

Imperial Acts Application Act 1969 No 30

[1969-30]



New South Wales

Status Information

Currency of version

Historical version for 17 July 2001 to 7 December 2003 (accessed 3 December 2024 at 4:31)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
Justices of the Peace Act 2002 No 27 (not commenced)

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 25 June 2002

Imperial Acts Application Act 1969 No 30



New South Wales

Contents

Long title	6
Part 1 Preliminary	6
1 Name of Act and commencement	6
2 Construction	6
3 (Repealed)	6
Part 2 General	6
4 Definition	6
5 Substitution of enactments	6
6 Preserved Imperial enactments	7
7 Enactments not affected by repeal	8
8 Imperial enactments repealed	8
9 Savings	8
10 Saving	9
11 Revival of repealed enactments	9
Part 3 Substituted enactments	10
Division 1 Administration of estates	10
12 Definitions	10
13 Executor of executor represents original testator	10
14 Rights and accountability of administrator	11
15 Liability for waste	11

Division 2 Calendar	11
Note.....	11
16 Provisions relating to calendar	11
Division 3 (Repealed)	12
Division 4 Forcible entries and detainers	12
Note.....	12
18 Forcible entry.....	12
19 Forcible detainer.....	12
20 Penalty.....	12
Division 5 Guardians	12
Note.....	12
21 Powers of guardian	12
Division 6 Insurance—life, fire and other policies	12
Note.....	12
22 Existing insurances not affected by this Division.....	13
23 Insurable interest	13
Division 7 Insurance—marine	13
Note.....	13
24 Application of Division	13
25 Existing contracts not affected.....	13
26 Avoidance of wagering or gaming contracts.....	13
27 Contracts must be embodied in policy	14
28 What policy must specify.....	14
Division 8 Justices of the Peace	14
Note.....	14
29 Appointment of Justices of the Peace	14
30 (Repealed)	14
Division 9 Landlord and tenant	14
31 (Repealed)	14

32 Voluntary waste.....	15
Division 10 Legal procedure—actions on bonds	15
Note.....	15
33 Assignment of breaches, payment of damages etc.....	15
34 Action of debt brought on a bond after money paid etc	16
Division 11 Libels—blasphemous and seditious libels	16
Note.....	16
35 Seizure of copies of libels	16
Division 12 Real property	17
Note.....	17
36 Alienation of fee simple	17
37 Tenure.....	17
Division 13 Recovery of property on determination of a life or lives.....	17
Note.....	17
38 Property—determination of a life or lives	18
Division 14 Religious worship—disturbance of.....	18
Note.....	18
39 Disturbing religious worship	18
Division 15 Bailiff	19
Note.....	19
40 Duties on arrest of civil debtors.....	19
Division 16 Sunday	19
Note.....	19
41 (Repealed)	19
Division 17 Witnesses—habeas corpus for prisoners	19
Note.....	19
42 (Repealed)	19
Part 4 Penalties	20

43 Offences—penalties.....	20
First Schedule	20
Second Schedule	21
Third Schedule Enactments applying irrespective of 9 George IV c 83	23

Imperial Acts Application Act 1969 No 30



New South Wales

An Act to provide that certain enactments of the Parliament of England and of the Parliament of Great Britain and of the Parliament of the United Kingdom of Great Britain and Ireland in force in England at the time of the passing of the Imperial Act 9 George IV Chapter 83 shall continue in force in New South Wales; to replace other enactments of such Parliaments; to repeal other enactments of such Parliaments; to validate certain matters; and for purposes connected therewith.

Part 1 Preliminary

1 Name of Act and commencement

- (1) This Act may be cited as the *Imperial Acts Application Act 1969*.
- (2) This Act shall, except where otherwise expressly provided, commence upon a day to be appointed by the Governor and notified by proclamation in the Gazette.

2 Construction

This Act shall be read and construed subject to the Commonwealth of Australia Constitution Act and so as not to exceed the legislative power of the State, to the intent that where any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application of the provision to other persons or circumstances shall not be affected.

3 (Repealed)

Part 2 General

4 Definition

In the construction of this Act, unless inconsistent with the context or subject-matter, the expression **Imperial enactment** includes any part of the enacted law at any time in force in England.

