

# THE CAMBRIDGE LAW JOURNAL 1980

THE  
CAMBRIDGE LAW  
JOURNAL  
1980

EDITOR  
D. E. C. YALE, M.A., LL.B., F.B.A.  
Reader in English Legal History

Published for the  
Faculty of Law, University of Cambridge

CAMBRIDGE UNIVERSITY PRESS

CAMBRIDGE  
LONDON NEW YORK NEW ROCHELLE  
MELBOURNE SYDNEY

Published by the Press Syndicate of the University of Cambridge  
The Pitt Building, Trumpington Street, Cambridge CB2 1RP  
32 East 57th Street, New York, N.Y. 10022, U.S.A.

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

## EDITORIAL COMMITTEE

D. E. C. YALE, M.A., LL.B., F.B.A., *Editor*

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

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

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

D. W. BOWETT, Q.C., LL.D., *Note Editor*

J. G. COLLIER, M.A., LL.B.

R. N. GOODERSON, LL.D., *Note Editor*

B. W. NAPIER, PH.D., *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

BRADLEY, A. W. The Role of the Ombudsman in Relation to the Protection of Citizens' Rights . . . . .	304
GEVA, BENJAMIN. Absence of Consideration in the Law of Bills and Notes . . . . .	360
JAMIESON, N. J. Status to Contract—Refuted or Refined . . . . .	333
KOOPMANS, T. Retrospectivity Reconsidered . . . . .	287
MERRILLS, J. G. The International Court of Justice and the General Act of 1928 . . . . .	137
OAKLEY, A. J. Pecuniary Compensation for Failure to complete a Contract for the Sale of Land . . . . .	58
PAULSON, STANLEY L. Material and Formal Authorisation in Kelsen's Pure Theory . . . . .	172
RICKETT, C. E. F. Unincorporated Associations and their Dissolution . . . . .	88
ROGERS, W. V. H. Two Statutory Strict Liabilities . . . . .	124

## LEGISLATION ANNOTATED

Employment Protection (Consolidation) Act 1978 . . . . .	278
Rules of the Supreme Court (Writ and Appearance) 1979 . . . . .	284

## REPORTS ANNOTATED

European Convention on Product Liability . . . . .	263
Law Commission Report on Attempt . . . . .	225
Williams Committee Report on Obscenity and Film Censorship . . . . .	10

## CASES ANNOTATED

Atlantic Baron, The. <i>See</i> North Ocean Shipping Co. v. Hyundai.			41
Att.-Gen. v. British Broadcasting Corp.	229	Pao On v. Lau Yiu . . . . .	252
Att.-Gen. v. Leveller Magazine Ltd.	13	Photo Production Ltd. v. Securicor Transport Ltd. . . . .	35
Att.-Gen.'s References (Nos. 1 2 of 1979)	17	Pritchard v. Briggs . . . . .	237
Belmont Finance Corp. Ltd. v. Williams Furniture Ltd. (No. 2)		Prudential Assurance Co. Ltd. v. Newman Industries Ltd. . . . .	54
Borden (U.K.) Ltd. v. Scottish Timber Products Ltd.	276	Puttick v. Att.-Gen. . . . .	21
Burmah Oil Co. Ltd. v. Bank of England	48	Raineri v. Miles . . . . .	17
Carega Properties S.A. v. Sharratt	1	<i>Re</i> Att.-Gen.'s References (Nos. 1 and 2 of 1979) . . . . .	48
Chase Manhattan Bank v. Israel-British Bank	272	<i>Re</i> Bond Worth Ltd. . . . .	250
Construction Industry Training Board v. Leighton	278	<i>Re</i> J. S. (a minor) . . . . .	232
Duchy of Lancaster (Att.-Gen.) v. G. E. Overton (Farms) Ltd.	281	<i>Re</i> Racal Communications Ltd .	5
Hawker Siddeley Ltd. v. Rump	278	R. v. I.R.C., <i>ex parte</i> Ross- minster Ltd. . . . .	17
Howard E. Perry Ltd. v. British Railways Board	269	R. v. Walkington . . . . .	45
I.R.C. v. Pearson	246	Ross v. Caunters . . . . .	17
Joram Developments Ltd. v. Sharratt	31	Scudder v. Smith . . . . .	280
Leakey v. National Trust	259	Sec. State for Education v. Globe Elastic Thread . . . . .	234
Marsden v. Fairey Stainless Ltd.	52	South East Asia Fire Bricks Sdn Bhd v. Non-Metallic Mineral Products Manufacturing Employees Union . . . . .	27
Midland Bank v. Hett	45	Tilling v. Whiteman . . . . .	239
Miles v. Clovis	17	United States Diplomatic and Consular Staff in Tehran, Case of . . . . .	24
North Ocean Shipping Co. Ltd. v. Hyundai	40	Universal Corp. v. Five Ways Properties . . . . .	52
		Wilkins v. Cantrell and Cochran (G.B.) Ltd. . . . .	243
		Williams & Glyn's Bank Ltd. v. Boland . . . . .	256
		Woodar Investment Ltd. v. Wimpey Construction U.K. Ltd. . . . .	

