Recent Developments in the Law of Land in England

Paul V. Baker
RECENT DEVELOPMENTS IN THE LAW OF LAND
IN ENGLAND

Paul V Baker*

GENERAL BACKGROUND

Although this article is primarily concerned with developments during the last 25 years, it will be appreciated that the law of land in England has a long history of continuous development. It is, therefore, difficult to isolate recent developments and explain them without some reference to the more remote past. Moreover, legal changes are but a reflection—or more often a delayed echo—of social and economic changes.

It will be sufficient for present purposes if we examine the situation at the end of the last century when the bulk of the land was agricultural and occupied by a village society, as indeed it was at the time of the Domesday Survey some nine centuries before.¹ By the turn of the century the political situation had changed beyond all recognition, and the industrial revolution had occurred. The political developments had had their impact on the rules of tenure, which had become very attenuated, but the social and economic relationships between many owners and occupiers of land had not been altered to the same extent. The industrial revolution had a very limited effect on land tenure, primarily because industry was based on coal, which is awkward to transport. As a consequence industry grew up near the coalfields and the resulting urban development was concentrated in relatively small areas. In those areas the industrial revolution did not affect the bulk of the land area which remained agricultural, though it did create some special problems of land tenure which are still with us, notably with regard to leasehold tenure.

In the present century the invention of the motor car and the perfection of new mobile forms of fuel, in the shape of electricity and oil, have brought about a great dispersal of both industry and its urban population, and this in turn has had a significant impact on the development of the land law. At the same time an increasing population and its higher standards of living and education have resulted in greater de-

* B.C.L., University of Oxford, 1949; M.A., University of Oxford, 1954. Lecturer in Law, Inns of Court School of Law; Editor of the Law Quarterly Review

mands for land for development. In small countries like England and Wales, these factors have led to difficult problems in maintaining a proper balance between competing claims for the use of land. To show how the law is responding to these pressures, I propose to consider the following topics:

1. Restrictive Covenants;
2. Town and Country Planning;
3. Betterment;
4. Compulsory Acquisition (i.e., Eminent Domain),
5. Protection of Tenants; and

Restrictive Covenants

The development of the restrictive covenant was the first attempt by the law to come to grips with the uncontrolled development of building land. Though their use has been sporadic, technical, and only partially effective, restrictive covenants are still very much part of the law, despite the fact that their importance has been reduced by the general provisions of the Town and Country Planning Acts.

Development

The doctrine of restrictive covenants was first propounded in Tulk v. Moxhay in 1848.² It was there decided that a covenant to maintain Leicester Square in London “in an open state, uncovered with any buildings” could be enforced against a purchaser of the square who took with notice of the covenant. The doctrine was developed during the next half century and its formative period probably ended in 1914 with the decision of the Court of Appeal in London County Council v. Allen.³

The court’s holding was to the effect that the covenant would not be enforceable against successors in title of the convenantor by a party who was not in possession of or interested in the land for the benefit of which the covenant was entered into.

Main Rules

The main rules of the developed doctrine are:⁴

---
² 41 Eng. Rep. 1143 (Ch. 1848).
³ [1914] 3 K.B. 642.
⁴ The leading textbook is C. Preston & G. Newsom, Restrictive Covenants (5th
(1) The covenant must be negative or restrictive in nature. This is a matter of substance rather than form, and the test is whether or not performance involves the expenditure of money. Thus, a covenant not to allow a building to fall down is negative in form but positive in substance.

(2) The covenantee must own land which will benefit from the covenant, i.e., the land held is in the nature of a dominant tenement.

(3) The burden of the covenant runs in equity. This means first, that only equitable remedies are available, and second, that it will not be enforceable against a bona fide purchaser of a legal estate in the burdened land without notice of the covenant. For covenants created since 1925, notice depends upon whether the covenant has been registered in a public register maintained under the Land Charges Act 1925.

(4) Successors in title of the covenantee must satisfy one of the following three conditions to enforce the covenant:

(a) The original covenant contained words which annexed the benefit to the land of the covenantee to be benefited.

(b) The benefit of the covenant has been expressly assigned to the purchaser along with the land of the covenantee. In this case the land of the covenantee need not be referred to in the covenant, though there must be such land as in rule (2) above.

(c) The burdened and benefited land are contained in an area subject to a building scheme which occurs when a developer lays out an area of land for sale in lots and has a scheme of covenants applicable to the area as a whole.

These detailed rules were definitively formulated by a great equity judge, Parker, J., in 1908, but have recently been relaxed and broadened.

Use of Doctrine

The doctrine enabled a vendor who was selling land to retain some control over the manner in which it was to be developed. Thus, he could restrict the number of houses in a given area, or he could restrict the use of the buildings to private residences, or he could ban, either selectively or completely, the carrying on of trade. Nevertheless, re-


5. Elliston v. Reacher, [1908] 2 Ch. 374.
strictive covenants suffer from certain drawbacks. In the first place, some of the detailed rules, especially those relating to the passing of the benefit of the covenant, have become very complicated, and, as a result, many covenants have ceased to be enforceable. Secondly, covenants which were reasonable when imposed have over the years become obsolete owing, for example, to changes in the neighbourhood.

Complexities

Save as a warning, it is probably not of prime interest to American readers to have a detailed exposition of the complexities which have arisen. Suffice it to say that they are mainly concerned with the transmission of the benefit. Two matters may, however, be mentioned.

First, where an owner is uncertain whether or not his land is saddled with restrictive covenants, he can apply to the court under a special procedure for a declaration to determine whether his land is affected by any restriction, and if so the nature, extent, and enforceability of it. This is much more satisfactory than breaking the covenant and waiting to see if anyone commences an action. Nevertheless, this procedure cannot be used to discharge or modify an existing covenant.

Second, the English Law Commission has recently made some useful suggestions for simplifying this part of the subject which propose the creation and public registration of "land obligations," by reference to a plan.

Modification of Covenants

Since 1925 a tribunal has had discretionary power to discharge or modify restrictive covenants affecting freehold and some leasehold land. At first the power was exercisable by one of the official arbitrators appointed for the purposes of the Acquisition of Land (Assessment of Compensation) Act 1919. The normal role of these arbitrators was to resolve disputes concerning the amount of compensation payable on the compulsory acquisition of land. In 1945, the arbitrators were institutionalized to create a new special court known as the Lands Tribunal, which now exercises the jurisdiction to modify or discharge restrictive covenants.

