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Explanatory Memorandum](#)

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

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*Mar a tionscnaíodh  
As initiated*

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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
Chief Rents Redemption (Ireland) Act 1864	27 & 28 Vic. c. 38
Clandestine Mortgages Act 1697	9 Will. 3 c. 11
Commons Act 1789	29 Geo. 3 c. 30
Commons Act 1791	31 Geo. 3 c. 38
Companies Act 1963	1963, No. 33
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
Conveyancing Act 1882	45 & 46 Vic. c. 39
Conveyancing Act 1911	1 & 2 Geo. 5 c. 37
Conveyancing Acts 1881 to 1911	
Copyhold	7 & 8 Vic. c. 55
Copyhold Act 1843	6 & 7 Vic. c. 23
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
Criminal Justice (Theft and Fraud Offences) Act 2001	2001, No. 50
Crown Land Act 1819	59 Geo. 3 c. 94
Crown Land Revenues in Ireland	17 & 18 Vic. c. 68
Crown Lands (Ireland) Act 1822	3 Geo. 4 c. 63
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
Crown Lands Act 1853	16 & 17 Vic. c. 56
Crown Lands Act 1866	29 & 30 Vic. c. 62
Crown Lands Act 1873	36 & 37 Vic. c. 36
Crown Lands Act 1885	48 & 49 Vic. c. 79
Crown Lands Act 1894	57 & 58 Vic. c. 43
Crown Lands Act 1906	6 Edw. 7 c. 28
Crown Lands Act 1913	3 & 4 Geo. 5 c. 8
Crown Lands Acts 1825	6 Geo. 4 c. 17
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
Drainage and Improvement of Land (Ireland) Act 1866	29 & 30 Vic. c. 40
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
Drainage and Improvement of Lands (Ireland) Act 1878	41 & 42 Vic. c. 59
Drainage and Improvement of Lands Act ( <i>Ireland</i> ) 1863	26 & 27 Vic. c. 88
Drainage and Improvement of Lands Amendment Act ( <i>Ireland</i> ) 1865	28 & 29 Vic. c. 52
Drainage and Improvement of Lands Amendment Act ( <i>Ireland</i> ) 1869	32 & 33 Vic. c. 72
Drainage and Improvement of Lands Amendment Act ( <i>Ireland</i> ) 1872	35 & 36 Vic. c. 31
Drainage and Improvement of Lands Amendment Act ( <i>Ireland</i> ) 1874	37 & 38 Vic. c. 32
Ecclesiastical Lands Act 1634	10 & 11 Chas. 1 c. 3
Ecclesiastical Lands Act 1795	35 Geo. 3 c. 23
Family Home Protection Act 1976	1976, No. 27
Family Law (Divorce) Act 1996	1996, No. 33
Family Law Act 1995	1995, No. 26
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. 86
Forfeiture Act 1639	15 Chas. 1 sess. 2 c. 3
Hospitals Act 1761	1 Geo. 3 c. 8
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
Interpretation Act 2005	2005, No. 23
Judgment Mortgage (Ireland) Act 1850	13 & 14 Vic. c. 29
Judgment Mortgage (Ireland) Act 1858	21 & 22 Vic. c. 105
Land Drainage Act 1845	8 & 9 Vic. c. 56
Land Drainage Act ( <i>Ireland</i> ) 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 (Ground Rents) Act 1967	1967, No. 3
Landlord and Tenant (Amendment) Act 1980	1980, No. 10
Law of Property Amendment Act 1859	22 & 23 Vic. c. 35
Law of Property Amendment Act 1860	23 & 24 Vic. c. 38
Leases Act 1849	12 & 13 Vic. c. 26



Leases by Schools Act 1781	21 & 22 Geo. 3 c. 27
Leases by Schools Act 1785	25 Geo. 3 c. 55
Leases for Corn Mills Act 1785	25 Geo. 3 c. 62
Leases for Cotton Manufacture Act 1800	40 Geo. 3 c. 90
Leases for Lives Act 1777	17 & 18 Geo. 3 c. 49
Leases for Mills (Ireland) Act 1851	14 & 15 Vic. c. 7
Leases for Schools (Ireland) Act 1881	44 & 45 Vic. c. 65
Leasing Powers Act for Religious Purposes in Ireland 1855	18 & 19 Vic. c. 39
Leasing Powers Amendment Act for Religious Purposes in Ireland Act 1875	38 & 39 Vic. c. 11
Life Estates Act 1695	7 Will. 3 c. 8
Limited Owners Reservoirs and Water Supply Further Facilities Act 1877	40 & 41 Vic. c. 31
Maintenance and Embracery Act 1634	10 Chas. 1 sess. 3 c. 15
Married Women's Status Act 1957	1957, No. 5
Mines (Ireland) Act 1806	46 Geo. 3 c. 71
Mining Leases (Ireland) Act 1848	11 & 12 Vic. c. 13
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
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
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. 18
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 (Ireland) Act 1847	10 & 11 Vic. c. 46
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 Acts 1882 to 1890	
Stamp Duties Consolidation Act 1999	1999, No. 31
State Property Act 1954	1954, No. 25
Statute De Donis Conditionalibus 1285	13 Edw. 1 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 cc. 1-3
Succession Act 1965	1965, No. 27
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	5 & 6 Will. 4 c. 74
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
	BC(JT) A 1899	Bodies Corporate (Joint Tenancy) Act 1899	62 & 63 Vic. c. 20
5	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
	JMA 1850	Judgment Mortgage (Ireland) Act 1850	13 & 14 Vic. c. 29
	JMA 1858	Judgment Mortgage (Ireland) Act 1858	21 & 22 Vic. c. 105
15	LEA 1695	Life Estates Act 1695	7 Will. 3 c. 8
	LPAA 1859	Law of Property Amendment Act 1859	22 & 23 Vic. c. 35
	LPAA 1860	Law of Property Amendment Act 1860	23 & 24 Vic. c. 38
20	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
	PA 1858	Prescription (Ireland) Act 1858	21 & 22 Vic. c. 42
25	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
	SQE 1290	Statute Quia Emptores 1290	18 Edw. 1 cc. 1-3
30	SLA 1882	Settled Land Act 1882	45 & 46 Vic. c. 38
	VCA 1893	Voluntary Conveyances Act 1893	56 & 57 Vic. c. 21
	VPA 1874	Vendor and Purchaser Act 1874	37 & 38 Vic. c. 78





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AN BILLE UM ATHCHÓIRIÚ AN DLÍ TALÚN AGUS  
TÍOLACHTA 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 AMEND THE REGISTRATION OF  
TITLE ACT 1964 AND FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

## PART 1

### PRELIMINARY AND GENERAL

15 **1.**—This Act may be cited as the Land and Conveyancing Law Short title.  
Reform Act 2006.

**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  
20 may be so appointed for different purposes and different provisions.

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

“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;  
25 “Act of 1965” means the Succession Act 1965;  
“Act of 1976” means the Family Home Protection Act 1976;  
“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;

“assent” has the meaning given to it by section 53 of the Act of 1965; 5

“charge by way of legal mortgage” has the meaning given to it by *section 86(1)*;

“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 the High Court or, subject to its jurisdictional limits in respect of land, the Circuit Court;

“covenant” includes an agreement, a condition, reservation and 15 stipulation;

“deed” has the meaning given to it by *section 62(2)*;

“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 20 the Act of 2000;

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

“exempted development” has the meaning given to it by section 4 of 25 the Act of 2000;

“fee farm grant” means any—

(a) grant of a fee simple, or

(b) lease for ever or in perpetuity,

reserving or charging a perpetual rent, whether or not the relation- 30 ship of landlord and tenant is created between the grantor and grantee, and includes a sub-fee farm grant;

“freehold covenant” has the meaning given to it by *section 46*;

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

“incumbrance” includes an annuity, charge, lien, mortgage, portion 35 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;

“instrument” includes a deed, will, or other document in writing, and information in electronic or other non-legible form which is capable 40 of being converted into such a document, but not a statutory provision;

“judgment mortgage” means a mortgage registered by a creditor under *section 114*;

“land” includes—

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

(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,

(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,

(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;

“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)*;

“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;

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

“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 land 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;

“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;

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

“property” includes all property both real and personal and any part of such property;

“purchaser” means an assignee, chargeant, grantee, lessee, mortgagee or other person who acquires land for valuable consideration; and “purchase” shall be read accordingly; 5

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

“Registry of Deeds” has the meaning given to it by section 33 of the Act of 2006; 10

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

“rentcharge” means any annual or periodic sum charged on or issuing out of land, except— 15

(a) a rent payable under a tenancy, or

(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; 20

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

“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; 25

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

“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; 30

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

“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; 35

“will” includes codicil.

