

THE CAMBRIDGE LAW JOURNAL 1959

THE
CAMBRIDGE LAW
JOURNAL
1959

EDITOR

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

*Published under the auspices of
The Faculty of Law, University of Cambridge*

CAMBRIDGE UNIVERSITY PRESS
CAMBRIDGE · LONDON · NEW YORK

Published by the Syndics of the Cambridge University Press
The Pitt Building, Trumpington Street, Cambridge CB2 1RP
Bentley House, 200 Euston Road, London NW1 2DB
32 East 57th Street, New York, NY 10022, USA

Originally published in 1959 by Stevens & Sons Limited
of 11 New Fetter Lane, London, Great Britain—Law Publishers
Reprinted by Cambridge University Press 1975

First printed in Great Britain by The Eastern Press Limited
London and Reading
Reprinted in Great Britain by Kingprint Limited
Richmond, Surrey

EDITORIAL COMMITTEE 1959

Professor C. J. HAMSON, M.A., LL.M., *Chairman & Treasurer*

Professor S. J. BAILEY, M.A., LL.M.

Professor E. C. S. WADE, LL.D., *Note Editor*

T. ELLIS LEWIS, PH.D., *Book Review Editor*

R. W. M. DIAS, M.A., LL.B., *Acting Book Review Editor*

J. W. A. THORNELY, M.A.

H. W. R. WADE, M.A., *Note Editor*

CONTRIBUTORS OF ARTICLES

DICKERSON, Professor Reed. Legislative Drafting in London and in Washington	49
GOODERSON, R. N. Similar Facts and <i>Actus Reus</i>	210
HALL, J. C. Gift Part of a Debt	99
HART, Professor H. L. A. Scandinavian Realism	233
JOLOWICZ, J. A. Damages and Income Tax	86
THORNE, Professor S. E. English Feudalism and Estates in Land . .	193
WEDDERBURN, K. W. Collateral Contracts	58

REPORTS AND STATUTES ANNOTATED

Law Reform Committee (Eighth Report): Cmnd. 622	28
Mental Health Act, 1959	176
Obscene Publications Act, 1959	179
Rights of Light Act, 1959	182
Street Offences Act, 1959	176
Variation of Trusts Act, 1958	166

CASES ANNOTATED

Att.-Gen. v. Smith	1	Green v. Russell	153
Baker v. T. E. Hopkins & Son, Ltd.	23	Harmer (H. R.), Ltd., <i>Re</i>	37
Baldwin & Francis, Ltd. v. Patents Appeal Tribunal	145	Hastings (No. 2), <i>Re</i>	3
Baxter v. Stockton on Tees Cor- poration	8	Hastings (No. 3), <i>Re</i>	141
Byng's Will Trusts, <i>Re</i>	167	McDougall v. Aeromarine of Emsworth, Ltd.	36
Byrne v. Kinematograph Renters Society, Ltd.	30	Matthews v. Kuwait Bechtel Corporation	163
Carapanayoti & Co., Ltd. v. E. T. Green, Ltd.	25	Midland Silicones, Ltd. v. Scrut- tons, Ltd.	150
Chapman's Settlement Trusts (No. 2), <i>Re</i>	166	Mountbatten v. Mountbatten	10
Chappell & Co., Ltd. v. Nestlé Co., Ltd.	160	National Coal Board v. Gamble	17
Churcher v. Street	44	Pyx Granite Co., Ltd. v. Ministry of Housing and Local Govern- ment	143
Coates' Trusts, <i>Re</i>	167	R. v. Campbell	142
Cornish v. Brook Green Laundry, Ltd.	171	R. v. Mackinnon	19
D. P. P. v. Nieser	14	R. v. Oakes	173
Davie v. New Merton Board Mills, Ltd.	157	Rands v. Oldroyd	5
Fowler v. Lanning	83	Royce, <i>Re</i>	169
Gillingham Bus Disaster Fund, <i>Re</i>	41	Spencer v. Macmillan's Trustees Steed's Will Trusts, <i>Re</i>	185 168
		United Railways of the Havana and Regla Warehouses, Ltd.	147
		Warner v. Sampson	47
		Woods v. Martins Bank, Ltd.	21

BOOK REVIEWS

BANKES: Teach Them to Live	136
BRIERLY: The Basis of Obligation in International Law and other papers	121
CHESHIRE AND BUTTERWORTH: The Modern Law of Real Property . . .	251
DAVID AND DE VRIES: The French Legal System	132
ELTON: Star Chamber Stories	138
FRIEDRICH: The Philosophy of Law in Historical Perspective	243
HUGHES PARRY: The Changing Conception of Contracts in English Law	137
KANTOROWICZ: The Definition of Law	254
KEITH-LUCAS: Redlich and Hirst's History of Local Government in England	185
PLUCKNETT: Early English Legal Literature	120
POTTER: Historical Introduction to English Law and Its Institutions . .	241
POTTER: Outlines of English Legal History	241
RESULTS OF PROBATION, THE: A Report of the Cambridge Department of Criminal Science	247
STEIN: Fault in the Formation of Contract in Roman Law and Scots Law	129
TURNER: Kenny's Outlines of Criminal Law	124
WU: Fountain of Justice: A Study in the Natural Law	258
YALE (ed.): Lord Nottingham's Chancery Cases, Vol. 1	127

