

Blackstone's Statutes on

Property Law 2011–2012

Meryl Thomas

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Blackstone's Statutes on Property Law

2011–2012

19th edition

edited by

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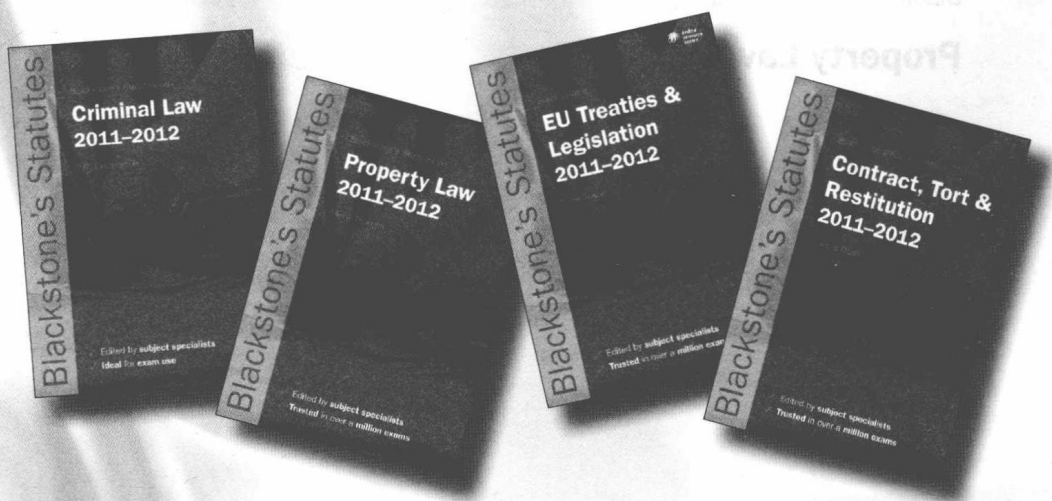
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Editor's preface

Blackstone's Statutes on Property Law seeks primarily to provide a concise and convenient collection of statutes which is suitable for all students who are studying land law, trusts, succession and conveyancing both at undergraduate and postgraduate level. The statutes have been carefully edited to remove extraneous material that is rarely or infrequently used by the student, and the book seeks to provide only the essential text.

The statutes are printed in chronological order with all subsequent amendments incorporated at the appropriate juncture in the statute; the amendments are indicated by their inclusion in a square bracket. The source of the amendment is rarely mentioned in an effort to keep the size of the book to a minimum. Sections that have been repealed by subsequent legislation are usually not included in the book and their absence is indicated by an ellipsis in a square bracket. Despite this, I have made a deliberate decision to include some legislation that has been repealed. For example, the following provisions are included, the Law of Property Act 1925, sections 141 and 142, which will inevitably continue to be relevant for some years to come; the Law of Property Act 1925, section 40, which is often taught alongside its modern counterpart for reasons of comparison; and many sections of the Land Registration Act 1925. Any editing of a section by the editor is indicated by three points of suspension without a square bracket. The title of the statute, marginal notes referring to the relevant section and the material parts of the section are included in the text, but there are no references to the previous law. Provisions relating to Scotland and Northern Ireland have largely been omitted.

The property legislation of 1925 now comprises under a third of the book, a far cry from the days when it comprised of more than two thirds of the text. Parliament has been rather quiet in the last twelve months, at least in relation to effecting any changes in the area of property law. There are currently two bills in Parliament, namely the Charities Bill and the Estates of Deceased Persons (Forfeiture Rule and Law of Succession) Bill. The former is aimed at consolidating the Charities Act 1993 and other enactments which relate to charities, and a copy of the current version can be found at www.publications.parliament.uk/pa/ld201011/ldbills/050/11050.i-v.html. The latter, which is included at the end of the book, gives effect to the recommendations of the Law Commission report of 2005, 'The Forfeiture Rule and the Law of Succession', which will, when enacted, in certain situations, protect the inheritance rights of the descendants of a person who has either forfeited their inheritance by killing the deceased, or have disclaimed their inheritance. There is an Online Resource Centre which accompanies this book at www.oxfordtextbooks.co.uk/orc/statutes/. The Online Resource Centre also contains details of useful statutory instruments, which are not printed in the book, commentary on recent cases which discuss the statutory material contained in the book, references to Law Commission reports that are relevant to property law and information on forthcoming legislation.