Service of notices.  
[CA 1881, s. 67]

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: 40

(a) by delivering it to the person; or



(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

5 (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

10 (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

(e) by sending it by email, fax or other electronic means.

15 (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.

20 (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.

25 (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) 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.

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

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

Regulations.

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

35 (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.

40 (2) If in any respect any difficulty arises during the period of 2 years from the commencement of a provision of this Act or an amendment of another Act effected by this Act in bringing the provision or amendment into operation, the Minister may by regulations do anything which appears to be necessary or expedient for bringing the provision or amendment into operation and regulations under this section may, in so far only as may appear necessary for carrying  
45 the regulations into effect, modify a provision of this Act or such an amendment if the modification is in conformity with the purposes, principles and spirit of this Act.

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

(4) A regulation under this section 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 shall be annulled accordingly, but without prejudice to the validity of anything previously done under it.

Offences.

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.

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

(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.

Expenses.

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.

Amendments and repeals.

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)*.

(2) Subject to *subsection (1)*, any reference in any enactment to—

(a) “the Conveyancing Acts 1881 to 1911” or to any of them, or

(b) “the Settled Land Acts 1882 to 1890” or to any of them, or

(c) any particular provision in those Acts,

is to be read, so far as is appropriate, as a reference to this Act or to the equivalent or substituted provision in 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

### 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—

- (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 in *section 10*,
  - 5 (c) the freedom to dispose of a fee simple (otherwise known [SQE 1290] as the rule against inalienability),
  - (d) any fee farm grant made in derogation of the Statute Quia Emptores 1290,
  - (e) any surviving customary right or franchise.
- 10 **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. Estates and interests in land.
- (2) Such an estate retains its pre-existing characteristics, but without any tenurial incidents.
- 15 (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.
- 20 **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. Restrictions on legal estates and interests.
- (2) For the purposes of *subsection (1)*, a “freehold estate” means a fee simple in possession and includes—
- (a) a determinable fee,
  - 25 (b) a fee simple subject to a right of entry or of re-entry,
  - (c) a fee simple subject only to—
    - (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,
    - 30 (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—
- 35 (a) takes effect in immediate possession or in future, or
  - (b) is subject to another legal estate or interest, or
  - (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
  - 40

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, 5
- (b) a freehold covenant,
- (c) an incumbrance,
- (d) a rent payable under a tenancy,
- (e) a possibility of reverter,
- (f) a *profit à prendre*, including a mining right, 10
- (g) a public or customary right,
- (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, 15
- (k) any other legal interest created by any statutory provision.

(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 before the commencement of this Part and may exist concurrently with, or subject to, any other legal estate or interest in the same land. 20

(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 so referred to as equitable interests. 25

(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. 30

(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. 35

(2) Any instrument entered into 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, 40

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.

5 (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.

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

(5) 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.

15 **13.—**(1) The creation of a fee tail of any kind at law or in equity is prohibited. Abolition of the fee tail.

(2) Any instrument entered into 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.

20 (3) Where—

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

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

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.

30 (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.

35 (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,

40 (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.

Prohibition of  
leases for lives.

**14.—**(1) The grant of a lease for—

- (a) a life or lives,
- (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,

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

10

Operation of future  
interests in land.

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

(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.

Abolition of various  
rules.

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

- (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);
- (d) the rule against perpetuities;
- (e) the rule against accumulations.

Scope of *section 16*.

**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, 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.

## PART 4

### TRUSTS OF LAND

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

Trusts of land.

5 (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

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

[LEA 1695]

(b) held, either with or without other property, on a trust whenever it arises and of whatever kind, or

10 (c) vested, whether before or after the commencement of this Part, in a minor,

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

(2) For the purposes of—

15 (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,

20 (b) *subsection (1)(b)*, a trust includes an express, implied, resulting, constructive and bare trust and a trust for sale.

(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.

25 (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.

30 (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 for any loss suffered or for such other remedy as the court thinks appropriate in the circumstances of the case.

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

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

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]

40 (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,

(b) in the case of a trust of land created expressly— 5

- (i) any trustee nominated by the trust instrument, but, if there is no such person, then,
- (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 10 power of sale, but, if there is no such person, then,
- (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, 15
- (iv) the settlor or, in the case of a trust created by will, the testator’s personal representative or representatives,

(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 20 an instrument creating a trust of land,

(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. 25

(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,
- (b) *subsection (1)(b)(iii)* a power to appoint a trustee includes 30 a power to appoint where no previous appointment has been made.

(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. 35

Powers of trustees of land.

**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, 40

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,

(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—

Overreaching for protection of purchasers.

(a) the purchaser has notice of the equitable interest, or

(b) any person entitled to that interest is in actual occupation of the land.

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

(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

(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—

(a) any conveyance made for fraudulent or other improper 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

(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.

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

(5) Where an equitable interest is overreached under this section it attaches to the proceeds of sale and the trustees or trust corporation shall give effect 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—

- (a) trustees themselves, or
- (b) beneficiaries themselves, or 5
- (c) trustees and beneficiaries, or
- (d) trustees or beneficiaries and other persons interested,

in relation to any matter concerning the—

- (i) performance of their functions by the trustees, or
- (ii) nature or extent of any beneficial or other interest in the 10  
land, or
- (iii) other operation of the trust.

(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. 15

(3) In considering an application under *subsection (1)* the court shall have regard to—

- (a) the purposes which the trust of land is intended to achieve,
- (b) the interests of any minor or other beneficiary subject to 20  
any incapacity,
- (c) the interests of any secured creditor of any beneficiary,
- (d) any other matter which the court considers relevant.

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

(5) Nothing in this section affects the jurisdiction of the court 25  
under section 36 of the Act of 1995.

## PART 5

### POWERS

**23.—**Except where stated otherwise, this Part applies to powers created or arising before or after the commencement of this Act. 30

**24.—**(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 62*.

- (2) *Subsection (1)* does not— 35
  - (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—

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

5 (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.

10 **25.**—(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. Release of powers. [CA 1881, s. 52]

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

15 **26.**—(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. Disclaimer of powers. [CA 1882, s. 16]

20 (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.

**27.**—(1) No appointment made in exercise of any power to appoint any property among two or more persons is invalid on the ground that— Validation of appointments. [IAA 1830] [PAA 1874]

25 (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

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

30 (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 6

### CO-OWNERSHIP

35 **28.**—(1) From the commencement of this Part, any— Unilateral severance of a joint tenancy.  
(a) conveyance, or contract for a conveyance, of land held in a joint tenancy, or

(b) acquisition of another interest in such land,

by one joint tenant without the consent referred to in *subsection (2)* is void both at law and in equity.

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

(3) From the commencement of this Part—

(a) the vesting of the estate or interest of an insolvent joint tenant in the Official Assignee or a liquidator, or 5

(b) registration of a judgment mortgage against the estate or interest of a joint tenant,

does not sever the joint tenancy.

(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. 10

Court orders.

**29.—**(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. 15

(2) An order under this section includes—

[PA 1868]  
[PA 1876]

(a) an order for partition of the land amongst the co-owners,

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

[AJA 1707, s. 23]

(c) an order directing that accounting adjustments be made as between the co-owners, 20

(d) such other order relating to the land as the court thinks fit in the circumstances of the case.

(3) In dealing with an application for an order under *subsection (1)* the court may— 25

(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— 30

(a) “person having an estate or interest in land” includes a mortgagee or other secured creditor 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, 35

(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), 40

(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),

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

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

(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.

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

Bodies corporate.  
[BC (JT) A 1899]

(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.

