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**AN BILLE UM ATHCHÓIRIÚ AN DLÍ TALÚN AGUS  
TÍOLACTHA 2006**  
**LAND AND CONVEYANCING LAW REFORM BILL 2006**

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*Mar a ritheadh ag Dáil Éireann*  
*As passed by Dáil Éireann*

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[No. 31*d* of 2006]

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ACTS REFERRED TO

Accumulations Act 1892	55 & 56 Vic. c. 58
Administration of Justice Act 1707	6 Anne c. 10
Bankruptcy Act 1988	1988, No. 27
Bodies Corporate (Joint Tenancy) Act 1899	62 & 63 Vic. c. 20
Boundaries Act 1721	8 Geo. 1 c. 5
Building Societies Act 1989	1989, No. 17
Capital Acquisitions Tax Consolidation Act 2003	2003, No. 1
Central Bank and Financial Services Authority of Ireland Act 2004	2004, No. 21
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Chief Rents Redemption (Ireland) Act 1864	27 & 28 Vic. c. 38
Circuit Court (Registration of Judgments) Act 1937	1937, No. 3
Clandestine Mortgages Act 1697	9 Will. 3 c. 11
Commons Act 1789	29 Geo. 3 c. 30
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Companies Act 1963	1963, No. 33
Consumer Credit Act 1995	1995, No. 24
Contingent Remainders Act 1877	40 & 41 Vic. c. 33
Conveyancing Act 1634	10 Chas. 1 sess. 2 c. 3
Conveyancing Act 1881	44 & 45 Vic. c. 41
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Conveyancing Act 1911	1 & 2 Geo. 5 c. 37
Conveyancing Acts 1881 to 1911	
Copyhold Act 1843	6 & 7 Vic. c. 23
Copyhold Act 1844	7 & 8 Vic. c. 55
Copyhold Act 1852	15 & 16 Vic. c. 51
Copyhold Act 1858	21 & 22 Vic. c. 94
Copyhold Act 1887	50 & 51 Vic. c. 73
County Hospitals (Amendment) Act 1767	7 Geo. 3 c. 8
County Hospitals Act 1765	5 Geo. 3 c. 20
County Hospitals Act 1777	17 & 18 Geo. 3 c. 15
Courts Act 1981	1981, No. 11
Courts and Court Officers Act 1995	1995, No. 31
Courts (Supplemental Provisions) Act 1961	1961, No. 39
Criminal Justice (Theft and Fraud Offences) Act 2001	2001, No. 50
Crown Land Act 1819	59 Geo. 3 c. 94
Crown Land Revenues Act 1854	17 & 18 Vic. c. 68
Crown Lands Act 1823	4 Geo. 4 c. 18
Crown Lands Act 1825	6 Geo. 4 c. 17
Crown Lands Act 1841	5 Vic. c. 1
Crown Lands Act 1845	8 & 9 Vic. c. 99
Crown Lands Act 1848	11 & 12 Vic. c. 102
Crown Lands Act 1851	14 & 15 Vic. c. 42
Crown Lands Act 1852	15 & 16 Vic. c. 62
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Crown Lands Act 1866	29 & 30 Vic. c. 62
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Crown Lands Act 1885	48 & 49 Vic. c. 79
Crown Lands Act 1894	57 & 58 Vic. c. 43
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Crown Lands Act 1913	3 & 4 Geo. 5 c. 8
Crown Lands (Ireland) Act 1822	3 Geo. 4 c. 63
Crown Private Estate Act 1800	39 & 40 Geo. 3 c. 88
Crown Private Estates Act 1862	25 & 26 Vic. c. 37
Crown Private Estates Act 1873	36 & 37 Vic. c. 61
Drainage (Ireland) Act 1842	5 & 6 Vic. c. 89
Drainage (Ireland) Act 1845	8 & 9 Vic. c. 69
Drainage (Ireland) Act 1846	9 & 10 Vic. c. 4
Drainage (Ireland) Act 1847	11 & 12 Vic. c. 79
Drainage (Ireland) Act 1856	19 & 20 Vic. c. 62
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Drainage and Improvement of Land (Ireland) Act 1892	55 & 56 Vic. c. 65
Drainage and Improvement of Lands (Ireland) Act 1853	16 & 17 Vic. c. 130
Drainage and Improvement of Lands (Ireland) Act 1855	18 & 19 Vic. c. 110
Drainage and Improvement of Lands (Ireland) Act 1864	27 & 28 Vic. c. 72
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Drainage and Improvement of Lands Act (Ireland) 1863	26 & 27 Vic. c. 88
Drainage and Improvement of Lands Amendment Act (Ireland) 1865	28 & 29 Vic. c. 52
Drainage and Improvement of Lands Amendment Act (Ireland) 1869	32 & 33 Vic. c. 72
Drainage and Improvement of Lands Amendment Act (Ireland) 1872	35 & 36 Vic. c. 31
Drainage and Improvement of Lands Amendment Act (Ireland) 1874	37 & 38 Vic. c. 32
Drainage and Improvement of Lands Supplemental Act Ireland 1864	27 & 28 Vic. c. 107
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Drainage and Improvement of Lands Supplemental Act (Ireland) 1866	29 & 30 Vic. c. 61
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Drainage and Improvement of Lands Supplemental Act (Ireland) (No. 2) 1867	30 & 31 Vic. c. 139
Drainage and Improvement of Lands Supplemental Act (Ireland) (No. 3) 1867	31 & 32 Vic. c. 3
Drainage Maintenance Act 1866	29 & 30 Vic. c. 49
Ecclesiastical Lands Act 1634	10 & 11 Chas. 1 c. 3
Ecclesiastical Lands Act 1795	35 Geo. 3 c. 23
Electronic Commerce Act 2000	2000, No. 27
Family Home Protection Act 1976	1976, No. 27
Family Law Act 1995	1995, No. 26
Family Law (Divorce) Act 1996	1996, No. 33
Fee-Farm Rents (Ireland) Act 1851	14 & 15 Vic. c. 20
Fines and Recoveries (Ireland) Act 1834	4 & 5 Will. 4 c. 92
Fines and Recoveries Act 1833	3 & 4 Will. 4 c. 74
Forfeiture Act 1639	15 Chas. 1 c. 3
Harbours Act 1946	1946, No. 9
Hospitals Act 1761	1 Geo. 3 c. 8
Housing Act 1966	1966, No. 21

Housing (Gaeltacht) Act 1929	1929, No. 41
Housing (Miscellaneous Provisions) Act 2002	2002, No. 9
Housing (Miscellaneous Provisions) Act 1992	1992, No. 18
Housing (Private Rented Dwellings) Act 1982	1982, No. 6
Illusory Appointments Act 1830	11 Geo. 4 & 1 Will. 4 c. 46
Improvement of Land Act 1864	27 & 28 Vic. c. 114
Improvement of Land Act 1899	62 & 63 Vic. c. 46
Inheritance Act 1833	3 & 4 Will. 4 c. 106
Interpretation Act 2005	2005, No. 23
Judgments (Ireland) Act 1844	7 & 8 Vic. c. 90
Judgment Mortgage (Ireland) Act 1850	13 & 14 Vic. c. 29
Judgment Mortgage (Ireland) Act 1858	21 & 22 Vic. c. 105
Judgments Registry (Ireland) Act 1871	34 & 35 Vic. c. 72
Land Debentures (Ireland) Act 1865	28 & 29 Vic. c. 101
Land Drainage Act 1845	8 & 9 Vic. c. 56
Land Drainage Act (Ireland) 1863	26 & 27 Vic. c. 26
Landed Estates Court (Ireland) Act 1858	21 & 22 Vic. c. 72
Landed Estates Court (Ireland) Act 1861	24 & 25 Vic. c. 123
Landed Estates Court Act 1866	29 & 30 Vic. c. 99
Landed Property (Ireland) Improvement Act 1860	23 & 24 Vic. c. 153
Landed Property Improvement (Ireland) Act 1847	10 & 11 Vic. c. 32
Landed Property Improvement (Ireland) Act 1849	12 & 13 Vic. c. 59
Landed Property Improvement (Ireland) Act 1852	15 & 16 Vic. c. 34
Landed Property Improvement (Ireland) Act 1862	25 & 26 Vic. c. 29
Landed Property Improvement (Ireland) Act 1866	29 & 30 Vic. c. 26
Landlord and Tenant (Amendment) Act 1980	1980, No. 10
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Law of Property Amendment Act 1859	22 & 23 Vic. c. 35
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Leases Act 1849	12 & 13 Vic. c. 26
Leases by Schools Act 1781	21 & 22 Geo. 3 c. 27
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Leases for Lives Act 1777	17 & 18 Geo. 3 c. 49
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Limited Owners Reservoirs and Water Supply Further Facilities Act 1877	40 & 41 Vic. c. 31
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Married Women's Status Act 1957	1957, No. 5
Minerals Development Act 1940	1940, No. 31
Mines (Ireland) Act 1806	46 Geo. 3 c. 71
Mining Leases Act 1723	10 Geo. 1 c. 5
Mining Leases Act 1741	15 Geo. 2 c. 10

Mining Leases Act 1749	23 Geo. 2 c. 9
Mining Leases (Ireland) Act 1848	11 & 12 Vic. c. 13
Mortgage Debenture Act 1865	28 & 29 Vic. c. 78
Mortgagees Legal Costs Act 1895	58 & 59 Vic. c. 25
Partition Act 1868	31 & 32 Vic. c. 40
Partition Act 1876	39 & 40 Vic. c. 17
Pensions Act 1990	1990, No. 25
Perpetual Funds (Registration) Act 1933	1933, No. 22
Planning and Development Act 2000	2000, No. 30
Plus Lands Act 1703	2 Anne c. 8
Powers of Appointment Act 1874	37 & 38 Vic. c. 37
Powers of Attorney Act 1996	1996, No. 12
Prescription Act 1832	2 & 3 Will. 4 c. 71
Prescription (Ireland) Act 1858	21 & 22 Vic. c. 42
Public Money Drainage Act 1850	13 & 14 Vic. c. 31
Real Property Act 1845	8 & 9 Vic. c. 106
Registration of Deeds and Title Act 2006	2006, No. 12
Registration of Title Act 1964	1964, No. 16
Renewable Leasehold Conversion Act 1849	12 & 13 Vic. c. 105
Renewable Leaseholds Conversion (Ireland) Act 1868	31 & 32 Vic. c. 62
Renewal of Leases (Ireland) Act 1838	1 & 2 Vic. c. 62
Sales of Reversions Act 1867	31 & 32 Vic. c. 4
Satisfied Terms Act 1845	8 & 9 Vic. c. 112
School Sites (Ireland) Act 1810	50 Geo. 3 c. 33
Settled Estates Act 1877	40 & 41 Vic. c. 18
Settled Land Act 1882	45 & 46 Vic. c. 38
Settled Land Act 1884	47 & 48 Vic. c. 18
Settled Land Act 1889	52 & 53 Vic. c. 36
Settled Land Act 1890	53 & 54 Vic. c. 69
Settled Land Acts (Amendment) Act 1887	50 & 51 Vic. c. 30
Settled Land (Ireland) Act 1847	10 & 11 Vic. c. 46
Settled Land Acts 1882 to 1890	
Sites for Schoolrooms Act 1836	6 & 7 Will. 4 c. 70
Stamp Duties Consolidation Act 1999	1999, No. 31
State Property Act 1954	1954, No. 25
Statute De Donis Conditionalibus 1285	13 Edw. 1 Stat. Westm. sec.c. 1
Statute of Frauds 1695	7 Will. 3 c. 12
Statute of Limitations 1957	1957, No. 6
Statute of Uses 1634	10 Chas. 1 sess. 2 c. 1
Statute Quia Emptores 1290	18 Edw. 1 Stat. d'ni R. de t'ris, & c.
Succession Act 1965	1965, No. 27
Taxes Consolidation Act 1997	1997, No. 39
Tenantry Act 1779	19 & 20 Geo. 3 c. 30
Tenures Abolition Act 1662	14 & 15 Chas. 2 sess. 4 c. 19
Timber Act 1735	9 Geo. 2 c. 7
Timber Act 1765	5 Geo. 3 c. 17
Timber Act 1767	7 Geo. 3 c. 20
Timber Act 1775	15 & 16 Geo. 3 c. 26

Timber Act 1777	17 & 18 Geo. 3 c. 35
Timber Act 1783	23 & 24 Geo. 3 c. 39
Timber (Ireland) Act 1888	51 & 52 Vic. c. 37
Tithe Arrears (Ireland) Act 1839	2 & 3 Vic. c. 3
Tithe Rentcharge (Ireland) Act 1838	1 & 2 Vic. c. 109
Tithe Rentcharge (Ireland) Act 1848	11 & 12 Vic. c. 80
Tithes Act 1835	5 & 6 Will. 4 c. 74
Tithing of Turnips Act 1835	5 & 6 Will. 4 c. 75
Trustee Act 1893	56 & 57 Vic. c. 53
Trustee Savings Bank Act 1989	1989, No. 21
Vendor and Purchaser Act 1874	37 & 38 Vic. c. 78
Voluntary Conveyances Act 1893	56 & 57 Vic. c. 21

## MARGINAL ABBREVIATIONS

	AJA 1707	Administration of Justice Act 1707	6 Anne c. 10
5	BC(JT) A 1899	Bodies Corporate (Joint Tenancy) Act 1899	62 & 63 Vic. c. 20
	CA 1634	Conveyancing Act 1634	10 Chas. 1 sess. 2 c. 3
	CA 1881	Conveyancing Act 1881	44 & 45 Vic. c. 41
	CA 1882	Conveyancing Act 1882	45 & 46 Vic. c. 39
	CA 1911	Conveyancing Act 1911	1 & 2 Geo. 5 c. 37
10	IAA 1830	Illusory Appointments Act 1830	11 Geo. 4 & 1 Will. 4 c. 46
	JA 1844	Judgments (Ireland) Act 1844	7 & 8 Vic. c. 90
15	JMA 1850	Judgment Mortgage (Ireland) Act 1850	13 & 14 Vic. c. 29
	JMA 1858	Judgment Mortgage (Ireland) Act 1858	21 & 22 Vic. c. 105
	JRA 1871	Judgments Registry (Ireland) Act 1871	34 & 35 Vic. c. 72
20	LEA 1695	Life Estates Act 1695	7 Will. 3 c. 8
	LPA 1867	Lis Pendens Act 1867	30 & 31 Vic. c. 47
	LPAA 1859	Law of Property Amendment Act 1859	22 & 23 Vic. c. 35
25	LPAA 1860	Law of Property Amendment Act 1860	23 & 24 Vic. c. 38
	PA 1868	Partition Act 1868	31 & 32 Vic. c. 40
	PA 1876	Partition Act 1876	39 & 40 Vic. c. 17
	PA 1832	Prescription Act 1832	2 & 3 Will. 4 c. 71
30	PA 1858	Prescription (Ireland) Act 1858	21 & 22 Vic. c. 42
	PAA 1874	Powers of Appointment Act 1874	37 & 38 Vic. c. 37
	RPA 1845	Real Property Act 1845	8 & 9 Vic. c. 106
	SF 1695	Statute of Frauds 1695	7 Will. 3 c. 12
35	SQE 1290	Statute Quia Emptores 1290	18 Edw. 1 Stat. d'ni R. de t'ris, & c.
	SLA 1882	Settled Land Act 1882	45 & 46 Vic. c. 38
	SU 1634	Statute of Uses 1634	10 Chas. 1 sess. 2 c. 1
	VCA 1893	Voluntary Conveyances Act 1893	56 & 57 Vic. c. 21
40	VPA 1874	Vendor and Purchaser Act 1874	37 & 38 Vic. c. 78





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AN BILLE UM ATHCHÓIRIÚ AN DLÍ TALÚN AGUS  
TÍOLACTHA 2006  
LAND AND CONVEYANCING LAW REFORM BILL 2006

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# BILL

5 *entitled*

AN ACT TO PROVIDE FOR THE REFORM AND MODERNIS-  
ATION OF LAND LAW AND CONVEYANCING, TO  
REPEAL ENACTMENTS THAT ARE OBSOLETE,  
UNNECESSARY OR OF NO BENEFIT IN MODERN CIR-  
10 CUMSTANCES, TO PROVIDE FOR THE VARIATION OF  
TRUSTS, TO MODERNISE THE LAW RELATING TO *LIS  
PENDENS*, TO AMEND THE REGISTRATION OF DEEDS  
AND TITLE ACTS 1964 AND 2006 AND CERTAIN OTHER  
ENACTMENTS AND FOR RELATED MATTERS.

15 BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

## PART 1

### PRELIMINARY AND GENERAL

1.—This Act may be cited as the Land and Conveyancing Law Short title.  
Reform Act 2009.

20 2.—This Act shall come into operation on such day or days as the Commencement.  
Minister may appoint by order or orders either generally or with  
reference to any particular purpose or provision and different days  
may be so appointed for different purposes and different provisions.

3.—In this Act, unless the context otherwise requires— Interpretation  
generally.

25 “Act of 1957” means the Statute of Limitations 1957;

“Act of 1963” means the Companies Act 1963;

“Act of 1964” means the Registration of Title Act 1964;

“Act of 1965” means the Succession Act 1965;

“Act of 1976” means the Family Home Protection Act 1976;

30 “Act of 1988” means the Bankruptcy Act 1988;

“Act of 1989” means the Building Societies Act 1989;

“Act of 1995” means the Family Law Act 1995;

“Act of 1996” means the Family Law (Divorce) Act 1996;

“Act of 2000” means the Planning and Development Act 2000;

“Act of 2005” means the Interpretation Act 2005;

“Act of 2006” means the Registration of Deeds and Title Act 2006; 5

“assent” has the meaning given to it by section 53 of the Act of 1965;

“consent” includes agreement, licence and permission;

“conveyance” includes an appointment, assent, assignment, charge, disclaimer, lease, mortgage, release, surrender, transfer, vesting certificate, vesting declaration, vesting order and every other assurance 10 by way of instrument except a will; and “convey” shall be read accordingly;

“the court” means—

(a) the High Court, or

(b) the Circuit Court when exercising the jurisdiction conferred on it by the Third Schedule to the Courts (Supplemental Provisions) Act 1961; 15

“covenant” includes an agreement, a condition, reservation and stipulation;

“deed” has the meaning given to it by *section 64(2)*; 20

“development” has the meaning given to it by section 3 of the Act of 2000;

“development plan” has the meaning given to it by section 3(1) of the Act of 2000;

“disposition” includes a conveyance and a devise, bequest or 25 appointment of property by will and “dispose” shall be read accordingly;

“exempted development” has the meaning given to it by section 4 of the Act of 2000;

“fee farm grant” means any— 30

(a) grant of a fee simple, or

(b) lease for ever or in perpetuity,

reserving or charging a perpetual rent, whether or not the relationship of landlord and tenant is created between the grantor and grantee, and includes a sub-fee farm grant; 35

“freehold covenant” has the meaning given to it by *section 48*;

“freehold estate” has the meaning given to it by *section 11(2)*;

“housing loan” has the meaning given to it by section 2(1) of the Consumer Credit Act 1995, as substituted by section 33 of, and Part 12 of Schedule 3 to, the Central Bank and Financial Services Authority of Ireland Act 2004 and “housing loan mortgage” means a mortgage to secure a housing loan; 40



“incumbrance” includes an annuity, charge, lien, mortgage, portion and trust for securing an annual or capital sum; and “incumbrancer” shall be read accordingly and includes every person entitled to the benefit of an incumbrance or to require its payment or discharge;

5 “instrument” includes a deed, will, or other document in writing, and information in electronic or other non-legible form which is capable of being converted into such a document, but not a statutory provision;

10 “judgment mortgage” means a mortgage registered by a creditor under *section 116*;

“land” includes—

(a) any estate or interest in or over land, whether corporeal or incorporeal,

15 (b) mines, minerals and other substances in the substratum below the surface, whether or not owned in horizontal, vertical or other layers apart from the surface of the land,

(c) land covered by water,

20 (d) buildings or structures of any kind on land and any part of them, whether the division is made horizontally, vertically or in any other way,

25 (e) the airspace above the surface of land or above any building or structure on land which is capable of being or was previously occupied by a building or structure and any part of such airspace, whether the division is made horizontally, vertically or in any other way,

(f) any part of land;

“Land Registry” has the meaning given to it by section 7 of the Act of 1964;

30 “landlord” means the person, including a sublandlord, entitled to the legal estate immediately superior to a tenancy;

“lease” as a noun means an instrument creating a tenancy; and as a verb means the granting of a tenancy by an instrument;

“legal estate” has the meaning given to it by *section 11(1)*;

“legal interest” has the meaning given to it by *section 11(4)*;

35 “lessee” means the person, including a sublessee, in whom a tenancy created by a lease is vested;

“lessor” means the person, including a sublessor, entitled to the legal estate immediately superior to a tenancy created by a lease;

“Minister” means the Minister for Justice, Equality and Law Reform;

40 “mortgage” includes any charge or lien on any property for securing money or money’s worth;

“mortgagee” includes any person having the benefit of a charge or lien and any person deriving title to the mortgage under the original mortgagee;

“mortgagor” includes any person deriving title to the mortgaged property under the original mortgagor or entitled to redeem the mortgage;

“notice” includes constructive notice;

“personal representative” means the executor or executrix or the administrator or administratrix for the time being of a deceased person; 5

“planning permission” means permission required under Part III of the Act of 2000;

“possession” includes the receipt of, or the right to receive, rent and profits, if any; 10

“prescribed” means prescribed by regulations made under *section 5*;

“property” means any real or personal property or any part or combination of such property;

“Property Registration Authority” has the meaning given to it by section 9 of the Act of 2006; 15

“purchaser” means an assignee, chargeant, grantee, lessee, mortgagee or other person who acquires land for valuable consideration; and “purchase” shall be read accordingly;

“registered land” has the meaning given to it by section 3(1) of the Act of 1964; 20

“Registry of Deeds” has the meaning given to it by section 33 of the Act of 2006;

“rent” includes a rent payable under a tenancy or a rentcharge, or other payment in money or money’s worth or any other consideration, reserved or issuing out of or charged on land, but does not include interest; 25

“rentcharge” means any annual or periodic sum charged on or issuing out of land, except—

(a) a rent payable under a tenancy, and 30

(b) interest;

“right of entry” means a right to take possession of land or of its income and to retain that possession or income until some obligation is performed;

“right of re-entry” means a right to forfeit the legal owner’s estate in the land; 35

“strict settlement” has the meaning given to it by *section 18(1)(a)*;

“subtenancy” includes a sub-subtenancy; and a “subtenant” shall be read accordingly;

“tenancy” means the estate or interest which arises from the relationship of landlord and tenant however it is created but does not include a tenancy at will or at sufferance; 40

“tenant” means the person, including a subtenant, in whom a tenancy is vested;

“trust corporation” has the meaning given to it by section 30(4) of the Act of 1965;

“trust of land” has the meaning given to it by *section 18(1)*;

5 “unregistered land” has the meaning given to it by section 3(1) of the Act of 1964;

“valuable consideration” does not include marriage or a nominal consideration in money;

“will” includes codicil.