5 Substitution of enactments

- (1) Each Imperial enactment mentioned in the First Schedule to this Act, so far as it was

in force in England on the twenty-fifth day of July, one thousand eight hundred and twenty-eight is declared:

- (a) to have been in force in New South Wales on that day by virtue of the Imperial Act 9 George IV Chapter 83 (*The Australian Courts Act 1828*), and
 - (b) to have remained in force in New South Wales from that day until the commencement of this Act, except so far as affected by State Acts from time to time in force.
- (2) Each Imperial enactment mentioned in the First Schedule to this Act is hereby repealed so far as it applies in New South Wales.
- (3) Each provision of Part 3 of this Act is substituted for the Imperial enactment mentioned in the first column of the First Schedule to this Act opposite the reference to that provision in the second column of that Schedule.
- (4) To the extent to which any of the provisions of Part 3 of this Act are inconsistent with the provisions of any State Act in force at the commencement of this Act, the provisions of the State Act shall prevail.
- (5) In construing any of the provisions of Part 3 of this Act regard may be had to the context (if any) of the Imperial enactment for which the provision is substituted.
- (6) In any State Act a reference to any Imperial enactment specified in the first column of the First Schedule to this Act shall, where the case permits, and unless a contrary intention appears, be construed as a reference to the provision of this Act specified opposite that Imperial enactment in the second column of that Schedule.

6 Preserved Imperial enactments

Each Imperial enactment mentioned in Part 1 of the Second Schedule to this Act, and so much of each Imperial enactment mentioned in the first column of Part 2 of that Schedule as is specified opposite that Imperial enactment in the second column of the said Part 2, so far in either case as it was in force in England on the twenty-fifth day of July, one thousand eight hundred and twenty-eight:

- (a) is declared to have been in force in New South Wales on that day by virtue of the Imperial Act 9 George IV Chapter 83, and
- (b) except so far as affected by any Imperial enactments or State Acts from time to time in force in New South Wales:
 - (i) is declared to have remained in force in New South Wales from that day,
 - (ii) shall from the commencement of this Act be in force in New South Wales, and
- (c) is not repealed by section eight of this Act.

7 Enactments not affected by repeal

Nothing in this Act affects any Imperial enactment set out in the Third Schedule to this Act or any other Imperial enactment which independently of the provisions of the Imperial Act 9 George IV Chapter 83 is made applicable to New South Wales by the express words or necessary intendment of any Imperial enactment.

8 Imperial enactments repealed

- (1) In addition to the repeals effected by subsection two of section five of this Act all other Imperial enactments (commencing with the Statute of Merton, 20 Henry III A.D. 1235-6) in force in England at the time of the passing of the Imperial Act 9 George IV Chapter 83 are so far as they are in force in New South Wales hereby repealed.
- (2) The repeal of the Imperial Act 7 George II Chapter 8 (*Sir John Barnard's Act*) effected by subsection one of this section shall be deemed to have taken effect as on and from the fourteenth day of June one thousand eight hundred and sixty:

Provided that nothing in this subsection shall affect any transaction in respect of which proceedings in any Court have been taken or commenced on or before the twenty-fifth day of July one thousand nine hundred and sixty-eight.

9 Savings

- (1) The repeal by this Act of any Imperial enactment does not:
 - (a) revive anything not in force or existing at the commencement of this Act,
 - (b) affect the previous operation of any Imperial enactment so repealed or anything duly done or suffered under any Imperial enactment so repealed,
 - (c) affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any Imperial enactment so repealed,
 - (d) affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any Imperial enactment so repealed, or
 - (e) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid,and any such investigation, legal proceeding, or remedy may be instituted, continued, or enforced, and any such penalty, forfeiture or punishment may be imposed and enforced, as if this Act had not been passed.
- (2) The repeal by this Act of:
 - (a) The Imperial Act 43 Elizabeth Chapter 4 (*The Charitable Uses Act 1601*) does not affect the established rules of law relating to charity,

- (b) section four of the Imperial Act 29 Charles II Chapter 3 (*The Statute of Frauds 1677*) does not apply in relation to a promise or agreement made before the commencement of this Act, and
- (c) any other Imperial enactment does not affect any rules of law or equity not enacted by the repealed enactment.

10 Saving

Where any Imperial enactment not repealed by this Act has been repealed (whether expressly or impliedly), confirmed, revived, or perpetuated by any Imperial enactment hereby repealed, the first-mentioned repeal, or the confirmation, revivor, or perpetuation shall not be affected by the repeal effected by this Act.