(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 7

### APPURTENANT RIGHTS

#### CHAPTER 1

#### *Easements and profits à prendre*

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

Interpretation of  
*Chapter 1.*

“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;

“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 35(1);

“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—

(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

(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;

“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.

Abolition of certain methods of prescription.

**32.**—Subject to *section 36*, 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 33*.

Acquisition of easements and *profits à prendre* by prescription.

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

[PA 1832]

(2) 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.

[PA 1858]

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

Tenancies.  
[PA 1832, s. 8]

**34.**—(1) Where the dominant owner acquiring an easement or *profit à prendre* under *section 33* 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.

(2) Where an easement or *profit à prendre* is acquired under *section 33* against a servient owner who owns a tenancy only in the servient land, it ends when that tenancy ends, but if the servient owner—

(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.

(3) Nothing in *subsection (2)* prevents the subsequent acquisition of an easement or *profit à prendre* under *section 33* on the basis of a new relevant user period against a landlord who takes possession of the servient land after the tenancy ends.

35.—(1) Subject to *subsection (2)*, where the servient owner is incapable, whether at the commencement or during the relevant user period, of management of that owner's affairs because of a mental incapacity, the running of that period is interrupted until the incapacity ceases, but in no such case does the total relevant user period exceed 30 years. Incapacity. [PA 1832, s. 7]

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

36.—In relation to any claim to an easement or *profit à prendre* made after the commencement of this Chapter, *sections 32 to 35*— Application of *sections 32 to 35*.

(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,

(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.

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

(a) prescription, or

(b) implied grant or reservation,

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.

(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.

38.—(1) The rule known as the Rule in *Wheeldon v. Burrows* is abolished. Implied grant.

(2) A conveyance of land creates for the benefit of that land any easement or *profit à prendre* over the land retained by the grantor which it is reasonable to assume, in the circumstances of the case, was, or would have been if they had adverted to the matter, within the contemplation of the parties at the date of the conveyance as being included in it.

## CHAPTER 2

### *Rentcharges*

Prohibition of  
certain rentcharges.

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

(2) *Subsection (1)* does not apply to the creation of a rentcharge under— 5

(a) a contract entered into before the commencement of this Chapter,

(b) an order of the court, or

(c) any statutory provision. 10

Enforcement of  
rentcharges.

[CA 1881, s. 44]

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

## CHAPTER 3

### *Party structures* 15

Interpretation of  
*Chapter 3*.

**41.**—(1) 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;

“building” includes part of a building; 20

“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;

“party structure” means any arch, ceiling, ditch, fence, floor, hedge, 25  
partition, shrub, tree, wall or other structure which horizontally, ver-  
tically 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 30  
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,

and includes any such structure which is— 35

(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 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;

5 “works” include—

- (a) carrying out works of adjustment, alteration, cutting into or away, decoration, demolition, improvement, lowering, maintenance, raising, renewal, repair, replacement, strengthening or taking down,
- 10 (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,
- 15 (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 43(1)*.

20 **42.—(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
- 25 (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
- (d) carrying out any other works which—
- 30 (i) will not cause substantial damage or inconvenience to the adjoining owner, or
- (ii) if they may or will cause such damage or inconvenience, it is nevertheless reasonable to carry them out.

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

- 40 (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,
- (b) pay to the adjoining owner—
- (i) the reasonable costs of obtaining professional advice with regard to the likely consequences of the works,

- (ii) reasonable compensation for any inconvenience caused by the works.

(3) The building owner may—

- (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)*, 5
- (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. 10

(4) If—

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

- (i) make good damage, or to reimburse the costs and expenses, under *subsection (2)(a)*, or

- (ii) pay reasonable costs or compensation under *subsection (2)(b)*, 15

the adjoining owner may recover such costs and expenses or compensation as a simple contract debt in a court of competent jurisdiction,

- (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. 20

Works orders.

**43.—**(1) A building owner who is in dispute with an adjoining owner with respect to exercise of rights under *section 42* may apply to the court for an order authorising the carrying out of specified works (a “works order”). 25

(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 42* and may take into account any other circumstances which it considers relevant. 30

Terms and conditions of works orders.

**44.—**(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 42*) as the court thinks fit in the circumstances of the case. 35

(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, 40

- (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. 45

(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.

- 5     **45.**—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.
- Discharge or modification of works orders.

## CHAPTER 4

### *Freehold covenants*

- 46.**—In this Chapter, unless the context otherwise requires—
- 10   “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;
- 15   “freehold covenant” means a covenant affecting freehold land entered into after the commencement of this Chapter;
- “scheme of development” means a building or estate scheme created on a subdivision of land and intended to confer the benefit of covenants on subsequent owners of subdivided parts in accordance with the rule sometimes known as the Rule in *Elliston v. Reacher*;
- 20   “servient land” means freehold land which is subject to a covenant benefiting other land; and “servient owner” shall be read accordingly and includes persons deriving title from or under that owner.
- Interpretation of Chapter 4.

- 47.**—(1) Subject to *subsection (3)*, the rules of common law and equity relating to the enforceability of a freehold covenant (including the rule known as the Rule in *Tulk v. Moxhay*) are abolished.
- 25   [CA 1881, ss. 58 and 59]
- Enforceability of freehold covenants.

(2) Subject to *subsection (3)*, 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—
- 30     (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 period when that person was such owner,
- (b) against—
- 35     (i) the servient owner for the time being, or
- (ii) a person who has ceased to be that owner, but only in respect of acts or omissions which occurred during the period when that person was such owner.
- (3) This section—
- 40     (a) does not affect the enforceability of—
- (i) a freehold covenant by a person entitled to the benefit of a scheme of development, or

(ii) a covenant for title under *section 77*,

(b) takes effect subject to the terms of the covenant or the instrument containing it.

Discharge and  
modification.

**48.—**(1) A servient owner may apply to the court for an order discharging in whole or in part or modifying a freehold covenant 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 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, 15
- (c) the development plan for the area under the Act of 2000,
- (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, 20
- (e) whether the covenant secures any practical benefit to the dominant owner and, if so, the nature and extent of that benefit,
- (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, 30
- (h) any representations made by any person interested in the performance of the covenant,
- (i) any other matter which the court considers relevant.

(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 court thinks fit. 35  
40

## PART 8

### CONTRACTS AND CONVEYANCES

#### CHAPTER 1

##### *Contracts relating to land*

5     **49.**—(1) Subject to *subsection (2)*, no action shall be brought to enforce any contract for the sale or other disposition of land unless 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. Evidence in writing.  
[SF 1695, s. 2]

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

(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.

15     **50.**—(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. Passing of beneficial interest.

(2) *Subsection (1)* does not affect—

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

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

25     (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.

**51.**—(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. Abolition of the Rule in *Bain v. Fothergill*.

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

**52.**—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, if it thinks fit, order the repayment of the whole or any part of any deposit, with or without interest. Order for return of deposit.

35     **53.**—(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. Vendor and purchaser summons.  
[VPA 1874, s. 9]

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

(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. 5

CHAPTER 2

*Title*

Root of title. 54.—(1) Subject to *subsections (2) and (3)*, after the commencement of this Chapter, a period of at least 20 years commencing with a good root of title is the period for proof of title which the purchaser may require. 10

[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.

(3) *Subsection (1)* takes effect subject to the terms of the contract for the sale or other disposition of the land. 15

Tenancies. 55.—(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—

[VPA 1874, s. 2]

[CA 1881, ss. 3 and 13]

(a) the fee simple, or 20

[CA 1882, s. 4]

(b) any tenancy superior to that out of which the subtenancy is, or is to be, immediately derived.

(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— 25

(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

(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 20 years' title as a purchaser under *section 54(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. 45

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

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

Other conditions of title.

[VPA 1874, s. 2]

[CA 1881, s. 3]

5 (a) the production of an instrument dated or made before the period prescribed by *section 54*, 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

10 (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,

15 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

20 (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.

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

25 (a) power of attorney under which any instrument which is produced is executed, or

30 (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 property is disposed of by an instrument which is produced, or a copy of which is produced, or

(c) instrument creating any limitation or trust by reference to which any part of the property is disposed of by an instrument which is produced.

