

Mark Wonnacott

Possession *of* Land



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POSSESSION OF LAND

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

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

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

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PREFACE AND ACKNOWLEDGMENTS

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

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

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

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

This book is an attempt to answer that question.

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

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

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

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

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

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