10 4.—(1) A notice authorised or required to be given or served by or under this Act shall, subject to *subsection (2)*, be addressed to the person concerned by name and may be given to or served on the person in one of the following ways: Service of notices.  
[CA 1881, s. 67]

(a) by delivering it to the person; or

15 (b) by leaving it at the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, at that address; or

20 (c) by sending it by post in a prepaid letter to the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, to that address; or

25 (d) where the notice relates to a building with which the person is associated, and it appears that no person is in actual occupation of the building, by affixing it in a conspicuous position on the outside of the building or the property containing the building; or

30 (e) if the person concerned has agreed to service of notices by means of an electronic communication (within the meaning given to it by section 2 of the Electronic Commerce Act 2000) to that person (being an addressee within the meaning given to it by that section) and provided that there is a facility to confirm receipt of electronic mail and that such receipt has been confirmed, then by that means; or

35 (f) by sending it by means of a facsimile machine to a device or facility for the reception of facsimiles located at the address at which the person ordinarily resides or carries on business or, if an address for the service of notices has been furnished by the person, that address, provided that the sender’s facsimile machine generates a message confirming successful transmission of the total number of pages of the notice; or

(g) by any other means that may be prescribed.

45 (2) Where the notice concerned is to be served on or given to a person who is the owner, landlord, tenant or occupier of a building and the name of the person cannot be ascertained by reasonable inquiry it may be addressed to the person at that building by using the words “the owner”, “the landlord”, “the tenant” or “the occupier” or other like description, as the case may require.

(3) For the purposes of this section, a company shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body shall be deemed to be ordinarily resident at its principal office or place of business.

(4) Where a notice required or authorised to be served or given by or under this Act is served or given on behalf of a person, the notice shall be deemed to be served or given by that person. 5

(5) A person shall not, at any time during the period of 3 months after the notice is affixed under *subsection (1)(d)*, remove, damage or deface the notice without lawful authority. 10

(6) A person who knowingly contravenes *subsection (5)* is guilty of an offence.

Regulations.

5.—(1) The Minister may make regulations—

(a) for any purpose in relation to which regulations are provided for by any of the provisions of this Act, 15

(b) for prescribing any matter or thing referred to in this Act as prescribed or to be prescribed,

(c) generally for the purpose of giving effect to this Act.

(2) A regulation under *subsection (1)* shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation is annulled accordingly, but without prejudice to the validity of anything previously done under it. 20 25

(3) (a) If in any respect any difficulty arises during the period of 5 years from the commencement of any provision of this Act (including a provision that amends another Act), either in bringing into operation or in giving full effect to the provision or the Act as amended, the Minister may by regulations do anything which appears to be necessary or expedient for removing that difficulty. 30

(b) In *paragraph (a)* a reference to another Act is a reference to an Act falling within either paragraph (a) or (b) of the definition of “Act” in section 2(1) of the Act of 2005. 35

(4) Regulations under *subsection (3)* may, in so far only as it may appear necessary for the removal of such difficulty, modify a provision referred to in that subsection provided such modification is in conformity with the purposes, principles and spirit of this Act.

(5) Where the Minister proposes to make regulations under *subsection (3)*— 40

(a) he or she shall, before doing so, consult with such other (if any) Minister of the Government as the Minister considers appropriate having regard to the functions of that other Minister of the Government in relation to the proposed regulations, and 45

(b) he or she shall cause a draft of the regulations to be laid before each House of the Oireachtas and the regulations

shall not be made until a resolution approving of the draft has been passed by each such House.

5 (6) A regulation under this section may contain such consequential, supplementary and ancillary provisions as the Minister considers necessary or expedient.

6.—(1) A person convicted of an offence under this Act is liable on summary conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding 6 months or both. Offences.

10 (2) Proceedings for an offence under this Act may be instituted at any time within one year after the date of the offence.

15 (3) Where a person is convicted of an offence under this Act the District Court shall, unless it is satisfied that there are special and substantial reasons for not so doing, order the person to pay the costs and expenses, measured by the Court, incurred in relation to the investigation, detection and prosecution of the offence.

7.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas. Expenses.

20 8.—(1) Each provision specified in *column (2)* of *Schedule 1* opposite the mention in *column (1)* of that Schedule of an enactment is amended in the manner specified in *column (3)*. Amendments and repeals.

(2) Subject to *subsection (1)*, and without prejudice to section 26(2)(f) of the Act of 2005—

(a) any reference in an enactment to—

- 25 (i) the Settled Land Acts 1882 to 1890,  
(ii) an Act included in that collective citation, or  
(iii) any provision of such an Act,

30 shall be construed as a reference to this Act or to the equivalent or substituted provision of this Act, as may be appropriate,

(b) any reference in an enactment to—

- (i) the Conveyancing Acts 1881 to 1911, or  
(ii) an Act (other than an Act repealed by this Act) included in that collective citation,  
35 shall be construed as including a reference to this Act, and

(c) any reference in an enactment to—

- (i) an Act that is included in the collective citation “the Conveyancing Acts 1881 to 1911” and that is repealed by this Act, or  
40 (ii) any particular provision of such an Act,

shall be construed as a reference to this Act or to the equivalent or substituted provision of this Act.

(3) Each enactment specified in *column (2)* of *Schedule 2* is repealed to the extent specified in *column (3)* of that Schedule.

## PART 2

5

### OWNERSHIP OF LAND

Ownership and abolition of feudal tenure.

**9.—**(1) From the commencement of this Part, ownership of land comprises the estates and interests specified in this Part.

(2) In so far as it survives, feudal tenure is abolished.

(3) *Subsection (2)* does not affect— 10

(a) the position of the State under—

(i) the State Property Act 1954,

(ii) section 73 of the Act of 1965,

(b) the concept of an estate under *section 10*,

(c) any fee farm grant made in derogation of the Statute Quia Emptores 1290, 15

(d) any surviving customary right or franchise.

[SQE 1290]

(4) A fee simple remains freely alienable.

Estates and interests in land.

**10.—**(1) The concept of an estate in land is retained and, subject to this Act, continues with the interests specified in this Part to denote the nature and extent of land ownership. 20

(2) Such an estate retains its pre-existing characteristics, but without any tenurial incidents.

(3) All references in any enactment or any instrument (whether made or executed before or after the commencement of this Part) to tenure or estates or interests in land, or to the holder of any such estate or interest, shall be read accordingly. 25

Restrictions on legal estates and interests.

**11.—**(1) The only legal estates in land which may be created or disposed of are the freehold and leasehold estates specified by this section. 30

(2) For the purposes of *subsection (1)*, a “freehold estate” means a fee simple in possession and includes—

(a) a determinable fee,

(b) a fee simple subject to a right of entry or of re-entry,

(c) a fee simple subject only to— 35

(i) a power of revocation,

(ii) an annuity or other payment of capital or income for the advancement, maintenance or other benefit of any person, or

5 (iii) a right of residence which is not an exclusive right over the whole land.

(3) For the purposes of *subsection (1)*, a “leasehold estate” means, subject to *sections 12 and 14*, the estate which arises when a tenancy is created for any period of time or any recurring period and irrespective of whether or not the estate—

10 (a) takes effect in immediate possession or in future, or

(b) is subject to another legal estate or interest, or

15 (c) is for a term which is uncertain or liable to termination by notice, re-entry or operation of law or by virtue of a provision for cessor on redemption or for any other reason.

(4) The only legal interests in land which may be created or disposed of are—

(a) an easement,

(b) a freehold covenant,

20 (c) an incumbrance,

(d) a rent payable under a tenancy,

(e) a possibility of reverter,

(f) a *profit à prendre*, including a mining right,

(g) a public or customary right,

25 (h) a rentcharge,

(i) a right of entry or of re-entry attached to a legal estate,

(j) a wayleave or other right to lay cables, pipes, wires or other conduits,

(k) any other legal interest created by any statutory provision.

30 (5) A legal estate or legal interest under this section has, subject to this Act, the same attributes as the corresponding legal estates and interests existing at the commencement of this Part and may exist concurrently with, or subject to, any other legal estate or interest in the same land.

35 (6) Subject to this Act, estates and interests other than those referred to in *subsections (1) to (4)* take effect as equitable interests only, but this does not prevent the creation of the estates and interests referred to in those subsections as equitable interests.

40 (7) Nothing in this Act affects judicial recognition of equitable interests.

(8) Subject to this Act, a power of attorney, power of appointment or other power to dispose of a legal estate or interest in land

operates with the same force and effect as such powers had before the commencement of this Part.

(9) All estates and interests in land, whether legal or equitable, may be disposed of.

Prohibition of fee farm grants.

**12.**—(1) The creation of a fee farm grant at law or in equity is prohibited. 5

(2) Any instrument executed after the commencement of this Part purporting to—

(a) create a fee farm grant, or

(b) grant a lease for life or lives renewable for ever or for any period which is perpetually renewable, 10

vests in the purported grantee or lessee a legal fee simple or, as the case may be, an equitable fee simple and any contract for such a grant entered into after such commencement operates as a contract for such a vesting. 15

(3) A fee simple which vests under *subsection (2)* is freed and discharged from any covenant or other provision relating to rent, but all other covenants or provisions continue in force so far as consistent with the nature of a fee simple.

(4) *Subsection (2)* does not apply to any contract or instrument giving effect to a contract entered into before the commencement of this Part. 20

(5) Notwithstanding *section 11(2)*, any fee simple held under a fee farm grant existing at law at the commencement of this Part continues as a legal estate and may be disposed of. 25

(6) Notwithstanding *section 11(4)*, any fee farm rent existing at law at the commencement of this Part continues as a legal interest and may be disposed of.

Abolition of the fee tail.

**13.**—(1) The creation of a fee tail of any kind at law or in equity is prohibited. 30

(2) Any instrument executed after the commencement of this Part purporting to create a fee tail in favour of any person vests in that person a legal fee simple or, as the case may be, an equitable fee simple and any contract for such a creation entered into before or after such commencement operates as a contract for such vesting. 35

(3) Where—

(a) immediately before the commencement of this Part, a person was entitled to a fee tail at law or in equity, or

(b) after such commencement, a person becomes entitled to such a fee tail, 40

a legal or, as the case may be, an equitable fee simple vests in that person on such commencement or on that person becoming so entitled provided any protectorship has ended.

(4) In *subsection (3)* “fee tail” includes—



(a) a base fee provided the protectorship has ended,

(b) a base fee created by failure to enrol the disentailing deed,

but does not include the estate of a tenant in tail after possibility of issue extinct.

5 (5) A fee simple which vests under *subsection (2)* or *subsection (3)* is—

(a) not subject to any estates or interests limited by the instrument creating the fee tail to take effect after the termination of the fee tail,

10 (b) subject to any estates or interests limited to take effect in defeasance of the fee tail which would be valid if limited to take effect in defeasance of a fee simple.

**14.**—The grant of a lease for—

Prohibition of leases for lives.

(a) a life or lives,

15 (b) a life or lives combined with a concurrent or reversionary term of any period,

(c) any term coming to an end on the death of a person or persons,

20 and any contract for such a grant made after the commencement of this Part is void both at law and in equity.

### PART 3

#### FUTURE INTERESTS

**15.**—(1) Subject to *subsection (2)*, all future interests in land, whether vested or contingent, exist in equity only.

Operation of future interests in land.

25 (2) *Subsection (1)* does not apply to—

(a) a possibility of reverter, or

(b) a right of entry or of re-entry attached to a legal estate.

**16.**—Subject to *section 17*, the following rules are abolished:

Abolition of various rules.

30 (a) the rules known as the common law contingent remainder rules;

(b) the rule known as the Rule in *Purefoy v. Rogers*;

(c) the rule known as the Rule in *Whitby v. Mitchell* (also known as the old rule against perpetuities and the rule against double possibilities);

35 (d) the rule against perpetuities;

(e) the rule against accumulations.

**17.—***Section 16* applies to any interest in property whenever created but does not apply if, before the commencement of this Part, in reliance on such an interest being invalid by virtue of the application of any of the rules abolished by that section—

- (a) the property has been distributed or otherwise dealt with, 5  
or
- (b) any person has done or omitted to do any thing which renders the position of that or any other person materially altered to that person's detriment after the commencement of this Part. 10

## PART 4

### TRUSTS OF LAND

Trusts of land.

[SLA 1882, ss. 2, 59, 60]

**18.—**(1) Subject to this Part, where land is—

- (a) for the time being limited by an instrument, whenever executed, to persons by way of succession without the interposition of a trust (in this Part referred to as a “strict settlement”), or 15
- (b) held, either with or without other property, on a trust whenever it arises and of whatever kind, or
- (c) vested, whether before or after the commencement of this Part, in a minor, 20

there is a trust of land for the purposes of this Part.

(2) For the purposes of—

- (a) *subsection (1)(a)*, a strict settlement exists where an estate or interest in reversion or remainder is not disposed of and reverts to the settlor or the testator's successors in title, but does not exist where a person owns a fee simple in possession, 25
- (b) *subsection (1)(b)*, a trust includes an express, implied, resulting, constructive and bare trust and a trust for sale. 30

(3) Subject to this Part, a trust of land is governed by the general law of trusts.

(4) Conversion of a life estate into an equitable interest only does not affect a life owner's liability for waste.

[LEA 1695]

(5) Where, by reason of absence from the State or otherwise, it remains uncertain for a period of at least 7 years as to whether a person upon whose life an estate or interest depends is alive, it shall continue to be presumed that the person is dead. 35

(6) If such presumption is applied to a person but subsequently rebutted by proof to the contrary, that person may bring an action for damages or another remedy for any loss suffered. 40

(7) In dealing with an action under *subsection (6)*, the court may make such order as appears to it to be just and equitable in the circumstances of the case.

(8) Any party to a conveyance shall, unless the contrary is proved, be presumed to have attained full age at the date of the conveyance.

(9) This Part does not apply to land held directly for a charitable purpose and not by way of a remainder.

5     **19.—(1)** The following persons are the trustees of a trust of land— Trustees of land.

(a) in the case of a strict settlement, where it— [SLA 1882, ss. 38, 39]

10           (i) exists at the commencement of this Part, the tenant for life within the meaning of the Settled Land Act 1882 together with any trustees of the settlement for the purposes of that Act,

(ii) is purported to be created after the commencement of this Part, the persons who would fall within *paragraph (b)* if the instrument creating it were deemed to be an instrument creating a trust of land,

15     (b) in the case of a trust of land created expressly—

(i) any trustee nominated by the trust instrument, but, if there is no such person, then,

20           (ii) any person on whom the trust instrument confers a present or future power of sale of the land, or power of consent to or approval of the exercise of such a power of sale, but, if there is no such person, then,

25           (iii) any person who, under either the trust instrument or the general law of trusts, has power to appoint a trustee of the land, but, if there is no such person, then,

(iv) the settlor or, in the case of a trust created by will, the testator's personal representative or representatives,

30     (c) in the case of land vested in a minor before the commencement of this Part or purporting so to vest after such commencement, the persons who would fall within *paragraph (b)* if the instrument vesting the land were deemed to be an instrument creating a trust of land,

35     (d) in the case of land the subject of an implied, resulting, constructive or bare trust, the person in whom the legal title to the land is vested.

(2) For the purposes of—

(a) *subsection (1)(a)(ii)* and *(1)(c)*, the references in *subsection (1)(b)* to “trustee” and “trustee of the land” include a trustee of the settlement,

40     (b) *subsection (1)(b)(iii)* a power to appoint a trustee includes a power to appoint where no previous appointment has been made.

45     (3) Nothing in this section affects the right of any person to obtain an order of the court appointing a trustee of land or vesting land in a person as trustee.

20.—(1) Subject to—

- (a) the duties of a trustee, and
- (b) any restrictions imposed by any statutory provision (including this Act) or the general law of trusts or by any instrument or court order relating to the land, 5

a trustee of land has the full power of an owner to convey or otherwise deal with it.

(2) The power of a trustee under *subsection (1)* includes the power to—

- (a) permit a beneficiary to occupy or otherwise use the land on such terms as the trustee thinks fit, 10
- (b) sell the land and to re-invest the proceeds, in whole or in part, in the purchase of land, whether or not situated in the State, for such occupation or use.

21.—(1) Subject to *subsection (3)*, a conveyance to a purchaser of a legal estate or legal interest in land by the person or persons specified in *subsection (2)* overreaches any equitable interest in the land so that it ceases to affect that estate or interest, whether or not the purchaser has notice of the equitable interest. 15

(2) For the purposes of *subsection (1)*, the “person or persons specified”— 20

- (a) shall be at least two trustees or a trust corporation where the trust land comprises—
  - (i) a strict settlement, or
  - (ii) a trust, including a trust for sale, of land held for persons by way of succession, or 25
  - (iii) land vested in or held on trust for a minor,
- (b) may be a single trustee or owner of the legal estate or interest in the case of any other trust of land.

(3) *Subsection (1)* does not apply to— 30

- (a) any conveyance made for fraudulent purposes of which the purchaser has actual knowledge at the date of the conveyance or to which the purchaser is a party, or
- (b) any equitable interest—
  - (i) to which the conveyance is expressly made subject, or 35
  - (ii) protected by deposit of documents of title relating to the legal estate or legal interest, or
  - (iii) in the case of a trust coming within *subsection (2)(b)*, protected by registration prior to the date of the conveyance or taking effect as a burden coming within section 72(1)(j) of the Act of 1964 (or, in the case of unregistered land, which would take effect as such a burden if the land were registered land). 40

(4) In *subsection (3)(b)(iii)*, “registration” means registration in the Registry of Deeds or Land Registry, as appropriate.

5 (5) Where an equitable interest is overreached under this section it attaches to the proceeds arising from the conveyance and effect shall be given to it accordingly.

(6) Nothing in this section affects the operation of the Act of 1976.

**22.**—(1) Any person having an interest in a trust of land, or a person acting on behalf of such a person, may apply to the court in a summary manner for an order to resolve a dispute between the—

Resolution of disputes.

- 10 (a) trustees themselves, or  
(b) beneficiaries themselves, or  
(c) trustees and beneficiaries, or  
(d) trustees or beneficiaries and other persons interested,

in relation to any matter concerning the—

- 15 (i) performance of their functions by the trustees, or  
(ii) nature or extent of any beneficial or other interest in the land, or  
(iii) other operation of the trust.

20 (2) Subject to *subsection (3)*, in determining an application under *subsection (1)* the court may make whatever order and direct whatever inquiries it thinks fit in the circumstances of the case.

(3) In considering an application under *subsection (1)(i)* and *(iii)* the court shall have regard to the interests of the beneficiaries as a whole and, subject to these, to—

- 25 (a) the purposes which the trust of land is intended to achieve,  
(b) the interests of any minor or other beneficiary subject to any incapacity,  
(c) the interests of any secured creditor of any beneficiary,  
(d) any other matter which the court considers relevant.

30 (4) In *subsection (1)*, “person having an interest” includes a mortgagee or other secured creditor, a judgment mortgagee or a trustee.

(5) Nothing in this section affects the jurisdiction of the court under section 36 of the Act of 1995.

## PART 5

35 VARIATION OF TRUSTS

**23.**—In this Part—

“appropriate person”, in relation to a relevant trust, means—

Interpretation of Part 5.

- (a) a trustee of, or a beneficiary under, the trust, or
- (b) any other person that the court, to which the application concerned under *section 24* is made, considers appropriate;

“arrangement”, in relation to a relevant trust, means an arrangement— 5

- (a) varying, revoking or resettling the trust, or
- (b) varying, enlarging, adding to or restricting the powers of the trustees under the trust to manage or administer the property the subject of the trust; 10

“relevant person”, in relation to a relevant trust, means—

- (a) a person who has a vested or contingent interest under the trust but who is incapable of assenting to an arrangement by reason of lack of capacity (whether by reason of minority or absence of mental capacity), 15
- (b) an unborn person,
- (c) a person whose identity, existence or whereabouts cannot be established by taking reasonable measures, or
- (d) a person who has a contingent interest under the trust but who does not fall within *paragraph (a)*; 20

“relevant trust”—

- (a) subject to *paragraph (b)*, means a trust arising, whether before, on or after the commencement of this section, under a will, settlement or other disposition,
- (b) does not include— 25
  - (i) a trust created for a charitable purpose within the meaning of the Charities Acts 1961 and 1973 and the Charities Act 2009,
  - (ii) an occupational pension scheme within the meaning of the Pensions Act 1990 established under a trust, 30
  - (iii) a trust created by a British statute,
  - (iv) a trust created by a Saorstát Éireann statute, or
  - (v) a trust created by an Act of the Oireachtas, whether passed before, on or after the commencement of this section. 35

Jurisdiction of court to vary, etc., trusts.

**24.**—(1) An appropriate person may make, in respect of a relevant trust, an application to the court for an order to approve an arrangement specified in the application for the benefit of a relevant person specified in the application if the arrangement has been assented to in writing by each other person (if any) who— 40

- (a) is not a relevant person,
- (b) is beneficially interested in the trust, and

(c) is capable of assenting to the arrangement.

(2) The court shall not hear an application made to it under *subsection (1)* in respect of a relevant trust unless it is satisfied that the applicant has given notice in writing of the application—

5 (a) to the Revenue Commissioners, and

(b) to such persons as may be prescribed by rules of court,

at least 2 weeks before the hearing of the application.

10 (3) The court may hear an application made to it under *subsection (1)* otherwise than in public if it considers that it is appropriate to do so.

