



The Law Commission

(LAW COM. No. 185)

FOURTH PROGRAMME OF LAW REFORM

*Presented to Parliament by the Lord High Chancellor
by Command of Her Majesty
September 1989*

LONDON
HER MAJESTY'S STATIONERY OFFICE

£4.60 net

The Law Commission was set up by section 1 of the Law Commissions Act 1965 for the purpose of promoting the reform of the law.

The Commissioners are—

The Honourable Mr. Justice Beldam, *Chairman*

Mr. Trevor M. Aldridge

Mr. Jack Beatson

Mr. Richard Buxton, Q.C.

Professor Brenda Hoggett, Q.C.

The Secretary of the Law Commission is Mr. Michael Collon and its offices are at Conquest House, 37–38 John Street, Theobalds Road, London WC1N 2BQ.

FOURTH PROGRAMME OF LAW REFORM

CONTENTS

	<i>Page</i>
INTRODUCTION	1
FOURTH PROGRAMME OF LAW REFORM: PROGRAMME ITEMS	
Item 1: The Law of Contract	3
Item 2: Civil Liability for Dangerous Things and Activities	3
Item 3: The Law of Landlord and Tenant	4
Item 4: Transfer of Land	4
Item 5: Criminal Law	4
Item 6: Family Law	5
Item 7: Private International Law	5
Item 8: The Law of Trusts	6
Item 9: Mentally Incapacitated Adults	6
APPENDIX: Work under the First Three Programmes	7

THE LAW COMMISSION

FOURTH PROGRAMME OF LAW REFORM

*To the Right Honourable the Lord Mackay of Clashfern,
Lord High Chancellor of Great Britain*

INTRODUCTION

1. Section 3(1)(b) of the Law Commissions Act 1965 requires the Law Commission from time to time to prepare and submit to the Lord Chancellor programmes for the examination of different branches of the law with a view to reform. The Law Commission may recommend that, in a particular case, some other agency should carry out the examination. If the Lord Chancellor approves the programme he lays it before Parliament pursuant to section 3(2) of the Act.

2. Work on items of law reform contained in such programmes constitutes only part of the work undertaken by the Law Commission. Others of its functions defined in section 3 of the Act include work on matters referred to it by the Lord Chancellor, other Ministers, or other departments or bodies; advice to Ministers and departments; the consolidation of statute law; and statute law revision, which has as its principal aim the repeal of obsolete enactments. Nevertheless work on programme items has from the start occupied a major part of the Commission's time and resources, and the number of reports resulting from this work is greater than the total of reports on references, consolidation and statute law revision.

3. To date the Commission has prepared three programmes of law reform. The First Programme¹ consisted of 17 items; the Second Programme² included three further items, one of which extended two items in the First Programme; and the Third Programme,³ in 1973, consisted of a single item. No further programmes have since been submitted.

4. We now feel it appropriate that the Commission should examine two further items: the **Law of Trusts**, and **Mentally Incapacitated Adults**.

5. At the same time the Commission feels that the Fourth Programme should not only supplement the first three programmes, but should consolidate them. Of the 21 programme items agreed by your predecessors, 20 were agreed in the first three years of the Commission's existence, and Item XXI as long ago as 1973. Work on nine of the 21 items has been completed, and a further four items have been merged with other items, so that they no longer require separate consideration. No further work is at present contemplated on Item XVII (Interpretation of Statutes). This leaves only seven of the original 21 items on which work is at present in progress or contemplated. These have been re-numbered 1 to 7 in the attached Programme. Item 8 is the **Law of Trusts**, and Item 9 **Mentally Incapacitated Adults**.

6. Our Twenty-Third Annual Report,⁴ which we submitted to you on 3 February 1989, includes in Appendix 4 a list of all the working papers and reports submitted by the Commission since it was established in 1965. These publications are however listed in chronological order, and of course include reports derived from specific references under section 3(1)(e) of the Law Commissions Act, reports on Statute Law Revision, and reports on Consolidation Bills. We have felt that it would be useful to append to this Programme a summary of the work which has been undertaken under each of the 21 programme items, whether or not that work has already been completed.

(Signed) ROY BELDAM, *Chairman*
TREVOR M. ALDRIDGE
JACK BEATSON
RICHARD BUXTON
BRENDA HOGGETT

MICHAEL COLLON, *Secretary*
28 July 1989

¹ (1965) Law Com. No. 1.

² (1968) Law Com. No. 14.

³ (1973) Law Com. No. 54.

⁴ (1989) Law Com. No. 176.

FOURTH PROGRAMME OF LAW REFORM: PROGRAMME ITEMS

ITEM 1: THE LAW OF CONTRACT

(Item I of the First Programme)

Recommended: that the law of contract be examined.

Examining agency: the Commission.

Item I of the First Programme recommended that the law of contract be examined *with a view to codification*. With the approval of the Lord Chancellor, announced in the House of Lords on 9 July 1973,¹ the Commission suspended work on production of a contract code, and decided to publish a series of working papers on particular aspects of the English law of contract.

The Commission has published a Working Paper on Rights to Goods in Bulk,² a project described in more detail in its Twenty-Third Annual Report.³

In the light of recent conflicting decisions of the courts the Commission has undertaken a preliminary study of whether, and if so to what extent, Contributory Negligence should be a defence to an action for breach of contract. This has shown that the law is in need of clarification and simplification.

ITEM 2: CIVIL LIABILITY FOR DANGEROUS THINGS AND ACTIVITIES

(Item IV of the First Programme)

Recommended: that an examination be made of the basic principles of liability applicable to dangerous things and activities, with a view to clarifying and harmonising and, so far as may be expedient, unifying the principles in question.

Examining agency: the Commission.

A study recently conducted by the Commission's Statute Law Revision team of the provisions of the Fires Prevention (Metropolis) Act 1774, and the work of the Commission on the law of transfer of land⁴ has led to further consideration of the basic principles underlying strict liability for the escape of fire. As a result the Commission has concluded that a further study should be undertaken of the principles underlying strict liability as a whole, with a view to modernising and simplifying those principles.