11 Revival of repealed enactments

- (1) The Governor may, by proclamation published in the Gazette, declare that any provision (in this section called ***the revived provision***) being the whole or any part of any Imperial enactment repealed by this Act, other than an Imperial enactment mentioned in the First Schedule to this Act, shall be revived as from the date of publication of the proclamation, or a later date to be specified in the proclamation.
- (2) On and after the date of revival, the revived provision shall, subject to Acts from time to time in force, and subject to subsection three of this section, have such effect in New South Wales as the revived provision had in New South Wales immediately before the commencement of this Act.
- (3) The revival under this section of any revived provision shall not:
 - (a) affect the previous operation of any repeal worked by section eight of this Act,
 - (b) affect anything duly done or suffered before the date of revival,
 - (c) affect any right, privilege, obligation, or liability acquired, accrued, or incurred before the date of revival, or any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation or liability, or
 - (d) make any person liable for any penalty, forfeiture or punishment in respect of anything done or omitted before the date of revival.
- (4) Every such proclamation shall be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is then in session, and if not, then within fourteen sitting days after the commencement of the next session.
- (5) If either House passes a resolution of which notice has been given at any time within fifteen sitting days after the proclamation has been laid before such House disallowing any proclamation or part thereof, the proclamation or part thereupon ceases to have effect.

Part 3 Substituted enactments

Division 1 Administration of estates

12 Definitions 25 Edward III St 5 c 5.

In this Division unless inconsistent with the context or subject-matter:

Administration means letters of administration whether general, special, or limited, or with the will annexed or otherwise, and includes an order to the Public Trustee to administer.

Estate includes both real and personal property.

Personal representative means the executor original or by representation or administrator for the time being of a deceased person.

Will includes codicil.

13 Executor of executor represents original testator 31 Edward III St 1 c 11; 1 James II c 17, s 6.

- (1) An executor of a sole or last surviving executor of a testator is the executor of that testator.

This provision shall not apply to an executor who does not prove the will of his testator and, in the case of an executor who on his death leaves surviving him some other executor of his testator who afterwards proves the will of that testator, it shall cease to apply on such probate being granted.

- (2) So long as the chain of such representation is unbroken, the last executor in the chain is the executor of every preceding testator.

- (3) The chain of such representation is broken by:

- (a) an intestacy,
- (b) the failure of a testator to appoint an executor, or
- (c) the failure to obtain probate of a will,

but is not broken by a temporary grant of administration if probate is subsequently granted.

- (4) Every person in the chain of representation to a testator:

- (a) has the same rights in respect of the estate of that testator as the original executor would have had if living, and
- (b) is, to the extent to which the estate of that testator has come to his hands

answerable as if he were an original executor.

14 Rights and accountability of administrator 30 Charles II c 7; 4 William and Mary c 24, s 12.

Every person to whom administration of the estate of a deceased person is granted shall, subject to the limitations (if any) contained in the grant, have the same rights and liabilities and shall be accountable in like manner as if he were the executor of the deceased.

15 Liability for waste

Where a person as personal representative or as executor in his own wrong wastes or converts to his own use any part of the estate of a deceased person and dies, his personal representative shall to the extent of the available assets of the defaulter be liable and chargeable in respect of such waste or conversion in the same manner as the defaulter would have been if living.

Division 2 Calendar

24 George II c 23—*The Calendar (New Style) Act 1750*—ss 1, 2 and 3.

16 Provisions relating to calendar

- (1) The first day of January in every year shall be the first day of the year, and each new year shall accordingly commence and be reckoned from the first day of every month of January and all acts, deeds, writings, notes, and other instruments, of what nature or kind soever, hereafter made, executed, or signed shall bear date according to the said method of reckoning, being the reckoning instituted by the Imperial Act 24 George II c 23, known as *The Calendar (New Style) Act 1750*.
- (2) The several years two thousand one hundred, two thousand two hundred, two thousand three hundred, or any other hundredth year in time to come, except only every fourth hundredth year, of which the year two thousand shall be the first, shall not be leap years, but shall be common years consisting of three hundred and sixty-five days, and no more; and the years two thousand, two thousand four hundred, two thousand eight hundred, and every other fourth hundredth year from the said year two thousand inclusive, and also all other years which by the reckoning in use before the first day of January, one thousand seven hundred and fifty-two (being the date for the commencement of the calendar or reckoning instituted by the said Imperial Act, *The Calendar (New Style) Act 1750*) would have been leap years, shall in all times to come be leap years, consisting of three hundred and sixty-six days, in the same manner as was before the said first day of January, one thousand seven hundred and fifty-two used with respect to every fourth year.
- (3) The months, the enumeration of days in the respective months, and the ordering of the days of the week and Easter Day, shall be determined in accordance with the calendar, table and rules annexed to the said Imperial Act, *The Calendar (New Style)*

Act 1750.

