

CONTENTS

	<i>Page</i>
<i>Preface to the First Edition</i>	vii
<i>Preface</i>	ix
<i>Table of Cases</i>	xxiii
<i>Table of Statutes</i>	lxii
<i>Table of Statutory Instruments</i>	lxxxiv
	 <i>Para.</i>
CHAPTER 1: HIGHWAYS AND HIGHWAY AUTHORITIES	
Characteristics of a highway	1-01
Introduction	1-01
Open to the public	1-06
Use as of right	1-07
A public right of passage	1-08
A public right to pass along a defined route	1-19
Classes of public rights of way	1-22
Carriageway highways	1-23
Footpaths and bridlepaths	1-38
Toll roads and charging schemes	1-46
Highway authorities	1-48
The Minister	1-49
Local highway authorities	1-52
Delegation, agreements between authorities and agency agreements	1-56
 CHAPTER 2: CREATION OF HIGHWAYS	
Introduction	2-01
Creation under statute	2-03
Creation by construction	2-03
Creation by agreement	2-10

CONTENTS

Creation by declaration	2-19
Creation by order	2-20
Creation at common law	2-23
Need for both dedication and acceptance	2-23
The essential elements of a dedication	2-24
Intention to dedicate to the public at large	2-25
Conditional or executory dedication	2-26
Limited dedication	2-27
Dedication distinguished from permission	2-32
Dedication in perpetuity and capacity to dedicate	2-34
Implied dedication at common law	2-44
The statutory presumption of dedication	2-53
Physical extent of dedication	2-82
Evidence and proof of dedication	2-86
Procedures for establishing whether a highway exists	2-100
CHAPTER 3: RIGHTS OF THE HIGHWAY AUTHORITY AND OF ADJOINING LANDOWNERS IN, UNDER AND OVER THE HIGHWAY	
Introduction	3-01
The various interests	3-01
Legal interest of the highway authority	3-05
At common law	3-05
Under the Highways Act 1980	3-07
Physical extent of the interest	3-08
Rights and responsibilities which flow from the ownership of the highway authority	3-16
Rights of the adjoining landowner	3-19
The presumption of ownership	3-19
Rights arising out of the ownership of the soil	3-30
Rights of access to and from the highway	3-34
Highway trees	3-40
CHAPTER 4: THE MAINTENANCE OF HIGHWAYS	
Introduction	4-01
At common law	4-01
The Highway Act 1835	4-03
The Highways Act 1959	4-06

CONTENTS

Highways classed as to liability to repair	4-07
Highways repairable by no one	4-08
Highways repairable by reason of statute, prescription, tenure or inclosure	4-09
By statute	4-10
By prescription	4-11
By tenure	4-12
By inclosure	4-16
Highways repairable at the public expense	4-18
Publicly maintainable highways	4-19
Introduction	4-19
Highways maintainable by virtue of the Highways Act 1959	4-20
Highways constructed by a highway authority	4-21
Highways constructed under Part II of the Housing Act 1985	4-22
Trunk roads and special roads	4-23
Toll roads	4-24
Footpaths and bridleways	4-25
Highways adopted in accordance with the Highways Act 1980 section 37	4-27
Highways adopted as a result of agreements under the Highways Act 1980 section 38	4-32
Other powers of adoption of highways	4-41
Extent of the duty to maintain	4-43
Enforcement of the duty to repair	4-63
Extinguishment of the liability to maintain a highway	4-67
Powers available in order to perform the duty to maintain	4-71
List of highways maintainable at the public expense	4-75
Extraordinary traffic	4-76

CHAPTER 5: CIVIL LIABILITY OF HIGHWAY AUTHORITIES

Introduction	5-01
Position before 1961	5-01
Highways (Miscellaneous Provisions) Act 1961	5-03
Liability for a failure to maintain under section 41 of the Highways Act 1980	5-04
Danger as a necessary requirement in an action for damages for breaches of section 41	5-06
An absolute duty	5-16
To whom is the duty owed?	5-19
Maintenance and repair	5-25

