



# THE LAW of REAL PROPERTY

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EIGHTH EDITION

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LONDON

SWEET & MAXWELL

2012

SWEET & MAXWELL



THOMSON REUTERS

<i>First Edition</i>	-	-	-	-	1957
<i>Second Impression</i>	-	-	-	-	1958
<i>Second Edition</i>	-	-	-	-	1959
<i>Second Impression</i>	-	-	-	-	1964
<i>Third Edition</i>	-	-	-	-	1966
<i>Second Impression</i>	-	-	-	-	1971
<i>Fourth Edition</i>	-	-	-	-	1975
<i>Second Impression</i>	-	-	-	-	1979
<i>Third Impression</i>	-	-	-	-	1982
<i>Fifth Edition</i>	-	-	-	-	1984
<i>Sixth Edition</i>	-	-	-	-	2000
<i>Seventh Edition</i>	-	-	-	-	2008
<i>Eighth Edition</i>	-	-	-	-	2012

*Published in 2012 by Sweet & Maxwell, 100 Avenue Road, London NW3 3PF  
part of Thomson Reuters (Professional) UK Limited  
(Registered in England & Wales, company No 1679046.  
Registered Office and address for service:  
Aldgate House, 33 Aldgate High Street, London EC3N 1DL)*

Typeset by Interactive Sciences Ltd, Gloucester  
Printed and bound by CPI Group (UK) Ltd, Croydon, CR0 4YY

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A CIP catalogue record for this book is available from the British Library.

Paperback ISBN 978-041-402329-1  
Hardback ISBN 978-041-404596-5

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# THE LAW OF REAL PROPERTY

## PREFACE

In this eighth edition, *Megarry & Wade* returns to the pattern it followed in the 1970s of appearing every four years. The most striking features of the last four years have been as follows.

First, the law on perpetuities and has been prospectively eliminated except in relation to trusts and wills by the Perpetuities and Accumulations Act 2009 and even there its role is now simply a restraining one. Accumulations are for almost all purposes now gone. Chapter 9 has been substantially rewritten to reflect these striking developments.

Second, the major legislative development that was considered in the seventh edition of the work, the Land Registration Act 2002, has now been the subject of a number of important judicial decisions, many on appeal from the adjudicator, in which it has been explored and illuminated (see Chapters 7 and 35).

Third, there have been a crop of important decisions from the highest appellate court, which, since the last edition, has become the Supreme Court. These decisions include two on proprietary estoppel, the first time that this doctrine has been considered at this level for over a century (see Chapter 16). There have also been important recent Supreme Court decisions on leases for lives (considered in Chapter 17) and on the downward extent of land ownership (see Chapter 3). The Supreme Court has perhaps been rather less successful in its latest attempt to clarify the rights of unmarried cohabitants (see Chapter 11).

Fourth, the Human Rights Act 1998 has begun to make itself felt rather more in relation to property law than it had previously (see Chapters 1 and 22).

The law is stated as of December 1, 2011.

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January 16, 2012

## PREFACE TO THE FIRST EDITION

This is a book in which we have attempted to state the English law of real property within a reasonable compass and in a form which will be both intelligible to students and helpful to practitioners. In some other spheres, the claims of student and practitioner are barely reconcilable, but here we are fortunate in our subject. In the main, the English law of real property rests on the logical development of clear principles, and it is these principles that throughout we have sought to emphasise. There are indeed certain passages in this book which are addressed solely or mainly to the student, and a number of details which, though important to the practitioner, need trouble none save the more zealous students; but for the most part it is our hope to have achieved a work of dual utility.

