

J. G. Riddall

Introduction to

Land Law

Second edition

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INTRODUCTION TO LAND LAW

by

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Preface to the Second Edition

Ars Incognita Imperitis Contemnitur

(Inscription on a bell in Ipswich parish church)

The only change in the structure of the land law which has occurred during the five years since the publication of this book has been the introduction of provisions (in the Rent Charges Act 1977) which will lead eventually to the virtual extinction of rentcharges on land. Other statutes which have modified the law have been the Torts (Interference with Goods) Act 1977 (p. 35) and the Criminal Law Act 1977 (p. 217).

Within the existing framework of the law there have been, during these five years, many decisions by the courts which have increased our knowledge of the law. Thus *Burgess v. Rawnsley* (p. 125) threw helpful light on the severance of a joint tenancy; *Sovmots Investments, Ltd. v. Secretary of State for the Environment* (p. 231) provided valuable service by establishing, after much uncertainty, that section 62 of the Law of Property Act 1925 operates only where, before the conveyance, the two tenements were not owned and occupied by the same person; *Davies v. Whitby* (p. 236) and *Diment v. H. N. Foot, Ltd.* supplemented our knowledge of prescription; *Davies v. Davies* (p. 236) augmented the law on profits; our understanding of the way in which the benefit of a covenant may become annexed to land was assisted by *Wrotham Park Estate Co., Ltd. v. Parkside Homes, Ltd.* (p. 270); an uncertainty about the extinguishment of restrictive covenants was removed by *Re Tiltwood, Sussex* (p. 282); *Multiservice Bookbinding, Ltd. v. Marsden* (p. 298) provided helpful guidance with regard to collateral advantages in mortgages; *Crabb v. Avon District Council* (p. 337) provided a further demonstration of the fact that equitable interests can still arise which are not registrable and so are subject to the old priority principles; *New Windsor Corporation v. Mellor* (p. 382) illustrated the acquisition by a floating body of rights based on custom; and *Peffer v. Rigg* (p. 360), *Freer v. Unwins* (p. 359), *Barclays Bank v. Taylor* (p. 361) and a

number of other cases provided useful (and often much needed) guidance on the operation of the Land Registration Acts.

If English land law is envisaged as a jig-saw puzzle, with many thousands of interlocking pieces, a puzzle with no edges, and with many areas still blank, then the cases mentioned above, and many others heard since the first publication of this book, can be thought of as fresh pieces of the puzzle, pieces which slot into, and extend our knowledge of, the total picture. But from time to time we are presented with pieces which do not fit. These are cases in which the decision does not supplement, or amend, or even reverse, a previous decision, but which runs counter to the very logic of the law. One such case was *Steadman v. Steadman* (p. 188). Another, lamentable, example, was *Wallis's Clayton Bay Holiday Camp v. Shell-Mex and B.P., Ltd.* (p. 322). It would be comforting if we could believe that English common law was part of natural law, with the result that decisions such as these, being contrary to natural law, are void. (Deep down, I feel that this must be so!)

Although the structure, and the purpose, of the book remains unaltered, a number of changes have been made. For example, the subject of Future Interests has been taken out of the chapter on Perpetuities, and made the subject of a separate chapter (Chapter 11). The chapter on Licences has been extended in an attempt to produce some coherence out of this disturbed part of the law. And the chapter on Registered Land has been extended so as to cover a number of aspects of the law not dealt with in the first edition. A new appendix has been added on Mere Equities.

I am grateful to all those people, both teachers and students of law, who have written to me commenting on the first edition of the book. Where they have made suggestions for amendments to the text, every suggestion has been considered carefully, and in the great majority of cases an alteration has been made to take account of the point raised. In this connection I am particularly grateful to Mrs. Susan Howdle, of the Faculty of Law at the University of Sheffield, who read the whole of the text of the first edition and sent me a list of detailed and constructive comments on points requiring attention.

My special thanks are also due to Professor Sam Fettes of the University of Syracuse. It was he who opened my eyes to the error of my previous thinking on the common law rule against perpetuities. When we were both teaching at the University of South Carolina, he gave me a lift each day to the University. And on every journey we discussed the rule against perpetuities. At last, on Sumter Street, Columbia, South Carolina (my own road to Damascus) I saw the light. The result has been the rewriting of the first half of what is now Chapter 12.

I am glad to be able to convey my appreciation to Mr. N. U. A. Hogg, Land Registrar at the Nottingham District Land Registry. He gave me great help in the revision of the chapter on Registered Land. Without his knowledge of the law and of the working of the system, and his generosity in making his knowledge available to me, I am not sure how I should have been able to complete the rewriting of Chapter 25.

The secretarial work in connection with this edition has fallen on those in the general office of this Faculty. Mrs. C. J. Taylor, Mrs. K. A. McCann and Mrs. M. Cooper have undertaken the greater part of this work and to all three I express my warmest thanks. I would like also to express my appreciation to Mr. J. M. Porter and Mrs. S. McCormack of the Library of this Faculty for their unflinching co-operation.

I am grateful to all those who assisted me in reading the proofs. My wife, my aunts, Miss M. Ford, Miss N. Ford and Mrs. M. Body, and my mother and father have all given great assistance in this tedious but vital job, and they have, between them, read the greater part of the proofs of this book. (I have done the final checking and it is with myself that responsibility rests for any errors which have got through the net.)

Many of the chapters of this edition have been rewritten or recast. The drafts of these chapters have been scrutinised by my father, and his suggestions and comments have once again led to many improvements in both the content and the style of the book. (At 92 he has lost none of his grip on the technicalities of the land law!)

