

BUTTERWORTHS

Property Law HANDBOOK

Ninth Edition

Consultant Editors

JOANNE WICKS QC

JONATHAN DAVEY



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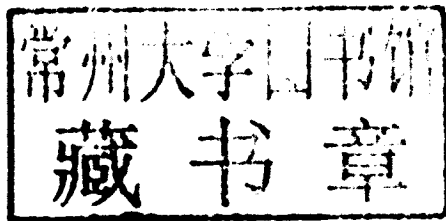
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PREFACE

The most significant piece of legislation to have been enacted since the last edition of this Handbook is the Perpetuities and Accumulations Act 2009. The rule against perpetuities, a principle of the common law which restricts the time period in which future interests of property must vest, and the rule against excessive accumulations, a statutory principle which restricts the period during which trust income may be accumulated, are both intended to strike a balance between a current owner's right to impose conditions on the disposition of his property and the right of future generations to enjoy that property freely. Although both rules were reformed to some extent by the Perpetuities and Accumulations Act 1964, they remained a complex and technical part of the law of property and the scourge of the law student. The new Act follows the recommendations of the Law Commission and is intended to simplify and modernise the law, creating a rule against perpetuities and accumulations fit for the 21st century.

Other important legislation includes the Equality Act 2010, which has effected significant changes in equality law, some of which are relevant to property transactions and disputes. Section 199 of the Act is of particular significance to property litigators as it will (for the future) abolish the presumption of advancement, which continues to influence the outcome of some cases despite being seriously out of step with modern expectations. That section is not, however, as we write, yet in force. This Handbook includes both the relevant provisions of the Act and also the Equality Act (Disability) Regulations 2010, which regulate the grant or withholding of landlord's consent where reasonable adjustments are required to be made to buildings.

Litigators and lenders will also note the pleasingly short Mortgage Repossessions (Protection of Tenants) Act 2010 and its accompanying regulations: the reader might think that this Act's title rather overstates its effect, since the protection offered to unauthorised tenants of a property being repossessed by a mortgage lender is fairly limited, comprising only the ability to apply for a two-month postponement of any possession order and the right to 14 days' notice of any application for a warrant of possession. Something is better than nothing, we suppose.

This Handbook follows the standard Butterworths Handbooks style, with amendments made by new legislation incorporated into the text of existing legislation. The NOTES which follow a provision detail the changes that have been made to the text and list any prospective amendments. In the text:

- an ellipsis (. . .) indicates that text has been repealed or revoked (or is outside the scope of this Handbook);
- square brackets denote text that has been inserted or substituted;
- italicised text is prospectively repealed or substituted, or repealed subject to savings.

We are keen to ensure that the Handbook remains of relevance to those who practise and study property law and are always pleased to receive suggestions for additional material or amendments. Please feel free to email us at the addresses below.

This Handbook is up to date to 3 August 2011, however later changes have been incorporated where possible.