(4) The court shall determine an application made to it under *subsection (1)* in respect of a relevant trust—

15 (a) subject to *paragraph (b)*, by making an order approving the arrangement specified in the application if it is satisfied that the carrying out of the arrangement would be for the benefit of—

(i) the relevant person specified in the application, and

(ii) any other relevant person,

(b) by refusing to make such an order in any case where—

20 (i) the court is not satisfied as referred to in *paragraph (a)*, or

(ii) the Revenue Commissioners have satisfied the court that the application is substantially motivated by a desire to avoid, or reduce the incidence of, tax.

25 (5) In determining under *subsection (4)* whether an arrangement would be for the benefit of a relevant person, the court may have regard to any benefit or detriment, financial or otherwise, that may accrue to that person directly or indirectly in consequence of the arrangement.

30 (6) Nothing in this section shall be construed as derogating from or affecting the operation of—

(a) the Charities Acts 1961 and 1973 and the Charities Act 2009,

35 (b) any power of a court, whether under an enactment or rule of law, to—

(i) vary, revoke or resettlement a trust (including a relevant trust), or

40 (ii) vary, enlarge, add to or restrict the powers of the trustees under a trust (including a relevant trust) to manage or administer the property the subject of the trust,

or

- (c) any rule of law relating to the termination or revocation of a trust (including a relevant trust).

## PART 6

### POWERS

Application of Part 6. **25.**—Except where stated otherwise, this Part applies to powers created or arising before or after the commencement of this Act. 5

Execution of non-testamentary powers of appointment. **26.**—(1) Subject to *subsection (2)*, an appointment made by deed after the commencement of this Part under a power of appointment is valid provided the instrument making the appointment complies with *section 64*. 10

[LPAA 1859, s. 12]

(2) *Subsection (1)* does not—

(a) prevent a donee of a power of appointment from making a valid appointment in some other way expressly authorised by the instrument creating the power, or

(b) relieve such a donee from compliance with any direction in the instrument creating the power that— 15

(i) the consent of any person is necessary to a valid appointment, or

(ii) an act is to be performed having no relation to the mode of executing and attesting the deed of appointment in order to give validity to any appointment. 20

Release of powers. **27.**—(1) Subject to *subsection (2)*, a person to whom any power, whether coupled with an interest or not, is given may release or contract not to exercise the power by deed or in any other way in which the power could be created. 25

[CA 1881, s. 52]

(2) *Subsection (1)* does not apply to a power in the nature of a trust or other fiduciary power.

Disclaimer of powers. **28.**—(1) A person to whom any power, whether coupled with an interest or not, is given may by deed disclaim the power and, after disclaimer, may not exercise or join in the exercise of the power. 30

[CA 1882, s. 6]

(2) On such disclaimer, the power may be exercised by any other person or persons, or the survivor or survivors of any other persons, to whom the power is given, subject to the terms of the instrument creating the power.

Validation of appointments. **29.**—(1) No appointment made in exercise of any power to appoint any property among two or more persons is invalid on the ground that— 35

[IAA 1830]

[PAA 1874]

(a) an insubstantial, illusory or nominal share only is appointed to or left unappointed to devolve on any one or more of those persons, or 40



(b) any such person is altogether excluded, whether by way of default of appointment or otherwise.

5 (2) This section does not affect any provision in the instrument creating the power which specifies the amount of any share from which any such person is not to be excluded.

## PART 7

### CO-OWNERSHIP

30.—(1) From the commencement of this Part, any—

Unilateral severance of a joint tenancy.

10 (a) conveyance, or contract for a conveyance, of land held in a joint tenancy, or

(b) acquisition of another interest in such land,

by a joint tenant without the consent referred to in *subsection (2)* is void both at law and in equity unless such consent is dispensed with under *section 31(2)(e)*.

15 (2) In *subsection (1)* “consent” means the prior consent in writing of the other joint tenant or, where there are more than one other, all the other joint tenants.

20 (3) From the commencement of this Part, registration of a judgment mortgage against the estate or interest in land of a joint tenant does not sever the joint tenancy and if the joint tenancy remains unsevered, the judgment mortgage is extinguished upon the death of the judgment debtor.

25 (4) Nothing in this section affects the jurisdiction of the court to find that all the joint tenants by mutual agreement or by their conduct have severed the joint tenancy in equity.

31.—(1) Any person having an estate or interest in land which is co-owned whether at law or in equity may apply to the court for an order under this section. Court orders.

(2) An order under this section includes—

30 (a) an order for partition of the land amongst the co-owners, [PA 1868]  
[PA 1876]

(b) an order for the taking of an account of incumbrances affecting the land, if any, and the making of inquiries as to the respective priorities of any such incumbrances,

35 (c) an order for sale of the land and distribution of the proceeds of sale as the court directs,

(d) an order directing that accounting adjustments be made as [AJA 1707, s. 23] between the co-owners,

40 (e) an order dispensing with consent to severance of a joint tenancy as required by *section 30* where such consent is being unreasonably withheld,

(f) such other order relating to the land as appears to the court to be just and equitable in the circumstances of the case.

(3) In dealing with an application for an order under *subsection (1)* the court may— 5

- (a) make an order with or without conditions or other requirements attached to it, or
- (b) dismiss the application without making any order, or
- (c) combine more than one order under this section.

(4) In this section— 10

- (a) “person having an estate or interest in land” includes a mortgagee or other secured creditor, a judgment mortgagee or a trustee,
- (b) “accounting adjustments” include—

- (i) payment of an occupation rent by a co-owner who has enjoyed, or is continuing to enjoy, occupation of the land to the exclusion of any other co-owner, 15

- (ii) compensation to be paid by a co-owner to any other co-owner who has incurred disproportionate expenditure in respect of the land (including its repair or improvement), 20

- (iii) contributions by a co-owner to disproportionate payments made by any other co-owner in respect of the land (including payments in respect of charges, rates, rents, taxes and other outgoings payable in respect of it), 25

- (iv) redistribution of rents and profits received by a co-owner disproportionate to his or her interest in the land,

- (v) any other adjustment necessary to achieve fairness between the co-owners. 30

(5) Nothing in this section affects the jurisdiction of the court under the Act of 1976, the Act of 1995 and the Act of 1996.

(6) The equitable jurisdiction of the court to make an order for partition of land which is co-owned whether at law or in equity is abolished. 35

Bodies corporate.  
[BC (JT) A 1899]

**32.—(1)** A body corporate may acquire and hold any property in a joint tenancy in the same manner as if it were an individual.

(2) Where a body corporate and an individual or two or more bodies corporate become entitled to any property in circumstances or by virtue of any instrument which would, if the body or bodies corporate had been an individual or individuals, have created a joint tenancy, they are entitled to the property as joint tenants. 40

(3) On the dissolution of a body corporate which is a joint tenant of any property, the property devolves on the other surviving joint tenant or joint tenants.

## PART 8

### APPURTENANT RIGHTS

#### CHAPTER 1

##### *Easements and profits à prendre*

**33.**—In this Chapter, unless the context otherwise requires—

Interpretation of  
*Chapter 1.*

5  
10 “dominant land” means land benefited by an easement or *profit à prendre* to which other land is subject, or in respect of which a relevant user period has commenced; and “dominant owner” shall be read accordingly and includes that owner’s predecessors and successors in title;

15 “foreshore” has the meaning given to it by section 2(1) of the Act of 1957;

“interruption” means interference with, or cessation of, the use or enjoyment of an easement or *profit à prendre* for a continuous period of at least one year, but does not include an interruption under *section 37(1)*;

20 “period of non-user” means a period during which the dominant owner ceases to use or enjoy the easement or *profit à prendre*;

“relevant user period” means a period of user as of right without interruption by the person claiming to be the dominant owner or owner of *profit à prendre* in gross—

25 (a) where the servient owner is not a State authority, for a minimum period of 12 years, or

(b) where the servient owner is a State authority, for—

(i) a minimum period of 30 years, or

30 (ii) where the servient land is foreshore, a minimum period of 60 years;

“servient land” means land subject to an easement or *profit à prendre*, or in respect of which a relevant user period has commenced; and “servient owner” shall be read accordingly and includes that owner’s predecessors and successors in title;

35 “State authority” means a Minister of the Government or the Commissioners of Public Works in Ireland;

“user as of right” means use or enjoyment without force, without secrecy and without the oral or written consent of the servient owner.

**34.**—Subject to *section 38*, acquisition of an easement or *profit à prendre* by prescription at common law and under the doctrine of lost modern grant is abolished and after the commencement of this Chapter acquisition by prescription shall be in accordance with *section 35*.

Abolition of certain  
methods of  
prescription.

Acquisition of easements and profits à prendre by prescription.

[PA 1832]  
[PA 1858]

**35.—(1)** An easement or *profit à prendre* shall be acquired at law by prescription only on registration of a court order under this section.

(2) Subject to *subsection (3)*, in an action to establish or dispute the acquisition by prescription of an easement or *profit à prendre*, the court shall make an order declaring the existence of the easement or *profit à prendre* if it is satisfied that there was a relevant user period immediately before the commencement of the action. 5

(3) The court may make an order under *subsection (2)* where the relevant user period was not immediately before the commencement of the action if it is satisfied that it is just and equitable to do so in all the circumstances of the case. 10

(4) An order under *subsection (2)* shall be registered in the Registry of Deeds or Land Registry, as appropriate.

Tenancies.  
[PA 1832, s. 8]

**36.—(1)** Where the dominant owner acquiring an easement or *profit à prendre* under *section 35* owns a tenancy only in the dominant land, the easement or *profit à prendre* attaches to that land and when the tenancy ends, passes to the landlord. 15

(2) Where an easement or *profit à prendre* is acquired under *section 35* against a servient owner who owns a tenancy only in the servient land, it ends when that tenancy ends, but if the servient owner— 20

(a) acquires a superior interest in the land, the easement or *profit à prendre* attaches to the superior interest,

(b) obtains an extension or renewal of the tenancy, the easement or *profit à prendre* continues to attach to the land for the period of that extension or renewal. 25

(3) Nothing in *subsection (2)* prevents the subsequent acquisition of an easement or *profit à prendre* under *section 35* on the basis of a new relevant user period against a landlord who takes possession of the servient land after the tenancy ends. 30

Incapacity.  
[PA 1832, s. 7]

**37.—(1)** Subject to *subsection (2)*, where the servient owner is incapable, whether at the commencement of or during the relevant user period, of managing his or her affairs because of a mental incapacity, the running of that period is suspended until the incapacity ceases. 35

(2) *Subsection (1)* does not apply where—

(a) the court considers that it is reasonable, in the circumstances of the case, to have expected some other person, whether as trustee, committee of a ward of court, an attorney under an enduring power of attorney or otherwise, to have acted on behalf of the servient owner during the relevant user period, or 40

(b) at least 30 years have elapsed since the commencement of the relevant user period. 45

Application of sections 34 to 37.

**38.—**In relation to any claim to an easement or *profit à prendre* made after the commencement of this Chapter, *sections 34 to 37*—

(a) apply to any claim based on a relevant user period notwithstanding that it is alleged that an additional user period occurred before that commencement,

5 (b) do not apply to any claim based on a user period under the law applicable prior to the commencement of this Chapter and alleged to have commenced prior to such commencement where the action in which the claim is made is brought within 3 years of such commencement.

10 **39.**—(1) On the expiry of a 12 year continuous period of non-user Extinguishment.  
of an easement or *profit à prendre* acquired by—

(a) prescription, or

(b) implied grant or reservation,

15 the easement or *profit à prendre* is extinguished except where it is protected by registration in the Registry of Deeds or Land Registry, as appropriate.

(2) This section applies to extinguishment of an easement or *profit à prendre* notwithstanding that it was acquired before the commencement of this Chapter, provided at least 3 years of the period of non-user occur after such commencement.

20 (3) Nothing in this section affects the jurisdiction of the court to declare that an easement or *profit à prendre*, however acquired, has been abandoned or extinguished.

**40.**—(1) The rule known as the Rule in *Wheeldon v. Burrows* is Implied grant.  
abolished and replaced by *subsection (2)*.

25 (2) Where the owner of land disposes of part of it or all of it in parts, the disposition creates by way of implication for the benefit of such part or parts any easement over the part retained, or other part or parts simultaneously disposed of, which—

30 (a) is necessary to the reasonable enjoyment of the part disposed of, and

(b) was reasonable for the parties, or would have been if they had adverted to the matter, to assume at the date the disposition took effect as being included in it.

(3) This section does not otherwise affect—

35 (a) easements arising by implication as easements of necessity or in order to give effect to the common intention of the parties to the disposition,

(b) the operation of the doctrine of non-derogation from grant.

40 CHAPTER 2

*Rentcharges*

**41.**—(1) Subject to *subsection (2)*, the creation of a rentcharge at Prohibition of  
law or in equity is prohibited. certain rentcharges.

(2) *Subsection (1)* does not apply to the creation of a rentcharge under—

- (a) a contract entered into before the commencement of this Chapter,
- (b) an order of the court, or 5
- (c) any statutory provision.

Enforcement of  
rentcharges.  
[CA 1881, s. 44]

**42.**—Subject to any other statutory provision, from the commencement of this Chapter, a rentcharge is enforceable as a simple contract debt only.

CHAPTER 3 10

*Party structures*

Interpretation of  
*Chapter 3.*

**43.**—In this Chapter, unless the context otherwise requires—

“adjoining” includes adjacent;

“adjoining owner” means the owner of any estate or interest in a building or unbuilt-on land adjoining that of the building owner; 15

“building” includes part of a building;

“building owner” means the owner for the time being of any estate or interest in a building or unbuilt-on land who wishes to carry out works to a party structure;

“the court” means the District Court; 20

“party structure” means any arch, ceiling, ditch, fence, floor, hedge, partition, shrub, tree, wall or other structure which horizontally, vertically or in any other way—

- (a) divides adjoining and separately owned buildings, or
- (b) is situated at or on or so close to the boundary line 25  
between adjoining and separately owned buildings or  
between such buildings and unbuilt-on lands that it is  
impossible or not reasonably practical to carry out works  
to the structure without access to the adjoining building  
or unbuilt-on land, 30

and includes any such structure which is—

- (i) situated entirely in or on one of the adjoining buildings or  
unbuilt-on lands, or
- (ii) straddles the boundary line between adjoining buildings or 35  
between such buildings and unbuilt-on lands and is either  
co-owned by their respective owners or subject to some  
division of ownership between them;

“works” include—

- (a) carrying out works of adjustment, alteration, cutting into 40  
or away, decoration, demolition, improvement, lowering,  
maintenance, raising, renewal, repair, replacement,  
strengthening or taking down,

- (b) cutting, treating or replacing any hedge, tree or shrub,
- (c) clearing or filling in ditches,
- (d) ascertaining the course of cables, drains, pipes, sewers, wires or other conduits and clearing, renewing, repairing or replacing them,
- (e) carrying out inspections, drawing up plans and performing other tasks requisite for, incidental to or consequential on any works falling within *paragraphs (a) to (d)*;

“works order” means an order under *section 45(1)*.

10 **44.—(1)** Subject to *subsection (2)*, a building owner may carry out works to a party structure for the purpose of— Rights of building owner.

- (a) compliance with any statutory provision or any notice or order under such a provision, or
- 15 (b) carrying out development which is exempted development or development for which planning permission has been obtained or compliance with any condition attached to such permission, or
- (c) preservation of the party structure or of any building or unbuilt-on land of which it forms a part, or
- 20 (d) carrying out any other works which—
  - (i) will not cause substantial damage or inconvenience to the adjoining owner, or
  - 25 (ii) if they may or will cause such damage or inconvenience, it is nevertheless reasonable to carry them out.

(2) Subject to *subsection (3)*, in exercising any right under *subsection (1)* the building owner shall—

- 30 (a) make good all damage caused to the adjoining owner as a consequence of the works, or reimburse the adjoining owner the reasonable costs and expenses of such making good, and
- (b) pay to the adjoining owner—
  - 35 (i) the reasonable costs of obtaining professional advice with regard to the likely consequences of the works, and
  - (ii) reasonable compensation for any inconvenience caused by the works.

(3) The building owner may—

- 40 (a) claim from the adjoining owner as a contribution to, or deduct from any reimbursement of, the cost and expenses of making good such damage under *subsection (2)(a)*, or
- (b) deduct from compensation under *subsection (2)(b)(ii)*,

such sum as will take into account the proportionate use or enjoyment of the party structure which the adjoining owner makes or, it is reasonable to assume, is likely to make.

(4) If—

(a) a building owner fails within a reasonable time to— 5

(i) make good damage under *subsection (2)(a)*, the adjoining owner may apply to the court for an order requiring the damage to be made good and on such application the court may make such order as it thinks fit, or 10

(ii) reimburse costs and expenses under *subsection (2)(a)* or to pay reasonable costs or compensation under *subsection (2)(b)*, the adjoining owner may recover such costs, expenses or compensation as a simple contract debt in a court of competent jurisdiction. 15

(b) an adjoining owner fails to meet a claim to a contribution under *subsection (3)(a)*, the building owner may recover such contribution as a simple contract debt in a court of competent jurisdiction.

Works orders.

**45.**—(1) A building owner who is in dispute with an adjoining owner with respect to exercise of rights under *section 44* may apply to the court for an order authorising the carrying out of specified works (a “works order”). 20

(2) In determining whether to make a works order and, if one is to be made, what terms and conditions should be attached to it, the court shall have regard to *section 44* and may take into account any other circumstances which it considers relevant. 25

Terms and conditions of works orders.

**46.**—(1) Subject to *subsection (3)*, a works order shall authorise the carrying out of the works specified, on such terms and conditions (including those necessary to comply with *section 44*) as the court thinks fit in the circumstances of the case. 30

(2) Without prejudice to the generality of *subsection (1)*, a works order may—

(a) authorise the building owner, and that owner’s agents, employees or servants, to enter on an adjoining owner’s building or unbuilt-on land for any purpose connected with the works, 35

(b) require the building owner to indemnify or give security to the adjoining owner for damage, costs and expenses caused by or arising from the works or likely so to be caused or to arise. 40

(3) A works order shall not authorise any permanent interference with, or loss of, any easement of light or other easement or other right relating to a party structure.

Discharge or modification of works orders.

**47.**—On the application of any person affected by a works order, the court may discharge or modify the order, on such terms and conditions as it thinks fit. 45



*Freehold covenants*

- 48.—In this Chapter, unless the context otherwise requires— Interpretation of Chapter 4.
- 5 “developer” means the person who creates a scheme of development and that person’s successors in title;
- “dominant land” means freehold land with the benefit of a covenant to which other freehold land is subject; and “dominant owner” shall be read accordingly and includes persons deriving title from or under that owner;
- 10 “freehold covenant” means a covenant attaching to dominant land and servient land which has been entered into after the commencement of this Chapter;
- “persons deriving title” include—
- 15 (a) a person who has acquired title to the land by possession under the Act of 1957;
- (b) a mortgagee, or receiver appointed by a mortgagee, in possession of the land;
- “scheme of development” means a development of land under which—
- 20 (a) the land is, or is intended to be, subdivided into 2 or more parts for conveyance in fee simple to each owner of a part;
- 25 (b) there is an intention as between the developer and the owners of parts to create reciprocity of covenants in accordance with *section 49(3)*;
- (c) that intention is expressed in each conveyance to the owners of parts or implied from the covenants in question as they relate to the parts and the proximity of the relationship between their owners;
- 30 “servient land” means freehold land which is subject to a covenant benefiting other freehold land; and “servient owner” shall be read accordingly and includes—
- (a) persons deriving title from or under that owner, but not a tenant for a period less than 5 years,
- 35 (b) in the case of a covenant which is restrictive in substance, a licensee or other person in occupation of the land with or without the consent of that owner.

49.—(1) Subject to *subsection (6)*, the rules of common law and equity (including the rule known as the rule in *Tulk v. Moxhay*) are abolished to the extent that they relate to the enforceability of a freehold covenant. Enforceability of freehold covenants. [CA 1881, ss. 58 and 59]

(2) Subject to *subsections (3) to (6)*, any freehold covenant which imposes in respect of servient land an obligation to do or to refrain from doing any act or thing is enforceable—

- (a) by—
  - (i) the dominant owner for the time being, or
  - (ii) a person who has ceased to be that owner but only in respect of any breach of covenant occurring during the period when that person was such owner, 5

- (b) against—
  - (i) the servient owner for the time being in respect of any breach of covenant by that owner or which occurred before and continued unremedied after that person became the servient owner, or 10
  - (ii) a person who has ceased to be that owner, but only in respect of a breach of covenant which occurred during the period when that person was such owner.

(3) Where there is a scheme of development *subsection (2)* applies so as to render covenants which are capable of reciprocally benefiting and burdening the parts of land within the scheme enforceable by and against the owners for the time being of such parts or persons referred to in *subsection (2)(a)(ii)* and *(2)(b)(ii)*. 15

(4) Where the servient land has been subdivided any obligations, whether to do or to refrain from doing any act or thing, relating to that land— 20

- (a) are apportioned, as appropriate to the subdivided parts of the land, between those parts,
- (b) are enforceable accordingly by or against the persons in whom the subdivided parts are vested, 25

as if those obligations had originally been entered into separately in respect only of each such part.

(5) Any dispute as to the application of *subsection (4)* to a particular case may be referred to the court for determination and, on such application, the court may order such apportionment as it thinks fit. 30

(6) This section—

- (a) does not affect—
  - (i) the enforceability of a covenant under the doctrine of privity of contract or a covenant for title under *section 80*, or 35
  - (ii) the application to a freehold covenant of the Act of 1957,
- (b) takes effect subject to the terms of the covenant or the instrument containing it. 40

Discharge and modification.

**50.—(1)** A servient owner may apply to the court for an order discharging in whole or in part or modifying a freehold covenant (whether created before or after the commencement of this Chapter) on the ground that continued compliance with it would constitute an

unreasonable interference with the use and enjoyment of the servient land.

5 (2) In determining whether to make an order under *subsection (1)* and, if one is to be made, what terms and conditions should be attached to it, the court shall have regard as appropriate to the following matters—

- 10 (a) the circumstances in which, and the purposes for which, the covenant was originally entered into and the time which has elapsed since then,
- (b) any change in the character of the dominant land and servient land or their neighbourhood,
- (c) the development plan for the area under the Act of 2000,
- 15 (d) planning permissions granted under that Act in respect of land in the vicinity of the dominant land and servient land or refusals to grant such permissions,
- (e) whether the covenant secures any practical benefit to the dominant owner and, if so, the nature and extent of that benefit,
- 20 (f) where the covenant creates an obligation on the servient owner to execute any works or to do any thing, or to pay or contribute towards the cost of executing any works or doing any thing, whether compliance with that obligation has become unduly onerous compared with the benefit derived from such compliance,
- 25 (g) whether the dominant owner has agreed, expressly or impliedly, to the covenant being discharged or varied,
- (h) any representations made by any person interested in the performance of the covenant,
- (i) any other matter which the court considers relevant.