SUBJECT INDEX 1958-59

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

This index covers the two years 1958 and 1959

<p>Administrative Law</p> <p>Alternative Remedies—Planning Acts (1959) . . . 143</p> <p>Certiorari—Declaration (1958) 135, 218</p> <p>Certiorari—Error of Law (1958) 137; (1959) 145</p> <p>†Certiorari—Future of Remedy (1958) 218</p> <p>Certiorari—Technical Matters (1959) 145</p> <p>Declaration—Certiorari (1958) 135</p> <p>Natural Justice—Trade Association (1959) 32</p> <p>Tribunals and Inquiries Act, 1958 (1958) 129</p> <p>Company Law</p> <p>Articles—Effect as Contract (1958) 148</p> <p>Minority—Oppression (1958) 152, (1959) 37</p> <p>Rule in <i>Foss v. Harbottle</i> (1958) 93</p> <p>Comparative Law</p> <p>*Contract—Roman and Scots Law (1959) 129</p> <p>*Danish Criminal Code (Waa-ben) (1958) 244</p> <p>*French Legal System (1959) 132</p> <p>†Indian Law (1958) 67, 117, 199</p> <p>*Irish Law (Donaldson) (1958) 248</p> <p>†Scandinavian Realism (1959) 233</p> <p>†Statutes—Drafting—England and U.S.A. (1959) 49</p> <p>Conflict of Laws</p> <p>Foreign Divorce—Recognition (1958) 15; (1959) 10</p> <p>Marriage by Proxy—Non-consummation (1958) . . . 146</p> <p>Substituted Debtor—Proper Law (1959) 147</p> <p>Tort Committed Abroad (1959) 163</p> <p>Winding Up Foreign Company (1958) 14</p>	<p>Constitutional Law</p> <p>Alien—Right to Enter (1958) 138</p> <p>Habeas Corpus (1959) . . . 3, 141</p> <p>Liberty of Subject—Mental Illness (1959) 176</p> <p>Liberty of Subject—Street Offences (1959) 176</p> <p>Obscene Publications Act, 1959 (1959) 179</p> <p>Parliamentary Privilege—Free Speech (1958) 134</p> <p>Telephone Tapping (1958) . . . 6</p> <p>Contract</p> <p>Banker's Duty of Care (1959) 21</p> <p>*Carriage of Goods by Sea (Carver) (1958) 246</p> <p>*Changing Conception (Hughes Parry) (1959) 137</p> <p>Charterparty—Effect on Third Party (1958) 169</p> <p>†Collateral Contracts (1959) . 58</p> <p>Condition—Description (1958) 23</p> <p>Consideration—Retail Price (1959) 160</p> <p>Corporations' Contracts—Formalities (1959) 28</p> <p>*Fault in Formation—Roman and Scots Law (1959) . . . 129</p> <p>Frustration—Suez Canal (1959) 25</p> <p>Illegality—English and Indian Law (1958) 199</p> <p>Illegality—False Statement (1958) 18</p> <p>Illegality—Foreign Law (1958) 17</p> <p>†India—Illegality (1958) . . . 199</p> <p>*Indian Contract Act (Setalvad and Gooderson) (1958) 117</p> <p>†Indian Law and English Law (1958) 67</p> <p>Misrepresentation—Rescission (1958) 166</p> <p>Natural Justice—Trade Association—Right to Hearing (1959) 80</p>
--	--

Contract—*cont.*

*Principles of Contract (Wilson) (1958) 241
 Resale Price Maintenance (1958) 163
 Restraint of Trade—Employment (1958) 20, 167
 Sale of Goods—Ship—Rejection (1959) 35
 Terminability of Indefinite Contract (1958) 20, 167
 Third Party—Benefit of Exemption Clause (1959) 150
 Third Party—Whether Bound by Charterparty (1958) 169
 Copyright—Retail Selling Price (1959) 160

Criminal Law

Corporation — Aiding and Abetting by (1959) 17
 Dangerous Driving—Automatism (1958) 142
 *Danish Criminal Code (Waaben) (1958) 244
 †Evidence—Similar Facts (1959) 210
 Evidence—Statements in Own Interest (1958) 145
 Homicide—Diminished Responsibility (1958) 140
 Jury—Praying a Tales (1958) 9
 *Kenny's Outlines (Turner) (1959) 124
 Larceny—Intent to Deprive (1958) 10
 Obscene Publications Act, 1959 (1959) 179
 *Prison Education (Bankes) (1959) 136
 *Probation—Study of Results (1959) 247
 Receiving—Felony or Misdemeanour (1959) 14
 Reckless Statement (1959) 19
 Statute — Construction — Absurdity (1959) 173
 Street Offences Act, 1959 (1959) 176