35 (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—

40 (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,

45 (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,

- (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.

(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. 5

(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. 10

(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. 15

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

(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 subsists, or

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

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

(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. 30

(10) In this section—

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

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

Protection of  
purchasers.

[VPA 1874, s. 2]

**57.—**(1) Recitals, statements and descriptions of facts, matters and parties contained in instruments, statutory provisions or statutory declarations 20 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. 40

(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, 45



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.

5 (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.

15 **58.—**(1) Any person disposing of land to a purchaser, or the solicitor or other agent of such a person, who with intent to defraud—  
Fraudulent concealment and falsification.  
(a) conceals from the purchaser any instrument or incumbrance material to the title, or [LPAA 1859, s. 24]  
[LPAA 1860, s. 8]

20 (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.

30 (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.

35 **59.—**(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.  
[CA 1911, s. 11]

45 (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*

Conveyances by deed only.

[RPA 1845, ss. 2 and 3]

**60.**—(1) Subject to *section 61*, a legal estate or interest in land may only be created or conveyed by a deed.

(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. 5

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

(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. 15

Exceptions to deeds.

**61.**—*Section 60(1)* does not apply to—

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

Formalities for deeds.

**62.**—(1) Any rule of law which requires—

- (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,

is abolished. 30

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

- (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, 35

(b) executed in the following manner:

(i) if made by an individual, it is—

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

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

(III) acknowledged by the individual in the presence of a witness who attests the signature, or

10 (IV) signed and sealed by the individual;

(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;

15 (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;

20 (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,

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

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

**63.—**(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. Escrows by corporate bodies.

30 (2) An instrument executed by a body corporate in accordance with *section 62(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.

35 **64.—**(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. Conveyance to oneself.  
[LPAA 1859, s. 21]

(2) Subject to *subsection (3)*— [CA 1881, s. 50]

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

40 (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.

(4) Without prejudice to *section 80*, this section does not affect any rule of law under which a covenant entered into with oneself is unenforceable.

5

Words of limitation.  
[CA 1881, s. 51]

**65.**—(1) A conveyance of unregistered land 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 is expressed in the conveyance.

(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.

10

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

15

(a) the heir or heirs, or

(b) any particular heir, or

(c) any class of heirs, or

(d) issue,

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.

20

(4) Subject to *subsections (5) to (7)*, *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*.

25

(5) An interest claimed under *subsection (4)* is extinguished unless the person who claims it applies to the court, within 12 years from the commencement of this Chapter, for an order declaring that that person is entitled to it or has acquired it and registers any order obtained under *subsection (7)*.

30

(6) On such an application the court may—

35

(a) refuse to make an order if it is satisfied that no substantial injustice will be done to any party, or

(b) 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.

40

(7) An order under *subsection (5)* shall be registered in the Registry of Deeds or Land Registry, as appropriate.

Reservations.  
[CA 1881, s. 62]

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

45

(a) vest that estate or interest in the grantor or other person for whose benefit it is made,

(b) annex it to the land, if any, for the benefit of which it is made.

5 (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.

10 (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.

15 **67.**—(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. Benefit of deeds.  
[RPA 1845, s. 5]

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

20 **68.**—(1) A conveyance of land includes, and conveys with the land, all— Features and rights  
conveyed with land.

(a) buildings, commons, ditches, drains, erections, fences, fixtures, hedges, water, watercourses and other features forming part of the land, [CA 1881, s. 6]

25 (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—

30 (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,

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

(3) This section—

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

40 (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

(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,

(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 5

(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.

Supplemental  
instruments.  
[CA 1881, s. 53]

**69.**—(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— 10

(a) were made by way of endorsement on the previous instrument, or 15

(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. 20

Partial releases.  
[LPAA 1859, ss. 10  
and 11]

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

(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, 25

(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 30

(b) prevent recovery of the whole of the rentcharge or enforcement of the whole judgment against the land unreleased, unless those interested agree otherwise. 35

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

**71.**—(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. 40

(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*

10 **72.**—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—

Construction of instruments.

(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.

20 **73.**—(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.

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

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

**74.**—(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.

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

(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.

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

(a) in its body a receipt for consideration,

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

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.

(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.

Conditions and covenants not implied.

[RPA 1845, s. 4]

**75.—**(1) An exchange or other conveyance of land does not imply any condition in law.

(2) Subject to any statutory provision, use of the word “give” or “grant” in any conveyance does not imply any covenant.

Scope of *sections 77* and *78*.

**76.—**In *sections 77* and *78*—

5

(a) “conveyance”—

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

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

(b) any reference to a person being expressed to “convey”, 10  
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.

Covenants for title.

[CA 1881, s. 7]

**77.—**(1) In a conveyance of any class referred to in *subsection (2)* 15  
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—

(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 20  
subject-matter of the conveyance”),

(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 con- 25  
veyance 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 30  
land (other than a tenancy) made by a person  
who is expressed to convey “as beneficial  
owner”;

Class 2: A conveyance (other than a mortgage) for  
valuable consideration of land comprised in a 35  
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 40  
beneficial owner”;

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”;

Class 5: A conveyance made by a person who is 45



expressed to convey “as trustee”, “as mortgagee”, “as personal representative” or under an order of the court.

5 (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.

10 (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.

(5) The benefit of a covenant implied under this section is—  
15 (a) annexed to and passes with the estate or interest of the implied covenantee,  
(b) 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,  
20 or any part of it, or an estate or interest derived out of it, is vested from time to time.

(6) A covenant implied under this section may, by the terms of the conveyance, be—  
25 (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,  
(b) modified and, if so modified, operates as if the modification was included in this section and *Schedule 3*.

30 (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  
35 *subsection (2)*.

**78.—**(1) In a conveyance of any class referred to in *subsection (2)* there are implied, in addition to the covenants referred to in *section 77(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.

40 (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,  
45 if more than one, who is the other party, or are the other parties, to the conveyance,

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

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. 15

(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, 25

(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. 30

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

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

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

50

(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.

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

Covenants by or with two or more persons.

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

[CA 1881, s. 60]

(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—

(a) the survivor or survivors of them,

(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.

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

**80.—**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.

Covenants by person jointly with others.

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

Production and safe custody of documents.

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

[CA 1881, s. 9]

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

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

(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,

(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,

- (c) deliver to the person entitled to request them such copies  
or abstracts, attested or unattested, of or from the docu- 5  
ments or any of them.

(3) The obligation imposed by an undertaking is to keep the docu-  
ments 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 writ- 10  
ing of,

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

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 15  
interested in or affected by the terms of the document to which the  
acknowledgment or undertaking relates.

(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 20  
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, 25  
but all costs and expenses of or incidental to specific performance of  
the acknowledgment shall be paid by the person requesting per-  
formance.

(7) The acknowledgment does not confer any right to damages  
for loss or destruction of, or injury to, the documents to which it 30  
relates, arising from whatever cause.

(8) Any person claiming to be entitled to the benefit of an under-  
taking 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 35  
make such order as to costs or other matters as it thinks fit.

(10) An acknowledgment or undertaking under this section satis-  
fies any liability to give a covenant for production and delivery of  
copies of or extracts from documents or for safe custody of 40  
documents.

(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.

(12) This section— 45

(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,

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

**82.**—(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. Notices.

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

## CHAPTER 5

### *General provisions*

**83.**—(1) A purchaser is not affected prejudicially by notice of any fact, instrument, matter or thing unless— Restrictions on constructive notice.

[CA 1882, s. 3]

(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

20 (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.

(2) Without prejudice to *section 55(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.

35 (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.

**84.**—(1) Without prejudice to any ground of appeal against any order, an order of the court under any statutory or other jurisdiction is not invalid as against a purchaser on the ground of want of— Court orders.

[CA 1881, s. 70]

40 (a) jurisdiction, or

(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.

**85.**—With a view to facilitating electronic conveyancing of land or providing further protection for the interests of vendors and purchasers of land, the following matters may be prescribed:

- (a) the conditions of sale applicable to a contract for the sale or other disposition of an estate or interest in land; 5
- (b) any other matter referred to in this Part.