30 (3) Where the court is satisfied that compliance with an order under *subsection (1)* will result in a quantifiable loss to the dominant owner or other person adversely affected by the order, it may include as a condition in the order a requirement by the servient owner to pay the dominant owner or other person such compensation as the  
35 court thinks fit.

(4) An order under *subsection (1)* shall be registered in the Registry of Deeds or Land Registry, as appropriate.

## PART 9

### CONTRACTS AND CONVEYANCES

#### 40 CHAPTER 1

#### *Contracts relating to land*

**51.—**(1) Subject to *subsection (2)*, no action shall be brought to enforce any contract for the sale or other disposition of land unless Evidence in writing.  
[SF 1695, s. 2]

the agreement on which such action is brought, or some memorandum or note of it, is in writing and signed by the person against whom the action is brought or that person's authorised agent.

(2) *Subsection (1)* does not affect the law relating to part performance or other equitable doctrines. 5

(3) For the avoidance of doubt, but subject to an express provision in the contract to the contrary, payment of a deposit in money or money's worth is not necessary for an enforceable contract.

Passing of beneficial interest.

**52.**—(1) Subject to *subsection (2)*, the entire beneficial interest passes to the purchaser on the making, after the commencement of this Chapter, of an enforceable contract for the sale or other disposition of land. 10

(2) *Subsection (1)* does not affect—

(a) the obligation of the vendor to maintain the land so long as possession of it is retained, or 15

(b) the liability of the vendor for loss or damage under any contractual provision dealing with such risk, or

(c) the vendor's right to rescind the contract for failure by the purchaser to complete or other breach of the contract, or

(d) any provision to the contrary in the contract. 20

Abolition of the Rule in *Bain v. Fothergill*.

**53.**—(1) The rule of law restricting damages recoverable for breaches of contract occasioned by defects in title to land (known as the Rule in *Bain v. Fothergill*) is abolished.

(2) *Subsection (1)* applies only to contracts made after the commencement of this Chapter. 25

Order for return of deposit.

**54.**—Where the court refuses to grant specific performance of a contract for the sale or other disposition of land, or in any action for the return of a deposit, the court may, where it is just and equitable to do so, order the repayment of the whole or any part of any deposit, with or without interest. 30

Vendor and purchaser summons. [VPA 1874, s. 9]

**55.**—(1) Any party to a contract for the sale or other disposition of land may apply to the court in a summary manner for an order determining a question relating to the contract.

(2) On such an application the court may make such order, including an order as to costs, as it thinks fit. 35

(3) A question in respect of which an application may be made under *subsection (1)* includes a question relating to any requisition, objection, claim for compensation or other question arising out of or connected with the contract, but does not include a question affecting the existence or validity of the contract. 40

*Title*

5 **56.**—(1) Subject to *subsections (2) and (3)*, after the commencement of this Chapter, a period of at least 15 years commencing with a good root of title is the period for proof of title which the purchaser may require. Root of title.  
[VPA 1874, s. 1]

(2) Where the title originates with a fee farm grant or lease, *subsection (1)* does not prevent the purchaser from requiring production of the fee farm grant or lease.

10 (3) *Subsection (1)* takes effect subject to the terms of the contract for the sale or other disposition of the land.

**57.**—(1) Subject to *subsections (2) and (5)*, under a contract to grant or assign a tenancy or subtenancy of land, the intended grantee or assignee is not entitled to call for the title to— Tenancies.  
[VPA 1874, s. 2]

15 (a) the fee simple, or [CA 1881, ss. 3 and 13]

(b) any tenancy superior to that out of which the subtenancy is, or is to be, immediately derived. [CA 1882, s. 4]

20 (2) Subject to *subsection (5)*, under a contract made after the commencement of this Chapter to grant a tenancy or subtenancy for a term exceeding 5 years the intended grantee may call for—

(a) in the case of a tenancy to be derived immediately out of the fee simple, a copy of the conveyance of that estate to the grantor, or

25 (b) in the case of a subtenancy, a copy of the superior lease out of which it is to be immediately derived and, if any, of the immediate assignment of the superior lease to the grantor,

30 and, where the tenancy or subtenancy is granted for the full market rent, taking into account any premium also paid by, but disregarding any concessions or inducements made to, the intended grantee, that grantee may also call for 15 years' title as a purchaser under *section 56(1)*.

35 (3) For the purpose of the deduction of title to an intended assignee, no preliminary contract for or relating to the tenancy forms part of the title, or evidence of the title, to the tenancy.

40 (4) Where by reason of *subsection (1)* an intended grantee or assignee is not entitled to call for the title to the fee simple or a superior tenancy, that person, where the contract is made after the commencement of this Chapter, is not affected with notice of any matter or thing of which, if the contract had specified that such title should be furnished, that person might have had notice.

(5) *Subsections (1) and (2)* take effect subject to the terms of the contract for the grant or assignment of the tenancy or subtenancy.

Other conditions of title.

[VPA 1874, s. 2]

[CA 1881, s. 3]

**58.**—(1) Subject to *subsection (2)*, a purchaser of land is not entitled to require—

- (a) the production of an instrument dated or made before the period referred to in *section 56*, or stipulated in the contract for sale, for the commencement of the title, even though the instrument creates a power subsequently exercised by an instrument produced to the purchaser, or 5
- (b) any information, or make any requisition, objection or inquiry with respect to any instrument referred to in *paragraph (a)* or the title prior to that period, notwithstanding that any instrument, or that prior title, is recited, agreed to be produced or noticed, 10

and the purchaser shall assume, unless the contrary appears, that—

- (i) the recitals contained in the instruments produced, relating to any instrument forming part of that prior title are correct, and give all the material contents of the instrument so recited, and 15
- (ii) every instrument so recited was duly executed by all necessary parties, and perfected, if and as required, by any act required or permitted by law. 20

(2) *Subsection (1)* does not deprive a purchaser of the right to require the production of any—

- (a) power of attorney under which any instrument which is produced is executed, or
- (b) instrument creating or disposing of an interest, power or obligation which is not shown to have ceased or expired, and subject to which any part of the land is disposed of by an instrument which is produced, or a copy of which is produced, or 25
- (c) instrument creating any limitation or trust by reference to which any part of the land is disposed of by an instrument which is produced. 30

(3) On a sale of land, the purchaser, where the purchaser requires the vendor to carry out such matters, shall bear the expenses (except where such expenses should be borne by the vendor in compliance with the obligation to deduce title) of— 35

- (a) production and inspection of all instruments, letters of administration, probates, proceedings at courts, records, statutory provisions and other documents not in the possession of the vendor, or the vendor's mortgagee or trustee, 40
- (b) making, procuring, producing, searching for and verifying all certificates, declarations, evidence and information, and all attested, office, stamped or other copies or abstracts of, or extracts from, any statutory provisions or other documents, not in the possession of the vendor or the vendor's mortgagee or trustee, 45

(c) making any copy, whether attested or unattested, of any document retained by the vendor, or the vendor's mortgagee or trustee, required to be delivered by the purchaser.

5 (4) On a sale of land in lots, a purchaser of two or more lots held wholly or partly under the same title is entitled to no more than one abstract of the common title, nor to more than one copy of any document forming part of the common title, except at the purchaser's own expense.

10 (5) The inability of a vendor to furnish the purchaser with an acknowledgment of the right to production and delivery of copies of documents of title is not an objection to title where the purchaser will, on the completion of the contract, have an equitable right to the production of such documents.

15 (6) Such acknowledgments and such undertakings for the safe custody of documents as the purchaser requires shall be furnished at the purchaser's expense, and the vendor shall bear the expense of perusal and execution on behalf of or by the vendor, and on behalf of and by necessary parties other than the purchaser.

20 (7) A vendor may retain a document of title where—

(a) the vendor retains any part of the land to which the document relates, or

(b) the document comprises an instrument—

(i) creating a trust which still exists, or

25 (ii) relating to the appointment or discharge of a trustee of an existing trust.

(8) This section takes effect subject to the terms of the contract for the sale or other disposition of the land.

30 (9) Nothing in this section is to be read as binding a purchaser to complete the purchase in any case where, on a contract made without reference to this section but containing stipulations similar to any of its provisions, specific performance would not be granted by the court against the purchaser.

(10) In this section—

35 (a) "instrument" includes a copy or abstract,

(b) "production" includes furnishing a copy or abstract and cognate words shall be read accordingly.

40 **59.—**(1) Recitals, statements and descriptions of facts, matters and parties contained in instruments, statutory provisions or statutory declarations 15 years old at the date of the contract are, unless and except so far as they are proved to be inaccurate, sufficient evidence of the truth of such facts, matters and parties. Protection of purchasers.  
[VPA 1874, s. 2]  
[CA 1881, s. 3]

45 (2) Where land sold is held under a tenancy (other than a subtenancy), the purchaser shall assume, unless the contrary appears, that the tenancy was duly granted; and, on production of the receipt for the last payment due for rent under the tenancy before the date of the actual completion of the purchase, the purchaser shall assume,

unless the contrary appears, that all the covenants and provisions of the tenancy have been duly performed and observed up to the date of actual completion of the purchase.

(3) Where land sold is held under a subtenancy, the purchaser shall assume, unless the contrary appears, that the subtenancy and every superior tenancy were duly granted; and, on production of the receipt for the last payment due for rent under the subtenancy before the date of the actual completion of the purchase, the purchaser shall assume, unless the contrary appears, that all the covenants and provisions of the subtenancy have been duly performed and observed up to the date of actual completion of the purchase, and also that all rent due under, and all covenants and provisions of, every superior tenancy have been paid and duly performed and observed up to that date.

Fraudulent concealment and falsification.

[LPAA 1859, s. 24]

[LPAA 1860, s. 8]

**60.**—(1) Any person disposing of land to a purchaser, or the solicitor or other agent of such a person, who with intent to defraud—

(a) conceals from the purchaser any instrument or incumbrance material to the title, or

(b) falsifies any information or matter on which the title may depend in order to induce the purchaser to accept the title offered or produced,

is guilty of an offence under this Act.

(2) Any such person or the person's solicitor or agent is also liable to an action for damages by the purchaser, or persons deriving title under the purchaser, for any loss sustained by reason of—

(a) the concealment of the instrument or incumbrance, or

(b) any claim made by a person whose title to the land was concealed by such falsification.

(3) In estimating damages, where the land is recovered from the purchaser or persons deriving title under the purchaser, regard shall be had to any expenditure by them on improving the land.

(4) Nothing in this section affects the provisions of the Criminal Justice (Theft and Fraud Offences) Act 2001.

Notice of rights on common title.

[CA 1911, s. 11]

**61.**—(1) Where land having a common title with other land is conveyed to a purchaser (other than a tenant or mortgagee) who does not hold or obtain possession of the documents forming the common title, the purchaser, notwithstanding a stipulation to the contrary in the contract or conveyance, may require that a memorandum giving notice of any provisions in the conveyance restricting user of or conferring rights over any other land comprised in the common title is endorsed on or permanently annexed to some document selected by the purchaser but retained in the possession or control of the vendor and being or forming part of the common title.

(2) The title of any person omitting to require an endorsement or annexation under this section is not affected or prejudiced merely by such omission.

(3) This section does not apply to registered land.



*Deeds and their operation*

62.—(1) Subject to *section 63*, a legal estate or interest in land may only be created or conveyed by a deed. Conveyances by deed only.

5 (2) A deed executed after the commencement of this Chapter is fully effective for such purposes without the need for any conveyance to uses and passes possession or the right to possession of the land, without actual entry, unless subject to some prior right to possession. [SU 1634]  
[RPA 1845, ss. 2 and 3]

10 (3) In the case of a voluntary conveyance executed after the commencement of this Chapter, a resulting use for the grantor is not implied merely because the land is not expressed to be conveyed for the use or benefit of the grantee.

15 (4) A bargain and sale, covenant to stand seised, feoffment with livery of seisin or any combination of these are no longer effective to create or to convey a legal estate or legal interest in land.

63.—*Section 62(1)* does not apply to— Exceptions to deeds.

- (a) an assent by a personal representative,
- (b) a surrender or other conveyance taking effect by operation of law,
- 20 (c) a disclaimer not required to be by deed,
- (d) a grant or assignment of a tenancy not required to be by deed,
- (e) a receipt not required to be by deed,
- 25 (f) a vesting order of the court or other competent authority, or
- (g) any other conveyance which may be prescribed.

64.—(1) Any rule of law which requires— Formalities for deeds.

- (a) a seal for the valid execution of a deed by an individual, or
  - (b) authority to deliver a deed to be given by deed,
- 30 is abolished.

(2) An instrument executed after the commencement of this Chapter is a deed if it is—

- 35 (a) described at its head by words such as “Assignment”, “Conveyance”, “Charge”, “Deed”, “Indenture”, “Lease”, “Mortgage”, “Surrender” or other heading appropriate to the deed in question, or it is otherwise made clear on its face that it is intended by the person making it, or the parties to it, to be a deed, by expressing it to be executed or signed as a deed,

(b) executed in the following manner:

(i) if made by an individual—

(I) it is signed by the individual in the presence of a witness who attests the signature, or

(II) it is signed by a person at the individual's direction given in the presence of a witness who attests the signature, or

(III) the individual's signature is acknowledged by him or her in the presence of a witness who attests the signature;

(ii) if made by a company registered in the State, it is executed under the seal of the company in accordance with its Articles of Association;

(iii) if made by a body corporate registered in the State other than a company, it is executed in accordance with the legal requirements governing execution of deeds by such a body corporate;

(iv) if made by a foreign body corporate, it is executed in accordance with the legal requirements governing execution of the instrument in question by such a body corporate in the jurisdiction where it is incorporated,

and

(c) delivered as a deed by the person executing it or by a person authorised to do so on that person's behalf.

(3) Any deed executed under this section has effect as if it were a document executed under seal.

(4) A deed, whenever created, has the effect of an indenture although not indented or expressed to be an indenture.

Escrows by corporate bodies.

**65.**—(1) Any rule of law to the effect that the affixing of a corporate seal to an instrument effects delivery by that body corporate is abolished.

(2) An instrument executed by a body corporate in accordance with *section 64(2)(b)* is capable of operating as an escrow in the same circumstances and with the same consequences as an instrument executed by an individual.

Conveyance to oneself.  
[LPAA 1859, s. 21]

**66.**—(1) Any property may be conveyed by a person to that person jointly with another person in the same way in which it might be conveyed by that person to another person.

[CA 1881, s. 50]

(2) Subject to *subsection (3)*—

(a) a person may convey, but not lease, property to that same person in a different capacity,

(b) two or more persons may convey, and have always been capable of conveying, any property vested in them to any

one or more of themselves in the same way in which they could convey it to a third person.

(3) *Subsection (2)* does not validate a conveyance made in breach of trust or other fiduciary obligation.

5 (4) Without prejudice to *section 83*, this section does not affect any rule of law under which a covenant entered into with oneself is unenforceable.

10 **67.**—(1) A conveyance of unregistered land with or without words of limitation, or any equivalent expression, passes the fee simple or the other entire estate or interest which the grantor had power to create or convey, unless a contrary intention appears in the conveyance. Words of limitation. [CA 1881, s. 51]

15 (2) A conveyance of unregistered land to a corporation sole by that person's corporate designation without the word "successors" passes to the corporation the fee simple or the other entire estate or interest which the grantor had power to create or convey, unless a contrary intention appears in the conveyance.

(3) Where an interest in land is expressed to be given to—

- (a) the heir or heirs, or
- 20 (b) any particular heir, or
- (c) any class of heirs, or
- (d) issue,

25 of any person in words which, under the rule known as the Rule in *Shelley's Case*, would have operated to give that person a fee simple, those words operate as words of purchase and not of limitation and take effect in equity accordingly.

30 (4) Subject to *section 68*, *subsections (1) to (3)* apply to conveyances executed before the commencement of this Chapter, but without prejudice to any act or thing done or any interest disposed of or acquired before that commencement in consequence of the failure to use words of limitation in such a conveyance or the application of the Rule in *Shelley's Case*.

**68.**—(1) An interest—

Extinguishment of certain interests.

- (a) to which a person was entitled, or
- 35 (b) acquired by a person,

40 before the commencement of this Chapter in consequence of the failure to use words of limitation in a conveyance executed before that commencement or the application of the Rule in *Shelley's Case* is extinguished unless the person claiming to be entitled to the interest or to have acquired it—

- (i) applies to the court, within 12 years from the commencement of this Chapter, for an order under this section, and
- (ii) registers any order made under this section in accordance with *subsection (3)*.

- (2) On such an application the court may—
- (a) make an order declaring that the applicant is entitled to the interest or has acquired it,
  - (b) refuse to make such an order if it is satisfied that no substantial injustice will be done to any party, or
  - (c) in lieu of a declaration in favour of the applicant, order payment by another party of such compensation to the applicant as the court thinks appropriate.
- (3) An order under this section shall be registered in the Registry of Deeds or Land Registry, as appropriate.

Reservations.  
[CA 1881, s. 62]

**69.**—(1) A reservation of a legal estate or interest in a conveyance of land operates, without execution of the conveyance or of any regrant by the grantee, to—

- (a) vest that estate or interest in the grantor or other person for whose benefit it is made, and
- (b) annex it to the land, if any, for the benefit of which it is made.

(2) A conveyance of land expressed to be subject to a legal estate or interest which is not in existence immediately before the date of the conveyance operates as a reservation within the meaning of *subsection (1)*, unless a contrary intention is expressed in the conveyance.

(3) For the purpose of construing the effect of a conveyance of land, a reservation shall not be treated as taking effect as a regrant.

(4) This section applies only to reservations made after the commencement of this Part.

Benefit of deeds.  
[RPA 1845, s. 5]

**70.**—(1) Where a deed is expressed to confer an estate or interest in land, or the benefit of a covenant or right relating to land, on a person, that person may enforce the deed whether or not named a party to it.

(2) Nothing in this section otherwise affects the doctrine of privity of contract.

Features and rights conveyed with land.  
[CA 1881, s. 6]

**71.**—(1) A conveyance of land includes, and conveys with the land, all—

- (a) buildings, commons, ditches, drains, erections, fences, fixtures, hedges, water, watercourses and other features forming part of the land,
- (b) advantages, easements, liberties, privileges, *profits à prendre* and rights appertaining or annexed to the land.

(2) A conveyance of land which has houses or other buildings on it includes, and conveys with the land, houses or other buildings all—

- (a) areas, cellars, cisterns, courts, courtyards, drainpipes, drains, erections, fixtures, gardens, lights, outhouses,

passages, sewers, watercourses, yards and other features forming part of the land, houses or other buildings,

(b) advantages, easements, liberties, privileges, *profits à prendre* and rights appertaining or annexed to the land, houses or other buildings.

5

(3) This section—

(a) does not on a conveyance of land (whether or not it has houses or other buildings on it)—

(i) create any new interest or right or convert any quasi-interest or right existing prior to the conveyance into a full interest or right, or

10

(ii) extend the scope of, or convert into a new interest or right, any licence, privilege or other interest or right existing before the conveyance,

15

(b) does not—

(i) give to any person a better title to any land, interest or right referred to in this section than the title which the conveyance gives to the land expressed to be conveyed, or

20

(ii) convey to any person any land, interest or right further or other than that which could have been conveyed to that person by the grantor,

(c) takes effect subject to the terms of the conveyance.

**72.—**(1) Any instrument expressed to be supplemental to a previous instrument, or directed to be read as an annex to such an instrument, is, so far as is appropriate, to be read and has effect as if the instrument so expressed or directed—

25

Supplemental instruments.  
[CA 1881, s. 53]

(a) were made by way of endorsement on the previous instrument, or

30

(b) contained a full recital of the previous instrument.

(2) This section does not confer on a purchaser any right to an abstract, copy or production of any such previous instrument and a purchaser may accept the same evidence that the previous instrument does not affect the title as if it had merely been mentioned in the supplemental instrument.

35

**73.—**(1) A release of part of land from—

Partial releases.

(a) a rentcharge does not extinguish the rentcharge, but bars only the right to recover any part of the rentcharge out of the land released,

[LPAA 1859, ss. 10 and 11]

40

(b) a judgment charged on the land does not affect the validity of the judgment as regards any of the land not specifically released.

(2) *Subsection (1)* does not—

- (a) prejudice the rights of any person interested in the land unreleased and not concurring in or confirming the release, or
- (b) prevent recovery of the whole of the rentcharge or enforcement of the whole judgment against the land unreleased, unless those interested agree otherwise.

Fraudulent dispositions.  
[CA 1634, ss. 1 to 5, 10, 11 and 14]  
[VCA 1893]

**74.**—(1) Subject to *subsection (2)*, any voluntary disposition of land made with the intention of defrauding a subsequent purchaser of the land is voidable by that purchaser.

(2) For the purposes of *subsection (1)*, a voluntary disposition is not to be read as intended to defraud merely because a subsequent disposition of the same land was made for valuable consideration.

(3) Subject to *subsection (4)*, any conveyance of property made with the intention of defrauding a creditor or other person is voidable by any person thereby prejudiced.

(4) *Subsection (3)* does not—

- (a) apply to any estate or interest in property conveyed for valuable consideration to any person in good faith not having, at the time of the conveyance, notice of the fraudulent intention, or
- (b) affect any other law relating to bankruptcy of an individual or corporate insolvency.

#### CHAPTER 4

##### *Contents of deeds*

Construction of instruments.

**75.**—Particular words and expressions used in any instrument relating to land executed or made after the commencement of this Chapter, unless the context otherwise requires—

- (a) are subject to the same general rules of construction as are applicable to such words and expressions used in Acts of the Oireachtas under Part 4 of the Act of 2005,
- (b) have the same particular meaning, construction or effect as assigned to such words and expressions used in Acts of the Oireachtas by Part 1 of the Schedule to that Act or by *section 3* of this Act, whichever is more appropriate.

All estate clause.  
[CA 1881, s. 63]

**76.**—(1) Subject to *subsection (2)*, a conveyance of land passes all the claim, demand, estate, interest, right and title which the grantor has or has power to convey in, to or on the land conveyed or expressed or intended to be conveyed.