## BOOK REVIEWS

ATIYAH, P. S.: <i>The Rise and Fall of Freedom of Contract</i> . . . . .	396
BAKER, J. H.: <i>An Introduction to English Legal History</i> (2nd ed.) . . . . .	197
BANKS, R. C. I. See SCAMELL, E. H.	
BEATON, C. H. See FINNIS, J. M.	
BENDITT, T. M.: <i>Law as Rule and Principle: Problems of Legal Philosophy</i> . . . . .	393
BERCUSSON, B.: <i>Fair Wages Resolutions</i> . . . . .	214
BERNARD, P. P.: <i>The Limits of Enlightenment: Joseph II and the Law</i> . . . . .	222
BROWNLIE, I.: <i>Principles of Public International Law</i> (3rd ed.) . . . . .	402
CALVERT, H.: <i>Social Security Law</i> (2nd ed.) . . . . .	211
CHESHIRE, G. C. See NORTH, P. M.	
COCKBURN, J. S.: <i>Calendar of Assize Records: Essex Indictments: Elizabeth I</i> . . . . .	385
CRANSTON, R.: <i>Consumers and the Law</i> . . . . .	389
CRAWFORD, J.: <i>The Creation of States in International Law</i> . . . . .	203
DAWSON, I. J. and PEARCE, R. A.: <i>Licences relating to the Occupation or Use of Land</i> . . . . .	219
DENNING, Lord: <i>The Discipline of Law</i> . . . . .	194
DEVLIN, Lord: <i>The Judge</i> . . . . .	371
DUGARD, J.: <i>Human Rights and the South African Legal Order</i> . . . . .	387
DUKEMINIER, J., and JOHANSON, S. M.: <i>Family Wealth Transactions</i> . . . . .	208
EL-HAKIM, A. A.: <i>The Middle Eastern States and the Law of the Sea</i> . . . . .	404
FFRENCH, H. L. See RIDER, B. A. K.	
FINNIS, J. M., and BEATON, C. H.: <i>Annual Survey of Commonwealth Law 1977</i> . . . . .	398
FLETCHER, G. P.: <i>Rethinking Criminal Law</i> . . . . .	382
FULBROOK, J.: <i>Administrative Justice and the Unemployed</i> . . . . .	214
HAKSAR, V.: <i>Equality, Liberty and Perfectionism</i> . . . . .	394
HARLAND, D. J. See TAPERELL, G. Q.	
HARRIS, J. W. <i>Law and Legal Science: An Inquiry into the Concepts Legal Rule and Legal System</i> . . . . .	406
HAZELL, R. (Ed.): <i>The Bar on Trial</i> . . . . .	195