The book is founded on pre-war manuscript from which *A Manual of the Law of Real Property* has already been drawn. As first conceived, the task was to revise and bring the manuscript up to date; in the outcome most, but by no means all, of that manuscript has found its way into this book, while at the same time much new material has been interwoven with it. For unlike the manuscript and the *Manual*, this is a work of joint authorship, with all the mutual aid that flows from the application of a second mind to that was conceived and in the main executed as a complete entity. Instead of dividing up the subject-matter and each writing the text of part, nearly all of this book has been covered by each of us in close detail, often more than once. It would be too much to hope that even this time-consuming process has extirpated all error, but we hope that the result will be thought to have justified the effort. In addition to this, other factors have combined to delay publication, including our geographical separation, the press of other claims upon our time, difficulties in resolving how much of the original manuscript to omit, and the troubles of the printing industry in 1956. The printers' skill has, however, enabled us to keep the text under constant revision, and although the vicissitudes of publication have made it difficult to ensure that the whole of the text has been brought up to the same date, we hope that in general the law will be found to have been accurately stated down to the beginning of 1957, with such later additions as the state of the proofs admitted.

The publication of this work completes the original scheme for two books of a common design but different scope. Those who in student days have become familiar with the *Manual* should be able to turn with ease to the greater amplitude of this book; and the similarity of design will, we hope, not only assist teachers of law in their tasks, but also make it possible for future editions of the *Manual* to become a little slimmer.

Finally, we have the pleasure of giving thanks where thanks are due. Some of our obligations are general and distributed; we are grateful to many of those whom we have severally sought to teach, for they have themselves taught us more than they are ever likely to realise. Other gratitude is more specific. The

publishers and printers have earned more praise than even they are accustomed to; it would be wrong if we did not mention specifically the printers' skill and publishers' generosity which made it possible for the work to proceed when the manuscript and galley proofs had reached a condition more deplorable than any we had seen before. Mr I. Goldsmith also gave invaluable help with the manuscript at that stage, Mr P. V. Baker read the proofs, and Mr R. Higgins prepared the table of cases and table of statutes. To all of them we are grateful.

LINCOLN'S INN,  
*New Year's Day, 1957*

R. E. M.  
H. W. R. W.

## GLOSSARY

[The object of this glossary is to provide a ready source of reference to the meanings of some of the more troublesome technical expressions used in the text. For the most part, brief but not necessarily exhaustive definitions have been given, with references to the paragraphs of the text where further information can be obtained and the terms may be seen in their context. Where the text contains a convenient collection and explanation of a number of contrasting terms, a simple reference to the appropriate pages is given instead of setting out the definition.]

- Absolute: not conditional or determinable (in relation to an estate) (6–013).  
Abstract of title: an epitome of documents and facts showing ownership (8–028).  
Ademption: failure of a testamentary gift, e.g. by the testator ceasing to own the property (14–086).  
Administrators: persons authorised to administer the estate of an intestate (14–139); compare Executors.  
Advancement: gift by parent or husband to provide for child or wife (11–015).  
Advowson: a right of presenting a clergyman to a vacant benefice (31–007).  
Alienation: the act of disposing of or transferring property.  
Ante-nuptial: before marriage.  
Appendant: attached to land by operation of law (27–066); compare Appurtenant.  
Approvement: appropriation of portion of manorial waste free from rights of common.  
Appurtenant: attached to land by act of parties (27–065); compare Appendant.  
Assent: an assurance by personal representatives vesting property in the person entitled (14–141).  
Assignment: a disposition or transfer, usually of a lease.  
Assurance: a disposition or transfer.  
Assured tenancy: a residential tenancy with limited statutory protection as to rent and possession (22–081).  
  
Base fee: a fee simple produced by partially barring an entail (3–075).  
Beneficial owner: a person entitled for his own benefit and not, e.g., as trustee.  
Beneficiaries: those entitled to benefit under a trust or will.  
*Bona vacantia*: goods without an owner.  
  