## PART 9

### MORTGAGES

#### CHAPTER 1

#### *Creation of mortgages* 10

Legal mortgages.

**86.**—(1) A legal mortgage of land may only be created by a charge by deed and such a mortgage is referred to in this Part as a “charge by way of legal mortgage”; and “mortgage”, “mortgagor” and “mortgagee” shall be read accordingly.

(2) From the commencement of this Chapter, any— 15

- (a) purported conveyance of a legal estate or interest in land by way of mortgage, or
- (b) other purported legal mortgage of land by deed, or
- (c) other transaction which under any instrument or statutory provision would operate otherwise as a legal mortgage 20 of land,

operates as if it were a charge by way of legal mortgage.

(3) 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 charge by way of legal mortgage or to lend money on the security of such a charge. 25

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

(5) Nothing in this section affects the creation of equitable mortgages of land. 30

(6) 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.

(7) For the purposes of *subsection (6)*, 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. 35

Position of  
mortgagor and  
mortgagee.

**87.**—(1) Subject to this Part, where a charge by way of legal mortgage is created after the commencement of this Chapter— 40

(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,

5 (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.

10 (2) Without prejudice to the generality of *subsection (1)(b)* and subject to *subsection (3)*, a first mortgagee under a charge by way of legal mortgage 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.

15 (3) 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 88*, responsible for their safe custody as if an undertaking for this were given under *section 81*.

## CHAPTER 2

### *Powers and rights of mortgagor*

20 **88.**—(1) Subject to *subsection (2)*, a mortgagor, as long as the right to redeem subsists, 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. Documents of title.  
[CA 1881, s. 16]

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

(a) on the request and at the expense of the mortgagor,

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

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

**89.**—(1) A mortgagor is entitled to redeem any 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. Abolition of right to consolidate.  
[CA 1881, s. 17]

35 (2) Notwithstanding any stipulation to the contrary, a mortgagee may not consolidate two or more mortgages of the same or other property.

40 **90.**—(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.

(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. 5

(3) This section—

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

(b) applies notwithstanding any stipulation to the contrary. 10

Court order for sale.

**91.**—(1) This section applies to any action brought by a mortgagor, or any other person entitled to redeem the mortgaged property or interested in either the mortgage debt or the right of redemption, for—

(a) redemption, or 15

(b) sale, or

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

(d) any combination of these in the alternative.

(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, notwithstanding that any person so entitled or interested dissents or does not enter an appearance. 20

(3) Without prejudice to the generality of the court's discretion under *subsection (2)*, it may— 25

(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, 30

(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, 35

(g) in the case of an equitable mortgage of a legal estate or interest in land, confer on a person power to convey that estate or interest in the name of the legal owner. 40



92.—(1) Where—

Advances on joint  
account.

(a) money advanced or owing under a mortgage, obligation  
for payment or transfer of a mortgage or of such an obli- [CA 1881, s. 61]  
gation, 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

(b) such a mortgage, obligation or transfer 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 mort-  
gagor or obligor, be deemed to belong to them on a joint account.

(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.

(3) This section takes effect subject to the terms of the mortgage,  
obligation or transfer.

### CHAPTER 3

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

93.—(1) Subject to this Part, the powers and rights of a mortgagee  
under *sections 94 to 107*— Powers and rights  
generally.

(a) apply to any mortgage created by deed after the com-  
mencement of this Chapter,

(b) vest as soon as the mortgage is created,

(c) do not become exercisable unless 28 days' notice in the  
prescribed form is given to the mortgagor and their exer-  
cise is for the purpose of protecting the mortgaged prop-  
erty or realising the mortgagee's security,

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

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

(3) Except for *subsection (1)* and as provided elsewhere in this  
Part, the powers and rights conferred by *sections 94 to 107* take effect  
subject to the terms of the mortgage.

(4) Where the mortgage comprises registered land, it is subject to  
section 62 of the Act of 1964.

**94.**—(1) Subject to *section 95* and notwithstanding any stipulation to the contrary, 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.

(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.

(3) Without prejudice to the generality of *subsection (2)*, where it 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 for possession, or at any time before the enforcement of such an order,
  - (i) stay the enforcement, or
  - (ii) postpone the date for delivery of possession, or
  - (iii) suspend the order,
    - for such period or periods as it thinks reasonable and, if an order is suspended, the court may subsequently revive it.

(4) Any adjournment, stay, postponement or suspension under *subsection (3)* may be made subject to such terms and conditions with regard to payment by the mortgagor of any sum secured by the mortgage or the remedying of any breach of obligation as the court thinks fit.

(5) The court may revoke or vary any term or condition imposed under *subsection (4)*.

(6) Nothing in this section affects the jurisdiction of the court under—

- (a) section 62(7) of the Act of 1964, or
- (b) sections 7 and 8 of the Act of 1976.

**95.**—(1) Where a mortgagee has reasonable grounds for believing that—

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

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 on such terms and conditions as the court thinks fit.

(2) Without prejudice to the generality of *subsection (1)*, an order under this section may specify—

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

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

(i) protecting the mortgaged property, or

(ii) preparing it for sale in exercise of the mortgagee's power under *section 97*, or

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

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

15 (4) Nothing in this section prejudices the right of a mortgagee to apply to the court for an order for sale of the mortgaged property.

**96.**—(1) Subject to the terms of any order under *section 94* or *section 95* and notwithstanding any stipulation to the contrary, a mortgagee in possession shall take steps within a reasonable time to exercise the power to—

(a) sell the mortgaged property under *section 97*, or

25 (b) if it is not appropriate to sell, lease the property under *section 108* and use the rent and any other income received from the lessee to reduce the mortgage debt, including interest accrued or accruing.

(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 94* or *section 95*.

**97.**—(1) Subject to *sections 98* to *103*, and notwithstanding any stipulation to the contrary, 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—

Power of sale.

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

[CA 1911, s. 5(2)]

35 (a) following service of notice on the mortgagor, or on one of 2 or more mortgagors, 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

40 (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

45 (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.

(2) 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.

(3) 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.

Incidental powers.

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

[CA 1911, s. 4]

**98.**—Incidental to the power of sale are the powers to—

(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,

(iv) subject to such conditions respecting title, evidence of title, or other matter as the mortgagee or other person selling thinks fit,

(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 property, 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,

(d) sell the mortgaged property, 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 property or the unsold part,

(ii) an exception or reservation of all or any of the mines and minerals in the mortgaged property 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 property or the unsold part,

(iii) covenants by the purchaser to expend money on the land sold.

Obligations on  
selling.

**99.**—(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 acting on behalf of 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.

(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.

5 (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.

(5) This section does not apply to a building society within the meaning of the Act of 1989.

10 (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.

15 **100.**—(1) A mortgagee exercising the power of sale conferred by this Part, or an express power of sale, has power to convey the property in accordance with *subsection (2)*—

Conveyance on sale.  
[CA 1881, s. 21(1)]

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

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

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

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

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

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

(3) This section—

30 (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,

35 (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.

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

40 **101.**—(1) Where a conveyance is made in professed exercise of the power of sale conferred by this Part, 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)]

(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.

(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. 5

Mortgagee's  
receipts.

[CA 1881, s. 22]

**102.**—(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. 10

(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. 15

(3) Subject to *section 103(5)*, money received by a mortgagee under the mortgage or from the proceeds of securities comprised in it shall be applied as *section 103* 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)]

**103.**—(1) Money received by the mortgagee which arises from the sale of mortgaged property shall be applied in the following order— 20

(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,

(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, 25

(c) in discharge of the mortgage debt, interest and costs, and other money, if any, due under the mortgage.

(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. 30 35

(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. 40

(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 102(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. 45

**104.**—(1) Subject to the same proviso relating to the exercise of the power of sale set out in *section 97(1)(a) to (c)*, and notwithstanding any stipulation to the contrary, 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—

Appointment of receiver.

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

(a) the income of the mortgaged property, or

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

(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—

(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.

(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.

(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.

(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 insurable nature.

**105.**—(1) Subject to *subsection (2)* and *section 106(4)*, the receiver shall apply all income received in the following order—

Application of income received.