CONTENTS

The modern approach	5-27
Maintenance or improvement	5-31
Highways to which the duty relates	5-32
The Special Defence	5-38
General	5-38
Availability of manpower	5-39
Adequacy of the system of inspection	5-40
Character of the highway and the traffic reasonably expected to use it	5-42
Standard of maintenance appropriate for a highway of that character and used by such traffic	5-44
State of repair in which a reasonable person would have expected to find the highway	5-45
State of knowledge of the highway authority	5-46
Warning notices	5-47
Reliance upon independent contractors	5-48
Other defences	5-49
Inevitable accident and Act of God	5-49
Contributory negligence	5-50
Volenti non fit injuria	5-51
The duty under section 41(1A)	5-52
Accidents occurring as a result of undertakers' works	5-53
New Roads and Street Works Act 1991	5-53
Tramways	5-55
Civil liabilities of the highway authority other than those arising out of a failure to maintain	5-60
General	5-60
Liability in nuisance	5-62
Negligence in the performance or non-performance of statutory functions	5-64
CHAPTER 6: IMPROVEMENT OF HIGHWAYS	
Introduction	6-01
Background	6-01
Meaning of improvement	6-02
Improvement powers under the Highways Act 1980	6-04
General power of improvement	6-04
Improvement of highways and compensation	6-05

CONTENTS

Widening of highways	6-12
Levelling and altering the level of highways	6-21
Corners and junctions	6-23
Fencing and boundaries	6-28
Cattle grids	6-31
Bridges	6-38
Power to lay out verges and to plant trees	6-39
Lighting	6-40
Safety provisions	6-45
Drainage of highways	6-55
Protection of the highway from various hazards of nature	6-61
Dual carriageway, roundabouts and cycle tracks	6-64
Road humps and traffic calming works	6-67
Miscellaneous powers	6-73
Traffic signs	6-74
Provision of highway facilities	6-76
CHAPTER 7: PROTECTION OF THE HIGHWAY AND OF HIGHWAY USERS: (1) PUBLIC NUISANCE AND ITS REMEDIES	
Introduction	7-01
Duty of the highway authority to assert and protect highway rights	7-02
At common law	7-02
Duty under statute	7-03
Public nuisance	7-10
Obstruction of the highway	7-14
Encroachment on the highway by adjoining landowners	7-26
Dangers to the user of the highway	7-31
Remedies for highway nuisance	7-41
CHAPTER 8: PROTECTION OF THE HIGHWAY AND OF HIGHWAY USERS: (2) STATUTORY POWERS RELATING TO AUTHORISED AND UNAUTHORISED INTERFERENCES WITH THE HIGHWAY	
Highways Act 1980 Part X	8-01
Introduction	8-01
Statutory powers to prevent damage to the highway	8-08
Obstructions in highways	8-19
Danger or annoyance to users of the highway	8-72
Precautions to be taken in doing certain works in or near streets or highways	8-81

CONTENTS

The construction of structures over and under highways	8-88
Statutory undertakers' apparatus	8-92
Vehicle crossings over footways and verges	8-93
Power to install refuse or storage bins in streets	8-94
Road humps and traffic calming works	8-95
Charges for permissions and licences	8-96
Level crossings	8-97
CHAPTER 9: EXTINGUISHMENT AND DIVERSION OF HIGHWAYS	
Introduction	9-01
Destruction of the highway	9-03
Statutory intervention	9-06
Effect of stopping up	9-08
Effect of diversion	9-12
When do stopping up and diversion orders take effect?	9-17
Extinguishment and diversion by court order	9-24
Highways Act 1980 section 116	9-24
Circumstances in which section 116 is appropriate	9-25
Procedure	9-28
Substantive conditions	9-33
Extinguishment and diversion by administrative powers	9-42
General	9-42
Highways Act 1980 sections 118 and 119	9-43
Extinguishment and diversion in the interests of agriculture, etc.	9-76
Rail crossing extinguishment and diversion orders: Highways Act 1980 sections 118A and 119A	9-77
Extinguishment and diversion for the purposes of crime prevention	9-88
Diversions for the protection of sites of special scientific interest	9-96
Temporary diversions for dangerous works	9-98
Extinguishment or diversion incidental to road construction and improvement	9-99
Extinguishment and diversion powers under the Town and Country Planning Act 1990	9-109
Powers under other statutes	9-138
Powers similar to stopping up orders	9-144
The wholesale extinguishment of certain rights of way by statute	9-151
Registers and combined orders	9-155