¹ *Hansard* (H.L.) Vol. 344, cols. 624–5.

² (1989) Working Paper No. 112.

³ (1989) Law Com. No. 176, para. 2.4.

⁴ (1988) Working Paper No. 109 on Passing of Risk from Vendor to Purchaser.

ITEM 3: THE LAW OF LANDLORD AND TENANT

(Item VIII of the First Programme)

Recommended:

- (a) that an examination be made of the law on waste and distress for rent;
- (b) that an examination be made of the basic law of landlord and tenant with a view to its modernisation and simplification and the codification of such parts as may appear appropriate.

Examining agency: the Commission.

The Commission is already working on Distress for Rent, Forfeiture, and Part II of the Landlord and Tenant Act 1954,⁵ and has also begun examining the state of the law relating to Repairing Obligations.

ITEM 4: TRANSFER OF LAND

(Item IX of the First Programme)

Recommended: that an examination be made of the system of conveying land with a view to its modernisation and simplification.

Examining agency: the Commission.

Item IX of the First Programme originally applied only to unregistered land, but in February 1966 the Lord Chancellor approved a recommendation that this Item "should be widened to cover the whole law relating to transfer of both registered and unregistered land".⁶

Under this Item the Commission is currently examining Overreaching, Land Mortgages, Implied Covenants for Title, Passing of Risk from Vendor to Purchaser and Obsolete Restrictive Covenants.⁷

ITEM 5: CRIMINAL LAW

(Item XVIII of the Second Programme)

Recommended: that a comprehensive examination be made of the criminal law, extending to general principles and specific topics, including bigamy, offences against the marriage law, and extra-territorial jurisdiction in criminal offences.

Examining agency: the Commission.

The topics listed are the only ones remaining out of those originally specified as part of the "first step" in the implementation of Item XVIII of the Second Programme. This Item is however the basis for work on Computer Misuse and Conspiracy to Defraud.⁸ It will also be the basis for the project on Aiding and Encouraging Crime, on which work will shortly begin.

⁵ See the Twenty-Third Annual Report, (1989) Law Com. No. 176, paras. 2.48, 2.49 and 2.52.

⁶ See the First Annual Report, (1966) Law Com. No. 4, para. 70.

⁷ More fully described in the Twenty-Third Annual Report, (1989) Law Com. No. 176, paras. 2.33 to 2.37.

⁸ See the Twenty-Third Annual Report, (1989) Law Com. No. 176, paras. 2.7 and 2.9.

ITEM 6: FAMILY LAW

(Item XIX of the Second Programme)

Recommended: that a comprehensive examination of family law be undertaken with a view to its systematic reform and eventual codification.

Examining agency: the Commission.

The Commission is at present working on a review of the Ground for Divorce, on Rights of Occupation of the Matrimonial Home and Domestic Violence, and on the Distribution of Property and Intestacy.⁹ Consideration is being given to what further work is needed on Wardship and on other aspects of substantive family law, jurisdiction and procedure.

ITEM 7: PRIVATE INTERNATIONAL LAW

(Item XXI of the Third Programme)

Recommended: that, in co-operation with the Scottish Law Commission, the Law Commission take under review when considered appropriate rules of private international law relating to obligations, property, family relationships and to any other matter which may be the subject of negotiations or agreements between Member States of the European Economic Community or of The Hague Conference on Private International Law.

Examining agency: the Law Commission, in co-operation with the Scottish Law Commission, acting through a joint Working Party.

Work began some years ago on Choice of Law in Tort and Delict. It is planned shortly to reconstitute a joint Working Party to complete examination of the topic.

⁹ See the Twenty-Third Annual Report, (1989) Law Com. No. 176, paras. 2.22 to 2.25, 2.27 and 2.58.

ITEM 8: THE LAW OF TRUSTS

Recommended: that an examination be made of the use of powers of attorney by trustees; of the rule against perpetuities; and of such other aspects of the law of trusts as may from time to time appear to the examining agency and to your Department to require reform.

Examining agency: the Commission.

Our work on various branches of the law, particularly Transfer of Land and Family Law, has brought us face to face with pressing problems relating to the law of trusts that cannot be dealt with under any existing Programme Item, since they may affect property other than land and relationships other than those within the family. We are aware of the work already done by your Law Reform Committee in its Twenty-Third Report on Powers and Duties of Trustees.¹⁰ However we believe that the following aspects of the law of trusts are now in need of examination:

- (a) **Powers of attorney and trustees.** Both the effects of the decision in *Walia v. Michael Naughton Ltd.*¹¹ and the relationship between s.3(3) of the Enduring Powers of Attorney Act 1985 and the general law relating to the use of powers of attorney by trustees require overall consideration.
- (b) **Perpetuities rule.** Carefully thought out dispositions of property run the risk of being declared wholly or partially invalid, e.g. *Re Drummond*,¹² *Re Green's Will Trusts*,¹³ because through technicalities they infringe the rule against perpetuities. We wish to examine the policy behind the rule, and also the policy on accumulations, to see whether in modern conditions they can any longer be justified, and if so, whether they could be simplified and brought up-to-date (particular account being taken of any difficulties experienced with the operation of the Perpetuities and Accumulations Act 1964).

ITEM 9: MENTALLY INCAPACITATED ADULTS

Recommended: that an investigation be carried out into the adequacy of legal and other procedures for the making of decisions on behalf of mentally incapacitated adults.

Examining agency: the Commission, assisted by representatives of the relevant Government Departments and other agencies.

The increasing life expectancy of mentally incapacitated persons prompts fresh consideration of whether the law adequately supports their rights, and the rights of those who care for them, in making decisions on a wide range of problems. These range from day-to-day living arrangements or family disputes to greater issues involving major intrusive and possibly irreversible medical treatment.