The present text has been updated and revised to include material which received Royal Assent in the 2010–2011 Parliamentary session.

As ever I would like to thank the staff at OUP for all their help, guidance and support in the production of this book. Also I would like to thank my ever-loving husband, Brian Dowrick, for all his patience and support. I am also indebted to all those colleagues in academe who comment on the book and generously offer suggestions on how the book can be improved. Some alterations and amendments have resulted from these ever-helpful suggestions.

Meryl Thomas
May 2011

New to this edition

The nineteenth edition of *Blackstone's Statutes on Property Law* has been fully revised and updated to include all relevant legislation through to May 2011 including:

- Defective Premises Act 1972
- Estates of Deceased Persons (Forfeiture Rule and Law of Succession) Bill

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Prescription Act 1832

(1832, c. 71)

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 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.

2 In claims of right 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.

3 Claim to the use of light enjoyed for 20 years

[. . .] 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.

4 Before mentioned periods to be deemed those next before suits

[. . .] 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.

5 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 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.

6 Presumption to be allowed in 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.

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.

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 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.

Wills Act 1837

(1837, c. 26)

1 Meaning of certain words in this Act

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] [and also to an appointment by will of a representative under section 4 of the Human Tissue Act 2004] [. . .] and to any other testamentary disposition; and the words 'real estate' shall extend to manors, advowsons, messuages, lands, tithes, rents, and hereditaments, [. . .] whether corporeal, incorporeal, or personal, [. . .] 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.

3 All property may be disposed of by will

. . . 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 [. . .] upon his executor or administrator; and the power hereby given shall extend [. . .] 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.

7 No will of a person under age valid

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

[9 Signing and attestation of wills

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.]

* See Mental Capacity Act 2005, Sch. 2, para. 4

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

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 hereinbefore 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.

11 Soldiers and mariners wills excepted

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.

13 Publication of will not be requisite

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

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

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

15 Gifts to an attesting witness to be void

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.

Note: This section applies to civil partners under the Civil Partnership Act 2004.

16 Creditor attesting to be admitted a witness

In case by any will any real or personal estate shall be charged with any debt or debts, and any creditor, or the wife or husband or [civil partner] 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.

17 Executor shall be admitted a witness

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.

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

(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.]

[18A Effect of dissolution or annulment of marriage on wills]

(1) Where, after a testator has made a will, [an order or decree] of a court [of civil jurisdiction in England and Wales] dissolves or annuls his marriage [or his marriage is dissolved or annulled and the divorce or annulment is entitled to recognition in England and Wales by virtue of Part II of the Family Law Act 1986]—

- [(a) provisions of the will appointing executors or trustees or conferring a power of appointment, if they appoint or confer the power on the former spouse, shall take effect as if the former spouse had died on the date on which the marriage is dissolved or annulled, and
- (b) any property which, or an interest in which, is devised or bequeathed to the former spouse shall pass as if the former spouse had died on that date,]

except insofar as a contrary intention appears by the will.

(2) Subsection (1)(b) above is without prejudice to any right of the former spouse under the Inheritance (Provision for Family and Dependents) Act 1975.]

Note: sections 18A(1)(a) and 18A(1) (b) were substituted by the Law Reform (Succession) Act 1995.

[18B Will to be revoked by civil partnership]

(1) Subject to subsections (2) to (6), a will is revoked by the formation of a civil partnership between the testator and another person.