8. Law of Property Act 1925, 15 & 16 Geo. 5, c. 6, § 84(2).
10. Law of Property Act 1925, 15 & 16 Geo. 5, c. 6, § 84(1).
11. Its principal jurisdiction is still concerned with disputes affecting values of property for the purposes of compulsory acquisition and taxation.
As a result of the formation of the special court, a substantial body of case law has emerged. Broadly speaking, the Tribunal has adopted a cautious approach to its jurisdiction, and as a result about half the contested applications fail. The Tribunal has generally been more receptive to an application to modify a covenant to allow a particular scheme of development than to discharge it completely. In any event the Tribunal cannot act unless the applicant satisfies one or more of a number of conditions, and even then the Tribunal has the discretion whether or not to accede to the application. Originally these conditions were:

1. Obsolescence. This condition can be shown by demonstrating changes in the character of the property, the neighbourhood, or other material circumstances. On the other hand, obsolescence may be established by showing that the continued existence of the covenant would impede the reasonable use of the land without giving practical benefits to anyone.

2. Agreement. Here, it must be established that the persons of full age and capacity entitled to the benefit of the restrictions have agreed, either expressly or by implication, inferred from their acts and omissions, to the discharge or modification sought.

3. No injury. In this situation, there must be a showing that the discharge or modification would not injure the persons entitled to the benefit of the covenant.

At the beginning of 1970, the jurisdiction of the Lands Tribunal was enlarged. Under the original provision, it could modify a covenant, 'inter alia', where the continued existence of the covenant would impede the reasonable use of the land for public or private purposes, but only if the covenant would do so "without securing practical benefits to other persons." Now the Lands Tribunal can act under this head so long as it is satisfied that the restriction does not secure practical benefits "of substantial value or advantage" to other persons, or the restriction "is contrary to the public interest," and that money would be a sufficient compensation. The Tribunal can take into account any development plan or pattern of planning permissions in the area. This is the first time the planning law has been linked to restrictive covenants, for in the past,

---

12. See Planning and Compensation Reports. Vol. 7 of these reports is wholly given over to decisions on restrictive covenants.
14. There had always been a power to award compensation, but it was sparingly exercised: see Re Henderson's Conveyance, [1940] Ch. 835.
they had been completely separate and cumulative modes of control. It is to planning control which we now turn.

**Town and Country Planning**

*Before the Act of 1947*

At common law any landowner was free to develop his land as he wished, subject only to the law of nuisance or other limiting rights of individual neighbouring owners. Unsightly, crowded buildings were frequently erected, although this was curbed to some extent by nineteenth century public health legislation. However, it was not until this century that there was any general power in public authorities to control development on general grounds of amenity, public need, or sightliness. The **Housing, Town Planning, &c. Act 1909** for the first time gave local authorities general power to control urban development. The **Town and Country Planning Act 1932** gave similar powers in regard to rural development. These measures were, however, half-hearted in that local authorities were not obliged to use the powers (and many did not), and even where they were employed the machinery for enforcement was dilatory and uncertain in operation.

Only in one respect was there compulsory control of development. After the first World War, developers began building new houses along the many new roads which were then being constructed to cope with the growing motor traffic. By this "ribbon development" as it was called, builders were saved the expense and trouble of constructing their own roads, but only at the cost of impeding the traffic flow and increasing the hazards of the occupiers and road users. The **Restriction of Ribbon Development Act 1935** prohibited the development of access routes to main roads and outlawed building within a certain distance from them without the consent of the highway authority. As the second World War progressed, it became obvious that the rebuilding which would be required could not be left uncontrolled. As a consequence an interim holding measure was introduced in 1943, but the present law really dates from July 1, 1948, when the **Town and Country Planning Act 1947** came into force.

---


Principles of the Act of 1947

The Act of 1947 was based on two main principles. First, it imposed a general system of planning control by which no one could build or develop land or change its use without obtaining the permission of the authorities. This aspect was a strengthening of the existing system of control. The second principle was completely new and was an endeavour to secure for the State the potential value of land for development in excess of its "existing use" value. The attempt to deprive landowners of this "betterment" is described in the next section.

Planning Legislation

The Act of 1947 was amended by the Town and Country Planning Acts 1953, 1954, and 1959. The control of caravan sites proved a particularly intractable problem which was dealt with by the Caravan Sites and Control of Development Act 1960. This legislation was repealed and reenacted in the consolidating Town and Country Planning Act 1962, which is the principal Act currently in force. It has in turn been amended by subsequent Acts, the latest being the Town and Country Planning Act 1968. The legislation with its subordinate regulations, to say nothing of ministerial directives and circulars, is of immense bulk and complexity.

Development

Central to the operation of planning control is the dual concept of development:

(1) the carrying out of building, engineering, mining or other operations in, on, over or under land, [or]
(2) the making of any material change in the use of any buildings or other land.\(^{17}\)

Many of the terms in this definition are further elaborated in the legislation and have been interpreted by the courts. The following points may be noted.

Building

Engineering operations include "the formation or laying out of means

\(^{17}\) Town and Country Planning Act 1962, 10 & 11 Eliz. 2, c. 38, § 12(1).
of access to highways; this embraces the control of ribbon development formerly controlled by the Act of 1935. The conversion of one house into two is development, though this does not automatically include every case where one family takes in another. Development does not include improvements or alterations to a building which do not materially affect its external appearance.

Change in the Use

To change a dwellinghouse into offices or a shop, even if no structural changes are made, is clearly development. There is, however, some relaxation of this stringent requirement under the Town and Country Planning (Use Classes) Order 1963. This sets out 19 classes of use, and change from one use to another in the same class does not constitute development, e.g., the change from one kind of shop to another (but not to a shop selling fried fish, tripe, catsmeat, pet animals, or motor cars) or from one type of light industry to another. Moreover, it has been held that intensification of use is not a change, in a case where on a caravan site of one and one-half acres the number of caravans had increased from eight to twenty-one. A similar increase in the number of small bungalows would obviously be development under the other branch of the definition.

Planning Permission

A person who wishes to carry out development must normally obtain planning permission by applying to the local planning authority (a county or county borough council) or its delegate. Permission is granted either unconditionally or subject to conditions, or it is denied. The conditions must have reference to the proposed development and may not take away existing rights without compensation. Thus, a condition that new houses in the country should be occupied by persons engaged in agriculture is permissible, but a condition that the owner should

18. Id. § 221 (1).
19. Id. § 12 (3) (a).
give up part of his land for a public highway is not. If a condition which is fundamental to the planning permission is void, the whole permission is a nullity.

When permission is refused or conditions unacceptable to the owner are imposed, the owner may appeal to the Minister of Housing and Local Government. The Minister must give the appellant and local planning authority an opportunity to be heard by one of his inspectors. Normally the inquiry is held in public and the inspector makes a report to the Minister. In important cases the Minister himself may make the ultimate decision, but many cases are decided by high ranking civil servants. In the public enquiries neighbours, other affected parties or, for that matter, any member of the general public can be heard concerning the proposal, but such persons have no right to intervene in the consideration of applications by local planning authorities. If the public learns of a plan, and some particularly obnoxious proposals (e.g., to build a sewage works, slaughter house, or dance hall) have been advertised, they may lobby local councillors or make representations to the committee, but generally such action is applied on the political rather than the legal plane.