Division 3

17 (Repealed)

Division 4 Forcible entries and detainers

5 Richard II St 1 c 7—*The Forcible Entry Act 1381.*

18 Forcible entry 8 Henry VI c 9—*The Forcible Entry Act 1429*; 31 Elizabeth c 11—*The Forcible Entry Act 1588.*

No person shall make any entry into any land except where such entry is given by law and, in such case, with no more force than is reasonably necessary.

19 Forcible detainer

No person being in actual possession of land for a period of less than three years by himself or his predecessors shall without colour of right hold possession of it in a manner likely to cause a breach of the peace or a reasonable apprehension of a breach of the peace against a person entitled by law to the possession of the land and able and willing to afford reasonable information as to his being so entitled.

20 Penalty

Any person who contravenes section eighteen or section nineteen of this Act shall be guilty of an indictable offence and liable to imprisonment for a term of not more than one year or to a fine not exceeding 10 penalty units or to both such imprisonment and fine.

Division 5 Guardians

12 Charles II c 24—*The Tenures Abolition Act 1660*—s 9.

21 Powers of guardian

(1) A guardian of a minor appointed by deed or will may take into his custody and management to the use of the minor the real and personal estate of the minor till the age of eighteen years or any lesser time according to the terms of the appointment of the guardian, and may bring such actions in relation to the real and personal estate of the minor as by law a guardian in common socage might have done, or may bring such other proceedings as may be necessary to give effect to all or any of his powers under this section.

(2) In this section *minor* means a person under the age of eighteen years.

Division 6 Insurance—life, fire and other policies

14 George III c 48—*The Life Assurance Act 1774.*

22 Existing insurances not affected by this Division

This Division does not apply to insurances made before the commencement of this Act.

23 Insurable interest

- (1) No insurance shall be made by any person on the life of any person or on any other event whatsoever wherein the person for whose use or benefit or on whose account the policy is made has no interest, or by way of gaming or wagering; and every assurance made contrary to this subsection shall be void.
- (2) It shall not be lawful to make any policy on the life of any person, or on any other event whatsoever, wherein the person effecting the policy has no interest, without inserting in such policy the names of the persons interested therein, or for whose use or benefit or on whose account such policy was made.
- (3) In all cases where there is an interest in such life or other event, no greater sum shall be recovered or received from the insurer than the amount or value of the interest.
- (4) Nothing in this Division shall extend to insurance made by any person on ships or goods, or to contracts of indemnity against loss by fire or loss by other events whatsoever.

Division 7 Insurance—marine

19 George II c 37—*The Marine Insurance Act 1745*; 28 George III c 56—*The Marine Insurance Act 1788*.

24 Application of Division

This Division applies to State marine insurance within the limits of New South Wales.

25 Existing contracts not affected

This Division does not apply to contracts of marine insurance made before the commencement of this Act.

26 Avoidance of wagering or gaming contracts

- (1) Every contract of marine insurance by way of gaming or wagering is void.
- (2) A contract of marine insurance is deemed to be a gaming or wagering contract:
 - (a) where the assured has not an insurable interest, and the contract is entered into with no expectation of acquiring such an interest, or
 - (b) where the policy is made “interest or no interest”, or “without further proof of interest than the policy itself”, or “without benefit of salvage to the insurer”, or subject to any other like term:

Provided that, where there is no possibility of salvage, a policy may be effected

without benefit of salvage to the insurer.

27 Contracts must be embodied in policy

Subject to the provisions of any Act, a contract of marine insurance is inadmissible in evidence in an action for the recovery of a loss under the contract unless it is embodied in a marine policy in accordance with this Division. The policy may be executed and issued either at the time when the contract is concluded or afterwards.

28 What policy must specify

A marine policy must specify:

- (a) the name of the assured, or of some person who effects the insurance on his behalf,
- (b) the subject-matter insured and the risk insured against,
- (c) the voyage, or period of time, or both as the case may be, covered by the insurance,
- (d) the sum or sums insured, and
- (e) the name or names of the insurers.

Division 8 Justices of the Peace

1 Edward III St 2 c 16; 18 Edward III St 2 c 2; 34 Edward III c 1—*The Justices of the Peace Act 1361*.

29 Appointment of Justices of the Peace

- (1) The Governor may issue a commission of the peace for the State.
- (2) A commission may be revoked by a subsequent commission.
- (3) A commission:
 - (a) shall be under the Public Seal of the State,
 - (b) shall be addressed generally, and not by name, to all such persons as may from time to time hold office as Justices of the Peace for the State, and
 - (c) shall have the same effect as it would have had if it had been issued by the Governor before the date of assent to this Act to each such Justice of the Peace by name.
- (4) The Governor may appoint Justices of the Peace for the State.