It has been suggested that the existing legal mechanisms are complicated, inflexible and piecemeal. Limitations on the powers of guardians under the Mental Health Act 1983 have added to the uncertainties. The decision of the House of Lords in *In re F. (Mental Patient: Sterilisation)*¹⁴ cannot provide a comprehensive solution to all the problems which have been identified to us.

It is not clear whether court proceedings are the most appropriate method of handling the needs of those concerned, or whether other mechanisms might be more suitable. With this in mind the Commission proposes that a multi-disciplinary investigation of the need for reform would be most suitable.

¹⁰ (1982) Cmnd. 8733.

¹¹ [1985] 1 W.L.R. 1115, [1985] 3 All E.R. 673.

¹² [1988] 1 W.L.R. 234, [1988] 1 All E.R. 449.

¹³ [1985] 3 All E.R. 455.

¹⁴ [1989] 2 W.L.R. 1025; [1989] 2 All E.R., *sub nom F v. West Berkshire Health Authority*.

APPENDIX

WORK UNDER THE FIRST THREE PROGRAMMES

CONTENTS

	<i>Page</i>
Item I: Codification of the Law of Contract	8
Item II: Exemption by Contract from Common Law Liabilities	9
Item III: Consideration, Third Party Rights in Contract and Contracts under Seal	9
Item IV: Civil Liability for Dangerous Things and Activities	10
Item V: Civil Liability for Animals	10
Item VI: Personal Injury Litigation	11
Item VII: Civil Liability of Vendors and Lessors for Defective Premises	11
Item VIII: Codification of the Law of Landlord and Tenant	12
Item IX: Transfer of Land	13
Item X: Family Law	14
Item XI: Financial Limits on Magistrates' Orders in Domestic and Affiliation Proceedings	15
Item XII: Recognition of Foreign Divorces, Nullity Decrees and Adoptions	15
Item XIII: Imputed Criminal Intent (<i>DPP v. Smith</i>)	16
Item XIV: Common Law Misdemeanours; Crime of Conspiracy	16
Item XV: Miscellaneous Matters involving Anomalies, Obsolescent Principles or Archaic Procedures	17
Item XVI: Judicature Act (Northern Ireland)	19
Item XVII: Interpretation of Statutes	19
Item XVIII: Codification of the Criminal Law	20
Item XIX: Family Law	22
Item XX: Interpretation of Wills	24
Item XXI: Private International Law	24

Item I: Codification of the Law of Contract

Recommended: that the law of contract be examined with a view to codification.

Examining agency: the Commission.

It was originally envisaged that the new code of contract would be a uniform body of law applying throughout England and Scotland, embodying amendments to the existing law in both countries. The production of such a code was to be a joint enterprise with the Scottish Law Commission. However, after a number of years' work the Scottish Law Commission became "increasingly concerned at the areas of disagreement that still existed on fundamental issues",¹ and in 1972 withdrew from the project.

The Commission therefore decided to concentrate on the reform of particular branches of the law of contract, rather than the publication of a draft code. With the approval of the Lord Chancellor, announced in the House of Lords on 9 July 1973,² the Commission suspended work on production of a contract code, and decided to publish a series of Working Papers on particular aspects of the English law of contract.³

At that stage, while it was envisaged that reform of particular aspects of the law of contract would probably extend over several years, it was still the intention thereafter to consider afresh the production of a contract code. No further work has however been undertaken on the codification of the law of contract, nor is such work likely in the foreseeable future.

Important amendments have however been made to the law of contract as a result of recommendations of the Law Commission in the Reports listed below.

<i>Report</i>	<i>Title</i>	<i>Related Legislation</i>
Law Com. No. 79	Report on Contribution	Civil Liability (Contribution) Act 1978 (c.47).
Law Com. No. 95	Implied Terms in Contracts for the Supply of Goods	Supply of Goods and Services Act 1982 (c.29).
Law Com. No. 121	Pecuniary Restitution on Breach of Contract	None.
Law Com. No. 134	Minors' Contracts	Minors' Contracts Act 1987 (c.13).
Law Com. No. 154	The Parol Evidence Rule	—

¹ Seventh Annual Report of the Scottish Law Commission 1971–72, (1973) Scot. Law Com. No. 28, para. 16.

² *Hansard* (H.L.) Vol. 344, cols. 624–5.

³ Apart from those that resulted in final reports the Commission also published, in 1975, Working Papers No. 60 on Firm Offers and No. 61 on Penalty Clauses and Forfeiture of Monies Paid.

Item II: Exemption by Contract from Common Law Liabilities

Recommended: that an examination be made of the following matters:

- (a) the desirability of prohibiting, invalidating or restricting the effects of clauses exempting from, or limiting liability for, negligence;
- (b) the extent to which the manner of incorporating such clauses, if permissible, should be regulated;
- (c) the desirability of any extension or alteration of the doctrine of fundamental breach.

Examining agency: for (a) and (b), an interdepartmental committee; for (c), the Commission.

In early 1966 the Lord Chancellor, the Secretary of State for Scotland and the Lord Advocate approved a proposal that these questions be examined by a joint Working Party of the Law Commission and the Scottish Law Commission which would include representatives of Government Departments, persons experienced in industry, commerce and consumer problems, and a certain number of English and Scottish lawyers. In 1969 the two Law Commissions published their First Report on Exemption Clauses in Contracts,⁴ recommending amendments to the Sale of Goods Act 1893. The Supply of Goods (Implied Terms) Act 1973 was largely based on the recommendations in that report.

A Second Report of the two Commissions on Exemption Clauses⁵ was published in 1975, and implemented by the Unfair Contract Terms Act 1977.

Item III: Consideration, Third Party Rights in Contract and Contracts under Seal

Recommended: that, in the light of the Sixth Interim Report of the Law Revision Committee,⁶ an examination be made of the doctrine of consideration in the law of contract (having regard to the law of equitable estoppel), third party rights in contract and contracts under seal.

Examining agency: the Commission.