CONTENTS

CHAPTER 10: STREETS AND PRIVATE STREETS

Streets	10-01
Making up of private streets	10-09
Introduction	10-09
Resolution of dissatisfaction	10-12
Objections to proposed works	10-38
Hearing and determination of objections	10-45
Final apportionment	10-47
Recovery of expenses	10-48
Advance payments code	10-53
Urgent repairs to private streets	10-56
Adoption of a street after private street works	10-57
Compensation	10-58

CHAPTER 11: BRIDGES

Introduction	11-01
Highway authorities for bridges	11-04
Construction of bridges	11-05
At common law	11-05
Statutory powers to construct bridges	11-06
Repair and maintenance of bridges	11-09
History	11-09
Establishing the liability to repair a bridge	11-18
Requirement of public utility	11-26
Bridges repairable by persons, bodies or areas other than the highway authority	11-36
Hundreds, towns, parishes, etc.	11-37
Liability arising out of tenure or prescription	11-38
Bridges constructed for private benefit to mitigate interference with an existing highway	11-39
Bridges repairable by no-one	11-42
The extent of repair	11-46
Bridges maintainable by the highway authority	11-46
Privately maintainable bridges	11-47

CONTENTS

Liability for the approaches to and the way carried by the bridge	11-48
Statutory powers governing the relationship between the owners of privately maintainable bridges and the highway authorities	11-51
Enforcement of liability to repair bridges	11-52
Order for reconstruction or transfer of privately maintainable bridges	11-53
Agreements between highway authorities and bridge owners	11-56
Bridges carrying trunk roads and special roads	11-57
Canal and railway bridges	11-60
CHAPTER 12: FOOTPATHS AND BRIDLEWAYS	
Introduction	12-01
Mapping of public paths	12-03
National Parks and Access to the Countryside Act 1949	12-03
Countryside Act 1968	12-07
Local Government Act 1972	12-08
Wildlife and Countryside Act 1981	12-09
Countryside and Rights of Way Act 2000	12-10
The definitive map and statement	12-15
Duties of the surveying authority	12-22
The evidential effect of the definitive map	12-34
The modification of the definitive map	12-41
The decision to make a modification order	12-63
The situation in London	12-76
Creation, maintenance and protection of public paths and restricted byways	12-77
Creation of footpaths, bridlepaths and restricted byways	12-77
Maintenance of footpaths, bridleways and restricted byways	12-78
Protection of highway rights over footpaths and bridleways	12-82
Prevention of obstructions	12-104
Improving the network	12-105
Provisions of amenities in pedestrian ways	12-107
Provision of services and amenities by councils	12-109
Grant of permissions by councils for the execution of works and use of objects or structures	12-111