(2) This section takes effect subject to the terms of the conveyance.

Receipts in deeds.  
[CA 1881, ss. 54 to 56]

**77.**—(1) A receipt for consideration in the body of a deed is sufficient discharge for the consideration to the person giving it, without any further receipt being endorsed on the deed.

(2) A receipt for consideration in the body of a deed is, in favour of a subsequent purchaser (not having notice that the consideration so acknowledged to be received was not, in fact, given wholly or in part), conclusive evidence of the giving of the whole consideration.

5 (3) Where a solicitor produces a deed which—

(a) has in its body a receipt for consideration, and

(b) has been executed by the person entitled to give a receipt for the consideration,

10 the deed is conclusive authority to the person liable to give the consideration for giving it to the solicitor, without the solicitor producing any separate or other authority or direction in that behalf from the person who executed or signed the deed or receipt.

15 (4) In *subsection (3)* “solicitor” includes any employee of a solicitor, and any member or employee of a firm in which the solicitor is a partner, and any such employee or member of another firm acting as agent of the solicitor or firm.

78.—(1) An exchange or other conveyance of land does not imply any condition in law. Conditions and covenants not implied.

20 (2) Subject to any statutory provision, use of the word “give” or “grant” in any conveyance does not imply any covenant. [RPA 1845, s. 4]

79.—In *sections 80 and 81*—

Scope of *sections 80 and 81*.

(a) “conveyance”—

(i) does not include the granting of a tenancy,

25 (ii) means a conveyance made after the commencement of this Chapter,

30 (b) any reference to a person being expressed to “convey”, or to an estate or interest or land being expressed to be “conveyed” does not mean that the words “convey” or “conveyed” must be used in the conveyance for the covenant to be implied.

80.—(1) In a conveyance of any class referred to in *subsection (2)* there are implied the covenants specified in relation to that class in *Part 2 of Schedule 3*, and those covenants are deemed to be made— Covenants for title. [CA 1881, s. 7]

35 (a) by the person or by each person who conveys, to the extent of the estate or interest or share of the estate or interest expressed to be conveyed by such person (“the subject-matter of the conveyance”),

40 (b) with the person to whom the conveyance is made, or with the persons jointly and severally, if more than one, to whom the conveyance is made as joint tenants, or with each of the persons, if more than one, to whom the conveyance is made as tenants in common,

and have the effect specified in *Parts 1 and 2 of Schedule 3*.

(2) The classes of conveyance referred to in *subsection (1)* are—

- Class 1: A conveyance (other than a mortgage) for valuable consideration of an estate or interest in land (other than a tenancy) made by a person who is expressed to convey “as beneficial owner”; 5
- Class 2: A conveyance (other than a mortgage) for valuable consideration of land comprised in a lease made by a person who is expressed to convey “as beneficial owner”;
- Class 3: A conveyance comprising a mortgage of land (other than land comprised in a lease) made by a person who is expressed to convey “as beneficial owner”; 10
- Class 4: A conveyance comprising a mortgage of land comprised in a lease made by a person who is expressed to convey “as beneficial owner”; 15
- Class 5: A conveyance made by a person who is expressed to convey “as trustee”, “as mortgagee”, “as personal representative” or under an order of the court.

(3) Where a conveyance is made by a person who is expressed to convey by direction of another person who is expressed to direct “as beneficial owner”, then, whether or not that other person is also expressed to convey “as beneficial owner”, the conveyance is for the purposes of this section a conveyance made by that other person expressed to convey “as beneficial owner” to the extent of the subject-matter of the conveyance made by that other person’s direction. 20 25

(4) Without prejudice to section 52(6) of the Act of 1965, where in a conveyance a person conveying is not expressed to convey “as beneficial owner”, “as trustee”, “as mortgagee”, “as personal representative”, under an order of the court or by a direction of a person “as beneficial owner”, no covenant on the part of the person conveying is implied in the conveyance. 30

(5) The benefit of a covenant implied under this section—

- (a) is annexed to and passes with the estate or interest of the implied covenantee,
- (b) is enforceable by every person, including a tenant, mortgagee and any other person deriving title from or under the implied covenantee, in whom that estate or interest, or any part of it, or an estate or interest derived out of it, is vested from time to time. 35

(6) A covenant implied under this section may, by the terms of the conveyance, be— 40

- (a) excluded but not so that a sole covenant or all (as distinct from some only) of the covenants implied in relation to a person expressed to convey as specified in *subsection (2)* are excluded, 45
- (b) modified and, if so modified, operates as if the modification was included in this section and *Schedule 3*.

(7) Any covenant implied under this section by reason of a person being expressed to convey “as beneficial owner” may, by express



reference to this section, be incorporated, with or without modification, in a conveyance, whether or not for valuable consideration, by a person who is expressed to convey as specified in Class 5 of *subsection (2)*.

5 **81.—(1)** In a conveyance of any class referred to in *subsection (2)* there are implied, in addition to the covenants referred to in *section 80(1)*, the covenants specified in relation to that class in *Part 3 of Schedule 3*, and those covenants are deemed to be made—

Additional covenants for land comprised in a lease.

10 (a) by the person, or by the persons jointly and severally, if more than one, so specified in relation to any class of conveyance,

(b) with the person, or with the persons jointly and severally, if more than one, who is the other party, or are the other parties, to the conveyance,

15 and have the effect specified in *Parts 1 and 3 of Schedule 3*.

(2) The classes of conveyance referred to in *subsection (1)* are—

Class 6: A conveyance (other than a mortgage) for valuable consideration of—

(a) the entirety of the land comprised in a lease, or

20 (b) part of the land comprised in a lease, subject to a part of the rent reserved by the lease which has been, or is by the conveyance, apportioned with the consent of the lessor,

25 for the residue of the term or interest created by the lease;

Class 7: A conveyance (other than a mortgage) for valuable consideration of part of the land comprised in a lease, for the residue of the term or interest created by the lease, subject to a part of the rent reserved by the lease which has been, or is by the conveyance, apportioned without the consent of the lessor.

30

(3) Where in a conveyance (other than a mortgage) part of land comprised in a lease is, without the consent of the lessor, expressed to be conveyed—

35 (a) subject to the entire rent, then *covenant (1)* in *paragraph (2)* of *Part 3 of Schedule 3* has effect as if the entire rent were the apportioned rent,

40 (b) exonerated from the entire rent, then *covenant (2)* in *paragraph (2)* of *Part 3 of Schedule 3* has effect as if the entire rent were the balance of the rent, and “(other than the covenant to pay the entire rent)” were omitted from the covenant.

(4) The benefit of a covenant implied under this section—

45 (a) is annexed to and passes with the estate or interest of the implied covenantee,

(b) is enforceable by every person, including a tenant, mortgagee and any other person deriving title from or under the implied covenant, in whom that estate or interest, or any part of it, or an estate or interest derived out of it, is vested from time to time. 5

(5) Any covenant implied under this section may, by the terms of the conveyance, be—

(a) modified by the express provisions of the conveyance and, if so modified, operates as if the modification were included in this section and *Schedule 3*, 10

(b) extended by providing expressly in the conveyance that—

(i) the land conveyed, or

(ii) the part of the land which remains vested in the covenantor,

stands charged with the payment of all money which would otherwise become payable under the implied covenant. 15

Covenants by or with two or more persons.

[CA 1881, s. 60]

**82.**—(1) Where under a covenant persons are—

(a) covenantors, the covenant binds them and any two or more of them jointly and each of them severally, 20

(b) covenantees, the covenant shall be construed as being also made with each of them.

(2) A covenant made with persons jointly to convey, pay money or do any other act to them or for their benefit, implies an obligation to do the act to, or for the benefit of— 25

(a) the survivor or survivors of them, or

(b) any other person on whom the right to sue on the covenant devolves.

(3) This section takes effect subject to the terms of the covenant or conveyance in which it is contained or implied or of any statutory provision implying the covenant. 30

(4) In this section “covenant” includes an express or implied covenant and a bond or obligation contained in a deed.

Covenants by person jointly with others.

**83.**—A covenant, whether express or implied, entered into by a person with that person jointly with another person or other persons shall be construed and is enforceable as if it had been entered into with that other person or persons alone. 35

Production and safe custody of documents.

[CA 1881, s. 9]

**84.**—(1) Where a person retains possession of documents and gives to another person in writing—

(a) an acknowledgment of the right of that other to production of those documents and to delivery of copies of them (“the acknowledgment”), 40

(b) an undertaking for the safe custody of those documents (“the undertaking”),

the acknowledgment and the undertaking have the effect specified in this section.

5 (2) The obligations imposed by an acknowledgment are to—

(a) produce the documents or any of them at all reasonable times for the purpose of inspection and of comparison with abstracts or copies of the documents, by the person entitled to request production or by any person authorised in writing by that person,

10 (b) produce the documents or any of them in court or any other place where, or on any occasion when, production may properly be required for proving or supporting the title or claim of the person entitled to request production, or for any other purpose relating to that title or claim,

15 (c) deliver to the person entitled to request them such copies or abstracts, attested or unattested, of or from the documents or any of them.

(3) The obligation imposed by an undertaking is to keep the documents complete, safe, uncanceled and undefaced.

(4) The obligations shall be performed from time to time—

(a) in the case of the acknowledgment, at the request in writing of,

(b) in the case of the undertaking, in favour of,

25 the person to whom it is given, or any person, not being a tenant, who has or who claims any estate, interest or right through or under that person or who otherwise becomes through or under that person interested in or affected by the terms of the document to which the acknowledgment or undertaking relates.

30 (5) The acknowledgment and undertaking bind the documents to which they relate in the possession or under the control of the person who retains them and every other person having possession or control of them from time to time but they bind each such individual possessor or person as long only as that person has possession or control.

(6) Each person having possession or control of such documents is bound specifically to perform the obligations imposed by this section, unless prevented from doing so by fire or other inevitable accident, but all costs and expenses of or incidental to specific performance of the acknowledgment shall be paid by the person requesting performance.

40 (7) The acknowledgment does not confer any right to damages for loss or destruction of, or injury to, the documents to which it relates, arising from whatever cause.

45 (8) Any person claiming to be entitled to the benefit of an undertaking may apply to the court for damages for any loss or destruction of, or injury to, the documents or any of them to which it relates.

(9) Upon such application the court may direct such inquiries and make such order as to costs or other matters as it thinks fit.

(10) An acknowledgment or undertaking under this section satisfies any liability to give a covenant for production and delivery of copies of or extracts from documents or for safe custody of documents. 5

(11) The rights conferred by an acknowledgment or undertaking under this section are in addition to all such other rights relating to production, inspection or obtaining copies of documents as are not satisfied by the giving of the acknowledgment or undertaking. 10

(12) This section—

(a) has effect where an acknowledgment or undertaking is given by a person to that same person in different capacities in the same way as where it is given by one person to another, 15

(b) takes effect subject to the terms of the acknowledgment or undertaking.

Notices.

**85.**—(1) Subject to *subsection (2)*, where an instrument makes provision for giving or serving a notice it may be given or served as if it were authorised or required to be given or served under this Act. 20

(2) *Subsection (1)* takes effect subject to the terms of the instrument.

## CHAPTER 5

### *General provisions*

Restrictions on constructive notice.

[CA 1882, s. 3]

**86.**—(1) A purchaser is not affected prejudicially by notice of any fact, instrument, matter or thing unless— 25

(a) it is within the purchaser's own knowledge or would have come to the purchaser's knowledge if such inquiries and inspections had been made as ought reasonably to have been made by the purchaser, or 30

(b) in the same transaction with respect to which a question of notice to the purchaser arises, it has come to the knowledge of the purchaser's counsel, as such, or solicitor or other agent, as such, or would have come to the knowledge of the solicitor or other agent if such inquiries and inspections had been made as ought reasonably to have been made by the solicitor or agent. 35

(2) Without prejudice to *section 57(4)*, *subsection (1)* does not exempt a purchaser from any liability under, or any obligation to perform or observe, any covenant, provision or restriction contained in any instrument under which the purchaser's title is derived, immediately or mediately; and such liability or obligation may be enforced in the same manner and to the same extent as if this section had not been enacted. 40

(3) A purchaser is not, by reason of anything in this section, affected by notice in any case where the purchaser would not have been so affected if this section had not been enacted. 45

87.—(1) Without prejudice to any ground of appeal against any Court orders.  
order, an order of the court under any statutory or other jurisdiction [CA 1881, s. 70]  
is not invalid as against a purchaser on the ground of want of—

(a) jurisdiction, or

5 (b) any concurrence, consent, notice or service.

(2) This section applies to any lease, sale or other act under the authority of the court and purporting to be in pursuance of any statutory provision, notwithstanding any exception in that provision.

10 88.—With a view to facilitating electronic conveyancing of land or Regulations for Part  
providing further protection for the interests of vendors and pur- 9.  
chasers of land, the following matters may be prescribed:

(a) the general conditions of sale applicable to a contract for the sale or other disposition of an estate or interest in land;

15 (b) any other matter referred to in this Part.

## PART 10

### MORTGAGES

#### CHAPTER 1

##### *Creation of mortgages*

20 89.—(1) A legal mortgage of land may only be created by a charge Legal mortgages.  
by deed and such a charge, unless the context requires otherwise,  
is referred to in this Part as a “mortgage”; and “mortgagor” and  
“mortgagee” shall be read accordingly.

25 (2) Subject to *subsection (3)*, from the commencement of this  
Chapter—

(a) any instrument which would, but for the provisions of this section, convey a legal estate or interest in land by way of mortgage, or

30 (b) any other transaction which under any instrument would operate, but for the provisions of this section, as a mortgage by conveyance of a legal estate or interest in land,

does not create a legal mortgage.

35 (3) From the commencement of this Chapter, any transaction which under any statutory provision would, but for the provisions of this section, operate as a mortgage by conveyance of a legal estate or interest in land operates as if it were a mortgage under this Part.

40 (4) From the commencement of this Chapter, any power, whenever created, to mortgage or lend money on mortgage of a legal estate or interest in land operates as a power to mortgage the legal estate or interest by a mortgage under this Part or to lend money on the security of such a mortgage.

(5) This Part applies to both unregistered and registered land.

(6) Nothing in this section affects the creation of equitable mortgages of land.

(7) From the commencement of this Chapter, it is not possible to create a Welsh mortgage and any purported creation of such a mortgage is void. 5

(8) For the purposes of *subsection (7)*, a “Welsh mortgage” includes any transaction under which a grantee or chargee of land is entitled to hold possession, and take rents and profits in lieu of interest on a loan, of land without the grantor or chargor being under a personal obligation to repay the loan, but being entitled to redeem. 10

Position of mortgagor and mortgagee.

**90.**—(1) Subject to this Part, where a mortgage is created after the commencement of this Chapter—

(a) the mortgagor has the same powers and rights and the same protection at law and in equity as the mortgagor would have been entitled to, 15

(b) the mortgagee has the same obligations, powers and rights as the mortgagee would have had,

if the mortgagee’s security had been created by a conveyance before that commencement of the legal estate or interest in the land of the mortgagor. 20

(2) Without prejudice to the generality of *subsection (1)(b)* and subject to *subsection (3)*, a first mortgagee has the same right to possession of documents of title as such mortgagee would have had if the security had been created by a conveyance before the commencement of this Chapter. 25

(3) Notwithstanding any stipulation to the contrary, a mortgagee who retains possession or control of documents of title relating to the mortgaged land is, in addition to being subject to the mortgagor’s rights under *section 91*, responsible for their safe custody as if an undertaking for this were given under *section 84*. 30

## CHAPTER 2

### *Powers and rights of mortgagor*

Documents of title.  
[CA 1881, s. 16]

**91.**—(1) Subject to *subsection (2)*, a mortgagor, as long as the right to redeem exists, may from time to time, at reasonable times, inspect and make copies or abstracts of or extracts from the documents of title relating to the mortgaged property in the possession or power of the mortgagee. 35

(2) Rights under *subsection (1)* are exercisable—

(a) on the request of the mortgagor, and 40

(b) on payment by the mortgagor of the mortgagee’s reasonable costs and expenses in relation to the exercise.

(3) *Subsection (1)* has effect notwithstanding any stipulation to the contrary.

92.—Notwithstanding any stipulation to the contrary, a mortgagor is entitled to redeem any housing loan mortgage without having to pay any money due under any other mortgage with the same mortgagee, whether that other mortgage is of the same or other property.

Restriction on consolidation of certain mortgages.  
[CA 1881, s. 17]

5 93.—(1) A mortgagor who is entitled to redeem may, subject to compliance with the terms on which the mortgagor would be entitled to require a discharge, require the mortgagee, instead of discharging the mortgage, to assign the mortgage debt and transfer the mortgage to any third person, as the mortgagor directs, and on the mortgagor so directing, the mortgagee is bound to assign and transfer accordingly.

Transfer in lieu of discharge.  
[CA 1881, s. 15]  
[CA 1882, s. 12]

15 (2) The rights conferred by *subsection (1)* belong to and may be enforced by each incumbrancer or the mortgagor notwithstanding any intermediate incumbrance, but a requisition of an incumbrancer prevails over a requisition of the mortgagor and, as between incumbrancers, a requisition of a prior incumbrancer prevails over a requisition of a subsequent incumbrancer.

(3) This section—

20 (a) does not apply in the case of a mortgagee being or having been in possession,

(b) applies notwithstanding any stipulation to the contrary.

94.—(1) This section applies to any action brought by a mortgagor for—

Court order for sale.

(a) redemption, or

25 (b) sale, or

(c) the raising and payment in any manner of the mortgage debt, or

(d) any combination of these in the alternative.

30 (2) In any action to which this section applies the court may, if it thinks fit, direct a sale of the mortgaged property on such terms as it thinks fit.

(3) Without prejudice to the generality of the court's discretion under *subsection (2)*, it may—

35 (a) allow any time for redemption or payment of the mortgage debt,

(b) require lodgment in court of a sum to meet the expenses of a sale and to secure a performance of its terms,

(c) give directions as to costs and require the giving of security for costs,

40 (d) direct a sale without previously determining priorities of incumbrances,

(e) give the conduct of the sale to a particular party,

(f) make a vesting order conveying the mortgaged property to a purchaser or appoint a person to make such a conveyance.

(4) Except in the case of a housing loan mortgage, this section takes effect subject to the terms of the mortgage. 5

Advances on joint account.

[CA 1881, s. 61]

**95.—**(1) Where—

(a) money advanced or owing under a mortgage, or any part of it, is expressed to be advanced by or owing to two or more persons out of money, or as money, belonging to them on a joint account, or 10

(b) such a mortgage is made to two or more persons jointly and not in shares,

the mortgage debt, or other money or money's worth for the time being due to those persons, shall, as between them and the mortgagor, be deemed to belong to them on a joint account. 15

(2) The receipt in writing of—

(a) the survivors or last survivor of those persons, or

(b) the personal representative of the last survivor,

is a complete discharge for all money or money's worth for the time being due, notwithstanding any notice to the payer of a severance of such joint account. 20

(3) This section takes effect subject to the terms of the mortgage.

(4) In this section “mortgage” includes an obligation for payment of money and a transfer of a mortgage or of such an obligation; and “mortgagor” shall be read accordingly. 25

### CHAPTER 3

#### *Obligations, powers and rights of mortgagee*

Powers and rights generally.

**96.—**(1) Subject to this Part, the powers and rights of a mortgagee under *sections 97 to 111*—

(a) apply to any mortgage created by deed after the commencement of this Chapter, 30

(b) vest, subject to section 62 of the Act of 1964, as soon as the mortgage is created,

(c) do not become exercisable unless their exercise is for the purpose of protecting the mortgaged property or realising the mortgagee's security, 35

(d) in relation to the mortgaged property, apply to any part of it.

(2) A mortgagee's right of foreclosure is abolished.

(3) The provisions relating to the powers and rights conferred by this Chapter apply to any housing loan mortgage notwithstanding 40



any stipulation to the contrary and notwithstanding any powers and rights expressly conferred under such a mortgage, but in relation to any other mortgage, except where this Part provides to the contrary, take effect subject to the terms of the mortgage.

5     **97.**—(1) Subject to *section 98*, a mortgagee shall not take possession of the mortgaged property without a court order granted under this section, unless the mortgagor consents in writing to such taking not more than 7 days prior to such taking. Taking possession.

10     (2) A mortgagee may apply to the court for an order for possession of the mortgaged property and on such application the court may, if it thinks fit, order that possession be granted to the applicant on such terms and conditions, if any, as it thinks fit.

15     **98.**—(1) Where a mortgagee has reasonable grounds for believing that— Abandoned property.

15     (a) the mortgagor has abandoned the mortgaged property, and

      (b) urgent steps are necessary to prevent deterioration of, or damage to, the property or entry on it by trespassers or other unauthorised persons,

20     the mortgagee may apply to the District Court, or any court already seised of any application or proceedings relating to the mortgaged property, for an order authorising the mortgagee to take possession of the property.

25     (2) On such an application the court may make an order authorising the mortgagee to take possession of the property on such terms and conditions as the court thinks fit, notwithstanding that the mortgagor dissents or does not appear.

      (3) Without prejudice to the generality of *subsection (2)*, an order under this section may specify—

30     (a) the period during which the mortgagee may retain possession of the mortgaged property,

      (b) works which may be carried out by the mortgagee for the purpose of—

          (i) protecting the mortgaged property, or

35     (ii) preparing it for sale in exercise of the mortgagee's power under *section 100*,

      (c) costs and expenses incurred by the mortgagee which may be added to the mortgage debt.

40     (4) The mortgagee is not liable to account strictly to the mortgagor during a period of possession under an order under this section.

45     **99.**—(1) Subject to the terms of any order under *section 97* or *section 98*, a mortgagee in possession (or after the mortgagee has appointed a receiver and so long as the receiver acts, the receiver) shall take steps within a reasonable time to exercise the power to— Mortgagee in possession.

- (a) sell the mortgaged property under *section 100*, or
- (b) if it is not appropriate to sell, lease the property under *section 112* and use the rent and any other income received from the lessee to reduce the mortgage debt, including interest accrued or accruing. 5

(2) Section 34 of the Act of 1957 does not apply to a mortgagee who takes possession of land under a court order under *section 97* or *section 98*.