30 (Repealed)

Division 9 Landlord and tenant

31 (Repealed)

32 Voluntary waste

- (1) A tenant for life or lives or a leasehold tenant shall not commit voluntary waste.
- (2) Nothing in subsection one of this section applies to any estate or tenancy without impeachment of waste, or affects any licence or other right to commit waste.
- (3) In subsection one of this section **leasehold tenant** includes a tenant for a term, a tenant under a periodical tenancy, a tenant under a tenancy to which section one hundred and twenty-seven of the *Conveyancing Act 1919*, as amended by subsequent Acts, applies, and a tenant at will.
- (4) A tenant who infringes subsection one of this section is liable in damages to his remainderman or reversioner but this section imposes no criminal liability.
- (5) This section does not affect the operation of any event which may determine a tenancy at will.

Division 10 Legal procedure—actions on bonds

8 and 9 William III c 11—*The Administration of Justice Act 1696*—s 8.

33 Assignment of breaches, payment of damages etc 4 and 5 Anne c 3 (or c 16)—*The Administration of Justice Act 1705*—ss 12 and 13.

- (1) In any action on any bond or on any penal sum for non-performance of any covenant or agreement, the plaintiff may assign as many breaches as he thinks fit, and may recover not only such damages as have been usually awarded in such cases, but also damages for such of the said breaches so assigned as the plaintiff proves to have occurred.
- (2) If interlocutory judgment in any such case is given for the plaintiff by confession or in default of appearance or of pleading, the plaintiff may suggest as many breaches of the covenants and agreements as he thinks fit, and may on proof of such breaches recover damages accordingly.
- (3) If the defendant after judgment and before execution pays into the court where the action is brought to the use of the plaintiff such damages together with the costs of the action, or if by reason of any execution the plaintiff is fully paid or satisfied all such damages together with his costs of the action and all reasonable charges and expenses for the said execution, further proceedings on the said judgment shall be stayed. But the judgment shall remain as a further security to answer to the plaintiff such damages as are sustained for further breach of such covenant or agreement, and upon any such breach the plaintiff may summon the defendant to show cause why execution should not be had or awarded upon the said judgment, upon which there shall be the like proceeding or such other proceeding as may be ordered for inquiry as to such breaches and assessing damages thereon; and upon payment or satisfaction

in manner as aforesaid of such future damages costs charges and expenses as aforesaid all further proceedings on the said judgment shall to the like extent again be stayed.

34 Action of debt brought on a bond after money paid etc

- (1) Where an action is brought upon any bond which has a condition or defeasance to make void the same upon payment of a lesser sum at a day or place certain, if the obligor has before the action brought paid to the obligee the principal and interest due by the defeasance or condition of such bond, though such payment was not made strictly according to the condition or defeasance, it may nevertheless be pleaded in bar of such action; and shall be as effectual a bar thereof as if the money had been paid at the day and place according to the condition or defeasance and had been so pleaded.
- (2) If at any time pending an action upon any such bond with a penalty the defendant brings into court all the principal money and interest due on such bond and also all costs properly chargeable by the plaintiff against the defendant in respect of any proceedings upon such bond, the money so brought in shall be in full satisfaction and discharge of the bond.

Division 11 Libels—blasphemous and seditious libels

60 George III and 1 George IV c 8—*The Criminal Libel Act 1819*—ss 1, 2 and 8.

35 Seizure of copies of libels

- (1) In every case in which any verdict or judgment shall be had against any person for composing, printing, or publishing any blasphemous libel, or any seditious libel tending to bring into hatred or contempt the person of Her Majesty, Her heirs or successors, or the government and constitution of the State of New South Wales as by law established, or either House of Parliament, or to excite Her Majesty's subjects to attempt the alteration of any matter as by law established, otherwise than by lawful means, the judge or the court before whom or in which such verdict shall have been given, or the court in which such judgment shall be had, may make an order for the seizure and carrying away and detaining in safe custody, in such manner as shall be directed in such order, all copies of the libel which shall be in the possession of the person against whom such verdict or judgment shall have been had, or in the possession of any other person named in the order for his use, evidence upon oath having been previously given to the satisfaction of such court or judge, that a copy or copies of the said libel is or are in the possession of such other person for the use of the person against whom such verdict or judgment shall have been had as aforesaid; and in every such case it shall be lawful for any justice of the peace or for any person acting under any such order, or for any person acting with or in aid of any such justice of the peace, or other person, to search for any copies of such libel in any house, building, or other place whatsoever belonging to or occupied by the person against

whom any such verdict or judgment shall have been had, or belonging to or occupied by any other person so named, in whose possession any copies of any such libel, belonging to the person against whom any such verdict or judgment shall have been had, shall be; and in case admission shall be refused or not obtained within a reasonable time after it shall have been first demanded, to enter by force by day into any such house, building, or place whatsoever, and to carry away all copies of the libel there found, and to detain the same in safe custody, until the same shall be restored under the provisions of this section, or disposed of according to any further order made in relation thereto.