In its Second Annual Report the Commission stated that "work on this Item has for all practical purposes been merged with the work on Item I".⁷ A similar statement was included in the Third Annual Report. There are no references to Item III as a separate Programme Item in subsequent Annual Reports, and it therefore no longer requires separate consideration.

⁴ Law Com. No. 24/Scot. Law Com. No. 12.

⁵ Law Com. No. 69/Scot. Law Com. No. 39.

⁶ (1937) Cmd. 5449.

⁷ (1967) Law Com. No. 12, para. 40.

Item IV: Civil Liability for Dangerous Things and Activities

Recommended: that an examination be made of the basic principles of liability applicable to dangerous things and activities, with a view to clarifying and harmonising and, so far as may be expedient, unifying the principles in question.

Examining agency: the Commission.

The only report under this Item is the Report on Civil Liability for Dangerous Things and Activities, submitted in 1970.⁸ That report made no recommendations, the Commission taking the view that the terms of the Recommendation which the Lord Chancellor had approved were too narrow for them to be able to make satisfactory recommendations, since they did not allow the Commission to investigate the principles of liability governing accidents involving personal injury.

The Commission has however since begun a preliminary examination of the effect of the common law on those provisions of the Fires Prevention (Metropolis) Act 1774 which are still unrepealed.

Item V: Civil Liability for Animals

Recommended: that in the light of the Goddard Report⁹ the law as to the civil liability for damage done by animals be examined.

Examining agency: the Commission.

The Law Commission submitted its Report on Civil Liability for Animals in 1967.¹⁰ A bill to introduce it fell on the dissolution of Parliament in 1970. A second Bill which was introduced in July 1970 gave effect to the Law Commission Report with some modifications, and the Animals Act 1971 received the Royal Assent on 12 May 1971. It came into operation on 1 October 1971.

⁸ Law Com. No. 32.

⁹ Report of the Committee on the Law of Civil Liability for Damage done by Animals, (1953) Cmd. 8746.

¹⁰ Law Com. No. 13.

Item VI: Personal Injury Litigation

Recommended:

- (a) that an examination be made of jurisdiction and procedure in personal injuries actions with a view to simplification and expedition;
- (b) that an examination be made of the methods and basis of assessment of damages for personal injuries and practice relating thereto.

Examining agency: for (a), an ad hoc committee; for (b), the Commission.

Part (a). A Committee on Personal Injuries Litigation under the chairmanship of Lord Justice Winn was set up on 12 January 1966, and reported on 27 May 1968.¹¹ Its recommendations were in part implemented by the Administration of Justice Act 1969.

Part (b). The Law Commission published a Working Paper¹² on the Assessment of Damages in Personal Injury Litigation in 1971. The Report¹³ which followed in 1973 also dealt with a number of topics outstanding from Programme Item XV(a): it recommended abolishing actions for loss of services, and actions for seduction, enticement and harbouring of a servant; and it made recommendations on the loss of consortium. No action was taken until the passing of the Administration of Justice Act 1982 which, partly in response to the Law Commission Report and partly in response to recommendations of the Pearson Commission,¹⁴ amended the law on the assessment of damages, widened the range of dependants entitled to bring an action for damages under the Fatal Accidents Act 1976, abolished the right to damages for loss of expectation of life, and abolished actions for loss of services or consortium, and actions for the enticement, harbouring and seduction of a servant.

Item VII: Civil Liability of Vendors and Lessors for Defective Premises

Recommended: that an examination be made of the contractual and tortious liability of the vendor and lessor of defective premises.

Examining agency: the Commission.

In the first year of its existence the Law Commission, after a preliminary study, decided that the contractual liability of lessors should be dealt with under Item VIII (the Law of Landlord and Tenant). A Report on the Civil Liability of Vendors and Lessors for Defective Premises¹⁵ was submitted in November 1970. In November 1971 a Private Member (Ivor Richard MP) introduced a Bill in substantially the same form as the Bill annexed to that Report, and it was enacted in June 1972 as the Defective Premises Act 1972.

¹¹ Cmnd. 3691.

¹² No. 41.

¹³ Law Com. No. 56.

¹⁴ Royal Commission on Civil Liability and Compensation for Personal Injury, (1978) Cmnd. 7054.

¹⁵ Law Com. No. 40.

Item VIII: Codification of the Law of Landlord and Tenant

Recommended:

- (a) that an examination be made of the law on waste and distress for rent;
- (b) that an examination be made of the basic law of landlord and tenant with a view to its modernisation and simplification and the codification of such parts as may appear appropriate.

Examining agency: the Commission.

<i>Report</i>	<i>Title</i>	<i>Related Legislation</i>
Law Com. No. 5	Interim Report on Distress for Rent	—
Law Com. No. 17	Landlord and Tenant Act 1954, Part II	Law of Property Act 1969 (c.59).
Law Com. No. 67	Obligations of Landlords and Tenants	None
Law Com. No. 141	Covenants Restricting Dispositions, Alterations and Change of User	None.
Law Com. No. 142	Forfeiture of Tenancies	None.
Law Com. No. 161	Leasehold Conveyancing (also under Item IX)	Landlord and Tenant Act 1988 (c.26).
Law Com. No. 162	Landlord and Tenant: Reform of the Law	—
Law Com. No. 174	Privity of Contract and Estate.	None.
Law Com. No. 178	Compensation for Tenants' Improvements	None.

Item IX: Transfer of Land

Recommended: that an examination be made of the system of conveying unregistered land with a view to its modernisation and simplification.

Examining agency: the Commission.