## Book Reviews

HEWARD, E.: Lord Mansfield . . . . .	378
HOULBROOKE, R.: Church Courts and People during the English Reformation 1520-1570 . . . . .	199
HOWELL, P. A.: The Judicial Committee of the Privy Council 1833-1876 .	386
JACONELLI, J.: Enacting a Bill of Rights: The Legal Problems . . . . .	403
JOHANSON, S. M. See DUKEMINIER, J.	
JUSTINIAN, I. See KOLBERT, C. F.	
KENT, H. S.: In on the Act: Memoirs of a Lawmaker . . . . .	399
KOLBERT, C. F. (Tr.): Justinian The Digest of Roman Law: Theft, Rapine, Damage and Insult . . . . .	222
LINDLEY, Lord. See SCAMELL, E. H.	
LOWE, N. V., and WHITE, R. A. H.: Wards of Court . . . . .	210
LUCAS, J. R.: On Justice: <i>Hepi Δικαιογ</i> . . . . .	401
LUTTER, M.: Europäisches Gesellschaftsrecht: Texte und Materialen zur Rechtsangleichung nebst Einführung und Bibliographie .	405
MARKESINIS, B. S., and MUNDAY, R. J. C.: An Outline of the Law of Agency . . . . .	200
MARTIN, A.: L'estoppel en droit international public: précédé d'un aperçu de la théorie de l'estoppel en droit anglais . . . . .	202
MAYDA, J.: François Gény and Modern Jurisprudence . . . . .	213
MEEK, R. L., RAPHAEL, D. D., and STEIN, P. G. (Eds.): Adam Smith Lectures on Jurisprudence . . . . .	391
MEEKINGS, C. A. F.: The 1235 Surrey Eye: Introduction . . . . .	198
MNOOKIN, R. H.: Child, Family and State: Problems and Materials on Children and the Law . . . . .	211
MORRIS, J. H. C.: The Conflict of Laws (2nd ed.) . . . . .	383
MUNDAY, R. J. C. See MARKESINIS, B. S.	
NORTH, P. M. (Ed.): Cheshire and North Private International Law (10th ed.) . . . . .	383
OAKLEY, A. J.: Constructive Trusts . . . . .	205
PALMER, N. E.: Bailments . . . . .	378
PEARCE, R. A. See DAWSON, I. J.	
PEARL, D.: Textbook of Muslim Law . . . . .	374
PLOTKIN, I. H. See SHICK, B. S.	
RAPHAEL, D. D. See MEEK, R. L.	
RIDER, B. A. K., and FFRENCH, H. L.: The Regulation of Insider Trading . . . . .	375
ROPER, R. B. See RUOFF, T. B. F.	

*Book Reviews*

RUOFF, T. B. F., and ROPER, R. B.: <i>The Law and Practice of Registered Conveyancing</i> (4th ed.) . . . . .	379
SCAMELL, E. H., and BANKS, R. C. I.: <i>Lindley on the Law of Partnership</i> (14th ed.) . . . . .	377
SHICK, B. C., and PLOTKIN, I. H.: <i>Torrens in the United States</i> . . . . .	220
SKINNER, A. S.: <i>A System of Social Science: Papers relating to Adam Smith</i> . . . . .	391
SMITH, Adam. See MEEK, R. L.	
STATUTE LAW SOCIETY: <i>Statute Law: Renton and the Need for Reform</i>	399
STEIN, P. G. See MEEK, R. L.	
TAPERELL, G. Q., VERMEESCH, R. B., and HARLAND, D. J.: <i>Trade Practices and Consumer Protection: A Commentary on the Trade Practices Act 1974</i> . . . . .	389
THORNTON, G. C.: <i>Legislative Drafting</i> (2nd ed.) . . . . .	399
VALTICOS, N.: <i>International Labour Law</i> . . . . .	217
VERMEESCH, R. B. See TAPERELL, G. Q.	
WHITE, R. A. H. See LOWE, N. V.	
WYLIE, J. C. W.: <i>Irish Conveyancing Law</i> . . . . .	207