Caution against first registration: a mechanism by which a person with an interest in unregistered land can ensure that he is informed of an application to register the title (7–045).  
*Cestui que trust*: a beneficiary under a trust.  
*Cestui que vie*: a person for whose life an estate *pur autre vie* lasts (3–087).  
Charge: an incumbrance securing the payment of money.  
Chattel real: a leasehold interest (1–012).  
Codicil: a supplementary will (14–015).  
Collaterals: blood relations who are neither ancestors nor descendants.  
Commonhold: a form of registered freehold that can be used where the property forms part of an estate or building and there are shared common parts (33–003).  
*Commorientes*: persons dying at the same time (14–064).  
Condition precedent: a condition which must be fulfilled before a disposition can take effect (3–056).  
Condition subsequent: a condition which may defeat a gift after it has taken effect (3–056).  
Consolidation: a requirement that a mortgagor shall not redeem one mortgage without another (25–055).  
Constructive: inferred or implied (8–017, 11–017).  
Contingent: operative only upon an uncertain event (9–001); compare Vested.  
Conversion: a change in the nature of property, either actually or notionally (10–009).  
Conveyance: an instrument (other than a will) transferring property.  
Copyhold: a form of tenure peculiar to manors prior to 1926 (2–013).  
Corporeal: admitting of physical possession (27–001).



Covenant: a promise contained in a deed.

Deed: a document signed, sealed and delivered.

Deed poll: a deed with only one party (8-037); compare Indenture.

Defeasance: the determination of an interest on a specified event.

Demise: a transfer, usually by the grant of a lease.

Determine: terminate, come to an end.

Devise: a gift of real property by will.

Disentail: to bar an entail (3-080).

Disseisin: dispossession; see Seisin.

Distrain, distress: the lawful extrajudicial seizure of chattels to enforce a right, e.g. to the payment of rent, now abolished.

Dominant tenement: land to which the benefit of a right is attached (27-005); compare Servient tenement.

Easement: a right over land for the benefit of other land, such as a right of way (27-003 et seq.).

Ejectment: obsolete action for recovery of land (4-018).

Emblements: growing crops which an outgoing tenant may take (3-105).

*En ventre sa mere*: conceived but not born.

Enfranchise: the statutory right of certain lessees to purchase the fee simple (22-193).

Entail: an estate or interest descending only to issue of the grantee.

Equitable easement: a right over land operating in equity only (8-080).

Equities: equitable rights.

Equity of redemption: the sum of a mortgagor's rights in the mortgaged property (24-017).

Escheat: a lord's right to ownerless realty (2-010).

Escrow: a document which upon delivery will become a deed.

Estate: 1. the *quantum* of an interest in land (2-005); compare Tenure.

2. an area of land (2-005).

3. the whole of the property owned by a deceased person (14-123).

Estate contract: a contract for the sale or lease of land (5-025, 8-075).

Estate rentcharge: a rentcharge created for certain purposes of management (31-019).

Estoppel: prohibition of a party from denying facts which he has led another to assume to be true (16-002).

Estovers: wood which a tenant may take for domestic and other purposes (3-097).

Execute: to perform or complete, e.g. a deed.

Executors: persons appointed by a testator to administer his estate (14-138); compare Administrators.

Fee: base (3-075), conditional (3-056), determinable (3-054), simple (3-008), tail (3-008).

Fee farm rent: a rentcharge payable in lieu of purchase money (6-013, 31-017).

Fine: 1. a collusive action partially barring an entail (3-076); compare Recovery.

2. a premium or a lump sum payment, e.g. for the grant of a lease.

Foreclosure: proceedings by a mortgagee which free mortgaged property from the equity of redemption (25-006).

Franchise: royal right granted to a subject, e.g. to hold a market (31-013).

Freehold: 1. free tenure (2-007, 2-020).

2. an estate of uncertain maximum duration (3-003).

General equitable charge: an equitable charge of a legal estate not protected by a deposit of title deeds (8-074).

Good consideration: natural love and affection for near relatives (8-008).

Hereditaments: inheritable rights in property (27-001).

Heriot: the best beast of a deceased tenant, to which the lord of the manor was entitled (2-028).

*In esse*: in existence (opposed to *in posse*, not in existence) (20-052).

In gross: existing independently of a dominant tenement.