In February 1966 the Lord Chancellor approved a recommendation that this Item “should be widened to cover the whole law relating to transfer of both registered and unregistered land”.¹⁶

<i>Report</i>	<i>Title</i>	<i>Related Legislation</i>
Law Com. No. 9	Interim Report on Root of Title to Freehold Land	Law of Property Act 1969 (c.59).
Law Com. No. 11	Restrictive Covenants	(in part) Law of Property Act 1969 (c.59).
Law Com. No. 18	Land Charges affecting Unregistered Land	Law of Property Act 1969 (c.59).
Law Com. No. 62	Local Land Charges	Local Land Charges Act 1975 (c.76).
Law Com. No. 65	“Subject to Contract” Agreements	—
Law Com. No. 68	Rentcharges	Rentcharges Act 1977 (c.30).
Law Com. No. 125	Land Registration	Land Registration Act 1986 (c.26).
Law Com. No. 127	The Law of Positive and Restrictive Covenants	None.
Law Com. No. 148	Second Report on Land Registration: Inspection of the Register	Land Registration Act 1988 (c.3).
Law Com. No. 152	Liability for Chancel Repairs	None.
Law Com. No. 158	Third Report on Land Registration A. Overriding Interests B. Rectification and Indemnity C. Minor Interests	—
Law Com. No. 161	Leasehold Conveyancing (also under Item VIII)	Landlord and Tenant Act 1988 (c.26).
Law Com. No. 163	Deeds and Escrows	Law of Property (Miscellaneous Provisions) Act 1989 (c.34).
Law Com. No. 164	Formalities for Contracts for Sale etc. of Land	Law of Property (Miscellaneous Provisions) Act 1989 (c.34).
Law Com. No. 166	The Rule in <i>Bain v. Fothergill</i>	Law of Property (Miscellaneous Provisions) Act 1989 (c.34).
Law Com. No. 173	Fourth Report on Land Registration	None.
Law Com. No. 181	Trusts of Land	None.
Law Com. No. 184	Title on Death	None.

¹⁶ See the First Annual Report 1965–66, (1966) Law Com. No. 4, para. 70.

Item X: Family Law

Recommended: that the Commission make a preliminary examination of the following three topics:

- (a) Matrimonial law, following the Report of the Royal Commission on Marriage and Divorce;¹⁷
- (b) Family inheritance and property law, having regard to the pending Report of the Committee on the Law of Succession in relation to Illegitimate Persons;¹⁸
- (c) Jurisdiction in family matters, having regard to the Report of the Committee on Conflicts of Jurisdiction affecting Children,¹⁹ and of the pending Report of the Committee on the law relating to Minors under the chairmanship of Mr. Justice Latey.²⁰

Two years after the formulation of the First Programme the Commission realised that Item X was drafted in terms which were too narrow, and recommended a new Programme Item (No. XIX) which would provide for a comprehensive examination of family law. They stated:²¹

“Having disposed of a considerable part of the preliminary examination required under Item X(a) (Matrimonial law) and having made some progress with (b) (Family inheritance and property law) . . . we think it desirable that our terms of reference under the whole of Item[s] X . . . should be extended to embrace a complete review of family law”.

Although a certain amount of preliminary work had been done under Item X, no reports were published under that Item, and after 1968 Programme work on family law was undertaken under Item XIX.

¹⁷ The Morton Commission, (1956) Cmd. 9678.

¹⁸ This Committee under the chairmanship of Lord Justice Russell reported in July 1966 (Cmnd. 3051).

¹⁹ The Hodson Committee, (1959) Cmnd. 842.

²⁰ The Committee on the Age of Majority reported in July 1967 (Cmnd. 3342).

²¹ (1968) Law Com. No. 14, p. 7, para. 3.

Item XI: Financial Limits on Magistrates' Orders in Domestic and Affiliation Proceedings

Recommended: that an examination be undertaken of the financial limits prescribed by statute for orders which may be made in magistrates' courts for the maintenance of spouses and children, having regard to the adequacy of the limits now laid down, the question whether the existence of such limits is desirable and, if so, the appropriate machinery for adjusting them to changing circumstances.

Examining agency: an interdepartmental committee.

In 1966 the Home Secretary appointed a Committee under the chairmanship of Miss Jean Graham Hall (now Her Honour Judge Jean Graham Hall) to investigate these questions. The Committee on Statutory Maintenance Limits reported to the Home Secretary in 1968,²² recommending the abolition of upper limits for maintenance of both spouse and child, and immediate effect was given to this recommendation by the Maintenance Orders Act 1968. Affiliation proceedings were abolished when Part II of the Family Law Reform Act was brought into force on 1 April 1989.

Item XII: Recognition of Foreign Divorces, Nullity Decrees and Adoptions

Recommended: that an examination be made of the rules governing the recognition in English law of divorces, decrees of nullity of marriage and adoptions obtained in, or having effect under, the law of other countries.

Examining agency: the Commission.

As in the case of Item X (q.v.), with the publication in 1968 of the Second Programme it was intended that work on Item XII should be conducted under Item XIX. However the Report of the two Law Commissions on the Hague Convention on the Recognition of Divorces and Legal Separations²³ was the response to a specific reference under section 3(1)(e). It was implemented by the Recognition of Divorces and Legal Separations Act 1971.

When the Commission ultimately reported in 1984 on the Recognition of Foreign Nullity Decrees and Related Matters,²⁴ the Third Programme had been approved adding Item XXI (Private International Law), and it was as part of this Item, rather than Item XIX, that this Report was submitted. Item XII can thus be said to have been merged, first with Item XIX and subsequently with Item XXI; and in any event to have been completed.

²² Cmnd. 3587.

²³ (1970) Law Com. No. 34/Scot. Law Com. No. 16.

²⁴ Law Com. No. 137/Scot. Law Com. No. 88, implemented by the Family Law Act 1986.

Item XIII: Imputed Criminal Intent (*DPP v. Smith*)

Recommended: that an examination be made of the effect and implications of the decision in *DPP v. Smith*.²⁵

Examining agency: the Commission.

In its report on this question submitted in December 1966²⁶ the Commission recommended that a subjective rather than an objective test should be applied in ascertaining the intent required, not only in murder, but also in all other offences where it is necessary to ascertain the existence of intent or foresight. Effect was given to this recommendation by section 8 of the Criminal Justice Act 1967.

