

THE CAMBRIDGE LAW JOURNAL 1973

THE
CAMBRIDGE LAW
JOURNAL
1973

EDITOR

C. J. HAMSON, M.A., LL.M.
Professor of Comparative Law

CAMBRIDGE
AT THE UNIVERSITY PRESS

FOR THE FACULTY OF LAW, UNIVERSITY OF CAMBRIDGE
1973

Published by the Syndics of the Cambridge University Press
Bentley House, P.O. Box 92, 200 Euston Road, London, NW1 2DB
American Branch: 32 East 57th Street, New York, N.Y. 10022

Printed in Great Britain by The Eastern Press, Ltd., London and Reading

EDITORIAL COMMITTEE

PROFESSOR C. J. HAMSON, M.A., LL.M., *Chairman*

PROFESSOR GLANVILLE L. WILLIAMS, Q.C., LL.D., F.B.A.

J. H. BAKER, M.A., *Secretary and Treasurer*

D. W. BOWETT, M.A., LL.B., *Note Editor*

R. N. GOODERSON, M.A., *Note Editor*

B. A. HEPPLER, M.A., LL.B., *Note Editor*

J. A. JOLOWICZ, M.A., *Note Editor*

M. J. PRICHARD, M.A., LL.B.

L. S. SEALY, PH.D.

J. W. A. THORNELY, M.A., *Book Review Editor*

D. G. T. WILLIAMS, M.A., LL.B., *Note Editor*

CONTRIBUTORS OF ARTICLES

BAKER, J. H. Solicitors and the Law of Maintenance 1590–1640	56
COVAL, S. C. and SMITH, J. C. Some Structural Properties of Legal Decisions	81
DAGTOGLOU, P. D. European Communities and Constitutional Law	256
HEYDON, J. D. The Problems of Entrapment	268
MARKESINIS, B. S. The Royal Prerogative Re-visited	287
PRICHARD, A. M. Acceleration and Contingent Remainders	246
SMITH, J. C. and COVAL, S. C. Some Structural Properties of Legal Decisions	81
SMITH, R. J. Licences and Constructive Trusts—"The Law is what it ought to be"	123
SPENCER, J. R. Signature, Consent, and the Rule in <i>L'Estrange v.</i> <i>Graucob</i>	104
WILLIAMS, DAVID W. Non-natural Use of Land	310

STATUTES ANNOTATED

European Communities Act 1972, s. 9	1
Supply of Goods (Implied Terms) Act 1973	203

CASES ANNOTATED

<p>Ashmore, Benson, Pease & Co. Ltd. v. A. V. Dawson Ltd. 199</p> <p>Atlantic Star, The 51, 240</p> <p>Att.-Gen. v. London Weekend Television Ltd. 178</p> <p>Att.-Gen. v. Times Newspapers Ltd. 177</p> <p>Baden's Deed Trusts (No. 2), <i>Re</i> Baroda (Maharane) v. Wildenstein 49</p> <p>Bristol Corporation v. Ross 220</p> <p>Burdle v. Sec. State for Environment 33</p> <p>Cory Lighterage Ltd. v. T.G. W.U. 236</p> <p>Tho. David (Porthcawl) Ltd. v. Penybont R.D.C. 35</p> <p>Davies v. Taylor 18</p> <p>D.P.P. v. Hester 39, 190</p> <p>D.P.P. v. Kilbourne 190</p> <p>Greenwood v. Bennett 23</p> <p>Grigsby v. Melville 30</p> <p>Harnett v. Harnett 231</p> <p>Hollier v. Rambler Motors (A.M.C.) Ltd. 14</p> <p>Hunter v. Hunter 232</p> <p>Hussey v. Palmer 41</p> <p>Kamara v. D.P.P. 187</p> <p>Kowalczyk v. Kowalczyk 232</p> <p>Krystman v. Krystman 231</p>	<p>Law v. Jones 214</p> <p>Leicester (Earl) v. Wells-next-the-Sea U.D.C. 28</p> <p>McPhail v. persons unknown 220</p> <p>Norwich Pharmacal Co. v. Cmrs. Customs & Excise 193</p> <p>Phillips v. Phillips 227</p> <p>Pickin v. British Railways Board 8</p> <p>Radwan v. Radwan (No. 1) 46</p> <p>Radwan v. Radwan (No. 2) 43</p> <p>R. v. Brittain 10, 187</p> <p>R. v. Kamara 12, 187</p> <p>R. v. Pentonville Prison (Governor), <i>ex p.</i> Cheng 181</p> <p>R. v. Quick 183</p> <p>Sainsbury (H. R. & S.) Ltd. v. Street 15</p> <p>Schuler A.G. v. Wickman Machine Tool Sales Ltd. 196</p> <p>Shiloh Spinners Ltd. v. Harding 218</p> <p>Sole v. W. J. Hallt Ltd. 209</p> <p>Spartan Steel & Alloys Ltd. v. Martin & Co. Ltd. 20</p> <p>Taylor v. D.P.P. 185</p> <p>Trippas v. Trippas 232</p> <p>Wachtel v. Wachtel 230</p> <p>Wellington Publishing Co. Ltd., <i>Re</i> 234</p> <p>Westwood v. Post Office 211</p> <p>Wroth v. Tyler 223</p>
--	---