(2) A disposition in a will in exercise of a power of appointment takes effect despite the formation of a subsequent civil partnership between the testator and another person unless the property so appointed would in default of appointment pass to the testator's personal representatives.

(3) If it appears from a will—

- (a) that at the time it was made the testator was expecting to form a civil partnership with a particular person, and
- (b) that he intended that the will should not be revoked by the formation of the civil partnership, the will is not revoked by its formation.

(4) Subsections (5) and (6) apply if it appears from a will—

- (a) that at the time it was made the testator was expecting to form a civil partnership with a particular person, and
- (b) that he intended that a disposition in the will should not be revoked by the formation of the civil partnership.

(5) The disposition takes effect despite the formation of the civil partnership.

(6) Any other disposition in the will also takes effect, unless it appears from the will that the testator intended the disposition to be revoked by the formation of the civil partnership.

18C Effect of dissolution or annulment of civil partnership on wills

(1) This section applies if, after a testator has made a will—

- (a) a court of civil jurisdiction in England and Wales dissolves his civil partnership or makes a nullity order in respect of it, or
- (b) his civil partnership is dissolved or annulled and the dissolution or annulment is entitled to recognition in England and Wales by virtue of Chapter 3 of Part 5 of the Civil Partnership Act 2004.

(2) Except in so far as a contrary intention appears by the will—

- (a) provisions of the will appointing executors or trustees or conferring a power of appointment, if they appoint or confer the power on the former civil partner, take effect as if the former civil partner had died on the date on which the civil partnership is dissolved or annulled, and
- (b) any property which, or an interest in which, is devised or bequeathed to the former civil partner shall pass as if the former civil partner had died on that date.

(3) Subsection (2)(b) does not affect any right of the former civil partner to apply for financial provision under the Inheritance (Provision for Family and Dependents) Act 1975.]

19 No will to be revoked by presumption

No will shall be revoked by any presumption of an intention on the ground of an alteration in circumstances.

20 No will to be revoked but by another will or codicil, or by a writing executed like a will, or by destruction

No will or codicil, or any part thereof, shall be revoked otherwise than as aforesaid, or by another will or codicil executed in manner herein-before required, or by some writing declaring an intention to revoke the same, and executed in the manner in which a will is herein-before required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

21 No alteration in a will shall have any effect unless executed as a will

No obliteration, interlineation, or other alteration made in any will after the execution thereof shall be valid or have any effect, except so far as the words or effect of the will before such alteration shall not be apparent, unless such alteration shall be executed in like manner as herein-before is required for the execution of the will; but the will, with such alteration as part thereof, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will.

22 No will revoked to be revived otherwise than by re-execution or a codicil to revive it

No will or codicil, or any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner herein-before required and showing an intention to revive the same; and when any will or codicil which shall be partly revoked, and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown.

23 A devise not to be rendered inoperative by any subsequent conveyance or act

No conveyance or other Act made or done subsequently to the execution of a will of or relating to any real or personal estate therein comprised, except an act by which such will shall be revoked as aforesaid, shall prevent the operation of the will with respect to such estate or interest in such real or personal estate as the testator shall have power to dispose of by will at the time of his death.

24 A will shall be construed to speak from the death of the testator

Every will shall be construed, with reference to the real estate and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will.

25 Residuary devise shall include estates comprised in lapsed and void devises

Unless a contrary intention shall appear by the will, such real estate or interest therein as shall be comprised or intended to be comprised in any devise in such will contained, which shall fail or be void by reason of the death of the devisee in the lifetime of the testator, or by reason of such devise being contrary to law or otherwise incapable of taking effect shall be included in the residuary devise (if any) contained in such will.

26 A general devise of the testator's lands shall include copyhold and leasehold as well as freehold lands

A devise of the land of the testator, or of the land of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, and any other general devise which would describe a [. . .] leasehold estate if the testator had no freehold estate which