The Commission also recommended that an intent to inflict grievous bodily harm should no longer be retained as an alternative to an intent to kill in the crime of murder, but this recommendation was not accepted.

Item XIV: Common Law Misdemeanours; Crime of Conspiracy

Recommended: that an examination be made of the common law crime of conspiracy, and in particular of the question whether it should be replaced by a statutory offence, and that the Home Secretary be asked to refer this examination to the Criminal Law Revision Committee.

The matter was referred by the Home Secretary to the Criminal Law Revision Committee, which examined the matter for five years. But in the Commission's Sixth Annual Report for 1970-71 it is stated:²⁷

"The crime of conspiracy, on which the Criminal Law Revision Committee had been working, is now being dealt with by us, and we are examining the subject with the Working Party which has been assisting in our review of the general principles of criminal law".

In the Annual Report for the following year there is no separate entry for Programme Item XIV, but under Item XVIII (Codification of the Criminal Law) it is stated:²⁸

"The crime of conspiracy is now being considered in the course of our work on the general part of the criminal law and is therefore included under this Item instead of under Item XIV . . . other common law "misdemeanours" which constitute separate substantive offences will be considered in due course in relation to the broad divisions of criminal conduct under which they most appropriately fall. In the result all common law offences will be absorbed into the statutorily defined offences which will go to make up the Criminal Code".

The Commission is working on Conspiracy to Defraud, and issued a Working Paper²⁹ on the subject in December 1987 which falls more appropriately under Item XVIII.

²⁵ [1961] A.C. 290.

²⁶ (1967) Law Com. No. 10.

²⁷ (1971) Law Com. No. 47, para. 30.

²⁸ (1972) Law Com. No. 50, para. 29.

²⁹ No. 104.

Item XV: Miscellaneous Matters involving Anomalies, Obsolescent Principles or Archaic Procedures

In introducing this Item the Commission stated:

“Much of English law is heavily overlaid with history. This does not mean that the principles involved may not still be applicable in modern conditions, subject to necessary adjustments from time to time. There are, however, certain parts of the law which seem to rest on social assumptions which are no longer valid or to involve archaic procedures. The topics mentioned below constitute only a first list of such matters which would appear to call for attention”.

There follows a list of five topics which the Commission wished to examine. Although they are specifically stated to be “only a first list”, the addition of any further topics to the list would require fresh authority, and would therefore in effect be a new Programme Item.

The five topics considered by the Commission are the following:

- (a) *Actions for loss of services, loss of consortium, seduction, enticement and harbouring, and the extent to which employers, spouses or parents should be entitled to recover wages or payments made to or on behalf of an employee, spouse or child, as the case may be, who is the victim of a tort. These matters have been the subject of a detailed survey, with proposals for reform, in the Eleventh Report of the Law Reform Committee.*³⁰

A Working Paper on Loss of Services³¹ was published in 1968. Its provisional recommendations on the abolition of actions for seduction and enticement in relation to the family were taken up in the Report on Financial Provision in Matrimonial Proceedings³² and given effect by the Law Reform (Miscellaneous Provisions) Act 1970. The remaining matters in topic (a)—viz. loss of services and loss of consortium—were dealt with under Item VI(b).

- (b) *Actions for breach of promise of marriage and a husband's claim for damages for adultery in matrimonial suits.*

The recommendations of the Report on Breach of Promise³³ were implemented by the Law Reform (Miscellaneous Provisions) Act 1970.

- (c) *Actions for pound-breach, rescous and replevin.*

These old forms of action are intimately bound up with the law of distress for rent. The Payne Committee recommended³⁴ that distress should be abolished, but no effect was given to that recommendation. Accordingly the Commission in 1985 itself began work on the law of distress under Programme Item VIII (the law of Landlord and Tenant). In 1986 a Working Paper³⁵ was issued on the subject, and this covers the remedies of replevin,³⁶ and also rescous and pound-breach.³⁷ Although work under Item XV(c) is thus not completed, it has for practical purposes been treated as work under Item VIII.

- (d) *The tort and crime of maintenance.*

³⁰ (1963) Cmnd. 2107.

³¹ No. 19.

³² (1969) Law Com. No. 25.

³³ (1969) Law Com. No. 26.

³⁴ Report of the Committee on the Enforcement of Judgment Debts, (1969) Cmnd. 3909.

³⁵ No. 97.

³⁶ Paras. 2.20 to 2.24.

³⁷ Para. 2.63.

(e) *Certain ancient criminal offences. The Criminal Law Revision Committee in its Seventh Report,³⁸ in proposing in paragraph 70 the abolition of the obsolete punishments of forfeiture of property and being placed outside The Queen's protection for such offences, drew attention to the case for their abolition in the interests of modernising the Statute Book.*

The Criminal Law Revision Committee recommended in its Seventh Report the repeal in whole or in part of certain obsolete enactments, and the first substantive report of the Commission was to the same effect.³⁹ Later in 1966 the Commission published proposals for the Reform of the Law Relating to Maintenance and Champerty.⁴⁰ All these proposals were implemented in the Criminal Law Act 1967.

³⁸ (1965) Cmnd. 2659.

³⁹ (1966) Law Com. No. 3.

⁴⁰ Law Com. No. 7.

Item XVI: Judicature Act (Northern Ireland)

Recommended: that an examination be made in Northern Ireland of the statute law dealing with the Supreme Court of Judicature of Northern Ireland with a view to the presentation to the Parliament of the United Kingdom of a modernised Judicature Bill for Northern Ireland designed to meet the present-day requirements of that country in the interests of a more expeditious, simple and efficacious system for the administration of justice by that Court in its High Court and Appellate Divisions.

Examining agency: an ad hoc committee.