BOOK REVIEWS

AARON, B. and WEDDERBURN, K. W. (Eds.): <i>Industrial Conflict. A Comparative Legal Survey</i>	335
BEINART, B. and VAN WARMELO, P. (Eds.): <i>Keessel's Praelectiones ad jus criminale. Lectures on Criminal Law, Vol. II</i>	162
BLOM-COOPER, L. and DREWRY, G.: <i>Final Appeal. A Study of the House of Lords in its Judicial Capacity</i>	151
BRANDON, R. and DAVIES, C.: <i>Wrongful Imprisonment. Mistaken Convictions and their Consequences</i>	329
BROWNLIE, I.: <i>Principles of Public International Law (2nd ed.)</i>	348
CARTER-RUCK, P. F.: <i>Libel and Slander</i>	150
CHOWDHURY, S. R.: <i>The Genesis of Bangladesh</i>	156
COCKBURN, J. S.: <i>A History of English Assizes 1558-1714</i>	146
EORSI, G. and HARMATHY, A.: <i>Law and Economic Reform in Socialist Countries</i>	171
FIFOOT, C. H. S.: <i>Frederic William Maitland. A Life</i>	145
FINGARETTE, H.: <i>The Meaning of Criminal Insanity</i>	346
FRIEDMANN, W.: <i>The State and the Rule of Law in a Mixed Economy</i>	168
FRIEDMANN, W. and GARNER, J. F. (Eds.): <i>Government Enterprise</i>	168
HOOD, R.: <i>Sentencing the Motoring Offender. A Study of Magistrates' Views and Practices</i>	330
I. C. J. SECRETARIAT: <i>The Events in East Pakistan, 1971</i>	156
JOLOWICZ, H. F. and NICHOLAS, B.: <i>Historical Introduction to the Study of Roman Law</i>	160
KERSLEY, R. H.: <i>Gibson's 1876-1962</i>	323
LESTER, A. and BINDMAN, G.: <i>Race and Law</i>	333
MCCLELLAN, J.: <i>Joseph Story and the American Constitution. A Study in Political and Legal Thought</i>	148
MCGREGOR, H.: <i>Damages (13th ed.)</i>	328
MANN, F. A.: <i>The Legal Aspect of Money (3rd ed.)</i>	165
MARKESINIS, B. S.: <i>The Theory and Practice of Dissolution of Parliament</i>	326
MAUDSLEY, R. H. and BURN, E. H.: <i>Trusts and Trustees. Cases and Materials</i>	153
MORTLOCK, B.: <i>The Inside of Divorce</i>	172
MUSTAFA, Z.: <i>The Common Law in the Sudan. An Account of the "Justice, Equity and Good Conscience" Provision</i>	351
NECKER, A.: <i>La Mission de l'Exécuteur Testamentaire dans les Successions Internationales. Étude de Droit International Privé Suisse et Comparé</i>	338
NICOLINI, U.: <i>Per lo Studio dell' Ordinamento giuridico nel comune medievale. Raccolta di Fonti</i>	164
NIELD, B.: <i>Farewell to the Assizes. The Sixty-one Towns</i>	353