*Generally Permitted Development*

Planning permission for 23 classes of development has been given in advance by the General Development Order 1963, thus obviating the need for a specific application. The Order includes minor alterations to dwellinghouses, temporary uses (e.g., for a fairground), and much development by gas, water, and electricity undertakings.

*Development and Structure Plans*

Local planning authorities are required to produce development plans for their area which indicate the character of permissions likely to be granted or refused. The plans require the approval of the Minister which may be given after he has held a public enquiry. These plans are subject to revision and modification, and under the most recent Act are to be replaced by structure and local plans, the former showing general lines and requiring the Minister’s approval, the latter filling in the details and not normally under the Minister’s control.

---

26. Id.
27. See Town and Country Planning Act 1968, c. 72, §§ 1-14.
not bound to grant or refuse an individual application in accordance with the plan, but they usually do so; and, of course, the plans influence the making of applications.28

**Enforcement**

The enforcement of planning control has presented great difficulties. For example, where development is carried out without permission, or any conditions to which the permission was subject have not been adhered to, the local planning authority may serve an enforcement notice which specifies the unauthorised development or breach and requires either restoration of the land to its former condition or compliance with the conditions.29 The courts have watched jealously over this invasion of the rights of landowners and have required strict adherence to the formal requirements of notices.30 Originally, such a notice had to be served within four years of the commencement of the unauthorised development or breach of condition. This short period, which has allowed some development through the net, is still the rule for all forms of building development and for a change to use as a single dwellinghouse, but notices challenging other changes of use, which are difficult to detect, can be served at any time.31

If the notice is not obeyed the penalty is a fine, and if the notice requires work to be done (e.g., demolition of buildings) the local planning authority may enter, do the work, and charge the owner with the cost.32 If these powers are insufficient, as where an owner keeps moving caravans from site to site or where the fines are less than the profits from the unauthorised use, the Attorney-General may obtain an injunction.33

**Additional Controls**

Trees which provide amenity, historic buildings, advertisements, and caravans are subject to special systems of control. Caravan sites were exceptionally difficult to control under the general law of planning con-

---

29. See Town and Country Planning Act 1968, c. 72, § 15.
trol owing to the dilatory nature of the remedies. No offence is committed by carrying out unauthorised development unless and until an enforcement notice is served. The Caravan Sites and Control of Development Act 1960 made it an offence to use land as a caravan site without a site licence, and a site licence is not granted until the applicant has obtained planning permission. The site licence may impose a system of rent control.34

Critique

There can be no doubt that the effect of the system of planning control which has been in operation since 1948 has, on the whole, been beneficial. To see the improvement one has only to compare some between-war developments—e.g., the bungalow town of Peacehaven in Sussex, or some large municipal housing estates remote from shops, transport, and places of employment—with the new estates which have been developed since the war. One criticism of the system is that it operates negatively, because the planning authorities merely rule on plans submitted to them and do not initiate redevelopment. This, however, overlooks several factors. One is the creation by public authorities of new towns, some of which have been impressive achievements in modern town planning. Another is the effect of development plans in channelling development into desirable directions. This is a long term procedure as it only operates when a landowner wishes to change his land, buildings, or their use. A third factor is the effect of informal consultations between council officials, owners' and developers' architects, and surveyors. These officials can exercise a positive influence on plans in preparation before they are submitted for approval.

Betterment

The Principle

The Labour Government under Mr. Attlee, which came to power in 1945, was elected on a programme of the nationalisation of basic industries and resources. There was never any question that the State should be entitled to the potential value of the land for development. The argument in support of this principle was that this value accrued to land, not through any effort or expenditure on the part of the landowner, but because of development, public and private, in the neigh-

bourhood. Accordingly, it was claimed that this development value ought to belong to the public at large, i.e., the State, and anyone who wished to develop land should in turn buy back this value from the State.

Town and Country Planning Act 1947

These notions were translated into law by the Act of 1947. This legislation had two prongs:

Purchase of Development Rights

The development rights of landowners as they existed when the Act came into force were expropriated and in return a global fund of £300 million was to be provided to be shared among the owners. The development rights were determined by taking the market value of the land and subtracting from it the "existing use value" together with some very limited rights of development in the context of that existing use. If the total of all these claims came to more than £300 million, some claims were to have priority and others would abate proportionately.

Development Charges

For the future, before carrying out any development for which planning permission was required, a development charge had to be paid or secured to the State. The charge was equal to the increase in the value of the land caused by the planning permission.

Abandonment

The scheme of development charges ran into formidable practical difficulties and eventually had to be abandoned. It was repealed as from November 18, 1952, by the Town and Country Planning Acts 1953 and 1954, before the compensation fund had been paid out. Though it may be mentioned that the Government changed in 1951, the main difficulties were:

1. The great burden on the surveying profession and government valuers in assessing the value of development rights;
2. The uncertain and nebulous nature of such valuations; and
3. The reluctance of landowners to sell land for development at its existing use value.
During the tenure of the Conservative Government, from 1951 to 1964, land values rose considerably and there were some well publicised cases where large amounts had been paid for vacant land. When Labour returned to power in 1964 another attempt was made to secure at least some part of this increase for the State. Under the Land Commission Act 1967 a national agency called the Land Commission was established with two functions. The first was to acquire a bank of land suitable for development which it would acquire, if necessary compulsorily, thus overriding the reluctance of landowners to release suitable land. The second was to levy a charge or tax on the development value of land which had accrued to it without effort on the part of the owner. Unlike the old development charge, the betterment levy, as it was called, took only a proportion, initially fixed at 40 percent, of the development value.

Abandonment

One of the first acts of the Conservative Government, which came into office in June, 1970, was to announce the dissolution of the Land Commission and the abandonment of the betterment levy. The reasons were partly a matter of political principle, but two other factors were present:

1. The immense complexity of the provisions of the Land Commission Act 1967 and
2. The introduction in 1965 of a general capital gains tax on realised gains in all forms of investment which to some extent included the realisation of development value.

Detriment

Though the development or proposed development of a piece of land often enhances the value of neighbouring land, this result by no means always occurs. For example, the construction of a new motorway, elevated or not, or even the threat of its construction, will seriously depress the value of houses which border it, or even make them totally unsaleable. In general there is no compensation for what has come to be called “planning blight.” If, however, the depressed land itself is actually earmarked for compulsory acquisition for the purpose of the motorway or
some other specified purpose, the owner can sometimes compel the authorities to purchase it in advance at its unblighted value.\textsuperscript{35}

**Compulsory Acquisition**

**Powers**

Parliament has the right to authorise the compulsory acquisition of land for public purposes. The building of the railways in the last century began a spate of statutory powers of acquisition which has continued unabated ever since. A recent count showed that over 70 general Acts of Parliament currently authorise compulsory acquisition for a wide variety of purposes,\textsuperscript{36} and this takes no account of local and private Acts. In the last 20-25 years Parliament has continued to pass Acts authorising the taking of land for specific purposes, e.g., new motorways, schools, and housing, but there have also been two new departures.

