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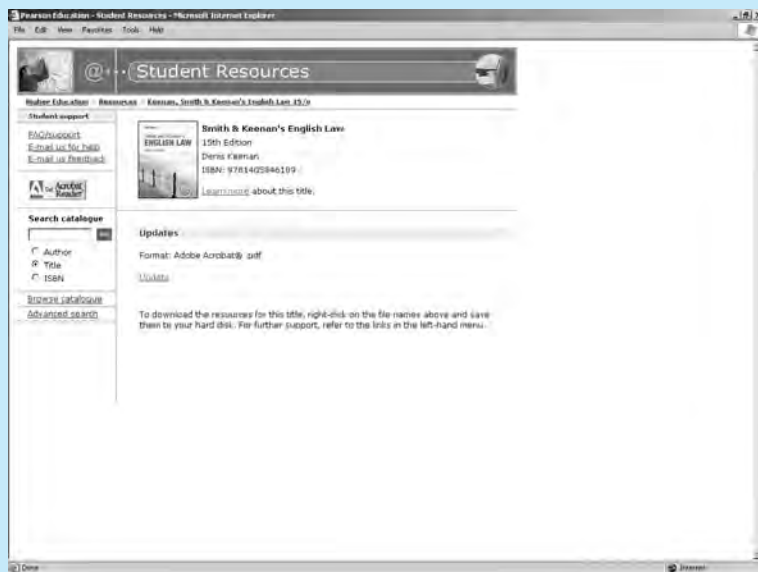
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Fifteenth Edition

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ENGLISH LAW
Text and Cases

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PREFACE

The major feature of this fifteenth edition is the considerable amount of updating of the text required since the last edition was published in 2004. The volume of law that emanates from Parliament in terms of statutes and Whitehall in terms of ministerial orders and the courts in terms of rulings in case law is enormous. A particular feature this time has been the full inclusion of the Constitutional Reform Act 2005 which has made the biggest and most far-reaching changes in the system of courts since Victorian times. Nevertheless my publishers and I have tried to keep the book very broadly within the page limits of the last edition. In regard to the problems of legal change I can only repeat what I have said in previous prefaces that it serves to accentuate the feeling always present in those who write legal textbooks and those who lecture in law and their students that they may diligently pursue but seemingly never overtake the fleeting vision of the Law!

What has this publication done to alleviate the problem?

- First there has been rigorous updating of the text so that the relevant law keeps us up to date to the end of February 2007.
- Secondly it will be noticed that as the text proceeds there is reference usually under a separate heading to reform. Here is set out reforms imminent in say the next 12 to 18 months.
- Finally this edition will, as has been the case with previous editions, receive updating three times a year through the companion website, details of which appear in the preliminary pages of the text.

A further distinctive feature of the book is to be found in the extensive cases and materials section which forms Part 6 and we have a new title 'English Law – Text and Cases'. Why is such an extensive treatment of case law included? The reasons are as follows:

- Long experience as a lecturer in both the public and private sectors of professional education led me to believe that other texts might be either too sketchy or too academic in their coverage of cases for the average student at the foundation stage of study. Far too often a case summary describes A selling goods to B, i.e. undefined persons in an undefined place at an undefined time (since the date of the case does not necessarily reflect the date of the facts which gave rise to it). Such summaries are often uninteresting for the reader and difficult to remember because there is no detailed description of the facts which may impress themselves upon the memory. This book therefore gives students ready access to the cases themselves.
- It was usual at one time for students to buy a leading text and a separate casebook. However, this has become an expensive exercise for students, particularly at foundation level where a number of legal topics must be studied at least in terms of the basic principles. This book includes both principles and cases.
- The case summaries in this text are detailed and the relevant circumstances identified and described, verbatim extracts from judgements often being given.
- The headnote to a case or group of connected cases also allows the student to study the Cases and Materials section separately from the main text and, in particular, to revise from this section when the text has been mastered.
- The extended case summaries are particularly useful where the teaching institution does not have an extensive law library or where there is great pressure upon the library

facilities. However, to assist in the use of a law library, the following page lists the law report abbreviations used in Part 6. Furthermore, an extended summary of a case for the student can represent a permissible economy of time, eliminating immaterial facts in the longer full report. It should be remembered that, particularly in the common law subjects, the cases are the authority for the points made in answers to examination questions and students should try to have an appreciation at least of the major cases.

- The Cases and Materials section assists the lecturer by removing the chore of producing case summaries of the more extended kind, allowing the lecturer to fulfil the much more useful role of giving comment, discussion and criticism of a case.

An additional point is worth mentioning in regard to the Appendix. It is not just an appendix of cases but also of materials. It will be noticed that many of the more discursive aspects of a legal topic are contained in the materials surrounding the reported case. Some may ask why these are not in the text. The reason is that throughout its life the text has been used on a wide variety of courses pitched at different levels and with slightly differing requirements. To facilitate the suitability of the book for this role the text is written in terms of the basic law of the topic. This may be enough in some courses if the basic cases are read and studied. In other courses a little more strength may be required and where this is so attention can be directed as required to the material in the Appendix that pushes out the boundaries of knowledge a little more.

Finally I would like to thank Zoë Botterill, Acquisitions Editor; my Editor Elizabeth Rix and Cheryl Cheasley, Editorial Assistant for their help. I need a lot of it! I also thank those who set, printed and bound the book. A text with so many inevitable changes is not that easy to cope with.