- (2) If in any such case as aforesaid judgment shall be stayed, or if, after judgment shall have been entered, the same shall be reversed, all copies so seized shall be forthwith returned to the person from whom the same shall have been so taken as aforesaid, free of all charge and expense, and without the payment of any fees whatsoever; and in every case in which final judgment shall be entered upon the verdict so found against the person charged with having composed, printed, or published such libel, then all copies so seized shall be disposed of as the court in which such judgment shall be given shall order and direct.
- (3) Any proceeding which shall be brought for any thing done in pursuance of this section, shall be commenced within six months next after the thing done; and the defendant in every such proceeding may plead the general issue, and give this section and the special matter in evidence at any trial to be had thereupon; and if proceedings shall be brought or commenced after the time limited for bringing the same, there shall be a verdict for the defendant.

Division 12 Real property

18 Edward I St 1 (*Quia Emptores*) cc 1 and 3; 34 Edward III c 15

36 Alienation of fee simple 12 Charles II c 24—*The Tenures Abolition Act 1660*—s 4.

Land held of the Crown in fee simple may be assured in fee simple without licence and without fine and the person taking under the assurance shall hold the land of the Crown in the same manner as the land was held before the assurance took effect.

37 Tenure

All tenures created by the Crown by way of the alienation of an estate in fee simple in land after the commencement of this Act shall be taken to be in free and common socage without any incident of tenure for the benefit of the Crown.

Division 13 Recovery of property on determination of a life or lives

18 and 19 Charles II c 11—*The Cestui que Vie Act 1666*; 6 Anne c 72 (or c 18)—*The Cestui que Vie Act 1707*.

38 Property—determination of a life or lives

- (1) Every person having any estate or interest in any property determinable upon a life or lives who, after the determination of such life or lives without the express consent of the person next immediately entitled upon or after such determination, holds over or continues in possession of such property estate or interest, or of the rents, profits or income thereof, shall be liable in damages or to an account for such rents and profits, or both, to the person entitled to such property, estate, interest, rents, profits or income after the determination of such life or lives.
- (2) Where a reversion remainder or other estate or interest in any property is expectant upon the determination of a life or lives, the reversioner remainderman or other person entitled to such reversion remainder or other estate or interest may in any proceeding claiming relief on the basis that such life or lives has or have determined, adduce evidence of belief that such life or lives has or have been determined and of the grounds of such belief, and thereupon the court may in its discretion order that unless the person or persons on whose life or lives such reversion remainder or other estate or interest is expectant is or are produced in court or is or are otherwise shown to be living, such person or persons shall for the purposes of such proceedings be accounted as dead, and relief may be given accordingly.
- (3) If in such proceedings the lastmentioned person is shown to have remained beyond Australia, or otherwise absented himself from the place in which if in Australia he might be expected to be found, for the space of seven years or upwards, such person, if not proved to be living, shall for the purposes of such proceedings be accounted as dead, and relief may be given accordingly.
- (4) If in any such proceedings judgment has been given against the plaintiff, and afterwards such plaintiff brings subsequent proceedings upon the basis that such life has determined, the court may make an order staying such proceedings permanently or until further order or for such time as may be thought fit.
- (5) If in consequence of the judgment given in any such proceedings, any person having any estate or interest in any property determinable on such life or lives has been evicted from or deprived of any property or any estate or interest therein, and afterwards it appears that such person or persons on whose life or lives such estate or interest depends is or are living or was or were living at the time of such eviction or deprivation, the court may give such relief as is appropriate in the circumstances.

Division 14 Religious worship—disturbance of

1 William and Mary c 18—*The Toleration Act 1688*—s 15; 52 George III c 155—*The Places of Religious Worship Act 1812*—s 12

39 Disturbing religious worship

Any person who wilfully and without lawful justification or excuse, the proof of which lies

on him, disquiets or disturbs any meeting of persons lawfully assembled for religious worship, or assaults any person lawfully officiating at any such meeting, or any of the persons there assembled, shall be liable upon summary conviction to a penalty not exceeding 1 penalty unit or to imprisonment for a term not exceeding two months.