**General Development**

Under the Town and Country Planning Act 1947, a development plan could designate land as subject to compulsory acquisition not only when it was required for the specific functions of some public body, but also when it was necessary to secure its development in accordance with the plan.\textsuperscript{37} In the latest Act these powers have been broadened and land may now be acquired compulsorily if the Minister of Housing and Local Government is satisfied:

- (a) that the land is required to secure the treatment as a whole, by development or improvement of the land or of any area in which the land is situated; or
- (b) that it is expedient in the public interest that the land should be held with land so required; or
- (c) that the land is required for development as a whole to provide for the relocation of population or industry or to replace open space; or

\textsuperscript{35} See note 42 infra.


\textsuperscript{37} Town and Country Planning Act 1947, 10 & 11 Geo. 6, c. 51, § 38.
(d) that it is expedient to acquire the land in the interests of proper planning of the area. 38

Similar broad powers exist under the Housing Act 1957 to facilitate the clearance of slums.39

Useless Land

Mention has been made of the detriment which the development of neighbouring land, or the threat of it, can produce. In addition, a refusal of planning permission may leave a landowner with useless land. To alleviate this result a form of compulsory purchase in reverse first appeared in the Act of 1947 40 Basically, if planning permission is refused, or conditions are imposed, and "the land has become incapable of reasonably beneficial use in its existing state," and cannot be rendered capable by any development that is permitted, an owner may serve on the local authority a notice requiring the authority to purchase the land compulsorily. However, this right is of limited application, for it is not operative with respect to land which has some beneficial use but which would become more useful by development.41

The Acts of 1959 and 1968 extended the right of an owner to serve a compulsory purchase order to certain cases of "planning blight." 42 Only in cases where the land is occupied by the owner can a proposal to acquire compulsorily the land be submitted. Where the Acts apply, an owner can accelerate the process of compulsory acquisition. The cases authorised by the 1959 Act were narrow in scope. They were extended by the Act of 1968 but still do not cover the whole field of potential compulsory acquisition, to say nothing of the plight of owners of neighbouring land affected by proposals for compulsory acquisition. It is, however, a typical reaction to a social problem to yield to a limited extent and then successively broaden the scope of the remedy.

40. Town and Country Planning Act 1947, 10 & 11 Geo. 6, c. 51 replaced by Town and Country Planning Act 1962, 10 & 11 Eliz. 2, c. 38, §§ 129-137
Procedure

The Act which authorises the taking of the land compulsorily may also lay down the compensation to be paid and the procedure by which it is to be acquired. In general, however, the Acts conferring power to acquire land adopt a standardised procedure by incorporating by reference Acts of general application where this procedure is set out. The main steps in the standardised procedure are as follows:

(1) The authority wishing to acquire land makes a provisional compulsory purchase order. The owners concerned are notified, and the order is advertised. The order is not effective unless and until it is confirmed by a Minister who must hear any objections, usually at a public enquiry conducted by an Inspector.

(2) After the order has become operative the acquiring authority serves a notice to treat. The notice does not by itself create a contract for sale, but it does give either party the right to have the compensation assessed. Normally the price will be agreed upon, but if not it is determined by the Lands Tribunal. As soon as the price is fixed, there is a binding contract for which specific performance will be granted.

(3) Even before completion of the contract, the acquiring authority can enter on 14 days notice. In such a case the authority pays interest from the date of entry on the compensation money when it has been assessed.

Sometimes, there has been a long delay between the obtaining of the compulsory purchase order and the serving of the notice to treat, or between the service of the notice to treat and the taking of the land. If, in the meantime, the authority’s plans change so that it no longer needs the land for the purpose for which it obtained the order or for any purpose justifiable under the statutory powers, its rights lapse. The authority may also lose its rights if it delays unreasonably in serving a notice to treat or acts as if it had abandoned its rights.

Compensation

Early statutes did not lay down any specific rules for assessing compensation, consequently, it was left to the courts to develop the requisite

---

43. Acquisition of Land (Authorisation Procedure) Act 1946, 9 & 10 Geo. 6, c. 49; Compulsory Purchase Act 1965, c. 56.
principles. The most important of these principles was that the owner was to receive the value to him of the land, and was given a special allowance because the purchase was compulsory. These principles were considered too favourable to owners, especially where the acquiring authority was a local authority as opposed to a private company, such as a railway company, trading for profit. Consequently, in 1919, the special allowance was abolished and two alternative principles were laid down. Under the first principle, the owner was to receive the amount which the land would realise if sold in the open market by a willing seller, thus denying any special value which the land had for him. The second principle applied where there was no general demand or market for land for the purpose for which the land being taken was used, e.g., if it were a church. In such cases the owner was compensated on the basis of the cost of equivalent reinstatement.

The Town and Country Planning Act 1947, it will be recalled, attempted to expropriate the development value of land. To achieve this end it was necessary to alter the first of the two principles. Accordingly, under the Act of 1947, an owner who would previously have been compensated with the open market value of his land thenceforth obtained only the value of the land in its existing use and received nothing for its potential development value. Cases of equivalent reinstatement were unchanged. The basis of existing use was abandoned in 1959 following the abolition of development charges, and the basis of open market value was restored.

For a number of years it was considered that the date at which compensation was to be assessed was the date of the notice to treat. In a time of stable prices, as in the nineteenth century when the rule was formulated, the selection of a proper date was not of great consequence. But in times of rapidly rising prices and values, such a rule can clearly operate unjustly against a landowner, especially where there is a long delay between the notice to treat and the assessment of compensation. Very recently the House of Lords has held in an equivalent reinstatement case that the date on which the reinstatement might reasonably have

---

47. Acquisition of Land (Assessment of Compensation) Act 1919, 9 & 10 Geo. 5, c. 57, §§ 2, 5.
49. Town and Country Planning Act 1959, 7 & 8 Eliz. 2, c. 53, Part I. These provisions and those of the 1919 Act relating to compensation have now been consolidated in the Land Compensation Act 1961, 9 & 10 Eliz. 2, c. 33.
been commenced is the appropriate date.\textsuperscript{50} For open market value cases, it seems that the date of assessment, or the date of taking possession, if it is earlier, will replace the date of the notice to treat.\textsuperscript{61}

**Protection of Tenants**

*Introductory*

This century has seen the growth of legislation designed to protect tenants against landlords. At common law, the matter was one of contract: at the end or determination of the tenancy a landlord might evict his tenant at will, or, under the threat of eviction, exact an increased rent. The system worked very harshly on good tenants who might by their own efforts have improved the property so that it commanded a higher rent. Indeed, in Ireland the injustice of the system produced great bitterness which at times boiled over into open rebellion.\textsuperscript{52}

Legislation has been piecemeal, and has dealt separately with the different types of property. A mild reform was introduced in 1875 to compensate evicted tenants of farm land, but the first statute which protected tenants of dwellinghouses from eviction was enacted in 1915, and was intended as a temporary war time measure.\textsuperscript{53} There is little common design to be found in the many succeeding statutes, and only a moment’s reflection is necessary to appreciate that protection from eviction is inseparably linked to the control of rent. Though the statutes may set about these objectives in different ways, both objectives must be tackled together. There are five systems of control. As is to be expected of a subject which touches the lives of so many people so closely, the interpretation of these statutes has produced an immense body of case law.\textsuperscript{54}


\textsuperscript{51} Id. at 907

\textsuperscript{52} See Woodham-Smith, The Great Hunger c. 1 (1962).