We have once more had the invaluable assistance of my wife Mary in terms of the organisation of the sources of reference of new material for inclusion. No lawyer can survive without this service.

Naturally I take responsibility for any errors or omissions.

Denis Keenan
Maenan
1 March 2007

Courses on which this book is known to be used

AAT	CIMA Foundation
ACCA Foundation Stage	Edexcel Foundation Stage
AS and A2 Level Law	GCSE
BA Accounting and Finance	ICoMA
BA Business Studies	ICSA
BA European Business	ILEX
BA Estate Management	The Chartered Institute of Housing
BA Financial Services	CIPS
	LLB (English Legal System)

THE BOOK AT A GLANCE

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20 The law of torts: general principles – including parties, vicarious liability and general defences	21 Specific torts – including torts against the person and goods, together with nuisance, negligence and defamation	22 The law of property – including real and personal property generally, landlord and tenant, transfer of land and securities	23 Criminal law: general principles – including strict offences and corporate liability	24 Specific offences – including murder, manslaughter, wounding, and sexual offences	25 Age and responsibility – general defences – including insanity, automatism and self-defence

Part 6 CASES AND MATERIALS

LAW REPORT ABBREVIATIONS

The following table sets out the abbreviations used when citing the various series of certain Law Reports which are in common use, together with the periods over which they extend.

AC	Law Reports, Appeal Cases 1891–(current).
ATC	Annotated Tax Cases 1922–1975.
All ER	All England Law Reports 1936–(current).
All ER (Comm)	All England Law Reports (Commercial Cases) (current).
All ER (D)	All England Law Reports (Direct) (online) (current).
All ER Rep	All England Law Reports Reprint, 36 vols 1558–1935.
App Cas	Law Reports, Appeal Cases, 15 vols 1875–1890.
BCLC	Butterworths Company Law Cases 1983–(current).
B & CR	Reports of Bankruptcy and Companies Winding-up Cases 1918–(current).
Ch	Law Reports Chancery Division 1891–(current).
CLY	Current Law Yearbook 1947–(current).
CMLR	Common Market Law Reports 1962–(current).
Com Cas	Commercial Cases 1895–1941.
Cr App R	Cohen’s Criminal Appeal Reports 1908–(current).
Crim LR	Criminal Law Review 1954–(current).
EHRR	European Human Rights Reports (current).
Fam	Law Reports Family Division 1972–(current).
ICR	Industrial Court Reports 1972–1974; Industrial Cases Reports 1974–(current).
IRLB	Industrial Relations Law Bulletin 1993–(current).
IRLR	Industrial Relations Law Reports 1971–(current).
ITR	Reports of decisions of the Industrial Tribunals 1966–(current).
KB	Law Reports, King’s Bench Division 1901–1952.
LGR	Local Government Reports 1902–(current).
LRRP	Law Reports Restrictive Practices 1957–(current).
Lloyd LR or (from 1951) Lloyd’s Rep	Lloyd’s List Law Reports 1919–(current).
NLJ	New Law Journal.
P	Law Reports, Probate, Divorce and Admiralty Division 1891–1971.
P & CR	Planning and Compensation Reports 1949–(current).
PIQR	Personal Injuries and Quantum Reports.
QB	Law Reports Queen’s Bench Division 1891–1901; 1953–(current).
Sol Jo	Solicitors’ Journal 1856–(current).
STC	Simon’s Tax Cases 1973–(current).
Tax Cas (or TC)	Tax Cases 1875–(current).
WLR	Weekly Law Reports 1953–(current).

TABLE OF CASES

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Part 1

THE ENGLISH LEGAL SYSTEM



THE NATURE AND DEVELOPMENT OF ENGLISH LAW

Classification of English law

The following are the main classifications of English law with which this book deals. The areas of law mentioned will be considered in more detail as relevant in the chapters which follow. They are given here merely as an overview of what is to come.

Private and public law

Private law is concerned with the legal relationships of ordinary persons in everyday transactions. It is also concerned with the legal position of corporate bodies and associations of persons the first of which are given a special form of legal personality. Private law includes contract and commercial law, the law of tort, family law (e.g. divorce, adoption and guardianship), trusts and the law of property which involves a consideration of the rights which can exist in property and how property can be transferred from one person to another.

Public law is concerned with the constitution and functions of the many different kinds of governmental organisations, including local authorities, such as county councils, and their legal relationship with the citizen and each other. These relationships form the subject matter of constitutional and administrative law. Public law is also concerned with crime which involves the state's relationship with the power of control over the individual.

There is also a division into *criminal and civil law*. Criminal law is concerned with legal rules which provide that certain forms of conduct shall attract punishment by the state, e.g. homicide and theft. Civil law includes the whole of private law and all divisions of public law except criminal law.

In order to understand the various branches of substantive private law which are considered in detail later, it is necessary to be able in particular to distinguish the following:

Contract

A contract is an agreement made between two or more persons which is intended to have legal consequences. Thus, if there is a breach of contract, the parties can go to court and obtain a remedy. We shall see in the chapters on contract which agreements the courts will enforce, under what conditions they are enforceable, and what remedies are available to injured parties. It should be noted that the parties to a contract in general enter voluntarily into their obligations; the function of the law is merely to act in an impartial way in order to settle any disputes which may arise between the parties to the contract.