Book Reviews

PENNINGTON, R. R.: Stannary Law. A History of the Mining Law of Cornwall and Devon	337
POURCELET, M.: Le Transport Maritime sous Connaissance	355
PUXON, M.: Family Law	340
RUBIN, N. N. & COTRAN, E. (Eds.): Annual Survey of African Law, Vol. I	352
RUBINSTEIN, M. (Ed.): Wicked, Wicked Libels	150
RUOFF, T. C. B. & ROPER, R. B.: The Law and Practice of Registered Conveyancing (3rd ed.)	353
SETALVAD, M. C.: My Life, Law and other Things	149
SIMPSON, A. W. B. (Ed.): Oxford Essays in Jurisprudence (2nd ser.)	342
STEAMER, R. J.: The Supreme Court in Crisis. A History of Conflict	358
THIRLWAY, H. W. A.: International Customary Law and Codification	349
THOMAS, A. VAN W. and THOMAS, A. J.: Legal Limits on the Use of Chemical and Biological Weapons	159
THOMAS, D. (Ed.): State Trials. Vol. I, Treason and Libel. Vol. II, The Public Conscience	325
TRANKELL, A.: Reliability of Evidence	329
TUNC, A.: Le Droit Anglais des Sociétés Anonymes	347
TURPIN, C.: Government Contracts	324
TWINING, W.: Karl Llewellyn and the Realist Movement	343
VAN DER KEESSEL: see BEINART, B. and VAN WARMELO, P.	
WEDDERBURN, K. W. and DAVIES, P. L.: Employment Grievances and Disputes Procedures in England	172
WELTNER, A.: Fundamental Traits of Socialist Labour Law	171
WESTON, B. H.: International Claims. Postwar French Practice	158
WILKINSON, H. W.: Standard Conditions of Sale of Land. A Commentary on the Law Society and National Conditions of Sale	166
WORTLEY, B. A. (Ed.): An Introduction to the Law of the European Community	167

SUBJECT INDEX 1973

† indicates an article * indicates a book review
Other references are to notes

- Accidents—liability for . . . 52
- Affray 185
- * African law—survey . . . 352
- America
 - * Constitutional law . 148, 358
 - † Law—defence of entrapment 268
 - * Supreme Court . . . 358
- * Appeals—House of Lords . 151
- Assizes
 - * History 146
 - * Judicial life on circuit . 353
- * Bangladesh 156
- † Barrister — qualification — history 58, 65
- Biography
 - * Karl Llewellyn . . . 343
 - * F. W. Maitland . . . 145
 - * M. C. Setalvad . . . 149
 - * Joseph Story 148
- Cambridge Law Journal*—change of editor . . . 177
- * Canadian law—carriage of goods by sea . . . 355
- * Carriage of goods by sea . 355
- * Casebooks 153, 164
- Cause of action—contract and tort 209
- Common law
 - * Reception in Sudan . . 351
 - * Theory of 342
- Company law
 - E.E.C. and 1
 - * History—tin mining . . 337
 - Takeovers and illegality . 234
 - * Textbook in French . . 347
- Comparative law
 - * Executors 338
 - * French account of English company law . . . 347
 - * Industrial conflict . . . 335
- Confidence—discovery . . . 193
- Conflict of laws
 - * Executors 338
 - Forum shopping . . . 49, 240
 - Marriage — capacity for polygamy 43
- Conspiracy 8, 187
- Constitutional law
 - * American 148, 358
 - † E.E.C. and 256
 - Extradition—political Offence 181
 - Extraterritoriality — Consulate 46
 - * Government enterprise . 169, 324
 - * Parliament—dissolution . 326
 - Parliament—sovereignty . 8
 - † Royal prerogative . . . 287
 - * Rule of law—state and . 168
 - * State trials (reprint) . . 325
- Contempt of court 177
- † Contingent remainder—acceleration 246
- Contract
 - † Agreement—theory of . 105
 - Conditions and warranties 196, 203
 - Construction 14, 196
 - Damages 223, 328
 - † Deterrence not relevant . 89
 - Exception clauses . . . 14, 203
 - Freedom—consumer sales 203
 - Frustration 15
 - * Government contracts . 324
 - Illegality 199
 - † Licences and privity . . 129
 - Memorandum in writing . 214
 - † Mistake 105
 - † Parol evidence rule . 117, 199
 - “Subject to contract” . 214
 - † Terms—contract by signature 104
 - Terms—implied by statute 203
 - Tort—overlap 209
- Conveyancing
 - * Conditions of sale . . . 166
 - † Construction—contingent remainders 246
 - Easement of occupation . 30
 - Equitable right of entry . 218
 - † Licences and constructive trusts 123