[CA 1881, s. 24(8)]

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

(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,



- (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, 5
- (g) in or towards discharge of the principal sum, if so directed in writing by the mortgagee.

(2) The mortgagee may by direction in writing—

- (a) waive particular categories of payments, or particular payments to be made under such categories, or 10
- (b) vary the order of categories of payments,

to be made under *subsection (1)*.

(3) 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. 15

#### Insurance.

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

**106.**—(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. 20

(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. 25

(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. 30

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

- (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. 35

#### Future advances.

**107.**—(1) Where a mortgage is expressed to be created on any property for the purpose of securing (whether with or without present advances) future advances, the mortgagee is entitled, in priority to any subsequent mortgagee, to payment of any sum due in respect of any such future advance, provided— 40

- (a) the mortgagee had no express notice in writing of the subsequent mortgage when the advance was made, or



(b) whether or not the mortgagee had such notice, the mortgage imposes an obligation to make such future advances, or

5 (c) an arrangement has been made to this effect with the subsequent mortgagee.

(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.

10 (3) From the commencement of this Chapter and notwithstanding any stipulation to the contrary, tacking in the form commonly known as *tabula in naufragio* is abolished.

(4) This section—

15 (a) apart from *subsection (3)*, applies to mortgages made before or after the commencement of this Chapter,

(b) does not affect any priority acquired by tacking before that commencement or in respect of advances made in accordance with *subsection (1)(a)* and (c).

#### CHAPTER 4

20 *Leases and surrenders of leases*

**108.**—(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]

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

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

(b) the granting had prejudiced the mortgagee.

30 (3) A mortgagee of land while in possession or, after the mortgagee 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—

35 (i) preserving the value of the land, or

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

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

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

(c) the mortgagor consents in writing, or

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

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

(5) This section— 5

(a) applies only where the mortgage is created after the commencement of this Part,

(b) takes effect subject to the terms of the mortgage.

Exercise of leasing powers.

**109.**—(1) A lease to be granted under *section 108* shall—

(a) reserve the best rent which can reasonably be obtained, 10  
taking into account any premium or other capital sum paid by the lessee and other relevant circumstances,

(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 15  
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. 20

(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) Failure by the mortgagor to comply with *subsection (4)* does 25  
not affect the validity of the lease.

(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 30  
applied in or towards discharge of that debt, whether or not the date for redemption has arrived,

(b) the mortgagee, it shall be applied in accordance with *section 103* as if it comprised the proceeds of a sale.

Surrenders.

[CA 1911, s. 3]

**110.**—(1) Subject to *subsection (6)*, the power of accepting surrenders of leases conferred by this section shall be exercised only for the purpose of granting a new lease under *section 108* or as authorised by the terms of the mortgage. 35

(2) A mortgagor or mortgagee in possession (or a mortgagee who has appointed a receiver who is still acting) may accept a surrender 40  
of a lease granted by them, whether the surrender relates to the whole or part only of the land leased.

(3) On such a surrender—

- (a) the term of the new lease shall not be less than the unexpired term which would have subsisted under the surrendered lease if it not been surrendered,
- 5 (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—
- 10 (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,
- (ii) any other modifications of the original lease shall comply with *section 109*.
- 15 (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—
- 20 (a) to the mortgagor, the consent of incumbrancers, or
- (b) to a second or subsequent mortgagee, the consent of any prior incumbrancer,
- is obtained.
- (6) This section takes effect subject to the terms of the mortgage.

25

## PART 10

### JUDGMENT MORTGAGES

- 111.**—In this Part, unless the context otherwise requires—
- “creditor” includes—
- 30 (a) an authorised agent and any person authorised by the court to register a judgment mortgage on behalf of a judgment creditor,
- (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.
- 35 **112.**—A judgment does not bind a purchaser of land for valuable consideration or a creditor unless and until it is registered in the prescribed manner in the Judgments Office within 5 years before the—
- (a) conveyance to the purchaser, or
- 40 (b) debt of the creditor accrued,

Interpretation of  
*Part 10*.

[JMA 1858, ss. 3  
and 4]

Registration of  
judgments.

[JMA 1850, s. 4]

and re-registered in the prescribed manner at the expiration of every successive 5 years.

Registration of *lis pendens*.

[JMA 1850, s. 5]

**113.**—A *lis pendens* does not bind a purchaser of land for valuable consideration, without actual knowledge of it, unless it is registered in the prescribed manner in the Judgments Office within 5 years before the making of the conveyance to the purchaser. 5

Registration of judgment mortgages.

[JMA 1850, s. 6]

**114.**—(1) A creditor who has obtained a judgment against a person may register a judgment mortgage against that person's estate or interest in land in accordance with this section.

(2) A judgment mortgage shall be registered in the Registry of Deeds or Land Registry, as appropriate. 10

(3) For the avoidance of doubt it is and always has been the case that—

(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, 15

(b) a judgment mortgage may be registered—

(i) notwithstanding that the judgment debtor has obtained an order of the court granting a stay of execution, unless the court orders otherwise, 20

(ii) against the interest of a beneficiary under a trust for sale of land.

Company debtor.

**115.**—Section 99(2) of the Act of 1963 is amended by—

(a) substitution in paragraph (i) of “copyright,” for “copyright.”, 25

(b) insertion after paragraph (i) of—

“(j) a charge created by registration of a judgment mortgage affecting any property of the company.”.

Effect of registration.

[JMA 1850, ss. 7 and 8]

[JMA 1850, s. 8]

**116.**—(1) Registration of a judgment mortgage under *section 114* creates in respect of the judgment debtor's estate or interest in land a charge by way of legal mortgage under *section 86(1)* and, subject to this Part, confers obligations, powers, and rights on the judgment creditor as mortgagee accordingly. 30

(2) The judgment mortgage is subject to any equity or incumbrance affecting the judgment debtor's land, whether registered or not, at the time of its registration. 35

(3) For the purposes of *subsection (2)*, an equity or incumbrance does not include any claim lodged in court against a judgment debtor's land which is not a family home within the Act of 1976, unless the claim seeks an order specifically against that land. 40

(4) Subject to section 284(2) of the Act of 1963 and section 51 of the Act of 1988, a judgment creditor who has registered a judgment

mortgage has the same priority and security as any other mortgagee of land.

- 5 (5) *Section 71* applies to a voluntary conveyance of land made by the judgment debtor before the creditor registers a judgment mortgage against that land under *section 114* as if the creditor were a purchaser for the purposes of *section 71*.

**117.**—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.

Discharge of judgment mortgages.

[JMA 1850, s. 9]

- 10 **118.**—Section 32 of the Act of 1957 is amended by the addition of the following subsection:

Amendment of section 32 of the Act of 1957.

“(3) In the case of a judgment mortgage, the right of action accrues from the date the judgment is marked and not when a judgment mortgage is registered on foot of it.”.

- 15 **119.**—The power of the sheriff, or of other persons entitled to exercise the sheriff’s powers, to seize a tenancy under a writ of *facias* or other process of execution is abolished.

Abolition of power to seize a tenancy.

## PART 11

### AMENDMENTS TO REGISTRATION OF TITLE ACT 1964

- 20 **120.**—Section 3 (interpretation) of the Act of 1964 is amended in subsection (1) by the—

Amendment of section 3.

- 25 (a) substitution of “ ‘judgment mortgage’ means a mortgage registered by a judgment creditor pursuant to *section 114* of the *Land and Conveyancing Law Reform Act 2006*,” for the definition of “judgment mortgage”;

- (b) substitution of “ ‘land’ has the meaning given to it by *section 3* of the *Land and Conveyancing Law Reform Act 2006*,” for the definition of “land”.

- 30 **121.**—Section 62 (creation and effect of charge on registered land) of the Act of 1964 is amended by the substitution in subsection (6) of “charge by way of legal mortgage within the meaning of *PART 9* of the *Land and Conveyancing Law Reform Act 2006*” for “mortgage by deed within the meaning of the Conveyancing Acts”.

Amendment of section 62.

- 35 **122.**—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):

Amendment of section 69.

“(kk) a freehold covenant within the meaning of *section 46* of the *Land and Conveyancing Law Reform Act 2006*,”.