Incorporeal: not admitting of physical possession (27–001).  
 Incumbrance: a liability burdening property.  
 Indenture: a deed between two or more parties (8–037); compare Deed poll.  
 Injunction: an order of a court restraining a breach of obligation, or commanding performance.  
 Instrument: a legal document.  
*Interesse termini*: the rights of a lessee before entry (17–079).  
 Intestacy: the failure to dispose of property by will.

*Jus accrescendi*: right of survivorship (13–003).  
*Jus tertii*: a third party's title (4–010).

Lapse: the failure of a gift, especially by the beneficiary predeceasing the testator (14–055).  
 Legal memory: any time later than the accession of Richard I in 1189 (28–059).  
 Letters of administration: an authorisation to persons to administer the estate of a deceased person (14–139).  
 Licence: a permission, e.g. to enter on land (34–001).  
 Lien: a form of security for unpaid money (24–002).  
 Limitation of actions: statutory barring of rights of action after a period of years (35–003).  
 Limitation, words of: words delimiting the estate granted to some person previously mentioned (3–023); compare Purchase, words of.  
 Limited owner: an owner with an estate less than a fee simple.  
*Lis pendens*: a pending action (8–064).

Mesne: intermediate, middle (2–003).  
 Minor: a person under 18 years of age.  
 Mortgage: transfer of property as security for a loan (24–001).

Notice: 1. knowledge or imputed knowledge (8–005, 8–015 et seq.).  
 2. A form of entry to protect a proprietary interest in registered land, which may be an agreed notice or a unilateral notice (7–070, 7–073, 7–074).  
 Nuncupative: oral (of wills) (14–052).

Overreach: to transfer rights from land to the purchase-money paid therefor (6–052 et seq.).  
 Overriding interest: an interest in registered land which binds the proprietor without being entered on the register (7–008, 7028, 7–086).

Parol: word of mouth.  
 Particular estate: an estate less than a fee simple (9–009).  
 Periodic tenancy: tenancy from year to year, month to month, etc. (17–064, 17–070).  
 Perpetuity: undue remoteness of a future gift; excessive inalienability (9–012).  
 Personal chattels: (14–109).  
 Personal representatives: executors or administrators (14–138).  
 Possibility of reverter: the grantor's right to the land if a determinable fee determines.  
 Powers: an authority given to a person to dispose of property which is not his, general (9–111), special (9–111).  
 Prescription: the acquisition of easements or profits by long user (28–043, 35–002).  
 Privity of contract: the relation between parties to a contract (20–003).  
 Privity of estate: the relation of landlord and tenant (20–004).  
 Probate: the formal confirmation of a will, granted by the court to an executor (14–124).  
 Profit à prendre: right to take something from another's land (27–055).  
 Protected tenancy: a contractual tenancy fully protected by the Rent Acts (22–134).  
 Protector of the settlement: the person able to control the barring of an entail (3–080).  
 Puisne mortgage: a legal mortgage not protected by a deposit of title deeds (8–072, 26–027).  
*Pur autre vie*: for the life of another person (3–087).  
 Purchase, words of: words conferring an interest on the person they mention (3–023); compare Limitation, words of.

Recovery: a collusive action completely barring an entail (3–073); compare Fine, 1.

Rectification: 1. The correction of a written instrument that does not correctly record what the parties agreed (15-122).

2. The alteration of the register of title to correct a mistake which prejudicially affects the title of the registered proprietor (7-132).

Regulated tenancy: a protected or statutory tenancy (22-131).

Release: waiver of some right or interest without transfer of possession.

Remainder: the interest of a grantee subject to a prior particular estate (9-008).

Rent: fee farm rent (6-013, 31-017), ground rent (15-046), rack rent (15-046), rentcharge (31-014).

Restriction: an entry in the register of title regulating the circumstances in which a disposition of a registered estate or charge may be the subject of an entry in the register (7-077).

Restrictive covenant: a covenant restricting the use of land (5-026, 32-032).

