

JOWITT'S DICTIONARY OF ENGLISH LAW

FIRST EDITION

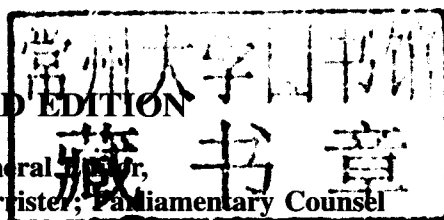
By The Rt. Hon. Earl Jowitt and
Clifford Walsh LL.M.

SECOND EDITION

By John Burke, Barrister

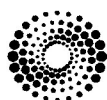
THIRD EDITION

General Editor,
Daniel Greenberg, Barrister; Parliamentary Counsel



VOLUME 1: A-I

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JOWITT'S DICTIONARY OF ENGLISH LAW

VOLUME 1

A-I

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FOREWORD

**By Rt. Hon. Baroness Scotland of Asthal QC,
HM Attorney General**

I am delighted to contribute this foreword to the new edition of Jowitt's Dictionary of English Law. The Dictionary is much loved by academics and practitioners but it is in serious need of being brought up to date and this, the first new edition for more than 30 years, is therefore to be warmly welcomed. It builds on the work which Lord Chancellor Jowitt began, preserving much of the historical material but now including also the latest expressions in fields such as competition law, European law and environmental law.

The contributors to this new edition consist of a galaxy of talent drawn from all parts of the legal profession, including academics, present and former members of the Government Legal Service and lawyers in private practice. I commend in particular the work of the General Editor, Daniel Greenberg, in co-ordinating this substantial project.

This new edition of Jowitt is a comprehensive, authoritative dictionary and I have no doubt that it will be an invaluable resource for lawyers and all others who come into contact with the law.

FOREWORD

**By Rt. Hon. Lord Mackay of Clashfern,
Lord Chancellor 1987–1997**

When Earl Jowitt as Lord Chancellor decided on the production of a dictionary of English Law it was clear that a comprehensive work covering all the terms used as part of the Law of England, whether currently in use or not, was a very substantial undertaking. It was also obvious that such a work would be of great help to those concerned with the law whether as practitioners or teachers or historians of the law as well as interested lay people. It did not aspire to explain the law but only to explain words and phrases used in the law and the legal system of England.

In the nature of a living system such as the law of England serving a community subject to very rapid development, the words and phrases that form part of that body of language will change as a result of changes in practice, of changes in the use of words and phrases and by the introduction of new words and phrases to facilitate the progress of areas of the law that are long established and to cope with completely new areas introduced by the development of English society such as that exemplified by the internet.

For example, the recent movement to discourage the use of Latin means that new expressions have to be found to express the concepts still in use to replace the succinct and elegant Latin phrases that are difficult to express concisely in English. I mention only the phrase “*per stirpes*” as an illustration, the entry for which in this edition cites a recent case of the Privy Council suggesting an English equivalent to the term.

If the words and phrases used in the legal system change with the passage of time, a dictionary of these words and phrases to continue to be fully useful in practice must change too. The 30 years and more since the last edition of Jowitt’s Dictionary of English Law have seen enormous changes. A new edition is therefore urgently necessary but its production is an enormous task requiring great expertise in the huge number of different areas of the law of England that now exist and I am glad that a team with this quality has been assembled under the able leadership of Daniel Greenberg to perform this task.

Knowing a good number of the members of the team and having had an opportunity of studying their work I can commend this third edition as fully meeting the original aims of Earl Jowitt for the present time.

PREFACE TO THE THIRD EDITION

Introduction

More than 30 years have passed since the last edition of Jowitt. So every entry that was not already purely historical when the last edition was published (and some that were) has had to be revised.

In past ages there seem to have existed certain giants of legal knowledge each of whom was capable of producing or revising a general legal dictionary without help. If that really was ever the case, it is certainly no longer so. In order to produce a dictionary that could hope to be authoritative and comprehensive it was necessary to assemble a broad editorial team and to enlist the support of many others for particular tasks. The editorial team was selected by issuing a very broad invitation throughout the ranks of those who were likely to be qualified to contribute, and by inviting those who were kind enough to respond to share in the project. The result was a very happy one: a group of dedicated and enthusiastic experts.

What is Jowitt?

