Statute Law (Repeals) Act 1969, s.1, Sched., Pt. III.*]

¹ For the effect of the Law of Property Act 1922, see the Law of Property (Amendment) Act 1924, s.9, Sched. 9, para. 3.

² Words substituted by the Children Act 1989, s.108(5), Sched. 13, para. 1.

³ Words repealed by the Statute Law (Repeals) Act 1969, s.1, Sched., Pt. III.

⁴ For restrictions on the freedom of testamentary disposition, see the Inheritance (Provision for Family and Dependents) Act 1975, *post*, p. 456.

⁵ Words repealed by the Statute Law (Repeals) Act 1969, s.1, Sched., Pt. III.

No will of a person under age valid

7. No will made by any person under the age of [eighteen years]⁶ shall be valid.

8. [*Repealed by the Statute Law (Repeals) Act 1969, s.1, Sched., Pt. III.*]

[Signing and attestation of wills

9. No will shall be valid unless—

- (a) it is in writing, and signed by the testator, or by some other person in his presence and by his direction; and
- (b) it appears that the testator intended by his signature to give effect to the will; and
- (c) the signature is made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and
- (d) each witness either—
 - (i) attests and signs the will; or
 - (ii) acknowledges his signature, in the presence of the testator (but not necessarily in the presence of any other witness),

but no form of attestation shall be necessary.]⁷

Appointments by will to be executed like other wills, and to be valid, although other required solemnities are not observed

10. No appointment made by will, in exercise of any power, shall be valid, unless the same be executed in manner herein-before required; and every will executed in manner herein-before required shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by will, notwithstanding it shall have been expressly required that a will made in exercise of such power should be executed with some additional or other form of execution or solemnity.

Soldiers and mariners wills excepted

11.⁸ Provided always, that any soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his personal estate as he might have done before the making of this Act.

12. [*Repealed by the Admiralty, etc., Acts Repeal Act 1865, s.1.*]

Publication not to be requisite

13. Every will executed in manner herein-before required shall be valid without any other publication thereof.

Will not to be void on account of incompetency of attesting witness

14. If any person who shall attest the execution of a will shall at the time of

⁶ Words substituted (in relation to wills made after January 1, 1970) by the Family Law Reform Act 1969, s.3(1)(a).

⁷ Section substituted (in relation to wills taking effect after 1982) by the Administration of Justice Act 1982, ss.17, 73(6). For special provision enabling an authorised person to sign a will for a mental patient, see the Mental Health Act 1983, ss.96(1)(e), (4), 97.

⁸ Explained and extended by the Wills (Soldiers and Sailors) Act 1918, *post*, p. 20. See also the Family Law Reform Act 1969, s.3(3), *post*, p. 425.

the execution thereof or at any time afterwards be incompetent to be admitted a witness to prove the execution thereof, such will shall not on that account be invalid.

Gifts to an attesting witness to be void

15.⁹ If any person shall attest the execution of any will to whom or to whose wife or husband any beneficial devise, legacy, estate, interest, gift, or appointment, of or affecting any real or personal estate (other than and except charges and directions for the payment of any debt or debts), shall be thereby given or made, such devise, legacy, estate, interest, gift, or appointment shall, so far only as concerns such person attesting the execution of such will, or the wife or husband of such person, or any person claiming under such person or wife or husband, be utterly null and void, and such person so attesting shall be admitted as a witness to prove the execution of such will, or to prove the validity or invalidity thereof, notwithstanding such devise, legacy, estate, interest, gift, or appointment mentioned in such will.

Creditor attesting to be admitted a witness

16. In case by any will any real or personal estate shall be charged with any debts or debts, and any creditor, or the wife or husband of any creditor, whose debt is so charged, shall attest the execution of such will, such creditor notwithstanding such charge shall be admitted a witness to prove the execution of such will, or to prove the validity or invalidity thereof.

Executor shall be admitted a witness

17. No person shall, on account of his being an executor of a will, be incompetent to be admitted a witness to prove the execution of such will, or a witness to prove the validity or invalidity thereof.

[Wills to be revoked by marriage, except in certain cases]

18.—(1) Subject to subsections (2) to (4) below, a will shall be revoked by the testator's marriage.

(2) A disposition in a will in exercise of a power of appointment shall take effect notwithstanding the testator's subsequent marriage unless the property so appointed would in default of appointment pass to his personal representatives.

(3) Where it appears from a will that at the time it was made the testator was expecting to be married to a particular person and that he intended that the will should not be revoked by the marriage, the will shall not be revoked by his marriage to that person.

(4) Where it appears from a will that at the time it was made the testator was expecting to be married to a particular person and that he intended that a disposition in the will should not be revoked by his marriage to that person,—

- (a) that disposition shall take effect notwithstanding the marriage; and
- (b) any other disposition in the will shall take effect also, unless it appears from the will that the testator intended the disposition to be revoked by the marriage.]¹⁰

⁹ See the Wills Act 1968, s.1, *post*, p. 424.

¹⁰ Section substituted (in relation to wills made after 1982) by the Administration of Justice Act 1982, ss.18(1), 73(7).