Resulting: returning to the grantor, or remaining in him, by implication of law or equity (11-009).

Reversion: the interest remaining in a grantor after granting a particular estate (9-008).

Riparian owner: the owner of land adjoining a watercourse (3-047).

Root of title: a document from which ownership is traced (15-078).

Seignory: the rights of a feudal lord.

Seisin: the possession of land by a freeholder (3-018).

Servient tenement: land burdened by a right such as an easement (27-005); compare Dominant tenement.

Settlement: provisions for persons in succession (or the instruments making such provisions) (Appendix, A-032).

Severance: the conversion of a joint tenancy into a tenancy in common (13-036).

Severance, words of: words showing that property is to pass in distinct shares (13-017).

Socage: freehold tenure (2-004).

Specialty: a contract by deed.

Squatter: a person wrongfully occupying land and claiming title to it.

Statutory owner: persons with the powers of a tenant for life (10-016).

Statutory tenant: a person holding over under the Rent Acts (22-132).

Statutory trusts: certain trusts imposed by statute (11-004), especially— 1. the trust of land under co-ownership (13-051). 2. the trusts for issue on intestacy (14-119).

Subinfeudation: alienation by creating a new tenure (2-014).

Sub-mortgage: a mortgage of a mortgage (25-146).

*Sui juris*: "of his own right," i.e. subject to no disability.

Surrender: the transfer of an interest (e.g. for life, or for years) to the person next entitled to the property (18-083).

Survivorship: a surviving joint tenant's right to the whole land (13-003).

*Tabula in naufragio*: "a plank in a shipwreck" (a form of tacking mortgages) (26-051).

Tacking: extension of a mortgagee's security to cover a later loan (26-050).

Tenement: property held by a tenant.

Tenure: the set of conditions upon which a tenant holds land (2-004); compare Estate, 1.

Term of years: a period with a defined minimum for which a tenant holds land (6-018).

Time immemorial: the time of the accession of Richard I in 1189 (28-059).

Title: the evidence of a person's right to property, or the right itself.

Trust: bare (12-008), completely constituted (11-003), constructive (11-017), express (11-005), implied (11-009), incompletely constituted (11-033), resulting (11-013), secret (11-043).

Trust corporation: one of certain companies with a large paid-up capital, or one of certain officials (Appendix, A-098).

Trust of land: any trust of property which consists of or includes land, whether the interests under that trust are successive, concurrent or otherwise (12-002).

Undivided share: the interest of a tenant in common (13-010).

User: use, enjoyment (Note: *not* the person who uses).

Vested: unconditionally owned (9-001); compare Contingent.

Vesting assent (Appendix, A-005), declaration (11-068), deed (Appendix, A-004).

Voluntary conveyance: a conveyance not made for valuable consideration.

Volunteer: a person who takes under a disposition without having given valuable consideration.

Waiver: abandonment of a legal right.

Waste: ameliorating (3–092), equitable (3–095), permissive (3–093), voluntary (3–094).

# CONTENTS

<i>Preface</i> ... ..	v
<i>Preface to the First Edition</i> ... ..	vii
<i>Table of Cases</i> ... ..	xv
<i>Table of Statutes</i> ... ..	cxxxi
<i>Commonwealth Statutes</i> ... ..	cclxvii
<i>Alphabetical List of Statutes</i> ... ..	cclxix
<i>Table of Statutory Instruments</i> ... ..	cclxxiii
<i>Glossary</i> ... ..	cclxxxi

## 1. INTRODUCTION

1. Real Property in Perspective ... ..	1-001
2. Meaning of "Real Property" ... ..	1-011
3. The Basis of the Law of Real Property ... ..	1-014
4. The Law in Action ... ..	1-018
5. Human Rights and Property Law ... ..	1-021

