Contents

The Authors	11
Acknowledgements	12
Foreword	15
Table of Cases	17
Table of Legislation	25
Glossary	33
Introduction	37
CHAPTER 1 ESTATES AND INTERESTS IN LAND	41
1.1 Introduction	41
1.2 Tenure	41
1.3 The Doctrine of Estates	43
1.4 Types of Estate	44
A. Freehold Estates	45
B. Words of Limitation	50
C. Leasehold Estates	54
1.5 Future Interests	54
A. Reversions	54
B. Remainders	55
1.6 Conditional and Modified Estates	55
A. Determinable Fee	55
B. Conditional Fee	56
1.7 Conclusion	61
CHAPTER 2 THE EXTENT OF PROPERTY	62
2.1 Introduction	62
2.2 Common Law Maxims	64
A. Ciuis est solum eius est usqe ad coleum et ad infernos	64
B. Quicquid planatur solo, solo cedit	67
2.3 Fixtures and Fittings: The Modern Context	70
A. Expanding the Definition	72
2.4 Finders Keepers?	73
A. The True Owner v The Finder	74
B. Finder v Landowner	74

THE LAW OF PROPERTY IN NORTHERN IRELAND

80
80
81
81
81
81
82
82
82
83
83
83
84
85
86
87
87
88
90
90
91
92
93
93
94
95
95
95
96
96
100
101
102
103

CONTENTS

CHAPTER 5 LAND LAW IN HISTORICAL CONTEXT	104
5.1 Introduction	104
5.2 Medieval Land Law	105
5.3 The 17th–18th Centuries	106
5.4 The 19th Century	114
5.5 The 1925 Legislation	115
5.6 Legal Estates and the Significance of Equity	117
5.7 Overreaching of Family Interests	118
CHAPTER 6 ADVERSE POSSESSION: THE COMMON LAW DOCTRIN	E 120
6.1 Introduction	120
6.2 General Principles of Adverse Possession	122
A. Dispossession	122
B. Possession	123
C. Possession Must Be Adverse	131
6.3 The Effect of the Limitation Order	133
6.4 Stopping Time Running	133
A. Granting Permission	133
B. Acknowledging Title	134
C. Interrupted Possession	135
6.5 Registered Land	135
6.6 Adverse Possession of Leasehold Land	136
CHAPTER 7 ADVERSE POSSESSION: CHALLENGE AND REFORM	140
7.1 Introduction	140
A. What Rights Were Alleged to Have Been Breached?	145
7.2 The Land Registration Act 2002	150
A. Estoppel	152
B. Some Other Rights to the Land	152
C. Reasonable Mistake as to Boundary	153
7.3 Reform in Northern Ireland?	154
CHAPTER 8 LEASES	155
8.1 Introduction	155
8.2 Formalities for the Creation of a Lease	156
8.3 Characteristics of a Lease	157

THE LAW OF PROPERTY IN NORTHERN IRELAND

A. Term Certain	158
B. There is a Reversion to the Landlord	159
C. A Rent Service is Not Required	160
D. Exclusive Possession	161
E. Irrespective of the Intention of the Parties	162
8.4 Exceptions	165
A. Trespass	165
B. Sham	165
C. Purchasers in Possession Prior to Completion	165
D. Service Occupiers	166
E. Charity	166
F. Statutory Duties	166
8.5 The Impact of Bruton v London and Quadrant Housing Trust	167
8.6 Types of Tenancy	168
A. Legal Leases	168
B. Equitable Leases	169
C. Joint Tenancies	170
8.7 Leasehold Covenants	174
A. Position in England and Wales	176
B. Sub Letting	178
C. Remedies for Breach of Covenants	178
8.8 Termination of Leases	179
A. Expiration of a Fixed Term Lease	179
B. Notice to Quit	180
C. Surrender	180
D. Forfeiture	181
CHAPTER 9 LICENCES AND PROPRIETARY ESTOPPEL	183
9.1 Introduction	183
9.2 Categories of Licence	184
A. Bare Licence	184
B. Licence Coupled With an Interest	185
C. Contractual Licences	186
D. Proprietary Estoppel	191
E. Effect of Proprietary Estoppel	195
9.3 Conacre and Agistment	198
9.4 Conclusion	198