Subject Index 1973

Conveyancing— <i>cont.</i>	
Mother-in-law's equity	41
* Registered land—law and practice	353
Restrictive covenant	28
"Subject to contract"—gazumping	214
Trust powers	36
Wife's right in home	223, 227
Criminal law and procedure	
† Accomplice—agent provocateur	268
Affray	185
Automatism and drunkenness	183
Conspiracy	8, 187
Evidence	190, 329
Forcible entry	10, 187
* Insanity	346
† Police—"Entrapment"	268
* Roman-Dutch law	162
* Traffic offences—sentences	330
* Criminology—sentencing	330
Damages	
Contract to sell land	214
Economic loss	20
Fatal accidents cases	17
* Textbook	328
* Defamation	150
Delays in chancery litigation	38, 226
Diplomatic immunity	47
Discovery—to find a defendant	193
Divorce	
* Practice	172
Property after	223, 230
* Textbook	340
Duty	
Contract and tort	209
* Legal theory	342
Easement—Exclusive occupation	30
Entry—right—registrability	218
Equity	
Discovery	193
Improver of realty	41, 126
Injunction	177, 221
* Law—fusion in stannaries	337
* Law—relationship in Sudan	351
† Licences	123
Power in nature of trust	36
Relief against judgment	220
Right of entry	218
Specific performance	223
* Trusts—cases and materials	153
Trusts—constructive	41, † 123
† Estoppel	125
European Economic Community	
Company law	1
† Constitutional law	256
* Law—published lectures	167
Evidence	
Corroboration	190
† Crown privilege	296
† "Entrapment"	278
Parol evidence—contract	117, 199
* Reliability	329
Exception clauses	14, 203
Extradition—political offence	181
Family law	
Community of property	41
Divorce	172, 230
Marriage—capacity—polygamy	43
* Textbook	340
Fatal Accidents Acts—damages	17
Fault—basis of liability	52, 241
Forcible entry	10, 187
French law—marriage	43
* French International Claims Commissions	158
* Greek constitution	326
* India—legal autobiography	149
Industrial relations	
The Act	236
* Comparative study	335
* Disputes procedures	172
Duty to trespassing employee	211
* Race and	333
* Socialist countries	171
Injunction	
Contempt of court	177
To suspend a judgment	221
International law	
* Bangladesh and	156
* Claims Commissions—France	158
* Customary law and codification	349
* Independence	156
* Law of war	156, 159
* Money	165
* Textbook	348
* United Nations	156
Judicial review of legislation	8
Jurisprudence	
Charity v. Justice	52, 241
† Decision-making	81
* Essays	342
† Judicial discretion	81
* Judicial legislation	153

Subject Index 1973

- Jurisprudence—*cont.*
 Morality and law of Tort 52, 241
 Policy and law of tort 21, 102, 241
 * Realist movement 343
 Repeating sins diminishes shame not guilt 54, 73
 * Socialist economic laws 171
 * State—philosophy of 168
- Land law
 Constructive trusts 41, 123
 † Contingent remainders 246
 Easements—exclusive occupation 30
 Equitable interests 41, 218
 Improvements 41, 126
 Law of Property Act 1925, s. 40 (1) 214
 † Licences and constructive trusts 123
 Restrictive covenants 28
 † Sale—conditions 166
 Sale—specific performance 223
 Settlements 138, 250
 Trust powers 36
 Wife's rights in home 223, 227
 † Wills—construction 246
- Legal education
 * Solicitors—Gibson's 324
 * Magistrates 330
- Legal history
 * American 148
 * Assizes 1558–1714 146
 * Italian 164
 † Maintenance 56
 † Maitland—biography 145
 * Roman—textbook 160
 † Solicitors 56
 * Stannary law 337
- * Legal system
 † House of Lords appeals 151
 † Justices of the Peace—backgrounds 330
- † Licence—Interest in land 123
- Lien
 Defence, not a cause of action 23
 For improver of chattel 24
 For improver of house 41
- * Maritime law—Carriage of goods by sea 355
- Marriage—polygamy—capacity 43
- Matrimonial home 223, 227
- * Money and the law 165
- Negligence
 Duty of care 20
 Economic loss 20
- † Nuisance 317
 Occupiers' liability—employment 209, 211
 * Pakistan—Bangladesh 156
 * Parliament—dissolution 326
- Personal property
Nemo dat quod non habet 23
 Repairer's lien and set-off 23
 Sale of ungrown crops 15
- Planning law—development—identification of unit 33
- † Police—practice—agent provocateur 268
- Possession of land
 Denied to owner 227
 Order against squatter 220
- Power in nature of trust—certainty 36
- Quasi-contract—repair of chattel by non-owner 23
- * Race relations law 333
- Registration of equitable interests 218, 225
- * Reports—state trials—reprint 325
- Restrictive covenants 28
- * Road traffic law—sentencing 330
- * Roman law—textbook 160
- * Roman-Dutch law—Van der Keessel's lectures 162
- † *Rylands v. Fletcher* — non-natural user 310
- Sale of goods 15, 203
- Sale of land † 166, 214, 223
- * Sentencing—motoring offenders 330
- Settlements
 † Lease for life 138
 † Contingent remainders 250
- Solicitors
 * Education—Gibson's 324
 † History 56
 Specific performance 223
- * Stannary law—history 337
- Statutes
 Interpretation 10, 213
 Private—validity 8
 † Royal Prerogative and 299
- * Succession—comparative law 338
- * Sudan — common law and equity in 351
- † Tenancy for life 137
- Tort
 * Defamation 150
 Duty—contract and tort 209
 Fatal accidents—damages 17
 Liability—basis of 52
 Malice—abuse of rights 236