The editorial policy for a dictionary is of crucial importance. The editorial team decided at an early stage that Jowitt is a dictionary and not an encyclopaedia: it should explain the meaning of those terms that together form the structure of the law, rather than attempting to summarise the substantive law on every topic. A number of articles in the first two editions arguably crossed the line, being unnecessarily long for a mere explanation of the meaning and function of a term but unacceptably short for an authoritative exposition of all relevant law. There were also a considerable number of entries that arguably did not belong at all in a dictionary of legal words and phrases.

So we set about the third edition with a revolutionary zeal, determined to cull a lot of extraneous material: but we quickly found that much of the material was too good to lose altogether and was not likely to be found anywhere else. For example, what place does a definition of “Castleward” have in a modern legal dictionary? Probably none: but if we remove it, it is gone forever and lost to the one-in-a-million historical researcher who might need it. So Jowitt still betrays its origins to some extent: the preface to the first edition acknowledged how much the work owed to *Viner’s Abridgement*, and the selection of entries still occasionally betrays the work’s original debt to what was more an encyclopaedia—and not an exclusively legal encyclopaedia, at that—than a dictionary.

In accepting this result we have relied to some extent on the fact that since dictionaries are alphabetical, it does not matter much if the contemporary entry you are looking for is flanked by a dozen entries on each side of only historical relevance—they will not significantly interfere with your finding the information you seek. And it is surprising how often archaic legal terms do turn up in contemporary documents. The historical entries of the dictionary also serve to show how many purported innovations turn out to be merely reinventions of once-familiar concepts, and how ideas thought archaic and discontinued are in fact more contemporary than one might think or like to

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think: so, for example, the entry for the much-vaunted *Explanatory Notes* for Parliamentary Bills is cross-referenced to the *Breviates* of which they are merely a belated revival, while the barbaric medieval *Castigatory* is cross-referenced to the equally barbaric, but disconcertingly contemporary, *Waterboarding*.

The intention is for *Jowitt* to serve as a companion work to *Stroud's Judicial Dictionary*. As a legal dictionary, *Jowitt* lists expressions forming part of the mechanism of the law of England and Wales. As a judicial dictionary, *Stroud* lists words and phrases that have been defined by judicial dictum or legislative provision. There is some overlap, but less than might have been expected. So, for example, "garden" appears in *Stroud* but not *Jowitt*; "bounty" appears in *Jowitt* but not *Stroud*; and "lease" appears in both. Where an expression listed in *Jowitt* receives particular added value from the judicial or legislative definitions in *Stroud*, the entry includes a cross-reference to that effect.

Contributors

If this edition appears to be the work of many people, that is probably because it is the work of many people. For some books that would be a disadvantage: for an authoritative contemporary dictionary of law, it is indispensable. The list of contributing editors is a list of expertise in every area of law: it should not be assumed, however, that because someone appears in the list of editors as having specialised in a particular area of law he or she is responsible for any deficiency or error in relation to that area. The overall task of allocating and editing entries was mine, and errors are more likely to be attributable to shortcomings in my performance of that role than to deficiencies in the support provided by the expert contributing editors.

I take this opportunity to offer my warm thanks to all those who have participated in this long and important project, and who have made it so interesting and enjoyable to be involved in.

First and foremost, of course, I thank all the Contributing Editors for their efficient, enthusiastic and impressively authoritative work: where I have taken liberties with their texts for the sake of consistency or for other well-intentioned editorial purposes, and have unwittingly damaged their product, I hope they will forgive me. Experts of all kinds have been enormously generous with their time and effort, and I can say no more by way of praise and thanks than to record my honest opinion that the results speak for themselves.

It is an enormous pleasure to note that this entire project was originally the brainchild of Mrs Barbara Grandage, formerly of Sweet & Maxwell, Publishers: how delightful it was, therefore, that she agreed to emerge from retirement to provide her inimitable combination of efficiency and friendly courtesy as Administrative Editor. Without her at the helm there would have been no Third Edition.

I also single out for thanks John Watherston and Saira Salimi—the two Senior Contributing Editors. John's advice and encouragement was enormously valuable, while Saira's work, particularly her revision of the entire text, has given the final product a polish that it would otherwise have lacked. I wish also to mention separately Charles Carey, who tackled the monumental task of revision of the largest portion of statutory references in an extraordinarily patient and tenacious way.

I also offer very warm thanks to former Lord Chancellor Lord Mackay and to the Attorney General Lady Scotland for their forewords for this new edition of *Jowitt*: their encouragement meant a lot to us all.