## 2. TENURES AND ESTATES

<i>Part 1—Introduction</i> ... ..	2-001
<i>Part 2—Types of Tenure</i> ... ..	2-007
<i>Part 3—Reduction in the Number of Tenures</i>	
1. Prohibition of New Tenures After 1290 ... ..	2-014
2. The Tenures Abolition Act 1660 ... ..	2-019
3. The 1925 Legislation... ..	2-020
<i>Part 4—Tenure and Ownership Today</i> ... ..	2-030

## 3. ESTATES

<i>Part 1—Classification</i> ... ..	3-001
1. Estates of Freehold ... ..	3-004
2. Leaseholds ... ..	3-009
3. Remainders and Reversions ... ..	3-017
4. Seisin ... ..	3-018
<i>Part 2—Estates of Freehold</i> ... ..	3-022
1. Words of Limitation ... ..	3-023
2. Nature of The Estates of Freehold ... ..	3-035

## 4. POSSESSION OF LAND

<i>Part 1—Ownership, Possession and Title</i> ... ..	4-001
<i>Part 2—Actions for the Recovery of Land</i> ... ..	4-014
1. The Real Actions ... ..	4-015
2. The Action of Ejectment ... ..	4-018
3. Statutory Reforms ... ..	4-023

## 5. LAW AND EQUITY

<i>Part 1—General Principles</i> ... ..	5-001
1. The Historical Basis of Equity ... ..	5-003
2. The Nature of Equitable Rights ... ..	5-009
<i>Part 2—Equitable Rights Before 1926</i> ... ..	5-021

## 6. THE LEGISLATIVE TRANSFORMATION OF THE LAW OF REAL PROPERTY AND THE PROTECTION OF ESTATES AND INTERESTS

<i>Part 1—The Reduction of Legal Estates to Two</i>	
1. The General Scheme ... ..	6-003
2. The Estates and Interests ... ..	6-013

<i>Part 2—The Protection of Estates and Interests</i>	
1. Extension of System of Registration of Charges for Unregistered Land ...	6-029
2. Registration of Title ... ..	6-039
3. Extension of Overreaching Provisions ... ..	6-047
4. Effect of a Sale on Legal and Equitable Rights ... ..	6-057
5. New Equitable Interests? ... ..	6-064
6. Personal Rights which May Affect Third Parties ... ..	6-066
7. REGISTRATION OF TITLE	
<i>Part 1—Introduction</i> ... ..	7-001
<i>Part 2—First Registration</i> ... ..	7-009
<i>Part 3—Dealings with Registered Land</i>	
1. Powers of Disposition ... ..	7-049
2. Registrable Dispositions ... ..	7-053
3. The Priority of Competing Interests ... ..	7-060
4. Notices and Restrictions ... ..	7-069
5. Unregistered Interests which Override Registered Dispositions ... ..	7-086
6. Charges ... ..	7-102
7. Special Cases ... ..	7-107
<i>Part 4—Registration and the Registers</i> ... ..	7-113
<i>Part 5—Indefeasibility</i> ... ..	7-131
<i>Part 6—Conveyancing</i> ... ..	7-146
8. UNREGISTERED CONVEYANCING: TITLES AND INCUMBRANCES	
<i>Part 1—The Unregistered System in Decline</i> ... ..	8-001
<i>Part 2—The Purchaser Without Notice</i> ... ..	8-005
<i>Part 3—Conveyancing Practice</i> ... ..	8-026
1. From Contract to Completion ... ..	8-027
2. The Conveyance ... ..	8-035
<i>Part 4—Registration of Land Charges</i> ... ..	8-061
1. Land Charges ... ..	8-062
2. Land Charges Register ... ..	8-063
3. Local Land Charges Registers ... ..	8-107
9. PERPETUITIES AND ACCUMULATIONS	
<i>Part 1—Vested and Contingent Future Interests</i> ... ..	9-001
<i>Part 2—Reversions</i> ... ..	9-008
<i>Part 3—Perpetuities</i>	
1. Introduction ... ..	9-012
2. The Rule against Perpetuities ... ..	9-015
<i>Part 4—Accumulations</i> ... ..	9-162
10. THE USE OF TRUSTS IN THE LAW OF REAL PROPERTY	
<i>Part 1</i>	
1. Settlements and trusts for sale prior to 1926 ... ..	10-004
2. The strict settlement before 1926 ... ..	10-005
3. Trusts for sale ... ..	10-007
<i>Part 2</i>	
1. The Settled Land Act 1925 ... ..	10-013
2. Principal Alterations Made by the Settled Land Act 1925 ... ..	10-014
<i>Part 3—Trusts for Sale After 1925 and Before 1997</i> ... ..	10-020
<i>Part 4—Trusts of Land After January 1, 1997</i> ... ..	10-034
11. CREATING TRUSTS OF LAND	
<i>Part 1—Classification and Types of Trust</i> ... ..	11-002
<i>Part 2—Formalities Required for the Creation of a Trust</i> ... ..	11-036
<i>Part 3—Formalities Required for the Transfer of an Interest under a Trust</i> ... ..	11-044
<i>Part 4—Trustees</i>	
1. Appointment of Trustees ... ..	11-050
2. Retirement and Removal of Trustees ... ..	11-064
3. Vesting of Trust Property ... ..	11-066
4. Procedure in the Case of Settled Land and Trusts of Land ... ..	11-071