Power of sale.  
[CA 1881, ss.  
19(1)(i), 20, 21(4),  
21(6) and (7)]

**100.**—(1) Subject to *subsection (3)* and *sections 101 to 107*, a mortgagee or any other person for the time being entitled to receive, and give a discharge for, the mortgage debt may sell or concur with any other person in selling the mortgaged property provided— 10

[CA 1911, s. 5(2)]

- (a) following service of notice on the mortgagor requiring payment of the mortgage debt, default has been made in payment of that debt, or part of it, for 3 months after such service, or 15
- (b) some interest under the mortgage or, in the case of a mortgage debt payable by instalments, some instalment representing interest or part interest and part capital is in arrears and unpaid for 2 months after becoming due, or 20
- (c) there has been a breach by the mortgagor, or some person concurring in the mortgage, of some other provision contained in the mortgage or any statutory provision, including this Act, other than a covenant for payment of the mortgage debt or interest, 25

and provided in each such case 28 days' notice in the prescribed form has been served on the mortgagor warning of the possibility of such sale.

(2) The power of sale shall not become exercisable without a court order granted under *subsection (3)*, unless the mortgagor consents in writing to such exercise not more than 7 days prior to such exercise. 30

(3) At any time after expiration of the 28 days' notice given under *subsection (1)*, a mortgagee may apply to the court for an order authorising exercise of the power of sale and on such application the court may, if it thinks fit, grant such authorisation to the applicant on such terms and conditions, if any, as it thinks fit. 35

(4) An application under *subsection (3)* may be made with an application under *section 97(2)* and, in such case, both may be heard together. 40

(5) A mortgagee is not answerable for any involuntary loss resulting from the exercise or execution of the power of sale under this Chapter, of any trust connected with it or of any power or provision contained in the mortgage.

(6) Once the power of sale becomes exercisable, the person entitled to exercise it may demand and recover from any person, other than a person having in the mortgaged property an estate or interest in priority to the mortgage, all deeds and documents relating to the property, or its title, which a purchaser under the power of sale would be entitled to demand and recover. 45 50

5 **101.**—(1) Upon an application for an order under, and without Applications under  
prejudice to the generality of, *sections 97(2) and 100(3)*, where it *sections 97 and 100.*  
appears to the court that the mortgagor is likely to be able within a  
reasonable period to pay any arrears, including interest, due under  
the mortgage or to remedy any other breach of obligation arising  
under it, the court may—

- (a) adjourn the proceedings, or
- (b) on making an order, or at any time before enforcement or  
implementation of such an order—

- 10 (i) stay the enforcement or implementation, or
- (ii) postpone the date for delivery of possession to the  
mortgagee, or
- (iii) suspend the order,

15 for such period or periods as it thinks reasonable and, if an order is  
suspended, the court may subsequently revive it.

20 (2) Any adjournment, stay, postponement or suspension under  
*subsection (1)* may be made subject to such terms and conditions  
with regard to payment by the mortgagor of any sum secured by  
the mortgage or remedying of any breach of obligation as the court  
thinks fit.

(3) The court may revoke or vary any term or condition imposed  
under *subsection (2)*.

(4) Subject to *subsection (5)*, an application under *section 97(2)*  
or *section 100(3)* may be made to the High Court.

25 (5) Where an application under *section 97(2)* or *section 100(3)*  
concerns property which is subject to a housing loan mortgage the  
Circuit Court shall have exclusive jurisdiction to deal with the appli-  
cation and the application shall not be made to the High Court.

30 (6) The jurisdiction of the Circuit Court to hear and determine  
applications under *sections 97(2) and 100(3)* concerning property  
which is subject to a housing loan mortgage shall be exercised by the  
judge of the circuit where the property or any part of it is situated.

(7) Nothing in this section affects the jurisdiction of the court  
under *sections 7 and 8* of the Act of 1976.

35 **102.**—Incidental to the power of sale are the powers to— Incidental powers.

- (a) sell the mortgaged property—
  - (i) subject to prior charges or not,
  - (ii) either together or in lots,
  - (iii) by public auction, tender or private contract,
  - 40 (iv) subject to such conditions respecting title, evidence of  
title, or other matter as the mortgagee or other per-  
son selling thinks fit,

[CA 1881, s.  
19(1)(i)]  
[CA 1911, s. 4]

- (b) rescind any contract for sale and resell,
- (c) impose or reserve or make binding by covenant or otherwise, on the sold part of the mortgaged land, or on the unsold part, any restriction or reservation with respect to building on or other user of land, or with respect to mines and minerals, for the purpose of their more beneficial working, or with respect to any other matter, 5
- (d) sell the mortgaged land, or all or any mines and minerals apart from the surface, with or without—
  - (i) any easement, right or privilege connected with building or other purposes on the sold part of the mortgaged land or the unsold part, 10
  - (ii) an exception or reservation of all or any of the mines and minerals in the mortgaged land and with or without a grant, reservation or imposition of powers of working, wayleaves, rights of way, rights of water and drainage and other powers, easements, rights and privileges for or connected with mining purposes, in relation to or on the sold part of the mortgaged land or the unsold part, 15  
20
  - (iii) covenants by the purchaser to expend money on the land sold.

Obligations on selling.

**103.**—(1) In the exercise of the power of sale conferred by this Chapter or any express power of sale, the mortgagee, or any receiver or other person appointed by the mortgagee, shall, notwithstanding any stipulation to the contrary in the mortgage, ensure as far as is reasonably practicable that the mortgaged property is sold at the best price reasonably obtainable. 25

(2) Within 28 days after completion of the sale, the mortgagee shall serve a notice in the prescribed form on the mortgagor containing information relating to the sale. 30

(3) A mortgagee who, without reasonable cause, is in breach of the obligation imposed by *subsection (2)* is guilty of an offence.

(4) Nothing in this section affects the operation of any rule of law relating to the duty of a mortgagee to account to a mortgagor. 35

(5) This section does not apply to a building society within the meaning of the Act of 1989 or a receiver appointed under the Companies Acts.

(6) In *subsection (2)* “mortgagor” includes a person last known to the mortgagee to be the mortgagor, but does not include a person to whom, without the knowledge of the mortgagee, any of the rights or liabilities of the mortgagor under the mortgage have been assigned. 40

Conveyance on sale.

[CA 1881, s. 21(1)]

**104.**—(1) A mortgagee exercising the power of sale conferred by this Chapter, or an express power of sale, has power to convey the property in accordance with *subsection (2)*— 45

- (a) freed from all estates, interests and rights in respect of which the mortgage has priority,

(b) subject to all estates, interests and rights which have priority to the mortgage.

(2) Subject to *subsections (3)(b) and (4)*, the conveyance—

5 (a) vests the estate or interest which has been mortgaged in the purchaser,

(b) extinguishes the mortgage, but without prejudice to any personal liability of the mortgagor not discharged out of the proceeds of sale,

10 (c) vests any fixtures or personal property included in the mortgage and the sale in the purchaser.

(3) This section—

(a) applies to a sale by a sub-mortgagee so as to enable the sub-mortgagee to convey the head-mortgagor's property in the same manner as the mortgagee,

15 (b) does not apply to a mortgage of part only of a tenancy unless any rent which is reserved and any tenant's covenants have been apportioned as regards the property mortgaged.

20 (4) Where the mortgaged property comprises registered land, the conveyance is subject to section 51 of the Act of 1964.

**105.**—(1) Where a conveyance is made in professed exercise of the power of sale conferred by this Chapter, the title of the purchaser is not impeachable on the ground that—

Protection of purchasers.  
[CA 1881, s. 21(2)]

(a) no case had arisen to authorise the sale, or

[CA 1911, s. 5(1)]

25 (b) due notice had not been given, or

(c) the power was otherwise improperly exercised,

and a purchaser is not, either before or on conveyance, required to see or inquire whether the power is properly exercised.

30 (2) Any person who suffers loss as a consequence of an unauthorised or improper exercise of the power of sale has a remedy in damages against the person exercising the power.

**106.**—(1) Subject to *subsection (2)*, the receipt in writing of a mortgagee is a conclusive discharge for any money arising under the power of sale conferred by this Chapter, or for any money or securities comprised in the mortgage, or arising under it, and a person paying or transferring the same to the mortgagee is not required to inquire whether any money remains due under the mortgage.

Mortgagee's receipts.  
[CA 1881, s. 22]

40 (2) *Subsection (1)* does not apply where the purchaser has actual knowledge of an impropriety or irregularity in the exercise of the power of sale or knowingly participates in such an exercise.

(3) Subject to *section 107(5)*, money received by a mortgagee under the mortgage or from the proceeds of securities comprised in it shall be applied as *section 107* requires as regards money arising from a sale under the power of sale conferred by this Chapter.

Application of  
proceeds of sale.

[CA 1881, s. 21(3)]

**107.—(1)** Money received by the mortgagee which arises from the sale of mortgaged property shall be applied in the following order—

- (a) in discharge of prior incumbrances, if any, to which the sale was not made subject or payment into court of a sum to meet any such prior incumbrances, 5
- (b) in payment of all charges, costs and expenses properly incurred by the mortgagee as incident to the sale or any attempted sale or otherwise,
- (c) in discharge of the mortgage debt, interest and costs, and other money, if any, due under the mortgage. 10

(2) Any residue of the money so received shall be held on trust by the mortgagee to be paid to the person who would, but for the sale, be the mortgagee secured on the property sold next in priority after the mortgagee selling, or is otherwise authorised to give receipts for the money so received, or, if there is no such person, the mortgagor. 15

(3) Where, in accordance with *subsection (2)*, the mortgagee gives effect to the trust of the residue by paying it to a subsequent mortgagee, the latter shall apply it in accordance with *subsections (1)(c) and (2)* and similar obligations attach to each subsequent mortgagee who receives any of the residue. 20

(4) Any mortgagee who so gives effect to the trust is discharged from any further obligation with respect to the residue.

(5) For the purposes of the application of *subsection (1)(b)* to money received under *section 106(3)*, charges, costs and expenses payable include those properly incurred in recovering and receiving the money or securities, and in conversion of securities into money, instead of those incident to the sale. 25

Appointment of  
receiver.

[CA 1881, ss.  
19(1)(iii),  
24(1)—(7)]

**108.—(1)** Where—

- (a) following service of notice on the mortgagor requiring payment of the mortgage debt, default has been made in payment of that debt, or part of it, for 3 months after such service, or 30
- (b) some interest under the mortgage or, in the case of a mortgage debt payable by instalments, some instalment representing interest or part interest and part capital is in arrears and unpaid for 2 months after becoming due, or 35
- (c) there has been a breach by the mortgagor, or some person concurring in the mortgage, of some other provision contained in the mortgage or any statutory provision, including this Act, other than a covenant for payment of the mortgage debt or interest, 40

the mortgagee or any other person for the time being entitled to receive, and give a discharge for, the mortgage debt, may appoint, by writing, such person as the mortgagee or that other person thinks fit to be a receiver of— 45

- (i) the income of the mortgaged property, or

(ii) if the mortgaged property comprises an interest in income, or a rentcharge or other annual or other periodical sum, that property.

5 (2) A receiver appointed under *subsection (1)* is the agent of the mortgagor, who is solely responsible for the receiver's acts or defaults, unless the mortgage provides otherwise.

(3) The receiver may—

10 (a) demand and recover all the income to which the appointment relates, by action or otherwise, in the name either of the mortgagor or mortgagee, to the full extent of the estate or interest which the mortgagor could dispose of,

(b) give effectual receipts accordingly for such income,

(c) exercise any powers delegated by the mortgagee or other person to the receiver.

15 (4) Any power delegated to the receiver shall be exercised in accordance with this Chapter.

(5) A person paying money to the receiver is not required to inquire whether the receiver is authorised to act.

20 (6) The receiver may be removed, and a new receiver may be appointed, by the mortgagee or the other person in writing.

(7) The receiver may retain out of any money received, for remuneration and in satisfaction of all costs incurred as receiver, a commission at the prescribed rate.

25 (8) The receiver shall, if so directed in writing by the mortgagee, insure to the extent, if any, to which the mortgagee might have insured and keep insured against loss or damage by fire, flood, storm, tempest or other perils commonly covered by a policy of comprehensive insurance, out of the money received, any property comprised in the mortgage, whether affixed to land or not, which is of an  
30 insurable nature.

**109.**—(1) Subject to *section 110(4)*, the receiver shall apply all money received in the following order—

Application of money received.

[CA 1881, s. 24(8)]

(a) in discharge of all rates, rents, taxes and other outgoings affecting the mortgaged property,

35 (b) in discharge of all annual sums or other payments, and the interest on all principal sums, which have priority to the mortgage under which the receiver is appointed,

(c) in payment of the receiver's commission,

40 (d) in payment of premiums on insurance, if any, payable under this Chapter or the mortgage,

(e) in defraying the cost of repairs as directed in writing by the mortgagee,

(f) in payment of interest accruing due in respect of any principal sum due under the mortgage,

(g) in or towards discharge of the principal sum, if so directed in writing by the mortgagee.

(2) The residue (if any) of any money so received after making the payments specified in *subsection (1)* shall be paid by the receiver to the person who, but for the possession of the receiver, would have been entitled to receive that money or who is otherwise entitled to the mortgaged property. 5

Insurance.  
[CA 1881, ss.  
19(1)(ii), 23]

**110.**—(1) A mortgagee may insure and keep insured any building, effects or other property of an insurable nature, whether affixed to the land or not, which forms part of the mortgaged property. 10

(2) The insurance shall be for the full reinstatement cost of repairing any loss or damage arising from fire, flood, storm, tempest or other perils commonly covered by a policy of comprehensive insurance.

(3) The mortgagee may give a good discharge for any money payable under any such insurance, but, subject to *subsection (4)*, so much of such money as exceeds the mortgage debt shall be dealt with by the mortgagee as if it were the proceeds of a sale of the mortgaged property. 15

(4) The mortgagee may require any money received under such or other insurance of the mortgaged property to be applied— 20

(a) by the mortgagor in making good loss or damage covered by the insurance, or

(b) in or towards the discharge of the mortgage debt.

Future advances.

**111.**—(1) Where a mortgage is expressed to be created on any land for the purpose of securing future advances (whether with or without present advances), the mortgagee is entitled, in priority to any subsequent mortgage, to the payment of any sum due in respect of any such future advances, except any advances which may have been made after the date of, and with express notice in writing of, the subsequent mortgage. 25 30

(2) In *subsection (1)* “future advances” includes sums from time to time due on a current account and all sums which by agreement or in the course of business between the parties are considered to be advances on the security of the mortgage. 35

(3) Save in regard to the making of such future advances the right to tack in any form is abolished, but without prejudice to any priority acquired by tacking before the commencement of this Chapter.

(4) This section—

(a) applies to mortgages made before or after the commencement of this Chapter, 40

(b) does not apply to registered land.



*Leases and surrenders of leases*

5 **112.**—(1) A mortgagor of land, while in possession, may, as  
 against every other incumbrancer, lease the land with the consent in  
 writing of the mortgagee, which consent shall not be unreasonably  
 withheld. Leasing powers.  
 [CA 1881, s. 18]  
 [CA 1911, s. 3]

(2) A lease made without such consent is voidable by a mortgagee  
 who establishes that—

10 (a) the lessee had actual knowledge of the mortgage at the  
 time of the granting of the lease, and

(b) the granting had prejudiced the mortgagee.

15 (3) A mortgagee of land while in possession or, after the mort-  
 gagee has appointed a receiver and so long as the receiver acts, the  
 receiver, may, as against all prior incumbrancers, if any, and the  
 mortgagor, lease the land provided—

(a) it is for the purpose of—

(i) preserving the value of the land, or

(ii) protection of the mortgagee’s security, or

20 (iii) raising income to pay interest due under the mortgage  
 or otherwise reduce the debt,

or

(b) it is otherwise an appropriate use of the land pending its  
 sale, or

(c) the mortgagor consents in writing, or

25 (d) the court in any action relating to the mortgaged land  
 makes an order permitting such lease.

(4) In this section “mortgagor” does not include an incumbrancer  
 deriving title from or under the original mortgagor.

30 (5) The power of leasing conferred by this section applies only to  
 mortgages created after the commencement of this Part.

**113.**—(1) A lease to be granted under *section 112* shall— Exercise of leasing  
 powers.

(a) reserve the best rent which can reasonably be obtained,  
 taking into account any premium or other capital sum  
 paid by the lessee and other relevant circumstances, and

35 (b) be otherwise granted on the best terms that can reasonably  
 be obtained and accord with good commercial practice,

and execution of the lease by the lessor shall be sufficient evidence  
 of execution and delivery of the lease.

(2) A purported lease which fails to comply with *subsection (1)* is void.

(3) A duplicate of a lease granted in accordance with *subsection (1)* shall be executed by the lessee and delivered to the lessor.

(4) In the case of a lease by the mortgagor, the mortgagor shall, within one month after making the lease, deliver to the mortgagee or, where there are more than one, the mortgagee first in priority, a copy of the lease duly executed by the lessee. 5

(5) Failure by the mortgagor to comply with *subsection (4)* does not affect the validity of the lease. 10

(6) Where a premium or other capital sum is paid by the lessee and the lease is granted by—

(a) the mortgagor, it, or, where it exceeds the mortgage debt, so much of it as is required for the purpose, shall be applied in or towards discharge of that debt, whether or not the date for redemption has arrived, 15

(b) the mortgagee, it shall be applied in accordance with *section 107* as if it comprised the proceeds of a sale.

Surrenders.  
[CA 1911, s. 3]

**114.**—(1) Subject to *subsection (2)*, a mortgagor or mortgagee in possession (or after the mortgagee has appointed a receiver and so long as the receiver acts, the receiver) may accept a surrender of a lease previously granted under *section 112* or as authorised by the terms of the mortgage, whether the surrender relates to the whole or part only of the land leased. 20

(2) *Subsection (1)* applies only where the surrender of the previous lease is for the purpose of granting a new lease under *section 112* or as authorised by the terms of the mortgage. 25

(3) On such a surrender—

(a) the term of the new lease shall not be less than the unexpired term which would have existed under the surrendered lease if it not been surrendered, 30

(b) the rent reserved by the new lease shall not be less than the rent which would have been payable under the surrendered lease if it had not been surrendered,

(c) where part only of the land has been surrendered— 35

(i) the rent reserved by the new lease shall not be less than is required to make the aggregate rents payable under the remaining lease and new lease not less than the rent payable under the surrendered lease if no partial surrender had been accepted, and 40

(ii) any other modifications of the original lease shall comply with *section 113*.

(4) A purported acceptance of a surrender which fails to comply with *subsection (3)* is void.

(5) Where a surrender involves payment of a premium or consideration other than the agreement to accept surrender, the surrender is void unless, in the case of a surrender—

(a) to the mortgagor, the consent of incumbrancers, or

5 (b) to a second or subsequent mortgagee, the consent of any prior incumbrancer,

is obtained.

## PART 11

### JUDGMENT MORTGAGES

10 **115.**—In this Part, unless the context otherwise requires—

“creditor” includes—

Interpretation of  
*Part 11.*

[JMA 1858, ss. 3  
and 4]

(a) an authorised agent and any person authorised by the court to register a judgment mortgage on behalf of a judgment creditor,

15 (b) one or some only of several creditors who have obtained the same judgment;

“judgment” includes any decree or order of any court of record.

**116.**—(1) A creditor who has obtained a judgment against a person may apply to the Property Registration Authority to register a judgment mortgage against that person’s estate or interest in land.

Registration of  
judgment  
mortgages.

[JMA 1850, s. 6]

(2) A judgment mortgage shall be registered in the Registry of Deeds or Land Registry, as appropriate.

(3) For the avoidance of doubt it is and always has been the case that—

25 (a) there is no requirement to re-register a judgment mortgage in order to maintain its validity or enforceability against the land or a purchaser of the land,

(b) a judgment mortgage may be registered—

30 (i) notwithstanding that the judgment debtor has obtained an order of the court granting a stay of execution, unless the court orders otherwise,

(ii) against the interest of a beneficiary under a trust for sale of land.

35 **117.**—(1) Registration of a judgment mortgage under *section 116* operates to charge the judgment debtor’s estate or interest in the land with the judgment debt and entitles the judgment mortgagee to apply to the court for an order under this section or *section 31*.

Effect of  
registration.

[JMA 1850, ss. 7  
and 8]

(2) On such an application the court may make—

[JMA 1850, s. 8]

- (a) an order for the taking of an account of other incumbrances affecting the land, if any, and the making of inquiries as to the respective priorities of any such incumbrances,
- (b) an order for the sale of the land, and where appropriate, the distribution of the proceeds of sale, 5
- (c) such other order for enforcement of the judgment mortgage as the court thinks appropriate.

(3) The judgment mortgage is subject to any right or incumbrance affecting the judgment debtor's land, whether registered or not, at the time of its registration. 10

(4) For the purposes of this section, a right or incumbrance does not include a claim made in an action to a judgment debtor's estate or interest in land (including such an estate or interest which a person receives, whether in whole or in part, by an order made in the action) whether by way of claim or counterclaim in the action, unless the claim seeks an order— 15

(a) under the Act of 1976, the Act of 1995 or the Act of 1996, or

(b) specifically against that estate or interest in land. 20

(5) *Section 74* applies to a voluntary conveyance of land made by the judgment debtor before the creditor registers a judgment mortgage against that land under *section 116* as if the creditor were a purchaser for the purposes of *section 74*.

Extinguishment of judgment mortgages.

[JMA 1850, s. 9]

**118.**—Registration in the Registry of Deeds of a certificate of satisfaction of a judgment in respect of which a judgment mortgage has been registered extinguishes the judgment mortgage. 25

Amendment of section 32 of the Act of 1957.

**119.**—Section 32 of the Act of 1957 is amended by the addition of the following subsection:

“(3) In the case of a judgment mortgage, the right of action accrues from the date the judgment becomes enforceable and not the date on which it is registered as a mortgage.”. 30

## PART 12

### *LIS PENDENS*

Interpretation of *Part 12*.

**120.**—In this Part— 35

“manner” includes form;

“prescribed” means prescribed by rules of court;

“register” means the register of *lis pendens* maintained under *section 121*.

Register of *lis pendens*.

[JA 1844, s. 10]

**121.**—(1) A register of *lis pendens* affecting land shall be maintained in the prescribed manner in the Central Office of the High Court. 40

- (2) The following may be registered as a *lis pendens*:
- (a) any action in the Circuit Court or the High Court in which a claim is made to an estate or interest in land (including such an estate or interest which a person receives, whether in whole or in part, by an order made in the action) whether by way of claim or counterclaim in the action; and
  - (b) any proceedings to have a conveyance of an estate or interest in land declared void.