\textsuperscript{53} Agricultural Holdings (England) Act 1875, 38 & 39 Vict. c. 92; Increase of Rent and Mortgage Interest (War Restrictions) Act 1915, 5 & 6 Geo. 5, c. 97

Unfurnished Dwellinghouses

Ever since the introduction of rent control for unfurnished dwellings in 1915, a varying number of tenanted properties have come within the scope of the legislation. To qualify, a house has had to be "let as a separate dwelling," and cannot have more than a specific "rateable value," i.e., the value for the purposes of local taxation. The value has varied from time to time. After extensive relaxation of restrictions during the inter-war period, widespread control was again introduced in 1939. A large measure of de-restriction occurred as a result of the Rent Act 1957. All houses above a certain, relatively small, rateable value were automatically de-controlled, and others became de-controlled if the house came into the landlord's possession and was relet to a new tenant. The relaxation was premature in light of the continuing housing shortage and led to some highly publicised examples of exploitation. As a consequence, when the Labour party came to power at the end of 1964, control was reimposed on all houses having a rateable value not exceeding £400 in London and £200 elsewhere. The practical effect of the upward value adjustment was to increase coverage, so that only luxury apartments or large houses in good districts are excluded. In 1968 the existing legislation was repealed and replaced by one consolidating statute, the Rent Act 1968. Houses provided by local authorities and other public and semipublic bodies are currently exempt from control, though well-conducted tenants of local authorities are in practice never evicted, and the level of rents in such accommodation comes under constant political scrutiny. Further, houses at very low rents in relation to their value are outside the scope of these Acts, as are other special categories.

Control of Rents

Three systems of rent control have been employed at different times.

---

55. The 1915 Act was replaced by the Increase of Rent and Mortgage Interest (Restrictions) Act 1920, 10 & 11 Geo. 5, c. 17, which remained the basic Act until 1968.
57. See Law Reform Committee, Cmd. No. 2605 (1965) (a wide ranging, illustrated survey on Housing in Greater London called the "Milner Holland Committee")
59. Rent Act 1968, c. 23, §§ 2(1)(a), 7(3). "[T]he rent payable is less than two-thirds of the rateable value."
1. **Standard Rents**

From 1915 until 1957, the maximum rent was based on the “standard rent” of the premises. This was the rent at which the premises were let at the beginning of the War of 1914 or 1939 as the case might be, or at some other specified date if they were not then let. The standard rent became a permanent attribute of the dwellinghouse and governed all tenancies of it. Certain permitted increases were allowed, e.g., for increased rates (local taxes) or improvements furnished by the landlord. The system of pegging rents at a fixed level is a crude device which can be justified as a temporary wartime measure, but as time goes on it leads to great injustices and practical difficulties. Sometimes houses of equal value had widely different rents, it was at times difficult to discover the rent being paid on the specified date, and as time went on the return to the landlord became so low that he could not afford to make even the most essential repairs.

2. **Gross Value**

The Rent Act 1957, which, it will be recalled, removed many houses from control altogether, replaced for those houses remaining controlled the system of standard rents with a new system pegged to the valuation placed on the house for the purposes of local taxation on November 7, 1956. There were variations to take account of the assumption of liability between landlord and tenant for carrying out repairs and paying the rates. This is still the method of control for those houses which continue to be let to their original tenants or their families, but as and when they fall vacant, they are released from the old system of control and fall within the scope of the Act of 1965. This system has the merit of uniformity since it does not depend on what rent was being charged for the particular house at an arbitrary date, but it suffers from the same inflexibility as the standard rent system.

3. **Fair Rents**

The Act of 1965 attempted to get away from the notion of a rent fixed at a particular date, and introduced a new system of “fair rents.” Either the landlord or the tenant may apply to the rent officer for the area for registration of the rent. The rent officer, after giving the parties an opportunity to make representations, registers the rent if he thinks...
it fair, or determines and registers what he thinks would be a fair rent. There is a right of appeal to a rent assessment committee. For a period of three years after the determination neither party can apply for the registration of a different rent without the concurrence of the other. In determining what is a fair rent regard must be given "to all the circumstances (other than personal circumstances) and in particular to the age, character and locality of the dwellinghouse and to its state of repair."

The effect of local shortages of accommodation, the disrepair or default attributable to the tenant’s failure to comply with his obligations, and any improvement voluntarily carried out by the tenant must, however, be disregarded.

Protection from Eviction

The courts are prohibited from making an order for possession of a house occupied by a protected tenant except on specified grounds. In the meantime the tenant, and after his death certain members of his family, may remain in the house despite the termination of the original tenancy by notice to quit or otherwise. They must observe all the terms of the original tenancy which are not inconsistent with the Acts.

To obtain an order for possession the landlord must satisfy the court that, in light of all the circumstances, it is reasonable to make such an order and that one or more of ten specific grounds for issuing the order exists. Some of the grounds are based on misconduct by the tenant, e.g., failure to pay the rent or allowing the premises to deteriorate. Others are based on the landlord’s needs, e.g., that he requires the house as a home for himself. Another ground is that alternative accommodation is available.

The right of a tenant to stay in occupation after his tenancy has ended is usually called a “statutory tenancy.” It differs from the tenancy originally granted to him in that it is a personal, non-assignable right which he will lose if he ceases to occupy the house as his home, or one of his homes. The statutory tenancy is a juristic anomaly: it is not an estate, being "nothing more than a status of irremovability."
**Premiums**

There are broad provisions prohibiting any person from requiring a premium as a condition of the grant, renewal, continuance, or assignment of any tenancy within the Acts. These are essential if the control of rent is not to be evaded.

**Long Leases**

Mention has already been made of the special problems of leasehold tenure in the areas of concentrated urban development which took place in the last century. During that time much land was developed on the building lease system, notably on Merseyside and Tyneside, in the suburbs of London, and in South Wales. The landowner contracted with a builder that when the latter built and sold houses, the owner would grant leases for a long term, usually 99 years, at a ground rent to the purchasers. At the end of the term, the landowner’s successors would regain possession of the land including the house, and during the lease the purchaser obtained a house without having to buy the land.