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Finally, I received assistance in varying degrees—but all of it immensely valuable—from an enormous number of people, including encouragement and advice, research assistance and permission to draw on materials. I have pleasure in thanking the following in particular: The Honourable Mr Justice Beatson; The Honourable Mr Justice Andrew Smith; The Honourable Mr Justice David Steel; His Honour Judge Peter Beaumont QC, Recorder of London; Professor G J Slapper, Professor of Law, Director of the Centre for Law, The Open University; Dr Jill Marshall, Lecturer, Queen Mary University of London, School of Law; Alastair Pitblado, Official Solicitor to the Supreme Court; E C Ollard, Clerk of Committees, House of Lords; Joe Ury, Executive Director, British and Irish Legal Information Institute; Sir Michael Wood, KCMG, Lauterpacht Centre for International Law, University of Cambridge; Brigadier Michael Conway, Army Legal Services; Jonathan Creer, Head of Judicial HR Services, The Judicial Office, Royal Courts of Justice; John Sorabji, Legal Secretary to the Master of the Rolls; Dr Michael Carrel, Lauterpacht Centre for International Law, University of Cambridge; Lieutenant Eunice Marsden RN; Mr Peter Fisher, Office of the Judge Advocate General; Group Captain William Boothby RAF; Christopher Blair, Legal Adviser, HM Treasury; Mr Andrew Partridge, Protocol Directorate, Foreign and Commonwealth Office; Lynne Orsborn, Chambers' Director, 2-3 Gray's Inn Square; Henry Clayton, Barrister; Gwyn Evans, Barrister; Neil Shah, Barrister; Richard Thomas, Barrister, Doughty Street Chambers; Pauline Wilkinson, Business Manager, Her Majesty's Court Service Communications; Bryan A. Garner, Editor In Chief, Black's Law Dictionary; Andrew Hill, General Council of the Bar of England and Wales; Kofi Kramo, Communications Officer, Bar Standards Board; Hilary Wight, Law Society of England and Wales; Geoffrey Haywood, Tynwald Library, Isle of Man; John Tate, Director of Legal Services, Independent Police Complaints Commission; Lucy Gardner, Assistant Curator, HMRC National Museum; Peter Jones, Consumer Contact Centre, Financial Services Authority; Chloe Smythe, Civil Justice Council; Rafael Runco, Deputy Ombudsman, Housing Ombudsman Service; Keir Hounsome, Solicitor to the Broads Authority; John Heath, Bank of England; Hannah Bower, Communications Officer, Cafcass; Henrietta Amodio, Master's House, Temple Church; Dr Michael Dixon, Director, Natural History Museum; Talitha Burson, General Dental Council; Dee Cook, Archivist, The Worshipful Society of Apothecaries of London; Annett Hegna, Legal Services, Care Quality Commission; Karen Kong, Health Protection Agency; Alan Crookham, Archivist, The National Gallery; Jeff Gill, Communications Department, Royal College of Veterinary Surgeons, London; Mitchell Duggan, The Crown Estate; Nick Parrott, Communications and Government Relations Manager, The Royal Institute of International Affairs, Chatham House; Vikki Gilson, Communications Manager, Trinity House, London; Mrs C Green, Royal Pharmaceutical Society of Great Britain; Barry Lester, National Audit Office; Jeremy Lonsdale, National Audit Office; Stuart Ross, Policy and Legal Services, Criminal Injuries Compensation Authority; John Marriott BSc PhD FRSC, Government Chemist; Richard Ali, Head of Communications, British Sugar Group; Nimrod Ben-Cnaan, Office Manager, Law Centres Federation; George Russell, Chief Actuary, Pensions Policy, Demography and Statistics Division, Government Actuary's Department; James Turner, Barrister; Julia Vergho, Office of Fair Trading; and James Young, National Audit Office.

Timing

This edition is generally up to date to October 2009.

PREFACE TO THE THIRD EDITION

This edition does not generally take account of the corporation tax work of the Tax Law Rewrite Project; although one of the revised Acts received Royal Assent before we went to press, the other was awaiting introduction—so the two will be addressed together in a later supplement or edition.

The Lisbon Treaty has caused particular problems of timing, because although the European Union (Amendment) Act 2008 has been enacted and is partially commenced, the Lisbon Treaty has not yet come into force, but looks as though it may do so before or not long after publication of this edition. For the most part, entries reflect the pre-Lisbon position, with reference to the changes that the Treaty will make when it comes into force. Hopefully a future supplement or edition will be able to tidy this up.