Subject Index 1973

Tort— <i>cont.</i>		Trusts	
Morality and policy in . . .	21, 52, 102, 241	* Cases and materials . . .	153
† Nuisance	317	Constructive and resulting	41,
† <i>Rylands v. Fletcher</i> . . .	310	† Licences and	† 123
Statutory	213	Power—certainty of ob-	
Trespass		jects	36
Criminal law	10, 187	† Wills — construction — class-	
Squatters	220	closing	246

NOTES FOR CONTRIBUTORS

Communications concerning articles should be addressed to the Incoming Editor, Professor S. A. de Smith, Fitzwilliam College, Cambridge; those concerning notes to Mr. R. N. Gooderson, St. Catharine's College, Cambridge.

Books for review should be sent to the Cambridge Law Journal, Squire Law Library, The Old Schools, Cambridge.

A leaflet giving instructions about layout is available on application.

THE CAMBRIDGE LAW JOURNAL

November 1973

CASE AND COMMENT

Contempt—Comment on law-suit	177	Employer's Liability to Trespasser	211
Extradition—Political Offence	181	Law of Property Act, s.40 (1)	214
Criminal Law—Self-induced Automatism	183	Registration—Equity	218
	185	Possession—Squatters—Equity	220
Criminal Law—Affray	185	Specific Performance—Damages	223
Criminal Law—Conspiracy	187	Matrimonial Home—Exclusion	227
Evidence—Corroboration	190	Divorce—Financial Restitution	230
Discovery to identify Defendant	193	Company Law—Takeovers	234
Contract—Condition	196	Industrial Dispute—Motive	236
Contract—Illegality	199	Conflict— <i>Forum Shopping</i>	240
Contract—Implied Terms	203	Tort Law and the Moral Law	241
Duty—Contract or Tort	209		

ARTICLES

Acceleration and Contingent Remainders: A. M. PRICHARD	246
European Communities and Constitutional Law: P. D. DAGTOGLOU	256
The Problems of Entrapment: J. D. HEYDON	268
The Royal Prerogative Re-visited: B. S. MARKESINIS	287
Non-natural Use of Land: DAVID W. WILLIAMS	310

BOOK REVIEWS

KERSLEY: Gibson's 1876-1962	323	TWINING: Karl Llewellyn and the Realist Movement	343
TURPIN: Government Contracts	324	FINGARETTE: The Meaning of Criminal Insanity	346
THOMAS (Ed.): State Trials	325	TUNG: Le Droit Anglais des Sociétés Anonymes	347
MARKESINIS: The Theory and Practice of Dissolution of Parliament	326	BROWNLIE: Principles of Public International Law (2nd ed.)	348
MCGREGOR: Damages (13th ed.)	328	THIRLWAY: International Customary Law and Codification	349
BRANDON & DAVIES: Wrongful Imprisonment	329	MUSTAFA: The Common Law in the Sudan	351
TRANKELL: Reliability of Evidence	329	RUBIN & COTRAN (Eds.): Annual Survey of African Law, Vol. I	352
HOOD: Sentencing the Motoring Offender	330	NIELD: Farewell to the Assizes	353
	333	RUOFF & ROPER: The Law and Practice of Registered Conveyancing (3rd ed.)	353
LESTER & BINDMAN: Race and Law	335	POURCELET: Le Transport Maritime Sous Connaissance	355
AARON & WEDDERBURN (Eds.): Industrial Conflict	337	STEAMER: The Supreme Court in Crisis	358
PENNINGTON: Stannary Law	337	BOOKS ALSO RECEIVED	359
NECKER: La Mission de l'Exécuteur Testamentaire dans les Successions Internationales	338		
PUXON: Family Law	340		
SIMPSON (Ed.): Oxford Essays in Jurisprudence (2nd Ser.)	342		

CAMBRIDGE UNIVERSITY PRESS

Bentley House, 200 Euston Road, London NW1 2DB

American Branch: 32 East 57th Street, New York, N.Y. 10022

Price £2.50 net in U.K.; US\$8.00 in U.S.A. and Canada. Subscription

price £4.00 net; US\$13.00