The system, however, has not lacked critics, and even as long ago as the 1880’s there was a serious political demand for “leasehold enfranchisement,” that is, the right for tenants compulsorily to acquire the freehold reversion on equitable terms. The matter became acute after the last war when so many of the leases were about to fall in. A majority of a committee appointed to look into the problem was against leasehold enfranchisement, though favouring some measure of protection similar to that afforded tenants of unfurnished premises at rack rents. This measure was introduced by Part I of the Landlord and Tenant Act 1954. In 1967, following a change of government, leasehold enfranchisement was finally introduced based on the “principle” that under a building lease “the land belongs in equity to the landowner and the house belongs in equity to the occupying leaseholder.” The Leasehold Reform Act 1967 allows certain tenants to exercise one of two rights, either to demand a conveyance of the freehold or to demand the grant of a new lease of 50 years.

---

66. Rent Act 1968, c. 23, s 13, 85, 86.
67. It seems that 99 years became the traditional maximum because leases of 100 or more years were subject to the Mortmain Acts: see Bland, Mortmain and the Term of Years, 71 L.Q.R. 79, 81-85 (1955).
68. See Law Reform Committee, Final Report, Cmd. No. 7982 (1950) (“the Jenkins Committee”).
Tenancies Protected

To be protected, the tenancy must be for a term exceeding 21 years at a ground rent having a rateable value not exceeding the limits established by the Rent Act 1965. At the time of his claim, the tenant must have occupied the house or part of it as his only or main residence for at least one-half of the preceding decade. The premises must be a house, which might be terraced, but not an apartment.\footnote{70}

Enfranchisement, New Leases, and Exemptions

A tenant purchasing the freehold pays a price based on the market value of the land but disregarding the building on it.\footnote{71} A tenant taking a new lease pays a rent amounting to the current letting value of the site only.\footnote{72}

The landlord may defeat a claim if he reasonably requires the house as a residence for himself or a member of his family. Further, the landlord of an estate containing many long leaseholds may be entitled to retain management powers and control over the development and use of the houses. For this he must obtain a certificate from the Minister and court approval of the scheme of management.\footnote{73}

Furnished Houses

The Rent Acts, discussed in the first section, do not apply and have never applied to houses let at a rent “which includes payments in respect of board, attendance or use of furniture.”\footnote{74} This originally offered a convenient method of evading the Acts by letting houses with a few worthless sticks of furniture, or what was contemptuously known as “the Rent Acts lino.”\footnote{75} In 1923 the exception was qualified so that a letting will not escape the Acts unless “the amount of rent which is fairly attributable to the attendance or the use of furniture, regard being had to the value of the same to the tenant, forms a substantial portion of the whole rent.”\footnote{76} This test has provoked much litigation culminating

\footnote{70. Leasehold Reform Act 1967, c. 88, §§ 1, 2.}
\footnote{71. Id. c. 78, §§ 8, 9.}
\footnote{72. Id. §§ 14, 15.}
\footnote{73. Id. §§ 17-19, 28, 29.}
\footnote{74. Increase of Rent and Mortgage Interest (Restrictions) Act 1920, 10 & 11 Geo. 5, c. 17, § 12(2) (c) (i); see also Rent Act 1968, c. 23, § 2(1) (b).}
\footnote{75. See R. Megarry, RENT ACTS 138 (10th ed. 1967).}
\footnote{76. Rent and Mortgage Interest Restrictions Act 1923, 13 & 14 Geo. 5, c. 32, § 10 [incorporated in the Rent Act 1968, c. 23, § 2(3)].}
in the House of Lords. In the acute housing shortage after the last war some measure of protection for tenants occupying furnished accommodation was considered essential and was provided by the Furnished Houses (Rent Control) Act 1946, which, with various amending provisions, has now been consolidated and replaced by Part VI of the Rent Act 1968. The protection is currently administered by a system of Rent Tribunals which the Act of 1946 established.

**Contracts Within the Act**

The Furnished Houses Act applies whenever a person has contracted for the right to occupy a house or apartment as a residence at a rent which includes payment for the use of furniture or services. The inclusion of any substantial payment for board, however, excludes the application of the Act. The Act is also not applicable if the rateable value of the premises is above that prescribed for the purposes of the Rent Acts. Broadly speaking, the Act applies to the furnished room or apartment, but not to hotel or guesthouse accommodation where food is provided, or to a holiday house, as that is not occupied with sufficient permanence to be classified as a residence.

**Control of Rent**

Any tenant of protected premises may refer his contract to the tribunal for his area which, after hearing the parties and visiting the premises, may approve or reduce the rent. The rent fixed by the tribunal is then registered with the local authority, and thereafter it becomes an offence to charge the current or any succeeding tenant more than the registered rent. The tribunal may subsequently raise or lower the rent if the circumstances change.

**Security of Tenure**

Where a tenant has referred a contract to the tribunal, no notice to quit subsequently served on him can take effect before the expiration of six months after the decision of the tribunal, unless the tribunal substitutes a shorter period. Except where a reduced period has been ordered, a tenant can apply for successive extensions of six months at a time, so long as he applies before the expiration of the preceding period. The tribunal has complete discretion whether or not to grant such

extensions. If the landlord has served a notice to quit before the first reference to the tribunal, or if the tenancy is for a fixed term and so determines automatically, there is no security of tenure. The temporary letting of his furnished house by an owner-occupier is also unprotected if the owner wants to recover it for himself or a member of his family.

**Business Premises**

Business premises were first protected in 1927. The particular grievance which was sought to be remedied was the loss of goodwill which a trader suffered when he was forced to move his business into other premises which might be some distance away. Accordingly, the Landlord and Tenant Act 1927 provided that a tenant could claim a new lease if he could establish that, through his activities, goodwill had become attached to the premises so that they could be let at a higher rent than they would otherwise command. This method of protection proved to be very unsatisfactory because of the difficulty of proving the existence of goodwill, and, in the case of many businesses and professions, because goodwill is personal to the tenant and not adherent to the premises. In many instances in which a tenant is forced to leave he may lose his goodwill, but the landlord does not always acquire it. For these reasons the Act, in practice, protected only tenants of retail stores.

In 1954, a far ranging system for protection of all business premises was introduced which does not depend upon the existence of goodwill. Part II of the Landlord and Tenant Act 1954 applies to any tenancy where the property includes premises occupied by the tenant for the purposes of any trade, profession, or employment. There are a number of exceptions such as mining leases, premises licensed to sell alcoholic liquors, tenancies of less than six months, and some tenancies protected by other systems of control.  