Comments welcome

It is hoped that *Jowitt* will now be updated more frequently than in the past. With that in mind, comments on individual entries will be greatly welcomed and should be addressed to me through the publishers. Readers are warned, however, that an observation that a particular area of the law is inadequately covered by the new edition is likely to receive a response wholly or partly consisting of an invitation to provide material for the next edition.

Daniel Greenberg

London
2009

EARL JOWITT

BIOGRAPHICAL NOTE

William Allen Jowitt, the first Earl Jowitt, was born in Stevenage on April 15, 1885. His father was the rector of the village. He was educated at Marlborough and New College, Oxford, and was called to the Bar in 1909. In 1922 he became King's Counsel and was elected Member of Parliament for The Hartlepoons as a member of the Liberal Party.

Jowitt first took office as Attorney General in Ramsay MacDonald's minority Labour government in 1929. When the Labour government split over the financial crisis in 1931, Jowitt was among the few Labour MPs to join the National Government, as a result of which he was expelled from the Labour Party. In the 1931 election he failed to be re-elected to Parliament, and lost office. He returned to the Commons in 1939 and shortly afterwards became Solicitor General in Churchill's coalition government. From 1941 onwards he held a number of ministerial positions including becoming Minister of National Insurance in 1944.

Jowitt was appointed Lord Chancellor in the majority Labour government in 1945, joining the House of Lords as Baron Jowitt. Following the Labour defeat in 1951, Jowitt became leader of the Opposition in the Lords. He became an Earl in the 1951 Prime Minister's Resignation Honours.

As well as holding the office of Lord Chancellor for the unusually long period of seven years, Lord Jowitt saw it as a challenge to improve the structure and state of the law, in particular by consolidating and pruning the statute book.

In the House of Lords tributes to Lord Jowitt after his death on August 16, 1957 (*Hansard*, HL Vol.205, cols 523–535 (October 29, 1957)) Viscount Kilmuir L.C. offered the following observations:

“His penetrating mind and the unequalled clarity of his exposition made him not only a formidable opponent in controversy but a help to all who wanted to understand the essential points of any subject. His warm humanity and real liking and friendship for those who came his way reflected an understanding of human problems and a very real sympathy with human suffering and human needs.”

Producing an authoritative dictionary is certainly consistent with a desire to help those who want to understand “the essential points” of the law. As a starting point for understanding a legal document or concept, Earl Jowitt's dictionary will doubtless have helped many people over the years; and all of us who contributed to the third edition very much hope that it will continue in the tradition of usefulness that he started.

A

A.B. See ABLE-BODIED SEAMAN.

ACAS. See ADVISORY, CONCILIATION AND ARBITRATION SERVICE.

A.D. Contraction for *Anno Domini* (in the year of our Lord).

ADR. See ALTERNATIVE DISPUTE RESOLUTION.

A.K.A. See ALIAS (DICTUS).

A.R. *Anno regni*, the year of the reign, as A.R.V.R. 22 (*Anno Regni Victoriae Reginae vicesimo secundo*); in the 22nd year of the reign of Queen Victoria. Regnal years were once used for identifying statutes, particularly of years before 1963 (see the Acts of Parliament Numbering and Citation Act 1962); nowadays chapter numbers together with the calendar year are generally used in preference, even when referring to old statutes. The general adoption (for new Acts) and provision (for old Acts) of short titles (*q.v.*) has made issues of identifying Acts less of a problem for most practical purposes.

ASBO. See ANTI-SOCIAL BEHAVIOUR ORDER.

A1. Alphanumeric code used in Lloyd's Register of British and Foreign Shipping (*q.v.*) since the 1775–1776 edition of the Register to indicate that a vessel has been built to Lloyd's highest class. The period for which the symbols A1 are applicable is indicated by a prefixed number. Thus a vessel classed 18 A1 will be allowed to remain in the A1 class for 18 years without re-survey.

A and B lists. The lists of members and former members of a company liable, in so far as their shares are unpaid or in accordance with their guarantees, as the case may be, to contribute towards the discharge of the liabilities of the company or towards the adjustment of the rights of the contributories among themselves (Insolvency Act 1986 ss.74–83 and 148, and Insolvency Rules 1986 (SI 1986/1925) r.4.195–4.201). See CALL; CONTRIBUTORY.

A, Table. See TABLE.

A coelo usque ad centrum (from heaven to the centre of the earth). See CUJUS EST SOLUM, ETC.