## SUBJECT INDEX 1980

† indicates an article

\* indicates a book review

Other references are to notes

<b>Administrative law</b>	
Errors of law . . . . .	232
Judicial review—Executive powers . . . . .	5
* Unemployment benefit . . . . .	214
* Agency—Outline of . . . . .	200
* Australia—Trade Practices Act 1974 . . . . .	389
Cambridge University Law Society . . . . .	407
* Commonwealth law—Annual Survey . . . . .	398
Company law	
* E.E.C. . . . .	405
Purchase of own shares . . . . .	276
Representative actions . . . . .	237
<i>see also</i> Partnership; Unincorporated associations	
* Comparative studies—Estoppel . . . . .	202
Conflict of laws	
Marriage of convenience —Nationality . . . . .	54
* Textbooks . . . . .	383
Constitutional law	
Bill of rights . . . . .	403
Contempt of court . . . . .	230
Crown privilege . . . . .	1
Crown proceedings . . . . .	9
* Human rights—S. Africa . . . . .	387
Nationality—Fraud . . . . .	54
Obscenity and censorship . . . . .	10
Official secrets . . . . .	13
† Ombudsman . . . . .	304
Parliamentary privilege . . . . .	13
Police powers . . . . .	5
Royal prerogative—Treasure trove . . . . .	281
* Statutes—Preparation of . . . . .	399
Contract	
Breach—Remedies . . . . .	21
Consideration . . . . .	42, *195, †360
† Damages and rescission . . . . .	58
† Damages in lieu of specific performance . . . . .	74
Duress . . . . .	40
Contract— <i>cont.</i>	
* Freedom of contract . . . . .	396
Fundamental breach . . . . .	252
Privity . . . . .	258
Rectification . . . . .	278
Repudiation and rescission . . . . .	256
Conveyancing <i>see</i> Sale of land	
Courts	
Contempt of “inferior court” . . . . .	229
* Ecclesiastical courts—History . . . . .	199
* Judicial Committee of Privy Council—History . . . . .	386
Jurisdiction — Industrial tribunals . . . . .	278
Preclusion of appeals to . . . . .	232
<i>see also</i> Judges	
Criminal law	
Attempt—Reform proposals . . . . .	225
* Jurisprudence of . . . . .	382
Theft—Intention to steal . . . . .	17
* Criminology—Sentencing . . . . .	371
* Ecclesiastical law—History of courts . . . . .	199
English Legal System <i>see</i> Courts; Legislation; Procedure	
Equity	
Constructive trusts . . . . .	*205, 272
Powers—Interest in possession . . . . .	246
Tracing — Romalpa clauses . . . . .	48
† Unincorporated associations . . . . .	88
* Wards of court . . . . .	210
* Estoppel—French view . . . . .	202
E.E.C. law	
* Company law . . . . .	405
Product Liability . . . . .	263
† Retrospectivity of legislation . . . . .	287
Evidence	
Crown privilege . . . . .	1
Paternity—Blood tests . . . . .	250

## Subject Index 1980

Family law			
* Children . . . . .	211	Landlord and tenant—Rent	
“ Family ” in Rent Act—		Act . . . . .	27, 31
Meaning . . . . .	31	Law reform	
* Family wealth trans-		Attempt in criminal law .	225
actions . . . . .	208	No judicial review of .	284
Marriage of convenience		Pornography . . . . .	10
—Fraud . . . . .	54	Product liability . . . . .	263
Paternity—Evidence .	250	Legal history	
* Wards of court . . . .	210	* Assize records . . . . .	385
Wife’s occupation of		* Church courts 1520–70 .	199
home—Registered land	243	* Eyres in 13th century .	198
* Germany—Legal history—		* Freedom of contract .	396
Joseph II . . . . .	222	* German—Joseph II .	222
International law		* Introductory textbook .	197
* Creation of states .	203	* Lectures of Adam Smith	391
Diplomatic immunity—		† Maine, Sir Henry—Evolu-	
Iranian hostages . . .	239	tionary theory . . . . .	333
* Estoppel . . . . .	202	* Mansfield, Lord . . . . .	373
† International Court and		* Privy Council—Judicial	
General Act of 1928 .	137	Committee . . . . .	386
* Labour law . . . . .	217	Legal profession	
* Law of the sea—Middle		* English Bar criticised .	195
Eastern states . . . .	404	Negligence by solicitors .	45
* Principles of . . . . .	402	Legislation	
Judges		* Bill of rights—Legal	
* Lord Denning . . . .	194	problems . . . . .	403
* Role of . . . . .	371	* Drafting . . . . .	399
Jurisprudence		† Retrospectivity . . . . .	287
* Criminal law . . . .	382	Mercantile law	
* Freedom of contract .	396	* Australian — Consumer	
* Gény, François . . .	213	protection . . . . .	389
* Justice . . . . .	401	† Bills and notes—Absence	
† Kelsen, Hans — Pure		of consideration . . . .	360
Theory . . . . .	172	* Consumer protection .	389
* Law and legal science .	406	* Muslim law—Textbook .	374
* Law as rule and principle	393	* Partnership—Textbook .	377
* Liberty and equality .	394	Personal property	
† Ombudsman and “rights”	304	* Bailment . . . . .	378
* Precedent . . . . .	195	Interference with goods	
* Smith, Adam . . . .	391	by detention . . . . .	269
† Status to contract .	333	Specificatio — Romalpa	
Labour law		clauses . . . . .	48
* Fair wages . . . . .	214	Procedure	
Industrial tribunals—		Class actions . . . . .	237
Jurisdiction . . . . .	278	Original writs . . . . .	284
* International law . . .	217	Restitution—Money paid by	
* Unemployed . . . . .	214	mistake . . . . .	272
Unfair dismissal—Strikes	52	Revenue law—C.T.T.—Inter-	
Land law		est in possession . . . . .	246
Joint ownership—Lease .	27	* Roman law—Translations	
* Licences . . . . .	219	from Digest . . . . .	222
Pre-emption as interest		Sale of land	
in land . . . . .	35	Damages for non-com-	
Registered land—Wife’s		pletion . . . . .	21, † 58
occupation . . . . .	243	Deposit—Repayment .	24
* Registered land—Torrens		* Irish conveyancing . . . .	207
in U.S.A. . . . .	220		
see also Sale of land			