- 40 **123.**—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 114* of the *Land and Conveyancing Law Reform Act 2006* shall, in the case of registered land, be in such form and in such manner as may be prescribed.

(2) Registration under subsection (1) shall operate to charge 5  
the interest of the judgment debtor subject to—

- (a) the burdens, if any, registered as affecting that interest,
- (b) the burdens to which, though not so registered, that interest is subject by virtue of *section 72*, 10
- (c) all unregistered rights subject to which the judgment debtor held that interest at the time of registration,

and the creditor has the obligations, powers and rights specified in *section 116* of the said *2006 Act*.”.

Amendment of  
section 75.

**124.**—Section 75 (priority of registered charge for future advances) 15  
of the Act of 1964 is amended by the substitution of the following  
for subsection (1):

“(1) Where a registered charge is expressed to be created on any land for the purpose of securing future advances (whether with or without present advances), the registered owner of the charge shall be entitled in priority to any subsequent charge to the payment of any sum due to him in respect of such future advances, provided— 20

- (a) the said registered owner had no express notice in writing of the subsequent charge when the advance was made, or 25
- (b) whether or not that owner had such notice, the charge imposes an obligation to make such future advances, or
- (c) an arrangement has been made to this effect with the owner of the subsequent charge.”. 30

## AMENDMENTS

	Enactment (1)	Provision (2)	Nature of amendment (3)
5	Registration of Title Act 1964	Section 3	In the definition of “freehold land”, the insertion of “in possession” after “fee simple”.
10			In the definition of “leasehold interest”, the substitution of “estate” for “interest” where it first occurs.
15			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”.
20		Section 37	In subsection (3), the deletion of “In either case,”.
		Section 38	In subsection (1), the deletion of “full or limited”.
		Section 39	The deletion of “full or limited”.
		Section 44	In subsection (3), the deletion of “In either case,”.
		Section 45	The deletion of “full or limited”.
		Section 46	The deletion of “full or limited”.
		Section 47	The deletion of “full or limited”.
		Section 51	In subsection (1), the deletion of “Subject, in the case of a limited owner, to the Settled Land Acts,”.
25		Section 60	In subsection (2), the deletion of—
			(a) “if he is full owner,” in each place where it occurs,
30			(b) “and if he is not full owner, of such persons as may be prescribed”, and
35			(c) “, and, if he is not full owner, to such persons as may be prescribed”.
		Section 61	In subsection (3)(a), the deletion of “full or limited”.
40			In subsection (4), the deletion of “full owner or limited”.
45		Section 100	In subsection (2), the deletion of “(including a limited owner exercising powers under the Settled Land Acts or this Act)”.

## SCHEDULE 2

## REPEALS

## PART 1

## PRE-UNION IRISH STATUTES

Session and Chapter	Short Title or Subject	Extent of Repeal	
10 Chas. 1 sess. 2 c. 1	Statute of Uses 1634	The whole Act so far as unrepealed	5
10 Chas. 1 sess. 2 c. 3	Conveyancing Act 1634	The whole Act so far as unrepealed	
10 Chas. 1 sess. 3 c. 15	Maintenance and Embracery Act 1634	Sections 2, 4 and 6	10
10 & 11 Chas. 1 c. 3	Ecclesiastical Lands Act 1634	The whole Act so far as unrepealed	
15 Chas. 1 sess. 2 c. 3	Forfeiture Act 1639	The whole Act	15
14 & 15 Chas. 2 sess. 4 c. 19	Tenures Abolition Act 1662	The whole Act so far as unrepealed	
7 Will. 3 c. 8	Life Estates Act 1695	The whole Act	
7 Will. 3 c. 12	Statute of Frauds 1695	Section 2	
9 Will. 3 c. 11	Clandestine Mortgages Act 1697	The whole Act	20
2 Anne c. 8	Plus Lands Act 1703	The whole Act	
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	25
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	
1 Geo. 3 c. 8	Hospitals Act 1761	The whole Act	30
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	
7 Geo. 3 c. 8	County Hospitals (Amendment) Act 1767	The whole Act so far as unrepealed	35
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	40
17 & 18 Geo. 3 c. 15	County Hospitals Act 1777	The whole Act	
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	45
19 & 20 Geo. 3 c. 30	Tenantry Act 1779	The whole Act so far as unrepealed	



	Session and Chapter	Short Title or Subject	Extent of Repeal
5	21 & 22 Geo. 3 c. 27	Leases by Schools Act 1781	The whole Act
	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
	29 Geo. 3 c. 30	Commons Act 1789	The whole Act so far as unrepealed
10	31 Geo. 3 c. 38	Commons Act 1791	The whole Act
	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

15

## PART 2

### STATUTES OF ENGLAND

13 Edw. 1 c. 1	Statute De Donis Conditionalibus 1285	The whole Act so far as unrepealed
18 Edw. 1 cc. 1-3	Statute Quia Emptores 1290	The whole Act

20

## PART 3

### STATUTE OF GREAT BRITAIN 1707 TO 1800

39 & 40 Geo. 3 c. 88	Crown Private Estate Act 1800	The whole Act so far as unrepealed
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## PART 4

### 25 STATUTES OF THE UNITED KINGDOM OF GREAT BRITAIN AND IRELAND 1801 TO 1922

	Session and Chapter	Short Title or Subject	Extent of Repeal
30	46 Geo. 3 c. 71	Mines (Ireland) Act 1806	The whole Act
	50 Geo. 3 c. 33	School Sites (Ireland) Act 1810	The whole Act so far as unrepealed
	59 Geo. 3 c. 94	Crown Land Act 1819	The whole Act
35	3 Geo. 4 c. 63	Crown Lands (Ireland) Act 1822	The whole Act so far as unrepealed
	6 Geo. 4 c. 17	Crown Lands Acts 1825	The whole Act
	11 Geo. 4 & 1 Will. 4 c. 46	Illusory Appointments Act 1830	The whole Act so far as unrepealed
40	2 & 3 Will. 4 c. 71	Prescription Act 1832	The whole Act so far as unrepealed
	3 & 4 Will. 4 c. 86	Fines and Recoveries 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

Session and Chapter	Short Title or Subject	Extent of Repeal	
5 & 6 Will. 4 c. 74	Tithes	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	5
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	10
6 & 7 Vic. c. 23	Copyhold Act 1843	The whole Act	
7 & 8 Vic. c. 55	Copyhold	The whole Act	
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	15
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	
8 & 9 Vic. c. 112	Satisfied Terms Act 1845	The whole Act so far as unrepealed	20
9 & 10 Vic. c. 4	Drainage (Ireland) Act 1846	The whole Act so far as unrepealed	
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	25
11 & 12 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	30
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	35
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	40
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	45
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	50

	Session and Chapter	Short Title or Subject	Extent of Repeal
5	15 & 16 Vic. c. 51	Copyhold Act 1852	The whole Act
	15 & 16 Vic. c. 62	Crown Lands Act 1852	The whole Act
	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 in Ireland	The whole Act
10	18 & 19 Vic. c. 39	Leasing Powers Act for Religious Purposes in Ireland 1855	The whole Act so far as unrepealed
	18 & 19 Vic. c. 110	Drainage and Improvement of Lands (Ireland) Act 1855	The whole Act
	19 & 20 Vic. c. 62	Drainage (Ireland) Act 1856	The whole Act so far as unrepealed
15	21 & 22 Vic. c. 42	Prescription (Ireland) Act 1858	The whole Act so far as unrepealed
	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
20	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
25	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
30	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 ( <i>Ireland</i> ) 1863	The whole Act
	26 & 27 Vic. c. 88	Drainage and Improvement of Lands Act ( <i>Ireland</i> ) 1863	The whole Act
35	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
	27 & 28 Vic. c. 114	Improvement of Land Act 1864	The whole Act so far as unrepealed
40	28 & 29 Vic. c. 52	Drainage and Improvement of Lands Amendment Act ( <i>Ireland</i> ) 1865	The whole Act
	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
	29 & 30 Vic. c. 62	Crown Lands Act 1866	The whole Act so far as unrepealed
50	29 & 30 Vic. c. 99	Landed Estates Court Act 1866	The whole Act so far as unrepealed
	31 & 32 Vic. c. 4	Sales of Reversions Act 1867	The whole Act so far as unrepealed