A communi observantia non est recedendum (Co.Litt. 229) (common usage is not to be departed from). This maxim merely expresses the conservatism of the common law. “Commonly a new invention doth offend against many rules and reasons of the common law” (Co.Litt. 379). See MINIME MUTANDA, ETC.; OMNIS INNOVATIO, ETC.; PERICULOSUM EST, ETC.

A fortiori. See FORTIORI, A.

A mensa et thoro (from board and bed). Prior to the enactment of the Matrimonial Causes Act 1857, a decree in the ecclesiastical courts for a divorce *a mensa et thoro* had the same effect as a decree for judicial separation (*q.v.*) had after the passing of that Act. In the ecclesiastical courts a decree for the complete dissolution of marriage was known as a decree for a divorce *a vinculo matrimonii*. See A VINCULO MATRIMONII.

A non posse ad non esse sequitur argumentum necessarie negative, licet non affirmative (Hob. 336) (from the fact that a thing cannot be done you necessarily draw the conclusion that it is not done; but from the fact that a thing has not been done you are not justified in concluding that it cannot be done).

A posteriori. See A PRIORI.

A priori. All arguments may be divided according to the relation of the subject-matter of the premises to that of the conclusion, into (i) *a priori* (from the antecedent

A

to the consequent), or those of such a nature that the premises would account for the conclusion, were that conclusion granted, which is the Aristotelian method of reasoning; and (ii) a posteriori (from the consequence to the antecedent), or those the premises of which could not have been used to account for the conclusion, which is the Baconian method of reasoning. The former class is manifestly argument from cause to effect, since to account for anything signifies to assign the cause of it. The latter class comprehends all other arguments.

A rescriptis valet argumentum (Co.Litt. 11a) (an argument drawn from rescripts is sound). A rescript is a decision of the Pope or Emperor on a doubtful point of law. The maxim is applied, at the reference given above, to original writs in the register. These were the ancient writs, as to which see ACTION ON THE CASE.

A rubro ad nigrum. Literally, from the red to the black. Statutes were written or printed in black, but the titles were in red; and to argue *a rubro ad nigrum* was to deduce the meaning of the statute from the title.

A tempore cujus contrarii memoria non existet (from a time where there is no memory to the contrary). See MEMORY.

A verbis legis non est recedendum (you must not vary the words of a statute). A construction ought not to be put upon statutes against the express letter of the statute; for nothing can so express the meaning of the makers of the statute as their own express words, for *index animi sermo* (language conveys the intention of the mind) (5 Co. Rep. 118b); and *maledicta expositio quae corrumpit textum* (an exposition which corrupts the text is bad (4 Co. Rep. 35; *Sussex Peerage Case* (1844) 11 Cl. & F. 143). It would be dangerous to give scope to make a construction in any case against the express words, when the meaning of the makers does not appear to the contrary, and when no inconvenience will thereupon follow; and therefore in such cases *a verbis legis non est recedendum* (Broom 442). See QUOTIENS IN VERBIS, ETC. This maxim now needs to be read in the context of an increasing trend towards purposive construction (see, generally, *Craies on Legislation*, 9th edn (2008), Part 4) and also in the light of provisions of the European Communities Act 1972 and the Human Rights Act 1998 (especially s.3) that permit or require a limited amount of violence to be done to the words of an Act in adopting a construction that is compliant with international obligations of the United Kingdom.

A vinculo matrimonii (from the bond of wedlock). A total divorce obtained from the ecclesiastical court on some canonical impediment existing before marriage and not arising afterwards, for the marriage was declared void, as having been absolutely unlawful ab initio, and the parties were therefore separated *pro salute animarum* (for the safety of their souls), the issue (if any) were illegitimate, and the parties might contract another marriage. Though this divorce could not have been obtained from the ecclesiastical court where the marriage was not void ab initio, yet it was frequently granted before the establishment of the Divorce Court in 1857, on the ground of adultery, by private Act of Parliament.

Ab.; Abr. Abridgment (*q.v.*).

Ab abusu ad usum non valet consequentia (from the abuse of a thing you can draw no conclusion as to its legitimate use).

Ab antiquo. From old times.

Ab assnetis non fit injuria (from things to which we are accustomed no wrong can arise). See ACQUESCENCE.

Ab initio (from the beginning). If a person authorised by law to enter upon the land of another, after entry commits a positive act of misfeasance (*q.v.*) which amounts to