## *Subject Index 1980*

Sale of land— <i>cont.</i>	
* Registered land—Law and practice . . . . .	379
Repudiation and rescission . . . . .	256
Social security law . . . . .	
* Textbook . . . . .	211
* Unemployed . . . . .	214
* South Africa—Human rights . . . . .	387
Torts	
Economic loss . . . . .	45
† Misrepresentation—Damages . . . . .	77
Negligence—Solicitors . . . . .	45
Torts— <i>cont.</i>	
Nuisance—Subsidence of land . . . . .	259
Product liability—E.E.C. . . . .	263
† Statutory strict liability . . . . .	124
Wrongful interference with goods by detention . . . . .	269
† Unincorporated associations—Dissolution . . . . .	88
U.S.A.	
Constitutional law . . . . .	179
* Torrens system in . . . . .	220
* Wills—Construction . . . . .	194

NOTES FOR CONTRIBUTORS

Communications concerning articles should be addressed to the Editor, Mr D. E. C. Yale, Christ's College, Cambridge CB2 3BU; those concerning notes to Mr R. N. Gooderson, St Catharine's College, Cambridge CB2 1RL.

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 1980

## CASE AND COMMENT

Criminal Law—Attempts	225	Contract—Repudiation	256
Freedom of Speech—Contempt	229	Tort—Nuisance	259
Judicial Review—Error of Law	232	E.E.C.—Product Liability	263
Class Actions—Damages	237	Tort—Interference with Goods	269
The Iranian Hostages	239	Restitution—Payment by Mistake	272
Registered Land—Wife's Occupation	243	Company Law—Conspiracy	276
Capital Transfer Tax—Powers	246	Labour Law—Tribunals	278
Family Law—Paternity	250	Royal Prerogative—Treasure Trove	281
Contract—Fundamental Breach	252	Abolition of Original Writs	284

## ARTICLES

Retrospectivity Reconsidered: T. KOOPMANS	287
The Role of the Ombudsman in Relation to the Protection of Citizens' Rights: A. W. BRADLEY	304
Status to Contract—Refuted or Refined: N. J. JAMIESON	333
Absence of Consideration in the Law of Bills and Notes: BENJAMIN GEVA	360

## BOOK REVIEWS

DEVLIN: The Judge	371	MEEK <i>et al.</i> (Eds): Adam Smith Lectures on Jurisprudence	391
HEWARD: Lord Mansfield	373	SKINNER: System of Social Science	391
PEARL: Textbook of Muslim Law	374	BENDITT: Law as Rule and Principle	393
RIDER & FFRENCH: Regulation of Insider Trading	375	HAKSAR: Equality, Liberty and Perfectionism	394
SCAMELL & BANKS (Eds): Lindley on Partnership (14th ed.)	377	ATIYAH: Rise and Fall of Freedom of Contract	396
PALMER: Bailments	378	FINNIS & BEATON (Eds): Annual Survey of Commonwealth Law 1977	398
RUOFF & ROPER: Registered Conveyancing (4th ed.)	379	KENT: In on the Act	399
FLETCHER: Rethinking Criminal Law	382	STATUTE LAW SOCIETY: Renton and the Need for Reform	399
MORRIS: Conflict of Laws (2nd ed.)	383	THORNTON: Legislative Drafting (2nd ed.)	399
NORTH: Cheshire & North Private International Law (10th ed.)	383	LUCAS: On Justice	401
COCKBURN: Essex Indictments	385	BROWNIE: Public International Law (3rd ed.)	402
HOWELL: Judicial Committee of the Privy Council 1833–76	386	JACONELLI: Enacting a Bill of Rights	403
DUGARD: Human Rights and the S. African Legal Order	387	EL-HAKIM: Middle Eastern States and the Law of the Sea	404
TAPERELL <i>et al.</i> (Eds): Trade Practices and Consumer Protection	389	LUTTER: Europäisches Gesellschaftsrecht	405
CRANSTON: Consumers and the Law	389	HARRIS: Law and Legal Science	406

Cambridge University Law Society 407

CAMBRIDGE UNIVERSITY PRESS