The staff of Butterworths, in their usual friendly way, have made their own expert contribution to the production of this book.

Perhaps I may conclude by adding some views on the nature of our land law, and how it is studied. To my mind, land law is a self-contained system of metaphysics; it is concerned with abstractions, abstractions built into great pyramids of reasoning, crowned by logically satisfying conclusions. At the same time it is a subject which is concerned with realities; with bricks and walls, and flats and factories, and footpaths, and rivers and sheep on the high fells. It is a magical subject. (And reminders of the land law are ubiquitous. Attached to the cairn at the summit of Scawfell Pike is a plaque recording the gift of the fell to the National Trust "subject to commoners rights".) How anyone can find it boring is beyond my understanding. But if people do find the subject tedious this can only be because they do not understand it. And if they do not understand it, this is often due, in my experience, to the fact that they approach the subject expecting to find, as is only natural, that land law, in the first instance, is concerned with land. I think that this is the wrong approach. It is true, of course, that land law is concerned with land, but I have found that the best way to come to grips with land law is, in the initial stages, not to think in terms of land, but to concentrate on the abstractions—the building blocks which go to make up the metaphysics of the subject. And the best way to deal with these notions, I have found, is to treat them as if one were studying elementary algebra: to treat life interests, reversions, fee simples, conditional interests, determinable interests, rights of re-entry, and so on, as if they formed parts of an algebraic equation. (For an exploration of this approach, see B. Rudden, "Towards a Grammar of Property", Ford Workshop papers, 1977, Institute of Advanced Legal Studies, University of London.) To a newcomer these terms may seem strange (perhaps even alarming), but they are quite simple. They can be explained to a child of twelve. But they are ideas which are more easily understood if thought of in isolation, existing in their own right. Then, when the logic of the system has been mastered, when the lattice work of ideas has been comprehended, when one reaches the summit and the mists clear leaving the pattern of the range visible, then, and only then, is it safe to begin to associate what one has been studying with the stuff that lies beneath one's feet.

If this book is able to serve in a small measure as a Wainwright to some of the more important areas of the land law, its purpose is achieved.

The text of this edition was delivered to the publishers on 1 March 1979.

FACULTY OF LAW,
THE UNIVERSITY,
LEEDS

J. G. Riddall.

From the Preface to the First Edition

“ . . . Causes which concern . . . Life, or Inheritance, or Goods or Fortunes . . . are not to be decided by natural Reason but by the artificial Reason and Judgement of Law, which requires long Study and Experience before that a man can attain to the cognizance of it; . . . ”

Coke L. J. (1608)

Land law is a complex subject and its “long Study” certainly causes difficulty to many students. The primary purpose of this book is to explain clearly the fundamental principles of the subject to those for whom it causes difficulty. I hope that not only will those studying for a degree in law, at a university or polytechnic, find the book helpful, but that it will also be welcomed by those whose main subject is not law, but whose course includes a study of land law.

My main purpose, then, is to provide explanation. In seeking to achieve this, I have in many places departed from the normal practice of first setting out a principle of law and then explaining it by illustration, and instead have reversed the order, beginning with an example of the kind of situation which causes a particular problem, and then showing how the law resolves it. I have also made use of diagrams to illustrate the operation of many principles.

I owe thanks to many people. I would like first to acknowledge my debt to the person who taught me land law, Mr. (now the Reverend) E. Swinfen Green, formerly a member of the Board of Management of Gibson and Weldon (presently the College of Law). He was a brilliant teacher, always lucid, always entertaining. I am grateful to him also for his encouragement when I sent him a sample chapter of the book. Encouragement I received too from Mrs. M. A. Richards, LL.B., Solicitor, of this University. She read several chapters in draft and made valuable suggestions, in particular about the arrangement of material in Chapter 8.

I would like to express my gratitude to my friends and colleagues in this Faculty for their readiness to give me the benefit of their knowledge and experience; in particular, Mr. G. N. Glover, LL.B., Solicitor, and Mr. J. R.

Atkinson, LL.B., Solicitor, both of whom have been of great assistance in advising me on practical aspects of the law. I am also extremely grateful for the help received from Mr. N. U. A. Hogg, Assistant Registrar at the Nottingham District Land Registry. He gave a lot of his time in order to explain some of the mysteries of Registered Land, and he made many constructive comments on Chapter [24].

I would like to thank my wife for her constant encouragement and her faith that the book would one day appear. I must also thank my daughter Jillian for her willingness to forgive my bad temper when I was writing the trickier chapters. My deepest debt is to my father. He scrutinised each chapter as it was written and offered numerous suggestions about the presentation of the material and the style of the text. He was also able to point out innumerable matters requiring correction or amendment. Without his help I am not sure whether this book would have reached a presentable form. In the four years during which he worked on the book, he came to have an understanding of land law which many students sixty-five years his junior would be glad to acquire.

The greater part of the typing of the book was undertaken by Mrs. Vivien Dobson. She carried out this work in addition to her duties in a busy Faculty office and I am most grateful to her. Latterly Miss Christine Henderson has helped with the typing, as has also my wife.

My thanks are due finally to the publishers for their part in preparing the text for the printer, and for compiling the index and the table of cases and statutes. I greatly appreciate their patience and friendly guidance throughout the period leading to the publication of the book.

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NOTE: "M. & B." after a case reference in a footnote indicates that the case is included in Maudsley and Burn, *Land Law: Cases and Materials* (3rd edn.).

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