10 (3) Such particulars as may be prescribed shall be entered in the register.

15 (4) A *lis pendens* registered under section 10 of the Judgments (Ireland) Act 1844 which has not been vacated before the repeal of that section continues to have effect as if that section has not been repealed and such registration shall be deemed to form part of the register to be maintained under *subsection (1)*.

**122.**—An entry of a *lis pendens* in the register shall be cancelled— Cancellation of entry in register.

- (a) with the consent, given in the prescribed manner, of the person on whose application it was registered, or [JRA 1871, s. 21]
- 20 (b) upon the lodgement in the Central Office of the High Court of a notice, given in the prescribed manner, of an order under *section 123* vacating the *lis pendens*.

**123.**—Subject to *section 124*, a court may make an order to vacate a *lis pendens* on application by— Court order to vacate *lis pendens*.

- 25 (a) the person on whose application it was registered, or [LPA 1867, s. 2]
- (b) any person affected by it, on notice to the person on whose application it was registered—
  - (i) where the action to which it relates has been discontinued or determined, or
  - 30 (ii) where the court is satisfied that there has been an unreasonable delay in prosecuting the action or the action is not being prosecuted bona fide.

**124.**—A court shall not under *section 123* vacate a *lis pendens*, registered under section 10 of the Judgments (Ireland) Act 1844 before the repeal of that section, on a ground other than one on which the *lis pendens* could have been vacated immediately before that repeal. Transitional.

**125.**—A *lis pendens* does not bind a purchaser of unregistered land without actual knowledge of it unless it has been registered in the Central Office of the High Court within 5 years before the making of the conveyance to the purchaser. Protection of purchasers. [JMA 1850, s. 5]

Amendment of  
Second Schedule to  
Courts and Court  
Officers Act 1995.

**126.**—The Courts and Court Officers Act 1995 is amended, in the Second Schedule, in paragraph 1, by substituting the following for subparagraph (xxiv):

“(xxiv) An order under *section 123* of the *Land and Conveyancing Law Reform Act 2009*.”. 5

### PART 13

#### AMENDMENTS TO REGISTRATION OF TITLE ACT 1964

Amendment of  
section 3.

**127.**—Section 3 (interpretation) of the Act of 1964 is amended in subsection (1)—

(a) by the insertion of the following definitions: 10

“ ‘instrument’ has the meaning given to it by *section 3* of the *Land and Conveyancing Law Reform Act 2009*;

‘owner’ includes full owner;”,

(b) by the substitution of “ ‘freehold land’ means land the ownership of which is an estate in fee simple in possession;” for the definition of “freehold land”, 15

(c) by the substitution of “ ‘judgment mortgage’ means a mortgage registered by a judgment creditor pursuant to *section 116* of the *Land and Conveyancing Law Reform Act 2009*;” for the definition of “judgment mortgage”, 20

(d) by the substitution of “ ‘land’ has the meaning given to it by *section 3* of the *Land and Conveyancing Law Reform Act 2009*;” for the definition of “land”,

(e) by the substitution of “estate” for “interest” where it first occurs in the definition of “leasehold interest”, and 25

(f) by the deletion of the definitions of “Bankruptcy Acts”, “Registry of Deeds”, “Settled Land Acts”, “settlement”, “settled land”, “tenant for life” and “trustees of the settlement”.

Substitution of  
section 25.

**128.**—The following section is substituted for section 25 (effect of failure to register where registration compulsory) of the Act of 1964: 30

“25.—A person shall not acquire an estate or interest in land in any case in which registration of ownership of the land is or becomes compulsory under section 23 or 24 unless the person is registered as owner of the estate or interest within 6 months after the purported acquisition or at such later time as the Authority (or, in case of refusal, the court) may sanction in any particular case, but on any such registration the person’s title shall relate back to the date of the purported acquisition, and any dealings with the land before the registration shall have effect accordingly.”. 35  
40

Amendment of  
section 69.

**129.**—Section 69 (burdens which may be registered as affecting registered land) of the Act of 1964 is amended by the insertion in subsection (1) of the following paragraph after paragraph (k):

“(kk) a freehold covenant within the meaning of *section 48* of the *Land and Conveyancing Law Reform Act 2009*.”.

5 **130.**—The following section is substituted for section 71 (registration of judgment mortgages) of the Act of 1964: Amendment of section 71.

“71.—(1) Application for registration of a judgment mortgage under *section 116* of the *Land and Conveyancing Law Reform Act 2009* shall, in the case of registered land, be in such form and in such manner as may be prescribed.

10 (2) Registration under subsection (1) shall operate to charge the estate or interest of the judgment debtor subject to—

(a) the burdens, if any, registered as affecting that estate or interest,

15 (b) the burdens to which, though not so registered, that estate or interest is subject by virtue of *section 72*,

(c) all unregistered rights subject to which the judgment debtor held that estate or interest at the time of registration,

and with the effect stated in *section 117* of the said *2009 Act*.”.

20 **PART 14**

**MISCELLANEOUS**

**131.**—In this Part, “business” and “lease” have the same meanings as they have in the Landlord and Tenant (Amendment) Act 1980. Interpretation (*Part 14*).

25 **132.**—(1) This section applies to a lease of land to be used wholly or partly for the purpose of carrying on a business. Review of rent in certain cases.

(2) *Subsection (1)* shall not apply where—

(a) the lease concerned, or

(b) an agreement for such a lease,

is entered into prior to the commencement of this section.

30 (3) A provision in a lease to which this section applies which provides for the review of the rent payable under the lease shall be construed as providing that the rent payable following such review may be fixed at an amount which is less than, greater than or the same as the amount of rent payable immediately prior to the date  
35 on which the rent falls to be reviewed.

(4) *Subsection (3)* shall apply—

(a) notwithstanding any provision to the contrary contained in the lease or in any agreement for the lease, and

(b) only as respects that part of the land demised by the lease in which business is permitted to be carried on under the terms of the lease.

Abolition of power to seize a tenancy.

**133.**—The power of the sheriff, or of other persons entitled to exercise the sheriff's powers, to seize a tenancy under a writ of *fiery facias* or other process of execution is abolished except in relation to a tenancy of land that is used wholly or partly for the purpose of carrying on a business. 5



## AMENDMENTS

	Enactment (1)	Provision (2)	Nature of amendment (3)
5	Trustee Act 1893	Section 15	The substitution of “ <i>sections 57 and 58 of the Land and Conveyancing Law Reform Act 2009</i> ” for “section two of the Vendor and Purchaser Act, 1874”.
10			
15	Housing (Gaeltacht) Act 1929	Section 9	In subsection (2)—  (a) the substitution of “legal mortgage under <i>Part 10 of the Land and Conveyancing Law Reform Act 2009</i> ” for “mortgage made by deed within the meaning of the Conveyancing Acts, 1881 to 1911”,  (b) the substitution of “that Act” for “those Acts” in both places where it occurs.
20			
25			
30	Minerals Development Act 1940	Section 52	In subsections (1) and (2), the deletion of the words “as tenant for life or person having the powers of a tenant for life under a settlement or”.
35	Harbours Act 1946	Section 169	In subsection (5), the deletion of—  (a) “or by reason of his being an infant”,  (b) “for his life, or”.
40	Statute of Limitations 1957	Section 2	In subsection (1), the substitution of “ ‘judgment mortgage’ means a mortgage registered by a judgment creditor under <i>section 116 of the Land and Conveyancing Law Reform Act 2009</i> ;” for the definition of “judgment mortgage”.
45		Section 25	In subsection (4), the deletion of “any settled land, within the meaning of the Settled Land Acts, 1882 to 1890, or”.
50	Charities Act 1961	Section 34	In subsection (4), the deletion of “, or the redemption and reconveyance of land which is subject to the mortgage or charge”.
55		Section 37	In subsection (1)—  (a) in paragraph (h), the substitution of “land,” for “land.”,  (b) the insertion of the following paragraph after paragraph (h):

Enactment (1)	Provision (2)	Nature of amendment (3)	
		“(i) the making of an application for a works order under <i>section 45</i> of the <i>Land and Conveyancing Law Reform Act 2009</i> .”.	5
Courts (Supplemental Provisions) Act 1961	Third Schedule	<p>In column (2) at reference number 19, the insertion of the following after paragraph (c):</p> <p>“(d) applications under <i>sections 94, 97</i> (except where the property concerned is subject to a housing loan mortgage), <i>100</i> (except where the property concerned is subject to a housing loan mortgage) and <i>117</i> of the <i>Land and Conveyancing Law Reform Act 2009</i>”.</p> <p>In column (2) at reference number 22, the insertion of “and under <i>section 55</i> of the <i>Land and Conveyancing Law Reform Act 2009</i>” after “Proceedings for specific performance of contracts”.</p> <p>In column (2) at reference number 23, the substitution of “Proceedings under <i>sections 31, 35, 50, 68, and 84</i> of the <i>Land and Conveyancing Law Reform Act 2009</i>” for “Proceedings for the partition or sale of land”.</p> <p>In column (2) at reference number 26, the insertion of “<i>Parts 4 and 5</i> of the <i>Land and Conveyancing Law Reform Act 2009</i> and” after “Proceedings under”.</p>	<p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> <p>40</p>
Companies Act 1963	Section 231	<p>In subsection (2)(a), the deletion of—</p> <p>(a) “fee farm grant, sub fee farm grant,”</p> <p>(b) “any rent reserved on any such grant or”.</p>	45
Registration of Title Act 1964	<p>Section 24</p> <p>Section 37</p> <p>Section 38</p> <p>Section 39</p> <p>Section 44</p> <p>Section 45</p>	<p>In subsection (1), the substitution of “on and after” for “on or after”.</p> <p>In subsection (3), the deletion of “In either case.”.</p> <p>In subsection (1), the deletion of “full or limited”.</p> <p>The deletion of “full or limited”.</p> <p>In subsection (3), the deletion of “In either case.”.</p> <p>The deletion of “full or limited”.</p>	<p>50</p> <p>55</p>

Enactment (1)	Provision (2)	Nature of amendment (3)
	Section 46	The deletion of “full or limited”.
	Section 47	The deletion of “full or limited”.
5	Section 51	In subsection (1), the substitution of “A” for “Subject, in the case of a limited owner, to the Settled Land Acts, a”.
10		In subsection (2), the deletion of “or in such other form as may appear to the Authority to be sufficient to convey the land,”.
15	Section 60	In subsection (2), the deletion of—  (a) “if he is full owner,” in each place where it occurs,  (b) “and if he is not full owner, of such persons as may be prescribed”, and  (c) “, and, if he is not full owner, to such persons as may be prescribed”.
20	Section 61	In subsection (3)(a), the deletion of—  (a) “full or limited”,  (b) “, as the case may be”.
25		In subsection (4), the deletion of “full owner or limited”.
30	Section 62	In subsection (2), the deletion of “(or an instrument in such other form as may appear to the Authority to be sufficient to charge the land, provided that such instrument shall expressly charge or reserve out of the land the payment of the money secured)”.
35		In subsection (6), the substitution of—  (a) “legal mortgage under <i>Part 10</i> of the <i>Land and Conveyancing Law Reform Act 2009</i> ” for “mortgage by deed within the meaning of the Conveyancing Acts”,  (b) “under such a mortgage” for “under a mortgage by deed”.
40		
45		
50	Section 64	In subsection (2), the deletion of “or in such other form as may appear to the Authority to be sufficient to transfer the charge,”.
55	Section 100	In subsection (1), the substitution of “any” for “the person

Enactment (1)	Provision (2)	Nature of amendment (3)
		who ought to be registered under this Act, or as to any other".
	Section 103	In subsection (2), the deletion of "(including a limited owner exercising powers under the Settled Land Acts or this Act)". 5
	Section 123	In subsection (4), the deletion of "or, in the case of settled land, as assignees of the registered owner". 10
		In subsection (6), the substitution of "instruments" for "those". 15
Succession Act 1965	Section 60	In subsection (1)—
		(a) in paragraph (c), the substitution of "a sub-lease of the land" for "a sub fee farm grant of the land, or a sub-lease thereof", 20
		(b) in paragraph (c), the deletion of "sub fee farm grant or", 25
		(c) the deletion of "grant or",
		(d) the deletion of "any rent reserved on such grant or". 30
Housing Act 1966	Section 71	In subsection (4)—
		(a) the substitution of "legal mortgage under <i>Part 10</i> of the <i>Land and Conveyancing Law Reform Act 2009</i> " for "mortgage made by deed within the meaning of the Conveyancing Acts, 1881 to 1911", 35
		(b) the substitution of "that Act" for "those Acts" in both places where it occurs. 40
Charities Act 1973	Section 4	In subsection (3), the deletion of "or the redemption and reconveyance of land which is subject to the mortgage or charge". 45
Bankruptcy Act 1988	Section 50	In subsection (1), the deletion of "or a leasehold interest in land". 50
	Section 51	The substitution of the following for subsection (1):
		"(1) A judgment creditor who registers a judgment mortgage under <i>section 116</i> of the <i>Land and Conveyancing Law Reform Act 2009</i> shall not, by reason of such registration, be entitled to any priority or preference over 55
		60

Enactment (1)	Provision (2)	Nature of amendment (3)
5  10  15  20	Section 61    Section 87	<p>simple contract creditors in the event of the person against whom such judgment mortgage is registered being adjudicated bankrupt, unless the judgment mortgage is registered at least three months before the date of the adjudication.”.</p> <p>In subsection (3)(a)—</p> <p>(a) the deletion of “fee farm grant, sub fee farm grant,”,</p> <p>(b) the deletion of “any rent reserved on any such grant or”.</p> <p>In subsection (4), the substitution of “a judgment mortgage under <i>section 116</i> of the <i>Land and Conveyancing Law Reform Act 2009</i>” for “an affidavit of a judgment mortgage under the Judgment Mortgage (Ireland) Act 1850”.</p> <p>In subsection (5), the substitution of “judgment mortgage” for “affidavit”.</p>
25  30  35	Section 23	<p>The substitution of the following for subsection (5):</p> <p>“(5) Where a Trustee Savings Bank is a creditor under a judgment within the meaning of <i>section 115</i> of the <i>Land and Conveyancing Law Reform Act 2006</i>, a judgment mortgage may be registered under <i>section 116</i> of that Act by the secretary or other officer or the law agent of the bank duly authorised in that behalf by the bank.”.</p>
40  45  50	Section 5	<p>In subsection (6)—</p> <p>(a) the substitution of “legal mortgage under <i>Part 10</i> of the <i>Land and Conveyancing Law Reform Act 2006</i>” for “mortgage by deed within the meaning of the Conveyancing Acts, 1881 to 1911”,</p> <p>(b) the substitution of “that Act” for “those Acts” in both places where it occurs.</p>
55  60	Section 10	<p>In subsection (1)(e), the substitution of “under <i>section 31</i> of the <i>Land and Conveyancing Law Reform Act 2009</i>” for “for the partition of property or under the Partition Act, 1868, and the Partition Act, 1876”.</p>
Powers of Attorney Act 1996	Section 16	<p>In subsection (2), the deletion of “or as a tenant for life within the meaning of the</p>

Enactment (1)	Provision (2)	Nature of amendment (3)	
		Settled Land Act, 1882, or as a trustee or other person exercising the power of a tenant for life under section 60 of that Act”.	5
Family Law (Divorce) Act 1996	Section 15	In subsection (1)(e), the substitution of “under <i>section 31</i> of the <i>Land and Conveyancing Law Reform Act 2009</i> ” for “for the partition of property or under the Partition Act, 1868, and the Partition Act, 1876”.	10
Taxes Consolidation Act 1997	Section 574	In subsection (3), the deletion of “(and in particular where settled land within the meaning of the Settled Land Act, 1882, is vested in the tenant for life and investments representing capital money are vested in the trustees of the settlement)”.	15 20
	Section 964	In subsection (1), the substitution of the following for paragraph (c):  “(c) Any judgment mortgage to be registered by a Collector-General under <i>section 116</i> of the <i>Land and Conveyancing Law Reform Act 2009</i> may be registered by a successor.”.	25 30
Stamp Duties Consolidation Act 1999	Section 1	In subsection (1), in the definition of “conveyance on sale”, the deletion of “(including a decree or order for, or having the effect of, an order for foreclosure)”.	35
Planning and Development Act 2000	Section 99	In subsection (3A)(c), the substitution of “legal mortgage under <i>Part 10</i> of the <i>Land and Conveyancing Law Reform Act 2009</i> ” for “mortgage made by deed within the meaning of the Conveyancing Acts 1881 to 1911”.	40
			45
Housing (Miscellaneous Provisions) Act 2002	Section 9	In subsection (3A)(c), the substitution of “legal mortgage under <i>Part 10</i> of the <i>Land and Conveyancing Law Reform Act 2009</i> ” for “mortgage made by deed within the meaning of the Conveyancing Acts 1881 to 1911”.	50
Capital Acquisitions Tax Consolidation Act 2003	Section 2	In subsection (1), in the definition of “general power of appointment”, the deletion of “or exercisable by a tenant for life under the Settled Land Act 1882,”.	55
			60

Enactment (1)	Provision (2)	Nature of amendment (3)
Registration of Deeds and Title Act 2006	Section 11	In subsection (6), the insertion of “and are eligible for reappointment” after “appointment”.
	Section 12	In subsection (3), the deletion of “for one further term”.
	Section 32	<p>In subsection (1), the substitution of—</p> <p>(a) “(g) an application to register a judgment mortgage under <i>section 116</i> of the <i>Land and Conveyancing Law Reform Act 2009</i>,” for paragraph (g) of the definition of “deed”,</p> <p>(b) “ ‘land’ has the meaning given to it by <i>section 3</i> of the <i>Land and Conveyancing Law Reform Act 2009</i>,” for the definition of “land”.</p>
	Section 55	The insertion of “of the Act of 1964” after “registration”).

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## SCHEDULE 2

## REPEALS

## PART 1

## PRE-UNION IRISH STATUTES

Session and Chapter (1)	Short Title (2)	Extent of Repeal (3)	
			5
10 Chas. 1 sess. 2 c. 1	Statute of Uses 1634	The whole Act so far as unrepealed	
10 Chas. 1 sess. 2 c. 3	Conveyancing Act 1634	The whole Act so far as unrepealed	10
10 Chas. 1 sess. 3 c. 15	Maintenance and Embracery Act 1634	Sections 2, 4 and 6	
10 & 11 Chas. 1 c. 3	Ecclesiastical Lands Act 1634	The whole Act so far as unrepealed	15
15 Chas. 1 c. 3	Forfeiture Act 1639	The whole Act	
14 & 15 Chas. 2 sess. 4 c. 19	Tenures Abolition Act 1662	The whole Act so far as unrepealed	20
7 Will. 3 c. 8	Life Estates Act 1695	The whole Act	
7 Will. 3 c. 12	Statute of Frauds 1695	In section 2, the words "or upon any contract or sale of lands, tenements, or hereditaments, or any interest in or concerning them,".	25
9 Will. 3 c. 11	Clandestine Mortgages Act 1697	The whole Act	
2 Anne c. 8	Plus Lands Act 1703	The whole Act	30
6 Anne c. 10	Administration of Justice Act 1707	Section 23	
8 Geo. 1 c. 5	Boundaries Act 1721	The whole Act so far as unrepealed	
10 Geo. 1 c. 5	Mining Leases Act 1723	The whole Act so far as unrepealed	35
9 Geo. 2 c. 7	Timber Act 1735	The whole Act	
15 Geo. 2 c. 10	Mining Leases Act 1741	The whole Act	
23 Geo. 2 c. 9	Mining Leases Act 1749	The whole Act	40
1 Geo. 3 c. 8	Hospitals Act 1761	The whole Act	
5 Geo. 3 c. 17	Timber Act 1765	The whole Act so far as unrepealed	
5 Geo. 3 c. 20	County Hospitals Act 1765	The whole Act so far as unrepealed	45
7 Geo. 3 c. 8	County Hospitals (Amendment) Act 1767	The whole Act so far as unrepealed	
7 Geo. 3 c. 20	Timber Act 1767	The whole Act so far as unrepealed	
15 & 16 Geo. 3 c. 26	Timber Act 1775	The whole Act so far as unrepealed	50
17 & 18 Geo. 3 c. 15	County Hospitals Act 1777	The whole Act	



	Session and Chapter	Short Title	Extent of Repeal
	(1)	(2)	(3)
	17 & 18 Geo. 3 c. 35	Timber Act 1777	The whole Act
	17 & 18 Geo. 3 c. 49	Leases for Lives Act 1777	The whole Act so far as unrepealed
5	19 & 20 Geo. 3 c. 30	Tenantry Act 1779	The whole Act so far as unrepealed
	21 & 22 Geo. 3 c. 27	Leases by Schools Act 1781	The whole Act
10	23 & 24 Geo. 3 c. 39	Timber Act 1783	The whole Act so far as unrepealed
	25 Geo. 3 c. 55	Leases by Schools Act 1785	The whole Act
	25 Geo. 3 c. 62	Leases for Corn Mills Act 1785	The whole Act so far as unrepealed
15	29 Geo. 3 c. 30	Commons Act 1789	The whole Act so far as unrepealed
	31 Geo. 3 c. 38	Commons Act 1791	The whole Act
20	35 Geo. 3 c. 23	Ecclesiastical Lands Act 1795	The whole Act
	40 Geo. 3 c. 90	Leases for Cotton Manufacture Act 1800	The whole Act

## PART 2

### STATUTES OF ENGLAND

	Session and Chapter	Short Title	Extent of Repeal
	(1)	(2)	(3)
25	13 Edw. 1 Stat. Westm. sec. c. 1	Statute De Donis Conditionalibus 1285	The whole Act so far as unrepealed
30	18 Edw. 1 Stat. d'ni R. de t'ris, & c.	Statute Quia Emptores 1290	The whole Act

## PART 3

### 35 STATUTE OF GREAT BRITAIN 1707 TO 1800

	Session and Chapter	Short Title	Extent of Repeal
	(1)	(2)	(3)
40	39 & 40 Geo. 3 c. 88	Crown Private Estate Act 1800	The whole Act so far as unrepealed