**Security of Tenure**

Initially, security of tenure of business premises is procured by the simple expedient of providing that the tenancy is not to terminate until it is determined in accordance with the provisions of the Act. Therefore, it continues at the old rent, notwithstanding that the date of termination set by the lease has arrived. In order to determine the tenancy,

78. For further exceptions see Landlord and Tenant Act 1954, 2 & 3 Eliz. 2, c. 56, § 43.
either party may give to the other not less than six months notice in a special form. Thereafter, the tenant may apply to the court for a new tenancy which the court is compelled to grant up to a limit of 14 years at the then prevailing market rent (disregarding goodwill), unless the landlord establishes one of seven statutory grounds of opposition. Some of the grounds relate to the tenant’s own shortcomings and defaults, but the most important, in practice, are that the landlord intends to demolish or reconstruct the premises or that he requires the premises for his own business or as his residence. If the landlord establishes either of these grounds and so evicts the tenant, he has to pay compensation to the tenant on a fixed scale.

Critique

These provisions have, on the whole, worked well, although some amendments of detail were introduced last year. Normally parties agree upon the terms of a new lease, but the ultimate sanction is the right to have the court fix the terms and rent. Two comments may be made. First, though the provisions of the Act work fairly as between landlords and existing tenants, they lead to some degree of stagnation and increase the difficulties in the way of persons wishing to start a new business. Second, in determining whether the landlord is entitled to resist the application on the grounds mentioned above, the court must assess his intention to demolish or occupy the premises in the future. While normally a court is concerned with assessing intention after the event—e.g., in criminal trials—the courts have proved themselves equal to this unusual task.

Agricultural Lands

Although the legislature intervened as long ago as 1875 on behalf of the tenants of farms, it was not until 1948 that this class of tenants was granted any security of tenure. Earlier legislation was directed to compensating them for disturbance and recouping to them their expenditure on improvements. The governing statute is the Agricultural Holdings Act 1948, as amended by the Agriculture Act 1958. The system depends for its operation on Agricultural Land Tribunals and arbitrators.

80. Id. § 30.
Agricultural Holding

The Acts apply to holdings of land used for the trade or business of agriculture, including horticulture and market garden. If the holding is mixed, the test is whether, as a whole, the tenancy is in substance a tenancy of agricultural land.

Security of Tenure

A tenancy of an agricultural holding cannot be determined save by a notice to quit of at least 12 months duration expiring at the end of the year of the tenancy, usually Lady day or Michaelmas day. If within one month of receiving the notice the tenant gives the landlord a counter-notice, then, with seven exceptions, the landlord’s notice becomes ineffective unless the Agricultural Land Tribunal consents to its taking effect; and only in five cases can the tribunal give consent. There are three categories.

(1) No Security. If the tenant fails to serve a counternotice or if one of the following exceptions applies:

(a) The Tribunal has previously consented to the notice;
(b) The land is required for some non-agricultural purpose for which planning permission has been obtained;
(c) The tenant is bankrupt, has committed some breach of the terms of his tenancy, or has died;
(d) The Tribunal has certified that the tenant is a bad farmer.

(2) Security at Discretion. If the landlord satisfies the Tribunal that the case falls within one of the following five categories, the tribunal must give the notice its full effect unless it appears that a fair and reasonable landlord would not insist on possession:

(a) because the land is needed to carry out a purpose desirable in the interests of good husbandry;
(b) because the land is needed to carry out a purpose desirable in the interests of sound management;
(c) because the land is needed to carry out a purpose desirable in the interests of agricultural research;
(d) because greater hardship would be caused by withholding consent than granting it;

83. Agricultural Holdings Act 1948, 11 & 12 Geo. 6, c. 63, §§ 24, 25.
(e) because the land is needed for a non-agricultural purpose.

(3) Full Security. In all cases not falling within the foregoing categories the notice to quit is ineffective and the tenancy continues.

Control of Rent

When an agricultural tenancy is first granted, the parties are free to agree to whatever rent they choose. Thereafter, and not more frequently than once every three years, either party may require the rent to be submitted to arbitration, and the arbitrator may award an increased or decreased rent. The test the arbitrator applies seeks to determine the rent at which the holding might be expected to be let in the open market, there being disregarded a number of factors, of which the most significant is the effect of improvements carried out by the tenant.84

Conclusion

Today most tenants in the United Kingdom are protected by some statutory provision. Because the systems of control are engrafted upon the law of landlord and tenant as developed by the common law, the rights of tenants “have become a matter not of contract but of status.” 85 Although the broad effects of the statutory systems are similar, the detailed variations are great. As regards rent, there may be control initially (unfurnished), only on renewal (business), only at intervals (agriculture), or on application to a tribunal (furnished). The rent may be fixed by a court (business), an arbitrator (agriculture), a tribunal (furnished), or a civil servant (unfurnished). As regards security, there are five methods: compulsory purchase of the landlord’s interest (long leases), application to a court for a new tenancy (business), paralysis of notice to quit (agriculture), application to a tribunal (furnished), and passive right to remain (unfurnished).

The Matrimonial Home

In the last 25 years the courts have frequently had to consider problems concerned with the ownership of and right to occupy the matr-

84. Id., § 8.
The story begins with the Married Women's Property Act 1882 which abrogated the old common law rule that during marriage a wife could neither acquire nor hold property independently of her husband. Property acquired by a woman after 1882, or property acquired at any time by a woman married after 1882, was and remained her separate property. The Act provided a summary method of resolving questions between husband and wife as to the title to or possession of property under which the judge "may make such order with respect to the property in dispute as he thinks fit." One of the points, which has only recently been settled by the highest court after considerable controversy, is that this provision is procedural only, and does not allow the court to transfer to one spouse property or a share in property which under the ordinary rules belongs to the other. Thus, the court cannot take away one party's rights because he has been responsible for the break-up of the marriage.

Ownership

Turning specifically to the matrimonial home, it should first be noted that the ordinary rules apply to this as to all other property. There were recently some indications of a trend toward a doctrine of "family assets," analogous to community property, but this trend has now been repudiated.

The central question to investigate is the intention of the parties at the time of acquisition. In some cases they will agree whether the house is to belong beneficially to one or the other or both jointly, and they may even make an express declaration. In such cases the court gives

87. Married Women's Property Act 1882, 45 & 46 Vict., c. 75, § 17
89. Id. at 793; Cobb v. Cobb, [1955] 1 W.L.R. 731, 737 The court exercising matrimonial jurisdiction may, of course, provide for the maintenance of an innocent spouse.
effect to the agreement or declaration unless vitiated by mistake. More often, the parties give no thought to the matter, and the intention must be determined from the circumstances. The fact that the legal title to the property is in the name of one spouse rather than another, or in both jointly, is not conclusive: the doctrine of presumptions of advancement and resulting trusts often comes into play. Where a husband buys property and directs its transfer to his wife's name, then under the presumption of advancement the wife will take it beneficially. However, the presumption is easily rebutted, so that its weight nowadays is much reduced because the modern wife is much less dependent upon her husband than were wives in the days when the doctrine was first formulated. Where the presumption does not apply, the ownership will go to the spouse who paid for the property.