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Lands Clauses Consolidation Act 1845, ss 68, 81, 127–130, 132	[1.57]
Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007, SI 2007/1253, arts 1–29, 46–48, Schs 1–8	[2.516]
Law of Property Act 1922, ss 145, 191, Sch 15	[1.89]
Law of Property Act 1925	[1.267]
Law of Property Act 1969, ss 23–25, 31	[1.669]
Law of Property (Amendment) Act 1926, ss 1, 3, 8	[1.506]
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Law of Property (Entailed Interests) Act 1932, ss 2, 3	[1.526]
Law of Property (Joint Tenants) Act 1964	[1.633]
Law of Property (Miscellaneous Provisions) Act 1989	[1.1246]
Law of Property (Miscellaneous Provisions) Act 1994	[1.1388]
Law Reform (Miscellaneous Provisions) Act 1970, ss 2, 7	[1.675]
Law Reform (Succession) Act 1995, ss 1, 3, 4, 6,	[1.1453]
Leasehold Property (Repairs) Act 1938	[1.530]
Leasehold Reform Act 1967, ss 19, 41	[1.661]
Leasehold Reform, Housing and Urban Development Act 1993, ss 88, 188	[1.1325]
Limitation Act 1980, ss 1, 2, 5, 8–10, 14A–19, 20–23, 26–27B, 28–32, 33, 35, 36, 38, 41, Sch 1	[1.847]
Local Government Act 1972, ss 111, 122, 123, 270, 274	[1.717]
Local Government and Housing Act 1989, s 186, Sch 10	[1.1252]
Local Government (Miscellaneous Provisions) Act 1982, ss 33, 49	[1.962]
Local Land Charges Act 1975, ss 1–13, 16, 20	[1.784]
Married Women's Property Act 1882, ss 11, 17, 26, 27	[1.80]
Matrimonial and Family Proceedings Act 1984, ss 17–21, 48	[1.1007]
Matrimonial Causes Act 1973, ss 18, 21, 23, 24, 24A, 25, 25A, 29, 55	[1.724]
Matrimonial Causes (Property and Maintenance) Act 1958, ss 7, 9	[1.594]
Matrimonial Proceedings and Property Act 1970, ss 37, 39, 43	[1.677]
Mental Capacity Act 2005, ss 1–4, 5–16, 17–21, 22, 23, 42, 43, 45, 47, 48, 63, 64, 66–69, Schs 1, 2–5	[1.1980]
Misrepresentation Act 1967	[1.656]
Mobile Homes Act 1983	[1.971]
Mortgage Repossessions (Protection of Tenants etc) Act 2010	[1.2320]
Occupiers' Liability Act 1957, ss 1–3, 5, 8	[1.587]
Occupiers' Liability Act 1984	[1.986]
Party Wall etc Act 1996	[1.1474]
Perpetuities and Accumulations Act 1964	[1.619]
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Powers of Attorney Act 1971	[1.680]
Prescription Act 1832	[1.6]
Property Misdescriptions Act 1991	[1.1308]
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Public Health Act 1875, ss 1, 2, 4	[1.77]
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Recognition of Trusts Act 1987	[1.1130]
Recorded Delivery Service Act 1962	[1.608]
Recreational Charities Act 1958, ss 1, 6	[1.592]

Regulatory Reform (Business Tenancies) (England and Wales) Order 2003,
SI 2003/3096, arts 1, 28, 29, Schs 1–4[2.421]

Rent Act 1977, ss 131, 132, 156[1.816]

Rentcharges Act 1977, ss 1–16, 18[1.799]

Reverter of Sites Act 1987[1.1137]

Rights of Light Act 1959[1.602]

Rights of Way (Hearings and Inquiries Procedure) (England) Rules 2007,
SI 2007/2008[2.644]

Road Traffic Act 1988, ss 34, 197[1.1244]

School Sites Act 1841, ss 2, 14[1.55]

Senior Courts Act 1981, ss 35A, 37–39, 49, 50, 113–121, 128, 153[1.934]

Serious Organised Crime and Police Act 2005, ss 128, 131, 179[1.2035]

Settled Land Act 1925[1.92]

Smoke-free (Premises and Enforcement) Regulations 2006,
SI 2006/3368, regs 1, 2[2.514]

Town and Country Planning Act 1990, ss 55, 106–106C, 191, 192,
237, 337[1.1254]

Treasure Act 1996[1.1457]

Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010,
SI 2010/2600[2.731]

Trustee Act 1925[1.211]

Trustee Act 2000, ss 1–43, Schs 1, 3[1.1563]

Trustee Delegation Act 1999, ss 1, 2, 7, 10, 11, 13[1.1547]

Trusts of Land and Appointment of Trustees Act 1996[1.1496]

Variation of Trusts Act 1958[1.599]

Wildlife and Countryside Act 1981, ss 39, 53, 53A, 53B, 54A, 56, 58,
59, 66, 74, Sch 15[1.951]

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PART I
STATUTES

LANDLORD AND TENANT ACT 1730

(1730 c 28)

Act for the more effectual preventing Frauds committed by Tenants, and for the more easy Recovery of Rents and Renewal of Leases

[1.1]