In March 1966 the Lord Chancellor appointed a Committee under Lord MacDermott, then Lord Chief Justice of Northern Ireland, to consider the matter. The Committee reported in March 1970.⁴¹ On 11 February 1971 the Lord Chancellor and the Prime Minister of Northern Ireland jointly set up a Committee under the chairmanship of Mr. Justice Lowry (now Lord Lowry) to consider, in view of the recommendations in Part V of the MacDermott Report, what changes might be agreed on the matters of concern, in particular the modification of existing jurisdictions and the better co-ordination of the work and sittings of the several courts and court systems. The Joint Committee on Civil and Criminal Jurisdiction in Northern Ireland published an interim report in September 1973,⁴² and the Law Commission expressed the view that the remaining work under Item XVI could best be accomplished by the Lord Chancellor and the Secretary of State for Northern Ireland. The Law Commission took no further part in this work, which ultimately resulted in the passing of the Judicature (Northern Ireland) Act 1978.

Item XVII: Interpretation of Statutes

Recommended: that an examination be made of the rules for the interpretation of statutes.

Examining agency: the Commission.

The two Commissions submitted in 1969 a joint Report on the Interpretation of Statutes,⁴³ but no effect was given to its recommendations.

After the signature of the Vienna Convention on the Law of Treaties,⁴⁴ the Law Commission started consultations jointly with the Scottish Law Commission, the Lord Chancellor's Office and the Foreign and Commonwealth Office to consider its implications for the law governing the interpretation of treaties to which effect has been given by statute. Reference to this was made in the Fifth to Eighth Annual Reports, but no progress seems to have been made, and there are no references to this work in subsequent Annual Reports.

In 1976 work was begun, together with the Scottish Law Commission, on the preparation of an Interpretation Bill designed to replace the Interpretation Act 1889 by a modern code of provisions relating to interpretation. The resulting Bill, which became the Interpretation Act 1978, was however dealt with, not under Item XVII, but as part of the Commission's programme of consolidation.

No work on this Programme Item has taken place since 1978.

⁴¹ Cmnd. 4292.

⁴² Cmnd. 5431.

⁴³ (1969) Law Com. No. 21/Scot. Law Com. No. 11.

⁴⁴ (1969) Cmnd. 4140.

Item XVIII: Codification of the Criminal Law

There should be a comprehensive examination of the criminal law with a view to its codification.

Recommended: that, as a first step, an examination be made of the following topics:—

(1) General principles of the criminal law. The work will be carried out in close touch with those concerned with other parts of the code.

Examining agency: the Commission with the assistance of a Working Party.

(2) Certain specific offences:

(a) Malicious damage to property, forgery, perjury, bigamy and offences against the marriage law.

Examining agency: the Commission.

(b) Offences against the person (including homicide) and sexual offences.

Examining agency: the Criminal Law Revision Committee.

(3) Extra-territorial jurisdiction in criminal offences.

Examining agency: the Commission.

As contemplated, the law of sexual offences was referred to the Criminal Law Revision Committee in 1975. It issued a Working Paper in October 1980. The Committee has since published its Fifteenth, Sixteenth and Seventeenth Reports dealing respectively with Sexual Offences,⁴⁵ Prostitution in the Street,⁴⁶ and Prostitution: Off-street Activities.⁴⁷ Some of the Committee's recommendations have already been implemented by the Sexual Offences Act 1985.

The team engaged on the codification of the criminal law presented a first draft of a Criminal Code to the Law Commission in 1985.⁴⁸ The Commission submitted its Report on a Criminal Code in April 1989.⁴⁹ A summary of the final stages of the work can be found in the Twenty-Third Annual Report.⁵⁰

The other reports of the Commission on criminal law which fall within Item XVIII are as follows:

<i>Report</i>	<i>Title</i>	<i>Related Legislation</i>
Law Com. No. 29	Offences of Damage to Property	Criminal Damage Act 1971 (c.48).
Law Com. No. 55	Forgery and Counterfeit Currency	Forgery and Counterfeiting Act 1981 (c.45).
Law Com. No. 76	Report on Conspiracy and Criminal Law Reform	(in part) Criminal Law Act 1977 (c.45).
Law Com. No. 83	Defences of General Application	None.
Law Com. No. 89	The Mental Element in Crime	None.
Law Com. No. 91	Territorial and Extra-territorial Extent of the Criminal Law	None.

⁴⁵ (1984) Cmnd. 9213.

⁴⁶ (1984) Cmnd. 9329.

⁴⁷ (1985) Cmnd. 9688.

⁴⁸ Law Com. No. 143.

⁴⁹ Law Com. No. 177.

⁵⁰ (1989) Law Com. No. 176, paras. 1.3, 2.5 and 2.6.

<i>Report</i>	<i>Title</i>	<i>Related Legislation</i>
Law Com. No. 96	Offences Relating to Interference with the Course of Justice	None.
Law Com. No. 102	Attempt, and Impossibility in Relation to Attempt, Conspiracy and Incitement	Criminal Attempts Act 1981 (c.47).
Law Com. No. 123	Offences Relating to Public Order	Public Order Act 1986 (c.64).
Law Com. No. 145	Offences against Religion and Public Worship	None.
Law Com. No. 147	Poison-Pen Letters	Malicious Communications Act 1988 (c.27).
Law Com. No. 149	Criminal Libel	None.
Law Com. No. 177	Criminal Code for England and Wales	None.
Law Com. No. 180	Jurisdiction over Offences of Fraud and Dishonesty with a Foreign Element	None.

Item XIX: Family Law

Recommended: that a comprehensive examination of family law be undertaken with a view to its systematic reform and eventual codification.

Examining agency: the Commission.