Division 15 Bailiff

32 George II c 28—*The Debtors Imprisonment Act 1758*—ss 1, 3 and 4.

40 Duties on arrest of civil debtors

- (1) Where any bailiff or other officer arrests or has in custody upon mesne process any person in the course of a civil proceeding such officer shall not:
 - (a) convey such person without his free consent to any premises licensed for the sale of intoxicating liquor or any registered club, or to the private house of such officer or any tenant or relative of such officer; nor
 - (b) charge such person with any sum for, or procure him to call or pay for, any liquor, food, or thing whatsoever, except what he freely asks for; nor
 - (c) take such person to any gaol within twenty-four hours of his arrest, unless such person fails to name or refuses to be carried to some safe and convenient house of his own nomination, being within a reasonable distance of the place at which he was arrested, and not being the private dwelling-house of such person,

but shall during such twenty-four hours permit such person to send for and to have brought to him at reasonable times in the day and in reasonable quantities any food or liquor from what place he thinks fit, and also to have and use such bedding, linen, and other necessary things as he has occasion for or is supplied with, and shall not require any payment for the use thereof or restrict the use thereof.

- (2) Where a bailiff or other officer makes an arrest to which this section applies he shall as promptly as reasonably possible inform the person arrested of the effect of subsection one of this section.

Division 16 Sunday

29 Charles II c 7—*The Sunday Observance Act 1677*—s 6

41 (Repealed)

Division 17 Witnesses—habeas corpus for prisoners

44 George III c 102—*The Habeas Corpus Act 1804*.

42 (Repealed)

Part 4 Penalties

43 Offences—penalties

Any person guilty of any offence under any Imperial enactment included in Part 1 of the Second Schedule for which no punishment is otherwise provided is liable to imprisonment for a term of not more than five years or to a fine not exceeding 20 penalty units, or to both such imprisonment and fine.

First Schedule

(Section 5)

Imperial enactment	Substituted provision of this Act	Division of Part 3
(1267) 52 Henry III (<i>Statute of Marlborough</i>) c 23	s 32	Division 9
(1289-90) 18 Edward I (st 1) (<i>Quia Emptores</i>) cc 1 and 3.	s 36	Division 12
(1326-7) 1 Edward III St 2 c 16	s 29	Division 8
(1344) 18 Edward III St 2 c 2	s 29	Division 8
(1351-2) 25 Edward III St 5 c 5	s 13	Division 1
(1357) 31 Edward III St 1 c 11	s 14	Division 1
(1360-1) 34 Edward III c 1 (<i>The Justices of the Peace Act 1361</i>)	s 30	Division 8
(1361) 34 Edward III c 15	s 36	Division 12
(1381-2) 5 Richard II St 1 c 7 (<i>The Forcible Entry Act 1381</i>)	s 18	Division 4
(1429) 8 Henry VI c 9 (<i>The Forcible Entry Act 1429</i>)	s 19	Division 4
(1588-9) 31 Elizabeth c 11 (<i>The Forcible Entry Act 1588</i>)	s 19	Division 4
(1660) 12 Charles II c 24 (<i>The Tenures Abolition Act 1660</i>):		
s 4	s 37	Division 12
s 9	s 21	Division 5
(1666) 18 and 19 Charles II c 11 (<i>The Cestui que Vie Act 1666</i>)	s 38	Division 13
(1677) 29 Charles II c 7 (<i>The Sunday Observance Act 1677</i>), s 6	s 41	Division 16
(1678) 30 Charles II c 7	s 15	Division 1

(1685) 1 James II c 17, s 6	s 14	Division 1
(1688) 1 William and Mary c 18 (<i>The Toleration Act 1688</i>), s 15	s 39	Division 14
(1692) 4 William and Mary c 24, s 12	s 15	Division 1
(1696–7) 8 and 9 William III c 11 (<i>The Administration of Justice Act 1696</i>), s 8	s 33	Division 10
(1705) 4 and 5 Anne c 3 (or c 16) (<i>The Administration of Justice Act 1705</i>), ss 12 and 13	s 34	Division 10
(1707) 6 Anne c 72 (or c 18) (<i>The Cestui que Vie Act 1707</i>)	s 38	Division 13
(1737) 11 George II c 19 (<i>The Distress for Rent Act 1737</i>), s 14	s 31	Division 9
(1745) 19 George II c 37 (<i>The Marine Insurance Act 1745</i>)	s 26	Division 7
(1750) 24 George II c 23 (<i>The Calendar (New Style) Act 1750</i>), ss 1, 2 and 3	s 16	Division 2
(1758–9) 32 George II c 28 (<i>The Debtors Imprisonment Act 1758</i>), ss 1, 3 and 4	s 40	Division 15
(1774) 14 George III c 48 (<i>The Life Assurance Act 1774</i>)	s 23	Division 6
(1788) 28 George III c 56 (<i>The Marine Insurance Act 1788</i>)	ss 27, 28	Division 7
(1804) 44 George III c 102 (<i>The Habeas Corpus Act 1804</i>)	s 42	Division 17
(1812) 52 George III c 101 (<i>The Charities Procedure Act 1812</i>)	s 17	Division 3
(1812) 52 George III c 155 (<i>The Places of Religious Worship Act 1812</i>), s 12	s 39	Division 14
(1819) 60 George III and 1 George IV c 8 (<i>The Criminal Libel Act 1819</i>), ss 1, 2 and 8	s 35	Division 11