Family Law

*Children (Morrison & Banwell) (1958) 119
 Deserted Wife—Matrimonial Home (1959) 44
 *Family Law (Johnson) (1958) 243

Habeas Corpus

Appeals (1959) 141
 Successive applications (1959) 3, 141

History of Law

*Early English Legal Literature (Plucknett) (1959) 120
 †Feudalism and Estates in Land (1959) 193
 †Glanvill in Yorkshire (1958) 178
 *Greek Legal Ideas (Jones) (1958) 113
 *Introduction and Outlines (Potter) (1959) 241
 *Local Government (Redlich and Hirst) (1959) 135
 *Maitland—Selections (Delany) (1958) 255
 *Nottingham's Chancery Cases (Yale) (1959) 127
 *Philosophy of Law (1959) 243
 *Source Book (Kiralffy) (1958) 121
 *Star Chamber Stories (Elton) (1959) 138

International Law

*Basis of Obligation (Brierly) (1959) 121
 *Opinions of Law Officers (McNair) (1958) 107
 Sovereign Immunity (1958) 3

Jurisprudence

*Argument—Uses of (Toulmin) (1958) 251
 *Aspects of Justice (Allen) (1958) 234
 *Definition of Law (Kantorowicz) (1959) 254
 *Greek Legal Theory (Jones) (1958) 113
 *Jurisprudence (Dias and Hughes) (1958) 108
 *Law and Justice (Ross) (1959) 233
 *Legal Philosophy (Castberg) (1958) 252
 *Natural Law (Wu) (1959) 259
 *Philosophy of Law in Historical Perspective (Friedrich) (1959) 243
 †Scandinavian Realism (1959) 233
 *Sociological Theory (Coser) (1958) 238

Leases

Denial of Title—Forfeiture (1958) 172; 1959 47
 Equitable Tenancy—Specific Performance (1959) 171

Local Government

Highway—Local Authority's Duty (1959) 8

Local Government— <i>cont.</i>		Statute— <i>cont.</i>	
*History (Redlich and Hirst) (1959)	135	Construction—Payment—Insurance Policy (1959)	153
*Machinery of Local Government (Jackson) (1958)	236	Construction — “Reckless” (1959)	19
Pecuniary Interest—Councilor (1959)	5	Construction—“Retail Selling Price” (1959)	160
Mental Health Act, 1959 (1959)	176	Drafting—English and American (1959)	49
Personal Property		Tort	
†Gift of Part of a Debt (1959)	99	Banker—Duty of Care (1959)	21
*Sale of Goods (Atiyah) (1958)	123	†Damages—Income Tax (1959)	86, 185
Ship—Rejection by Buyer (1959)	35	Damages—South Africa (1958)	122
Planning Use of Land (1958)	135	Defamation—Fair Comment (1958)	28, 157
Alternative Remedies (1959)	143	Fatal Accident—Insurance Money (1959)	153
Enforcement Procedure (1959)	1	Highway—Local Authority’s Duty (1959)	8
Post Office		Master and Servant (1958) 27, 157; (1959)	163
Telephone Tapping (1958)	6	Duty—Contract or Tort? (1959)	163
Real Property		Indemnity to Master (1958)	157
†Accumulations—Class-Closing (1958)	39	Negligence—Defective Tool (1958) 27; (1959)	157
Adverse Possession (1958)	34	Negligence—Duty to Rescuer (1959)	23
Equitable Interest of Deserted Wife (1959)	44	Negligence—Negligent Advice (1959)	21
†Estates—Feudalism (1959)	193	Nuisance—Tree Roots (1958)	32
*Modern Real Property (Cheshire) (1959)	251	Occupiers’ Liability—Independent Contractor (1958)	160
Rights of Light Act, 1959 (1959)	182	Passing Off (1958)	162
Sale of Land—Evidence in Writing (1958)	36	Remoteness of Damage (1958)	30
Roman Law		<i>Res Ipsa Loquitur</i> (1959)	33
Animals—Liability for (1959)	189	Trespass—Negligence—Burden of Proof (1959)	33
*Contract—Roman and Scots Law (1959)	129	Trusts	
†Usucapion—Mistake (1958)	93	Charitable Trust—Disposal of Surplus (1959)	41
Sale of Goods		Employee—Accident—Insurance Money (1959)	153
Ship—Rejection by Buyer (1959)	85	Variation—Law Reform (1958)	1
Statute		Variation—Survey of Cases (1959)	166
Abuse of Procedure—Injunction (1959)	1	Wills	
Construction — “And” for “Or” (1959)	173	*Wills (Bailey) (1958)	115
Construction—“Maintenance” (1958)	174	Witness — Benefit — Solicitor Trustee (1959)	169