<i>Report</i>	<i>Title</i>	<i>Related Legislation</i>
Law Com. No. 16	Blood Tests and the Proof of Paternity in Civil Proceedings	Family Law Reform Act 1969 (c.46).
Law Com. No. 23	Proposal for the Abolition of the Matrimonial Remedy of Restitution of Conjugal Rights	Matrimonial Proceedings and Property Act 1970 (c.45).
Law Com. No. 25	Financial Provision in Matrimonial Proceedings	Matrimonial Proceedings and Property Act 1970 (c.45) and Law Reform (Miscellaneous Provisions) Act 1970 (c.33).
Law Com. No. 33	Nullity of Marriage	Nullity of Marriage Act 1971 (c.44).
Law Com. No. 42	Polygamous Marriages	Matrimonial Proceedings (Polygamous Marriages) Act 1972 (c.38).
Law Com. No. 48	Jurisdiction in Matrimonial Causes	Domicile and Matrimonial Proceedings Act 1973 (c.45).
Law Com. No. 52	First Report on Family Property: A New Approach	—
Law Com. No. 53	Report on Solemnisation of Marriage in England and Wales	None
Law Com. No. 61	Second Report on Family Property: Family Provision on Death	Inheritance (Provision for Family and Dependants) Act 1975 (c.63).
Law Com. No. 77	Matrimonial Proceedings in Magistrates' Courts	Domestic Proceedings and Magistrates' Courts Act 1978 (c.22).
Law Com. No. 86	Third Report on Family Property: The Matrimonial Home (Co-ownership and Occupation Rights) and Household Goods	Housing Act 1980 (c.51); Matrimonial Homes and Property Act 1981 (c.24).
Law Com. No. 99	Orders for Sale of Property under the Matrimonial Causes Act 1973	Matrimonial Homes and Property Act 1981 (c.24).
Law Com. No. 103	The Financial Consequences of Divorce: The Basic Policy. A Discussion Paper	See Law Com. No. 112, below.
Law Com. No. 112	The Financial Consequences of Divorce: The Response to the Law Commission's Discussion Paper, and Recommendations on the Policy of the Law	Matrimonial and Family Proceedings Act 1984 (c.42).

<i>Report</i>	<i>Title</i>	<i>Related Legislation</i>
Law Com. No. 116	Time Restrictions on Presentation of Divorce and Nullity Petitions	Matrimonial and Family Proceedings Act 1984 (c.42).
Law Com. No. 117	Financial Relief after Foreign Divorce	Matrimonial and Family Proceedings Act 1984 (c.42).
Law Com. No. 118	Illegitimacy	Family Law Reform Act 1987 (c.42).
Law Com. No. 132	Declarations in Family Matters	Family Law Act 1986 (c.55).
Law Com. No. 146	Capacity to Contract a Polygamous Marriage and Related Issues (also under Item XXI)	None.
Law Com. No. 157	Illegitimacy (Second Report)	Family Law Reform Act 1987 (c.42).
Law Com. No. 165	Choice of Law Rules in Marriage (also under Item XXI)	Foreign Marriage (Amendment) Act 1988 (c.44).
Law Com. No. 170	Facing the Future: A Discussion Paper on the Ground for Divorce	—
Law Com. No. 172	Review of Child Law: Guardianship and Custody	Children Bill.
Law Com. No. 175	Matrimonial Property	None.

Item XX: Interpretation of Wills

Recommended: that the rules governing the interpretation of wills should be examined with a view to review.

Examining agency: the Law Reform Committee.

The Lord Chancellor referred this matter to the Law Reform Committee in October 1968, and the Committee established a sub-Committee under the chairmanship of Mr. Justice Megarry (as he then was) to consider:

“Whether in relation to the interpretation of wills it is desirable—

- (a) to amend the law relating to the admissibility of extrinsic evidence; and
- (b) to confer upon the court any powers of rectification”.

The sub-Committee submitted a draft report to the full Committee in 1972, and the 19th Report of the Law Reform Committee on Interpretation of Wills was published in May 1973.⁵¹ The Administration of Justice Act 1982 implemented the main recommendations, not only of that Report, but also of the Law Reform Committee’s 22nd Report on The Making and Revocation of Wills.⁵²

Item XXI: Private International Law

Recommended: that, in co-operation with the Scottish Law Commission, the Law Commission take under review when considered appropriate rules of private international law relating to obligations, property, family relationships and to any other matter which may be the subject of negotiations or agreements between Member States of the European Economic Community or of the Hague Conference on Private International Law.

Examining agency: the Law Commission, in co-operation with the Scottish Law Commission, acting through a joint Working Party.

<i>Report</i>	<i>Title</i>	<i>Related Legislation</i>
Law Com. No. 109	Council of Europe Conventions on Foreign Money Liabilities (1967) and on the Place of Payment of Money Liabilities (1972)	—
Law Com. No. 124	Foreign Money Liabilities	None.

(These Reports both resulted initially from a reference from the Foreign and Commonwealth Office under section 3(1)(e), dated 25 February 1972, before the Third Programme had been approved.)

Law Com. No. 137	Recognition of Foreign Nullity Decrees and Related Matters	Family Law Act 1986 (c.55)
Law Com. No. 146	Capacity to Contract a Polygamous Marriage and Related Issues (also under Item XIX)	None.
Law Com. No. 165	Choice of Law Rules in Marriage (also under Item XIX)	Foreign Marriage (Amendment) Act 1988 (c.44).
Law Com. No. 168	The Law of Domicile	None.

⁵¹ Cmnd. 5301.

⁵² (1980) Cmnd. 7902.

- HMSO publications are available from:

HMSO Publications Centre

(Mail and telephone orders only)

PO Box 276, London SW8 5DT

Telephone orders 01-873 9090

General enquiries 01-873 0011

(queuing system in operation for both numbers)

HMSO Bookshops

49 High Holborn, London, WC1V 6HB 01-873 0011 (Counter service only)

258 Broad Street, Birmingham, B1 2HE 021-643 3740

Southey House, 33 Wine Street, Bristol, BS1 2BQ (0272) 264306

9-21 Princess Street, Manchester, M60 8AS 061-834 7201

80 Chichester Street, Belfast, BT1 4JY (0232) 238451

71 Lothian Road, Edinburgh EH3 9AZ 031-228 4181

HMSO's Accredited Agents

(see Yellow Pages)

And through good booksellers