CONTENTS

Procedure	12-113
Private vehicular use of public footpaths and bridleways	12-118
CHAPTER 13: ACCESS TO OPEN LAND	
Introduction	13-01
The scheme of the Act	13-07
The extent of the right of access	13-09
To what land does the right of access apply	13-34
The preparation of the conclusive map	13-44
The nature of the right of access	13-52
Rights and liabilities of owners and occupiers	13-55
The powers and duties of access authorities	13-61
Enforcement and means of access	13-73
CHAPTER 14: STREET WORKS	
Introduction	14-01
History	14-01
The New Roads and Street Works Act 1991	14-09
An overview of Part III	14-09
The objects, bodies and persons to whom the street works provisions apply	14-17
The street works register	14-38
The notice system	14-45
The general duties of co-ordination and co-operation	14-59
Streets subject to special controls	14-63
Safety and supervisory control over the carrying out of street works	14-76
Reinstatement	14-90
Provision of facilities for inspection; the charging of fees; the recovery of costs and compensation	14-101
Road, bridge and transport works and their effect on undertakers' apparatus	14-106
A complete code?	14-120
Permit schemes	14-121
Civil and criminal liability under the New Roads and Street Works Act 1991	14-135

CONTENTS

Civil liability at common law for damage and injury caused by street works	14–137
CHAPTER 15: AUTHORISATION PROCEDURES, ACQUISITION OF LAND, COMPULSORY PURCHASE POWERS, INQUIRIES AND COMPENSATION	
Authorisation procedures	15–01
Line and side roads orders	15–03
Development consent	15–11
Powers of acquisition of land	15–21
Introduction	15–21
General power of acquisition	15–25
Specific powers of acquisition	15–32
Acquisition of rights over land	15–38
Exchange of land	15–42
Powers of land acquisition in other statutes	15–43
Compulsory purchase orders	15–44
Inquiries	15–60
Inquiries into objections to orders and schemes and compulsory purchase orders	15–62
The Highway Inquiries Procedure Rules 1994	15–65
Other inquiry procedure rules	15–81
Compensation	15–87
Compensation for the acquisition of land	15–87
Compensation for injurious affection and severance	15–94
Compensation for injurious affection where no land has been taken	15–97
Compensation for depreciation caused by the use of new or improved highways	15–103
Mitigation of the injurious effect of public works	15–108
Compensation in respect of other acts and decisions of a highway authority under the Highways Act 1980	15–113
Power to execute works for mitigating the adverse effects of the construction or improvement of a highway	15–115
CHAPTER 16: TRAFFIC REGULATION AND MANAGEMENT	
Introduction	16–01
Traffic authorities	16–02
The network management duty	16–04

CONTENTS

London	16-13
Road traffic reduction	16-15
Traffic regulation orders	16-17
Introduction	16-17
Factors to be taken into account in deciding whether to make a TRO	16-19
The general discretion	16-25
The statutory purposes	16-26
The content of TROs	16-37
Restriction on the content of TROs	16-41
The effect of a TRO	16-42
London: section 6 and Schedule 1	16-46
Experimental orders	16-50
Other orders similar to TROs	16-54
Parking controls on highways	16-64
Procedure	16-72
Enforcement	16-73
Procedure for making traffic regulation and other orders	16-86
Consultation	16-87
Notice of the proposal to make a TRO	16-88
Dealing with objections	16-90
Making the order	16-91
Orders made by the Secretary of State: procedure	16-96
CHAPTER 17: MISCELLANEOUS MATTERS	
General provisions as to ownership	17-01
Vesting of highways and highway drains	17-01
Transfer of property and liabilities in certain situations	17-03
Transfer of lighting systems	17-06
Transfer of toll highways	17-07
Financial provisions	17-08
Powers of entry and powers to carry out works	17-18
Power to dispose of materials	17-24
Ancillary powers	17-25
Obstruction of officers	17-27
Default powers	17-28
Recovery of expenses	17-34
Prosecutions, notices and appeals	17-38
Prosecutions	17-38
Notices and service of documents	17-39
Appeals and applications	17-40

CONTENTS

	<i>Page</i>
APPENDICES	
1. Highways in London	000
2. Highways in Wales	000
3. Summary of the main powers available for stopping up or diversion of highways	000
4. Summary of the main dispute and compensation procedures under the Highways Act 1980	000