1 Persons holding over lands, etc, after expiration of leases, to pay double the yearly value

In case any tenant or tenants for any term for life, lives, or years, or other person or persons who are or shall come into possession of any lands, tenements, or hereditaments by, from, or under, or by collusion with such tenant or tenants, shall wilfully hold over any lands, tenements, or hereditaments after the determination of such term or terms, and after demand made and notice in writing given for delivering the possession thereof by his or their landlords or lessors or the person or persons to whom the remainder or reversion of such lands, tenements, or hereditaments shall belong, his or their agent or agents thereunto lawfully authorized, then and in such case, such person or persons so holding over shall, for and during the time he, she, and they shall so hold over or keep the person or persons entitled out of possession of the said lands, tenements and hereditaments as aforesaid, pay to the person or persons so kept out of possession, their executors, administrators, or assigns, at the rate of double the yearly value of the lands, tenements, and hereditaments so detained, for so long time as the same are detained, to be recovered in any of his Majesty's courts of record by action . . .

NOTES

Words omitted repealed by the Statute Law Revision Act 1948.

2–4 *(Repealed by the Statute Law Revision Act 1867.)*

[1.2]

5 Method of recovering seck rents, etc

And whereas the remedy for recovering rents seck, rents of assize, and chief rents are tedious and difficult: . . . from and after the twenty-fourth day of June, one thousand seven hundred and thirty one, all and every person or persons, bodies politick and corporate, shall and may have the like remedy by distress and by impounding and selling the same, in cases of rents seck, rents of assize, and chief rents, which have been duly answered or paid for the space of three years, within the space of twenty years before the first day of this present session of Parliament, or shall be hereafter created, as in case or rent reserved upon lease, any laws or usage to the contrary notwithstanding.

NOTES

Repealed by the Tribunals, Courts and Enforcement Act 2007, ss 86, 146, Sch 14, para 3, Sch 23, Pt 4, as from a day to be appointed; words omitted repealed by the Statute Law Revision Act 1948.

6 *(Repealed by the Law of Property Act 1925, s 207, Sch 7.)*

[1.3]

7 Not to extend to Scotland

Provided always, that nothing in this Act contained shall extend to . . . Scotland.

NOTES

Words omitted repealed by the Statute Law Revision Act 1948.

FIRES PREVENTION (METROPOLIS) ACT 1774

(1774 c 78)

An Act . . . for the more effectually preventing Mischiefs by Fire within the Cities of London and Westminster and the Liberties thereof, and other the Parishes, Precincts, and Places within the Weekly Bills of Mortality, the Parishes of Saint Mary-le-bon, Paddington, Saint Pancras and Saint Luke at Chelsea, in the County of Middlesex . . .

NOTES

Words omitted repealed by the Statute Law Revision Act 1887.

1–82 (*Repealed by the Metropolitan Fire Brigade Act 1865, s 34.*)

[1.4]

83 Money insured on houses burnt how to be applied

And in order to deter and hinder ill-minded persons from wilfully setting their house or houses or other buildings on fire with a view of gaining to themselves the insurance money, whereby the lives and fortunes of many families may be lost or endangered: Be it further enacted by the authority aforesaid, that it shall and may be lawful to and for the respective governors or directors of the several insurance offices for insuring houses or other buildings against loss by fire, and they are hereby authorised and required, upon the request of any person or persons interested in or intitled unto any house or houses or other buildings which may hereafter be burnt down, demolished or damaged by fire, or upon any grounds of suspicion that the owner or owners, occupier or occupiers, or other person or persons who shall have insured such house or houses or other buildings have been guilty of fraud, or of wilfully setting their house or houses or other buildings on fire, to cause the insurance money to be laid out and expended, as far as the same will go, towards rebuilding, reinstating or repairing such house or houses or other buildings so burnt down, demolished or damaged by fire, unless the party or parties claiming such insurance money shall, within sixty days next after his, her or their claim is adjusted, give a sufficient security to the governors or directors of the insurance office where such house or houses or other buildings are insured, that the same insurance money shall be laid out and expended as aforesaid, or unless the said insurance money shall be in that time settled and disposed of to and amongst all the contending parties, to the satisfaction and approbation of such governors or directors of such insurance office respectively.