CONTENTS

CHAPTER 10 FREEHOLD COVENANTS	199
10.1 Introduction	199
10.2 The Nature of Covenants	201
10.3 Property (NI) Order 1997	202
10.4 The Common Law Position	204
A. The Running of the Benefit	204
B. The Running of the Burden	206
10.5 The Equitable Rules	208
A. The Running of the Burden in Equity	208
B. The Running of the Benefit in Equity	210
10.6 Housing Developments	213
A. Title must derive from a common owner	213
B. Estate must be subject to common restrictions	214
C. Restrictions must be intended to benefit all plots	214
D. Reciprocity	214
E. Scope of covenant must be clearly defined	214
10.7 Discharge and Modification of Restrictive Covenants	215
A. Common ownership	218
B. Agreement between parties	219
C. No ongoing benefit	219
10.8 Remedies for Breach of Covenant	219
10.9 Apartment Living and the Problem of Collective Responsibility	219
10.10 Proposals for Reform?	221
CHAPTER 11 INCORPOREAL HEREDITAMENTS	223
11.1 Introduction	223
11.2 The Definition of an Easement	224
A. There must be both a dominant and a servient tenement	225
B. Accommodation of the dominant tenement	226
C. Ownership or occupation of the dominant and servient tenements	
must be by different persons	228
D. Any right claimed must be capable of forming the subject matter	
of a grant	228
11.3 The Creation of Easements	231
A. By statute	232
B. By Deed	232
C. By Implication	233

THE LAW OF PROPERTY IN NORTHERN IRELAND

D. By Prescription	238
11.4 Easements Arising in Equity	242
11.5 Discharge and Modification of Easements	243
A. Statute	243
B. Release	243
C. Abandonment	243
D. Unity of possession and title	243
11.6 Profits à Prendre	244
CHAPTER 12 CO-OWNERSHIP	245
12.1 Introduction	245
12.2 Forms of Co-ownership	246
12.3 Joint Tenancy and Tenancy In Common	246
A. Features of Joint Tenancy	246
B. Tenancy in Common	249
C. Comparative Advantages and Disadvantages	249
D. Uncertainty: In Common, or Joint Tenancy?	251
12.4 Who owns the Family Home?	255
A. Recent Developments - Quantifying Beneficial Ownership	257
12.5 Severance	259
A. Severance at Common Law	260
B. Severance in Equity	262
C. Effect of Severance	263
12.6 Determination of Joint Tenancies and Tenancies in Common	264
A. Sale	264
B. Partition	264
C. Union in a Sole Tenant	265
CHAPTER 13 MORTGAGES	266
13.1 Introduction	266
13.2 What is a Mortgage?	266
13.3 Terminology	267
13.4 Types of Mortgage Facility	268
A. Repayment Loan	268
B. Interest Only Loan	268
13.5 The Creation of Mortgages in Northern Ireland	269
A. Formalities	270

CONTENTS

B. Legal Mortgages of Unregistered Land	271
C. Legal Mortgages of Registered Land	272
D. Equitable Mortgages	273
13.6 Rights of the Mortgagor	274
A. Rule Against Irredeemability	275
B. Clogs and Fetters	275
C. Undue Influence	275
13.7 Rights of the Mortgagee	277
A. Enforcement of Security in Northern Irish Law	278
13.8 The Administration of Justice Acts 1970 & 1973 and the Powers of	
the Court	283
A. Proposals to Sell the Mortgaged Property	286
13.9 Human Rights and Mortgages	288
CHAPTER 14 THE LAW RELATING TO WILLS	289
14.1 Introduction	289
14.2 Formalities	290
14.3 Testamentary Capacity	292
14.4 Knowledge and Approval	294
14.5 Revocation and Alteration of Wills	296
14.6 Ademption and Lapse	297
14.7 Construction of Wills	297
CHAPTER 15 INTESTACY AND THE INHERITANCE (PROVISION	
FOR FAMILY & DEPENDENTS) (NORTHERN IRELAND) ORDER 1979	300
15.1 Introduction	300
15.2 Intestate Distribution	301
A. Spouses or Civil Partners	301
B. Children	302
C. Other Relatives	303
15.3 The Inheritance (Provision for Family & Dependents) (Northern Ireland	d)
Order 1979	304
A. Spouses and Civil Partners	306
B. Children of the Deceased	307
C. Dependants	308
D. Property Held on Joint Tenancies and Prior Dispositions	308
Index	311