## PART 4

STATUTES OF THE UNITED KINGDOM OF GREAT BRITAIN AND IRELAND  
1801 TO 1922

Session and Chapter (1)	Short Title (2)	Extent of Repeal (3)	
46 Geo. 3 c. 71	Mines (Ireland) Act 1806	The whole Act	5
50 Geo. 3 c. 33	School Sites (Ireland) Act 1810	The whole Act so far as unrepealed	10
59 Geo. 3 c. 94	Crown Land Act 1819	The whole Act	
3 Geo. 4 c. 63	Crown Lands (Ireland) Act 1822	The whole Act so far as unrepealed	
4 Geo. 4 c. 18	Crown Lands Act 1823	The whole Act	15
6 Geo. 4 c. 17	Crown Lands Act 1825	The whole Act	
11 Geo. 4 & 1 Will. 4 c. 46	Illusory Appointments Act 1830	The whole Act so far as unrepealed	
2 & 3 Will. 4 c. 71	Prescription Act 1832	The whole Act so far as unrepealed	20
3 & 4 Will. 4 c. 74	Fines and Recoveries Act 1833	The whole Act so far as unrepealed	
3 & 4 Will. 4 c. 106	Inheritance Act 1833	The whole Act so far as unrepealed	
4 & 5 Will. 4 c. 92	Fines and Recoveries (Ireland) Act 1834	The whole Act so far as unrepealed	25
5 & 6 Will. 4 c. 74	Tithes Act 1835	The whole Act so far as unrepealed	
5 & 6 Will. 4 c. 75	Tithing of Turnips Act 1835	The whole Act so far as unrepealed	30
6 & 7 Will. 4 c. 70	Sites for Schoolrooms Act 1836	The whole Act so far as unrepealed	
1 & 2 Vic. c. 62	Renewal of Leases (Ireland) Act 1838	The whole Act so far as unrepealed	
1 & 2 Vic. c. 109	Tithe Rentcharge (Ireland) Act 1838	The whole Act so far as unrepealed	35
2 & 3 Vic. c. 3	Tithe Arrears (Ireland) Act 1839	The whole Act so far as unrepealed	
5 Vic. c. 1	Crown Lands Act 1841	The whole Act	
5 & 6 Vic. c. 89	Drainage (Ireland) Act 1842	The whole Act	40
6 & 7 Vic. c. 23	Copyhold Act 1843	The whole Act	
7 & 8 Vic. c. 55	Copyhold Act 1844	The whole Act	45
7 & 8 Vic. c. 90	Judgments (Ireland) Act 1844	Section 10	
8 & 9 Vic. c. 56	Land Drainage Act 1845	The whole Act so far as unrepealed	
8 & 9 Vic. c. 69	Drainage (Ireland) Act 1845	The whole Act	50
8 & 9 Vic. c. 99	Crown Lands Act 1845	The whole Act	
8 & 9 Vic. c. 106	Real Property Act 1845	Sections 2 to 6 and 8	55

	Session and Chapter	Short Title	Extent of Repeal
	(1)	(2)	(3)
	8 & 9 Vic. c. 112	Satisfied Terms Act 1845	The whole Act so far as unrepealed
	9 & 10 Vic. c. 4	Drainage (Ireland) Act 1846	The whole Act so far as unrepealed
5	10 & 11 Vic. c. 32	Landed Property Improvement (Ireland) Act 1847	The whole Act so far as unrepealed
	10 & 11 Vic. c. 46	Settled Land (Ireland) Act 1847	The whole Act so far as unrepealed
10	10 & 11 Vic. c. 79	Drainage (Ireland) Act 1847	The whole Act
	11 & 12 Vic. c. 13	Mining Leases (Ireland) Act 1848	The whole Act so far as unrepealed
	11 & 12 Vic. c. 80	Tithe Rentcharge (Ireland) Act 1848	The whole Act so far as unrepealed
15	11 & 12 Vic. c. 102	Crown Lands Act 1848	The whole Act so far as unrepealed
	12 & 13 Vic. c. 26	Leases Act 1849	The whole Act so far as unrepealed
20	12 & 13 Vic. c. 59	Landed Property Improvement (Ireland) Act 1849	The whole Act so far as unrepealed
	12 & 13 Vic. c. 105	Renewable Leasehold Conversion Act 1849	The whole Act so far as unrepealed
	13 & 14 Vic. c. 29	Judgment Mortgage (Ireland) Act 1850	The whole Act so far as unrepealed
25	13 & 14 Vic. c. 31	Public Money Drainage Act 1850	The whole Act so far as unrepealed
	14 & 15 Vic. c. 7	Leases for Mills (Ireland) Act 1851	The whole Act so far as unrepealed
30	14 & 15 Vic. c. 20	Fee-Farm Rents (Ireland) Act 1851	The whole Act so far as unrepealed
	14 & 15 Vic. c. 42	Crown Lands Act 1851	The whole Act so far as unrepealed
	15 & 16 Vic. c. 34	Landed Property Improvement (Ireland) Act 1852	The whole Act so far as unrepealed
35	15 & 16 Vic. c. 51	Copyhold Act 1852	The whole Act
	15 & 16 Vic. c. 62	Crown Lands Act 1852	The whole Act
40	16 & 17 Vic. c. 56	Crown Lands Act 1853	The whole Act
	16 & 17 Vic. c. 130	Drainage and Improvement of Lands (Ireland) Act 1853	The whole Act
	17 & 18 Vic. c. 68	Crown Land Revenues Act 1854	The whole Act
45	18 & 19 Vic. c. 39	Leasing Powers for Religious Worship in Ireland Act 1855	The whole Act so far as unrepealed
	18 & 19 Vic. c. 110	Drainage and Improvement of Lands (Ireland) Act 1855	The whole Act
50	19 & 20 Vic. c. 9	Public Money Drainage Act 1856	The whole Act so far as unrepealed
	19 & 20 Vic. c. 62	Drainage (Ireland) Act 1856	The whole Act so far as unrepealed
	21 & 22 Vic. c. 42	Prescription (Ireland) Act 1858	The whole Act so far as unrepealed

Session and Chapter (1)	Short Title (2)	Extent of Repeal (3)	
21 & 22 Vic. c. 72	Landed Estates Court (Ireland) Act 1858	The whole Act so far as unrepealed	
21 & 22 Vic. c. 94	Copyhold Act 1858	The whole Act	
21 & 22 Vic. c. 105	Judgment Mortgage (Ireland) Act 1858	The whole Act so far as unrepealed	5
22 & 23 Vic. c. 35	Law of Property Amendment Act 1859	Sections 10 to 13, 21, 23 and 24	
23 & 24 Vic. c. 38	Law of Property Amendment Act 1860	Sections 7, 8 and 10	10
23 & 24 Vic. c. 153	Landed Property (Ireland) Improvement Act 1860	The whole Act so far as unrepealed	
24 & 25 Vic. c. 123	Landed Estates Court (Ireland) Act 1861	The whole Act so far as unrepealed	
25 & 26 Vic. c. 29	Landed Property Improvement (Ireland) Act 1862	The whole Act so far as unrepealed	15
25 & 26 Vic. c. 37	Crown Private Estates Act 1862	The whole Act so far as unrepealed	
26 & 27 Vic. c. 26	Land Drainage Act (Ireland) 1863	The whole Act	20
26 & 27 Vic. c. 88	Drainage and Improvement of Lands Act (Ireland) 1863	The whole Act	
27 & 28 Vic. c. 38	Chief Rents Redemption (Ireland) Act 1864	The whole Act so far as unrepealed	
27 & 28 Vic. c. 72	Drainage and Improvement of Lands (Ireland) Act 1864	The whole Act	25
27 & 28 Vic. c. 107	Drainage and Improvement of Lands Supplemental Act, Ireland 1864	The whole Act	
27 & 28 Vic. c. 114	Improvement of Land Act 1864	The whole Act so far as unrepealed	30
28 & 29 Vic. c. 52	Drainage and Improvement of Lands Amendment Act (Ireland) 1865	The whole Act	
28 & 29 Vic. c. 53	Drainage and Improvement of Lands Supplemental Act (No. 2 Ireland) 1865	The whole Act	35
28 & 29 Vic. c. 78	Mortgage Debenture Act 1865	The whole Act	
28 & 29 Vic. c. 101	Land Debentures (Ireland) Act 1865	The whole Act	40
29 & 30 Vic. c. 26	Landed Property Improvement (Ireland) Act 1866	The whole Act so far as unrepealed	
29 & 30 Vic. c. 40	Drainage and Improvement of Land (Ireland) Act 1866	The whole Act so far as unrepealed	45
29 & 30 Vic. c. 49	Drainage Maintenance Act 1866	The whole Act	
29 & 30 Vic. c. 61	Drainage and Improvement of Lands Supplemental Act (Ireland) 1866	The whole Act	50
29 & 30 Vic. c. 62	Crown Lands Act 1866	The whole Act so far as unrepealed	
29 & 30 Vic. c. 99	Landed Estates Court Act 1866	The whole Act so far as unrepealed	

	Session and Chapter	Short Title	Extent of Repeal
	(1)	(2)	(3)
	30 & 31 Vic. c. 43	Drainage and Improvement of Lands Supplemental Act (Ireland) 1867	The whole Act
5	30 & 31 Vic. c. 47	Lis Pendens Act 1867	The whole Act so far as unrepealed
	30 & 31 Vic. c. 139	Drainage and Improvement of Lands Supplemental Act (Ireland) (No. 2) 1867	The whole Act
10	31 & 32 Vic. c. 3	Drainage and Improvement of Lands Supplemental Act (Ireland) (No. 3) 1867	The whole Act
	31 & 32 Vic. c. 4	Sales of Reversions Act 1867	The whole Act so far as unrepealed
15	31 & 32 Vic. c. 40	Partition Act 1868	The whole Act so far as unrepealed
	31 & 32 Vic. c. 62	Renewable Leaseholds Conversion (Ireland) Act 1868	The whole Act so far as unrepealed
20	32 & 33 Vic. c. 72	Drainage and Improvement of Lands Amendment Act, Ireland 1869	The whole Act
	34 & 35 Vic. c. 72	Judgments Registry (Ireland) Act 1871	Section 21
25	35 & 36 Vic. c. 31	Drainage and Improvement of Lands Amendment Act (Ireland) 1872	The whole Act
	36 & 37 Vic. c. 36	Crown Lands Act 1873	The whole Act
	36 & 37 Vic. c. 61	Crown Private Estates Act 1873	The whole Act so far as unrepealed
30	37 & 38 Vic. c. 32	Drainage and Improvement of Lands Amendment Act (Ireland) 1874	The whole Act
	37 & 38 Vic. c. 37	Powers of Appointment Act 1874	The whole Act so far as unrepealed
35	37 & 38 Vic. c. 78	Vendor and Purchaser Act 1874	The whole Act so far as unrepealed
	38 & 39 Vic. c. 11	Leasing Powers Amendment Act for Religious Purposes in Ireland 1875	The whole Act
40	39 & 40 Vic. c. 17	Partition Act 1876	The whole Act so far as unrepealed
	40 & 41 Vic. c. 18	Settled Estates Act 1877	The whole Act so far as unrepealed
45	40 & 41 Vic. c. 31	Limited Owners Reservoirs and Water Supply Further Facilities Act 1877	The whole Act so far as unrepealed
	40 & 41 Vic. c. 33	Contingent Remainders Act 1877	The whole Act
50	41 & 42 Vic. c. 59	Drainage and Improvement of Lands (Ireland) Act 1878	The whole Act
55	44 & 45 Vic. c. 41	Conveyancing Act 1881	Sections 2 to 9, 15 to 24, 26 to 29, 41, 44, 49 to 64, 66, 67, 69, 70, 72 and 73 and the third and fourth Schedules

Session and Chapter (1)	Short Title (2)	Extent of Repeal (3)	
44 & 45 Vic. c. 65	Leases for Schools (Ireland) Act 1881	The whole Act so far as unrepealed	
45 & 46 Vic. c. 38	Settled Land Act 1882	The whole Act so far as unrepealed	
45 & 46 Vic. c. 39	Conveyancing Act 1882	Sections 3, 4, 6, 10 and 12	5
47 & 48 Vic. c. 18	Settled Land Act 1884	The whole Act so far as unrepealed	
48 & 49 Vic. c. 79	Crown Lands Act 1885	The whole Act so far as unrepealed	10
50 & 51 Vic. c. 30	Settled Land Acts (Amendment) Act 1887	The whole Act so far as unrepealed	
50 & 51 Vic. c. 73	Copyhold Act 1887	The whole Act so far as unrepealed	
51 & 52 Vic. c. 37	Timber (Ireland) Act 1888	The whole Act	15
52 & 53 Vic. c. 36	Settled Land Act 1889	The whole Act	
53 & 54 Vic. c. 69	Settled Land Act 1890	The whole Act so far as unrepealed	20
55 & 56 Vic. c. 58	Accumulations Act 1892	The whole Act	
55 & 56 Vic. c. 65	Drainage and Improvement of Land (Ireland) Act 1892	The whole Act	
56 & 57 Vic. c. 21	Voluntary Conveyances Act 1893	The whole Act	25
57 & 58 Vic. c. 43	Crown Lands Act 1894	The whole Act	
58 & 59 Vic. c. 25	Mortgagees Legal Costs Act 1895	The whole Act	30
62 & 63 Vic. c. 20	Bodies Corporate (Joint Tenancy) Act 1899	The whole Act	
62 & 63 Vic. c. 46	Improvement of Land Act 1899	The whole Act so far as unrepealed	
6 Edw. 7 c. 28	Crown Lands Act 1906	The whole Act so far as unrepealed	35
1 & 2 Geo. 5 c. 37	Conveyancing Act 1911	Sections 1, 3 to 6, 9 to 11, 13 and 15	
3 & 4 Geo. 5 c. 8	Crown Lands Act 1913	The whole Act	40

## PART 5

## ACTS OF THE OIREACHTAS

	Number and Year (1)	Enactment (2)	Extent of Repeal (3)
5	No. 22 of 1933	Perpetual Funds (Registration) Act 1933	The whole Act
10	No. 3 of 1937	Circuit Court (Registration of Judgments) Act 1937	Section 4
	No. 5 of 1957	Married Women's Status Act 1957	Sections 2(4) and 2(5)
15	No. 16 of 1964	Registration of Title Act 1964	Sections 3(2), 27, 37(2), 44(2), 52(3), 55(3), 61(1), 61(3)(b), 62(3), 62(7), 62(8), 98(4)(a), 99 and 101
	No. 27 of 1965	Succession Act 1965	Sections 50(3), 58(2), 95 and 97
20	No. 3 of 1967	Landlord and Tenant (Ground Rents) Act 1967	Section 24(2)
	No. 10 of 1980	Landlord and Tenant (Amendment) Act 1980	Sections 79 and 80(2)
	No. 11 of 1981	Courts Acts 1981	Section 24
25	No. 6 of 1982	Housing (Private Rented Dwellings) Act 1982	Section 22
	No. 27 of 1988	Bankruptcy Act 1988	Section 64
30	No. 18 of 1992	Housing (Miscellaneous Provisions) Act 1992	Section 2(2)
	No. 12 of 1996	Powers of Attorney Act 1996	Section 6(3)
	No. 31 of 1999	Stamp Duties Consolidation Act 1999	Section 39

## COVENANTS IMPLIED IN CONVEYANCES

## PART 1

## EXTENT OF THE BURDEN OF COVENANTS

1. In this Schedule, unless either the context otherwise requires 5  
or the contrary is expressed, the covenantor's liability in respect of  
any covenant extends to the acts or omissions only of persons within  
any of the following classes:

(1) the covenantor and any person conveying by the coven- 10  
antor's direction;

(2) any person through whom the covenantor derives title;

(3) any person (including a mortgagee) who either holds or has 15  
held a derivative title from the covenantor for less than the estate or  
interest vested in the covenantor or who holds or has held such a  
derivative title from any predecessor in title of the covenantor;

(4) any person who holds or has held in trust for the covenantor.

2. It is not a breach of a covenant contained in this Schedule 20  
where the conveyance by the covenantor was made expressly subject  
to the act, matter or thing which, but for this paragraph, would or  
might have caused such a breach.

3. The covenantor has no liability for any defect in the title of  
which it is proved that the covenantee had actual knowledge before  
the making of the contract to convey or the making of the convey-  
ance (whichever is the earlier).

## PART 2 25

## IMPLIED COVENANTS

## Paragraph 1

## Class 1 Conveyances

*Covenants implied in a conveyance (other than a mortgage) for valu- 30*  
*able consideration of an estate or interest in land (other than a*  
*tenancy) made by a person who is expressed to convey "as beneficial*  
*owner".*

(1) That the covenantor has the right to convey the subject- 35  
matter of the conveyance, save that the covenantor's liab-  
ility is only in respect of any acts or omissions of the  
covenantor or persons within class (ii) of *paragraph 1* of  
*Part 1*.

(2) That the person to whom the conveyance is made will 40  
quietly enjoy the subject-matter of the conveyance with-  
out disturbance from any person within any class in *para-*  
*graph 1* of *Part 1*.

(3) That the subject-matter of the conveyance is free from all  
claims, demands, estates, incumbrances and interests.



- 5 (4) That the covenantor will, at the covenantor's own cost, take such action as may be necessary for the better assuring of the subject-matter of the conveyance as may from time to time be reasonably required by the person to whom the conveyance is made and the persons deriving title under that person.

Paragraph 2

Class 2 Conveyances

10 *Covenants implied in a conveyance (other than a mortgage) for valuable consideration of land comprised in a lease made by a person who is expressed to convey "as beneficial owner".*

(1) to (4) Covenants (1) to (4) in paragraph 1.

- 15 (5) That the lease which created the subject-matter of the conveyance is at the time of the conveyance valid and effectual.

- (6) That the rent reserved by the lease has up to the time of the conveyance been paid and the covenants expressly or impliedly contained in the lease have been performed and observed by the lessee.

20 The covenantor's liability in respect of covenants (5) and (6) is restricted to—

(a) any acts or omissions of the covenantor or persons within class (ii) of paragraph 1 in *Part 1*, and

25 (b) as regards the covenants mentioned in covenant (6), breaches caused by such acts and omissions the consequences of which could not be discovered on reasonable inspection of the land conveyed.

30 Paragraph 3

Class 3 Conveyances

*Covenants implied in a conveyance comprising a mortgage of land (other than land comprised in a lease) made by a person who is expressed to convey "as beneficial owner".*

35 (1) to (4) Covenants (1) to (4) in paragraph 1.

Those covenants are subject to the following variations, that is to say—

40 (a) liability in respect of any breach of the covenants extends to the acts or omissions of any person whether or not that person is within the classes of person set out in paragraph 1 of *Part 1*;

45 (b) covenant (2) (for quiet enjoyment) is not implied against any mortgagor until the mortgagee has lawfully entered into possession of the land conveyed.

Paragraph 4

Class 4 Conveyances

*Covenants implied in a conveyance comprising a mortgage of land comprised in a lease made by a person who is expressed to convey “as beneficial owner”.* 5

- (1) to (4) Covenants (1) to (4) in paragraph 1, subject to the variations mentioned in paragraph (3).
- (5) That the grant or lease which created the estate out of which the subject-matter of the conveyance is created is at the time of the conveyance valid and effectual and that the rent reserved by the grant or lease has up to that time been paid and that the covenants expressed or implied in the grant or lease have been performed and observed. 10
- (6) That the covenantor will from time to time, so long as any money remains owing on the security of the land conveyed, pay the rent reserved by the grant or lease and perform and observe the covenants in it and will indemnify the person to whom the conveyance is made in respect of any consequences of the breach of this covenant. 15  
20

Paragraph 5

Class 5 Conveyances

*Covenant implied in a conveyance made by a person who is expressed to convey “as trustee”, “as mortgagee”, “as personal representative” or under an order of the court.* 25

That the covenantor has not, by virtue of any act or omission of the covenantor, caused the title to the estate or interest conveyed to be liable to be impeached through the existence of any incumbrance or rendered the covenantor unable to convey that estate or interest in the manner in which it is expressed to be conveyed. 30

PART 3

ADDITIONAL IMPLIED COVENANTS FOR LAND COMPRISED IN A LEASE

Paragraph 1

Class 6 Conveyances 35

*Additional covenants implied in a conveyance (other than a mortgage) for valuable consideration of—*

- (a) *the entirety of land comprised in a lease, or*
- (b) *part of the land comprised in a lease, subject to a part of the rent reserved by the lease which has been, or is by the conveyance, apportioned with the consent of the lessor,* 40

*for the residue of the term or interest created by the lease.*

- (1) That the assignee, or the person deriving title under the assignee, will at all times, from the date of the conveyance or other date stated in it, duly pay all rent becoming due under the lease creating the estate for which the land 45

is conveyed, or, as the case may be, such part of such rent as has been apportioned to the land conveyed, and observe and perform all the covenants, contained in it and on the part of the lessee to be observed and performed, so far as they relate to the land conveyed.

- (2) That the assignee will at all times, from that date, indemnify the assignor and the assignor's estate and their estates from and against all claims, costs and proceedings on account of any omission to pay the rent, or the part of the rent so apportioned, or any breach of any of the covenants, so far as they relate to the land conveyed.

Paragraph 2  
Class 7 Conveyances

*Additional covenants implied in a conveyance (other than a mortgage) for valuable consideration of part of the land comprised in a lease, for the residue of the term or interest created by the lease, subject to a part of the rent reserved by the lease which has been, or is by the conveyance, apportioned without the consent of the lessor.*

- (1) *In every case* That the assignee will at all times, from the date of the conveyance, or other date stated in it, pay the apportioned rent and observe and perform all the covenants (other than the covenant to pay the entire rent) contained in the lease creating the estate for which the land is conveyed, and on the part of the lessee to be observed and performed, so far as the same relate to the land conveyed; and also will at all times from that date indemnify the assignor and the assignor's estate, from and against all claims, costs and proceedings on account of any omission to pay the apportioned rent or any breach of any of such covenants.

- (2) *Where the conveying party is expressed to convey "as beneficial owner"* That the assignor, or the persons deriving title under the assignor, will at all times, from the date of the conveyance, or other date stated in it, pay the balance of the rent (after deducting the said apportioned rent and any other rents similarly apportioned in respect of land not retained) and observe and perform all the covenants (other than the covenant to pay the entire rent) contained in the lease and on the part of the lessee to be observed and performed so far as they relate to the land demised (other than the land comprised in the conveyance) and remaining vested in the assignor; and also will at all times, from that date, indemnify the assignee, and the assignee's estate, from and against all claims, costs and proceedings on account of any omission to pay the balance of the rent or any breach of any of such covenants.