12.	THE TRUSTS OF LAND AND APPOINTMENT OF TRUSTEES ACT 1996	
	<i>Trusts of Land</i> ... ..	12-002
	<i>Overreaching under a Trust of Land</i> ... ..	12-036
13.	CO-OWNERSHIP	
	<i>Part 1—Joint Tenancy and Tenancy in Common</i>	
	1. Nature of the Tenancies ... ..	13-002
	2. Estates in which the Tenancies could Exist ... ..	13-013
	3. Creation of the Tenancies ... ..	13-014
	4. The Right of Severance ... ..	13-036
	5. The Imposition of a Statutory Trust in Cases of Co-ownership ... ..	13-051
	6. Position of Settled Land ... ..	13-090
	7. The Special Position of Unincorporated Associations ... ..	13-094
	8. Determination of Joint Tenancies and Tenancies in Common ... ..	13-098
	9. The Conveyancing Implications of Implied Co-ownership ... ..	13-105
14.	WILLS AND INTESTACY	
	1. Freedom of Testation ... ..	14-002
	2. Nature of a Will ... ..	14-012
	3. The Formalities of a Will ... ..	14-019
	4. Operation of Wills ... ..	14-055
	5. Construction of Wills ... ..	14-070
	6. Gifts in Contemplation of Death ... ..	14-100
	7. The Rules of Intestacy ... ..	14-104
	8. Devolution of Legal Estates ... ..	14-137
15.	CONTRACTS OF SALE	
	<i>Part 1—Types of Contract</i> ... ..	15-002
	1. Conditional Contracts ... ..	15-003
	2. Options and Rights of Pre-emption ... ..	15-012
	<i>Part 2—The Essentials of a Valid Contract</i> ... ..	15-014
	<i>Part 3—Contracts in Practice</i>	
	1. Cases Where it is Usual to have a Contract ... ..	15-046
	2. Types of Contract ... ..	15-047
	3. Terms of a Contract ... ..	15-050
	4. Effect of a Contract ... ..	15-051
16.	PROPRIETARY ESTOPPEL	
	1. The Nature of Proprietary Estoppel ... ..	16-001
	2. Historical Background ... ..	16-004
	3. The Elements of Estoppel ... ..	16-007
	4. Contrast with Other Forms of Relief ... ..	16-034
17.	THE NATURE AND CREATION OF LEASES	
	<i>Part 1—Introductory</i>	
	1. Nature and History of Leases ... ..	17-001
	2. Terminology ... ..	17-009
	<i>Part 2—Creation of Leases</i>	
	1. Essentials of a Lease ... ..	17-012
	2. Types of Leases and Tenancies ... ..	17-064
	<i>Part 3—Assignment of Leases and Reversions</i>	
	1. Assignment of Leases ... ..	17-136
	2. Assignment of Reversions ... ..	17-144
18.	THE DETERMINATION OF TENANCIES	
	1. By Expiry ... ..	18-002
	2. By Notice ... ..	18-003
	3. By Forfeiture ... ..	18-004
	4. By Surrender ... ..	18-083
	5. By Merger ... ..	18-090
	6. By Enlargement ... ..	18-092
	7. By Disclaimer ... ..	18-096