Second Schedule

Part 1 Constitutional enactments

(Section 6)

(1297)	25 Edward I (<i>Magna Carta</i>) c 29.
(1351)	25 Edward III St 5 c 4.
(1354)	28 Edward III c 3.

- (1368) 42 Edward III c 3.
- (1623–4) 21 James I c 3 (*The Statute of Monopolies*) ss 1 and 6.
- (1627) 3 Charles I c 1 (*The Petition of Right*).
- (1640) 16 Charles I c 10 (*The Habeas Corpus Act 1640*), s 6.
- (1679) 31 Charles II c 2 (*The Habeas Corpus Act 1679*) ss 1–8, s 11 (except the words “and shall incur and sustain” and the following words of the section), and ss 15–19.
- (1688) 1 William and Mary c 30 (*The Royal Mines Act 1688*), s 3.
- (1688) 1 William and Mary sess 2 c 2 (*The Bill of Rights*).
- (1700) 12 and 13 William III c 2 (*The Act of Settlement*).
- (1702) 1 Anne c 2 (*The Demise of the Crown Act 1702*), s 4.
- (1702) 1 Anne St 2 c 21 (*The Treason Act 1702*), s 3.
- (1707) 6 Anne c 41 (or 6 Anne c 7) (*The Succession to the Crown Act 1707*), s 9.
- (1772) 12 George III c 11 (*The Royal Marriages Act 1772*), ss 1 and 2.
- (1816) 56 George III c 100 (*The Habeas Corpus Act 1816*).

Part 2 Criminal law—treason: piracy

(Section 6)

Treason

So far as the same declares what offences shall be adjudged treason, as amended by the following:

- (1351) 25 Edward III st 5 c 2 (*The Treason Act 1351*).
- 9 George IV c 31,
- 11 George IV and 1 William IV c 66 (*The Forgery Act, 1830*) adopted by 4 William IV No 4,
- 2 and 3 William IV c 34 adopted by 9 Victoria No 1.
- (1795) 36 George III c 7 (*The Treason Act 1795*).
- (1817) 57 George III c 6 (*The Treason Act 1817*).
- Such provisions of the Acts respectively as relate to the compassing, imagining, inventing, devising, or intending death or destruction, or any bodily harm tending to death or destruction, maim or wounding, imprisonment, or restraint of the person of the Sovereign and the expressing, uttering, or declaring of such compassings, imaginations, inventions, devices, or intentions, or any of them.
- (1695) 7 and 8 William III c 3 (*The Treason Act 1695*).
- S 5 (except the words “And that no person” to the end of that section) and s 6.

Piracy

(1536) 28 Henry VIII c 15*.
(1698-9) 11 and 12 William III (11 William III) c 7.
(1717-8) 4 George I c 2 (or c 11), s 7.
(1721-2) 8 George I c 24.
(1744-5) 18 George II c 30*.

The provisions of each Act except so much of each Act as relates to the punishment of the crime of piracy or of any offence by any of the said Acts declared to be piracy, or of accessories thereto.

Editorial note—

* See [Piracy Punishment Act 1902](#), s 3.

Third Schedule Enactments applying irrespective of 9 George IV c 83

(A) Criminal law enactments

(1698-9)	11 William III c 12	Crimes by Governors of Colonies.
(1772)	12 George III c 24	<i>The Dockyards, &c Protection Act 1772.</i>
(1802)	42 George III c 85, s 1	<i>The Criminal Jurisdiction Act 1802.</i>
(1812)	52 George III c 156	<i>The Prisoners of War (Escape) Act 1812.</i>
(1824)	5 George IV c 113	<i>The Slave Trade Act 1824.</i>

(B) Miscellaneous

(1813)	54 George III c 15, s 4	<i>The New South Wales (Debts) Act 1813.</i>
(1821)	1 and 2 George IV c 121, ss 27-29	<i>The Commissariat Accounts Act 1821.</i>