Most cases, however, are less straightforward than those referred to in the previous paragraph. A house is not usually paid for outright, and often only a small deposit is paid and the balance raised on a mortgage which is paid off by instalments. One party may pay the instalments but is assisted in doing so because the other contributes to the family's living expenses. In the past, the courts have tended to apply the maxim "equality is equity" to this situation and declared the house to belong to both equally, but in the most recent case the House of Lords held the court should have evaluated the respective contributions and not automatically given a half share to each. In this evaluation, account should be taken of indirect as well as direct contributions, as, for example, where the wife pays expenses which normally the husband would bear.

Another difficult situation is presented where one party spends time and money in improving a house belonging to the other. The House of Lords has held, overruling earlier cases, that this fact of itself does not give the contributing spouse any interest in the house in the absence of an agreement to that effect. The situation is different where both

99. Id. at 1336.
build a house on a plot belonging to one of them. The legislature has intervened to give a spouse who makes a contribution “of substantial nature” toward the improvement of property belonging to either or both of them an interest or enlarged interest in that property.  

**Right of Occupation**

It has long been established that a spouse in whom the matrimonial house is vested cannot use this right of property so as to evict the other partner so long as the marriage subsists and no matrimonial offence has been committed. The question has arisen, however, in the last two decades, whether this right of the partner to occupy the matrimonial home could prevail against third parties claiming through the owner as purchasers, or more usually as mortgagees. The situation was aggravated by the housing shortage and the break-up of wartime marriages consequent upon the second World War, which resulted in many wives being deserted by their husbands and having nowhere to go. The lower courts evolved the doctrine of the “deserted wife’s equity,” under which the wife was entitled, as against purchasers and mortgagees deriving title from her husband who took with notice of her rights, to remain in occupation unless and until a court ordered her to leave. The discretionary nature of the right and the fact that it determined on divorce or the commission of a matrimonial offence prevented its being regarded as a true proprietary right.

When the doctrine was ultimately reviewed by the House of Lords it was decisively rejected. As the conditions which led to the invention of the doctrine still remained, the legislature stepped in with the Matrimonial Homes Act 1967. The Act gives one spouse the right to remain in occupation of a house vested in the other. The right operates as a charge on the estate or interest of the other spouse and has priority from the date of acquisition or marriage, whichever is later. It lasts as long as the marriage lasts, though the court can extend or restrict it in

---

103. See Shipman v. Shipman, [1924] 2 Ch. 140 (C.A.) (drunkenness and cruelty on part of spouse is sufficient to evict spouse).
104. The doctrine was first proclaimed by the Court of Appeal in Bendall v. McWhirter, [1952] 2 Q.B. 466 (C.A.). Important later cases were Jess v. Woodcock & Sons Ltd. v. Hobbs, [1955] 1 W.L.R. 152 (C.A.) and Westminster Bank Ltd. v. Lee, [1956] Ch. 7
the event of a matrimonial dispute. It is not binding on purchasers or mortgagees unless it is registered as a land charge or protected by an entry in the land registry if the title is registered. Thus, purchasers and mortgagees need now only search public registers and do not have to put embarrassing questions to a husband regarding the state of his matrimonial relations.

**Conclusion**

As stated in the opening section, this article has been mainly concerned with the response of the land law to social and economic pressures, because those responses are considered to be the most significant developments in the last 25 years. The period also embraces a number of other changes, to two of which some brief mention should be made.

**Registration of Title**

The greater fluidity of land in this century has produced demands for simpler procedures for investigating and making titles. The basic method of proving title is to commence with a root of title of a certain minimum age and trace its devolution from the root into the present vendor. The root is a document such as a conveyance which identifies the land, deals with the estate in it which is the subject of the purchase, and casts no doubt on the earlier title. The minimum period, originally set at 60 years, has been successively lowered to 40 years after 1874, to 30 years after 1925, and to 15 years after 1969. This system of unregistered conveyancing is gradually being replaced by a system of registration of title. A public Land Registry was first established in 1862. At first its use was voluntary, but in 1899 compulsory registration in London was introduced, and extended to Middlesex and the boroughs of Eastbourne, Hastings, and Croydon by 1939. The big breakthrough came in 1952, when the county of Surrey was added as a compulsory area against opposition from the legal profession. Since then opposition has evaporated, and all the counties around London and some 80 towns, up and down the country, have been added.

---


107. Land Registry Act 1862, promoted by Lord Westbury, L.C., to whom title deeds were "difficult to read, impossible to understand, and disgusting to touch" [cited in Sir E. Dowson & V. Sheppard, Land Registration 11 (2d ed. 1956) (a mine of information on registration of title to land in all parts of the world)].

108. A list as of 1965 is given in Sir G. Curtis & T. Ruoff, Registered Conveyancing
The declaration of a compulsory area does not mean that every title in the area has to be registered forthwith; it has to be registered as and when a sale of the legal estate in fee simple or the creation or assignment on sale of certain leases takes place.

The register identifies the land by reference to a plan, names the proprietor, and sets out the more important incumbrances, so that the investigation of title consists of inspecting the entries in the register. The proprietor is given a certificate which reproduces the relevant entries in the register.

It is beyond the scope of this article to describe the system in greater detail, because the legal framework was, for the most part, established more than 25 years ago and developments in the law since then have been relatively minor. The significant development in this period has been the spread of the compulsory areas into the most populous districts, so that it is estimated that a third of the work of conveyancing in the whole country concerns registered land.

*The Rule Against Perpetuities*

Perhaps the most important doctrinal change in the law of property in the last decade has been the adoption of the "wait and see" principle in applying the rule against perpetuities to limitations in wills and settlements. As is well known, the classic formulation of the rule demanded that interests must be capable of vesting if at all within the period of the rule. The Perpetuities and Accumulations Act 1964 now provides that where a disposition would be void on the ground that it might not become vested until too remote a time, it is to be treated, until such time as it becomes established that the vesting must occur (if at all) after the end of the period, as if it were not subject to the rule. Another important section of the Act enables settlors and testators to choose a fixed period of years not exceeding 80 as the perpetuity period in lieu of the period measured by lives in being and 21 years. The Act also includes a number of more specific, but nonetheless useful, reforms de-

---
223-25 (2d ed. 1965). This is the standard textbook by the present Chief Land Registrar and his immediate predecessor.
109. The Act was passed in response to the Law Reform Committee, Fourth Report Cmd. No. 18 (1956). The writings of Professor Barton Leach of Harvard and Dr. J.H.C. Morris of Oxford in the Rule Against Perpetuities (2d ed. 1962) and elsewhere have had great influence.
110. Perpetuities and Accumulations Act 1964, c. 55, § 3.
111. Id. § 1.
signed to save draftsmen from notorious traps. This Act will doubtless save a number of gifts from destruction, but its practical effect is unlikely to be great. In the first place it does not extend the perpetuity period, and, secondly, its principal provision only applies if the disposition would otherwise be void. The Act thus helps lame dogs over stiles rather than opens up new vistas.