<i>C. By Implied Reservation or Grant</i> ... ..	28-012
<i>D. By s.62 of the Law of Property Act 1925</i> ... ..	28-027
<i>E. Difference between Effects of Contract and of Grant</i> ... ..	28-038
<i>F. By Presumed Grant, or Prescription</i> ... ..	28-043
<b>29. ENFORCEMENT AND EXTINGUISHMENT OF EASEMENTS AND PROFITS</b>	
<i>A. Remedies for Infringement of Easements and Profits</i> ... ..	29-001
<i>B. Extinguishment of Easements and Profits à Prendre</i> ... ..	29-007
<i>C. By Unity of Ownership and Possession</i> ... ..	29-014
<b>30. SPECIES OF EASEMENTS AND PROFITS</b>	
<i>A. Rights of Way</i> ... ..	30-001
<i>B. Rights of Light</i> ... ..	30-010
<i>C. Rights of Water</i> ... ..	30-020
<i>D. Rights of Support</i> ... ..	30-021
<i>E. Rights of Fencing</i> ... ..	30-022
<i>F. Miscellaneous Easements</i> ... ..	30-023
<i>G. Species of Profits à Prendre</i> ... ..	30-024
<i>H. Rights of Access to Neighbouring Land</i> ... ..	30-035
<i>I. Party Walls</i> ... ..	30-040
<b>31. OTHER INCORPOREAL HEREDITAMENTS</b>	
<i>Part 1 Incorporeal Hereditaments</i>	
<i>Part 2 Rentcharges</i>	
1. Nature of Rentcharges ... ..	31-014
2. Abolition of Rentcharges ... ..	31-018
3. Creation and Transfer of Rentcharges ... ..	31-020
4. Means of Enforcing Payment of Rentcharges ... ..	31-027
5. Apportionment of Rentcharges ... ..	31-033
6. Extinguishment of Rentcharges ... ..	31-035
<b>32. FREEHOLD COVENANTS</b>	
1. The Position at Law ... ..	32-004
2. In Equity: Restrictive Covenants ... ..	32-030
3. Declaration as to Restrictive Covenants ... ..	32-083
4. Discharge of Restrictive Covenants ... ..	32-084
5. Restrictive Covenants and Planning ... ..	32-094
6. Restrictive Covenants and Compulsory Acquisition ... ..	32-095
7. Restrictive Covenants and Race Relations ... ..	32-096
<b>33. COMMONHOLD</b>	
<b>34. LICENCES</b>	
1. Nature of a Licence ... ..	34-001
2. Types of Licences ... ..	34-002
3. Revocability of Licences ... ..	34-007
4. Licences and Third Parties ... ..	34-014
5. Matrimonial Homes ... ..	34-021
<b>35. ADVERSE POSSESSION AND LIMITATION</b>	
<i>Part 1—General Principles</i> ... ..	35-001
<i>Part 2—The Length of the Limitation Period or Period of Adverse Possession</i> ... ..	35-004
<i>Part 3—The Running of Time</i> ... ..	35-013
1. When Time Begins to Run ... ..	35-014
2. Postponement of the Period ... ..	35-044
3. Starting Time Running Afresh ... ..	35-051
<i>Part 4—The Effect of the Lapse of Time</i>	
1. Title to Land ... ..	35-055
2. Arrears of Income ... ..	35-067
<i>Part 5—Adverse Possession of Registered Land</i>	
1. General Principles ... ..	35-070