84, 85 (*Repealed by the Metropolitan Fire Brigade Act 1865, s 34.*)

[1.5]

86 No action to lie against a person where the fire accidentally begins

And . . . no action, suit or process whatever shall be had, maintained or prosecuted against any person in whose house, chamber, stable, barn or other building, or on whose estate any fire shall . . . accidentally begin, nor shall any recompence be made by such person for any damage suffered thereby, any law, usage or custom to the contrary notwithstanding: . . . provided that no contract or agreement made between landlord and tenant shall be hereby defeated or made void.

NOTES

First words omitted repealed by the Statute Law Revision Act 1888; second words omitted repealed by the Statute Law Revision Act 1948; final words omitted repealed by the Statute Law Revision Act 1958.

87–102 (*Repealed by the Metropolitan Fire Brigade Act 1865, s 34.*)

PREScription ACT 1832

(1832 c 71)

An Act for shortening the Time of Prescription in certain cases

[1 August 1832]

ARRANGEMENT OF SECTIONS

- | | | |
|----|---|--------|
| 1 | 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 | [1.6] |
| 2 | In claims of rights of way or other easement the periods to be twenty years and forty years | [1.7] |
| 3 | Right to the use of light enjoyed for twenty years, indefeasible, unless shown to have been by consent | [1.8] |
| 4 | Before mentioned periods to be deemed those next before suits for claiming to which such periods relate—What shall constitute an interruption | [1.9] |
| 5 | In actions on the case the claimant may allege his right generally, as at present.
In pleas to trespass and other pleadings, etc, the period mentioned in this Act may be alleged; and exceptions, etc, to be replied to specially | [1.10] |
| 6 | Restricting the presumption to be allowed in support of claims herein provided for | [1.11] |
| 7 | Proviso for infants, etc | [1.12] |
| 8 | What time to be excluded in computing the term of forty years appointed by this Act | [1.13] |
| 8A | Exclusion of time because of mediation in certain cross-border disputes | [1.14] |
| 9 | Extent of Act | [1.15] |

[1.6]
1 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

. . . 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 . . . or any land being parcel of the duchy of Lancaster or 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.

NOTES
Words omitted repealed by the Statute Law Revision Act 1890.

[1.7]
2 In claims of rights of way or other easement the periods to be twenty years and forty years

. . . 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 . . . 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.

NOTES
Words omitted repealed by the Statute Law Revision (No 2) Act 1888 and the Statute Law Revision Act 1890.

[1.8]
3 Right to the use of light enjoyed for twenty years, indefeasible, unless shown to have been by consent

. . . 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 years 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.

NOTES
Words omitted repealed by the Statute Law Revision (No 2) Act 1888.

[1.9]
4 Before mentioned periods to be deemed those next before suits for claiming to which such periods relate—What shall constitute an interruption

. . . Each of the respective periods of years herein-before 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 authorizing the same to be made.

NOTES
Words omitted repealed by the Statute Law Revision (No 2) Act 1888.

[1.10]

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

. . . 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 and 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 herein-before 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.

NOTES

Words omitted repealed by the Statute Law Revision (No 2) Act 1888.

[1.11]

6 Restricting the presumption to be allowed in support of claims herein provided for

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

NOTES

Words omitted repealed by the Statute Law Revision (No 2) Act 1888.

[1.12]

7 Proviso for infants, etc

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 herein-before mentioned, except only in cases where the right or claim is hereby declared to be absolute and indefeasible.

NOTES

Amended in relation to Northern Ireland only by the Mental Health (Northern Ireland) Order 1986, SI 1986/595, art 136(1), Sch 5, Pt II.

[1.13]

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

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 term, 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.

NOTES

Words omitted repealed by the Statute Law Revision (No 2) Act 1888.

[1.14]

[8A Exclusion of time because of mediation in certain cross-border disputes

(1) In this section—

- (a) “Mediation Directive” means Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters;
- (b) “mediation” has the meaning given by article 3(a) of the Mediation Directive;
- (c) “mediator” has the meaning given by article 3(b) of the Mediation Directive;
- (d) “relevant dispute” means a dispute to which article 8(1) of the Mediation Directive applies (certain cross-border disputes).