Session and Chapter	Short Title or Subject	Extent of Repeal	
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	
32 & 33 Vic. c. 72	Drainage and Improvement of Lands Amendment Act Ireland 1869	The whole Act	5
35 & 36 Vic. c. 31	Drainage and Improvement of Lands Amendment Act (Ireland) 1872	The whole Act	10
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	
37 & 38 Vic. c. 32	Drainage and Improvement of Lands Amendment Act (Ireland) 1874	The whole Act	15
37 & 38 Vic. c. 37	Powers of Appointment Act 1874	The whole Act so far as unrepealed	
37 & 38 Vic. c. 78	Vendor and Purchaser Act 1874	The whole Act so far as unrepealed	20
38 & 39 Vic. c. 11	Leasing Powers Amendment Act for Religious Purposes in Ireland Act 1875	The whole Act	
39 & 40 Vic. c. 17	Partition Act 1876	The whole Act so far as unrepealed	25
40 & 41 Vic. c. 18	Settled Estates Act 1877	The whole Act so far as unrepealed	
40 & 41 Vic. c. 31	Limited Owners Reservoirs and Water Supply Further Facilities Act 1877	The whole Act so far as unrepealed	30
40 & 41 Vic. c. 33	Contingent Remainders Act 1877	The whole Act	
41 & 42 Vic. c. 59	Drainage and Improvement of Lands (Ireland) Act 1878	The whole Act	
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	35
44 & 45 Vic. c. 65	Leases for Schools (Ireland) Act 1881	The whole Act so far as unrepealed	40
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, 10 and 12	45
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	
50 & 51 Vic. c. 30	Settled Land Acts (Amendment) Act 1887	The whole Act so far as unrepealed	50
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	
52 & 53 Vic. c. 36	Settled Land Act 1889	The whole Act	55

	Session and Chapter	Short Title or Subject	Extent of Repeal
	53 & 54 Vic. c. 69	Settled Land Act 1890	The whole Act so far as unrepealed
	55 & 56 Vic. c. 58	Accumulations Act 1892	The whole Act
5	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
	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
10	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
15	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

## PART 5

### ACTS OF THE OIREACHTAS

	Number and Year (1)	Enactment (2)	Extent of Repeal (3)
20	No. 5 of 1957	Married Women's Status Act 1957	Sections 2(4) and 2(5)
25	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(8), 98(4)(a), 99 and 101
30	No. 27 of 1965	Succession Act 1965	Sections 50(3), 58(2) and 95
	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)
35	No. 6 of 1982	Housing (Private Rented Dwellings) Act 1982	Section 22
	No. 27 of 1988	Bankruptcy Act 1988	Section 64
	No. 18 of 1992	Housing (Miscellaneous Provisions) Act 1992	Section 2(2)
40	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:

- (i) the covenantor and any person conveying by the cov- 10  
enantor's direction;
- (ii) any person through whom the covenantor derives  
title;
- (iii) any person (including a mortgagee) who either holds  
or has held a derivative title from the covenantor for 15  
less than the estate or interest vested in the coven-  
antor or who holds or has held such a derivative title  
from any predecessor in title of the covenantor;
- (iv) 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 25  
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

## IMPLIED COVENANTS

## Paragraph 1 30

## Class 1 Conveyances

*Covenants implied in a conveyance (other than a mortgage) for valu-  
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".* 35

- (1) That the covenantor has the right to convey the subject-  
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 40  
*Part 1*.
- (2) That the person to whom the conveyance is made will  
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.

(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

*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.

(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.

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

(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 property conveyed.

#### 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".*

(1) to (4) Covenants (1) to (4) in paragraph 1.

Those covenants are subject to the following variations, that is to say—

(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*;

(b) covenant (2) (for quiet enjoyment) is not implied against any mortgagor until the mortgagee has lawfully entered into possession of the property 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 property 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.



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

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**EXPLANATORY AND FINANCIAL MEMORANDUM**

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**Introduction**

This Bill provides for a comprehensive reform and modernisation of land law and conveyancing law. It is the result of a joint project undertaken by the Department of Justice, Equality and Law Reform and the Law Reform Commission. The first phase of the project concluded in October 2004 with publication of a Consultation Paper entitled 'Reform and Modernisation of Land Law and Conveyancing Law' [LRC CP — 2004]. This was followed by a consultation phase. The third phase culminated in publication of a Report containing a draft Land and Conveyancing Bill in July 2005 [LRC 74 — 2005].

The reforms contained in the Bill are underpinned by the following set of guiding principles:

- (a) updating the law to make it accord with changes in society;
- (b) promoting simplification of the law and its language to make it more easily understood and accessible;
- (c) promoting simplification of the conveyancing process, especially the procedures involved and the taking of security over land;
- (d) facilitating extension of the registration of title system with a view to promoting its use; and
- (e) facilitating introduction of an eConveyancing system as soon as possible.

The Bill provides for the repeal — in whole or in part — of about 150 pre-1922 statutes and their replacement, where appropriate, with statutory provisions more suited to modern conditions. It also repeals certain provisions in Acts of the Oireachtas which will no longer be required following its enactment.

Apart from these statutory provisions, much current law and practice relating to land ownership and land transactions is based on the system introduced to Ireland by the Normans from the 12th century onwards. A key feature was the feudal notion of land tenure whereby

all land was held from the Crown. The Bill abolishes feudal tenure in so far as it survives and updates the law relating to land ownership. It also abolishes various common law rules resulting from court decisions and conveyancing practices over the centuries.

Another significant feature of land and conveyancing law as it has evolved has been the development of equitable jurisdiction by the courts in order to temper the harshness or rigidity of the common law. This has led to the important distinction between “legal” ownership of land and “equitable” or, as it is often referred to, “beneficial” ownership. A good illustration of this distinction is the trust under which the legal title to property is vested in a trustee (or trustees) who is obliged to hold or use the property entirely for the benefit of others i.e. the “beneficiaries”. Under the Bill’s provisions, the courts will remain free to exercise their equitable jurisdiction to develop the law in order to accommodate changing circumstances and conditions.

While this Bill introduces many changes to the common law relating to land ownership and land transactions, it recognises that it will otherwise continue to operate and to develop. A consequence of this is that well-established concepts which are still of relevance in modern times are retained, though often subject to modifications set out in the Bill and explained later. The marginal notes which appear alongside various provisions throughout the Bill indicate that the provision concerned replaces an existing statutory provision either by retaining its substance or by modifying it.

## **Provisions of the Bill**

### **PART 1 — PRELIMINARY AND GENERAL**

*(Sections 1 to 8)*

*Sections 1 to 8* contain provisions of a general nature dealing with such matters as commencement, interpretation, service of notices, regulations, offences and repeals.

*Section 2* makes provision for different parts of the Bill to be implemented at different times. For example, the provisions relating to future interests contained in Part 3 will not be implemented until legislation on variation of trusts is enacted (as recommended in the Law Reform Commission’s *Report on Variation of Trusts* (LRC 63 — 2000).

*Section 3* adapts or adopts definitions to be found in various statutes relating to land and conveyancing, including statutes being replaced such as the Conveyancing Act 1881 and Settled Land Act 1882. In one instance a definition differs from the one to be found in the Interpretation Act 2005. This is the definition of “land” which is given an extended meaning. It makes it clear that land includes both the airspace above and substratum below the surface and layers of these, however the division is made. It has become increasingly common in modern times for transactions to be entered into with respect to such airspace before any buildings are erected to fill the airspace. The definition confirms that such transactions are valid (as was recognised by the common law in cases decided over a century ago).

*Section 4* provides for service of notices under this Bill, e.g. notices by a mortgagee requiring payment of mortgage money under *section 97(1)(a)* or giving particulars of a sale under *section 99(2)*. Under *section 82*, these provisions may also be applied to the service of

notices required by private documents, unless the document in question provides otherwise.

*Section 5* provides for the making of regulations to deal with prescribed matters or otherwise generally to give effect to the Bill. *Section 6* provides for offences such as fraudulent concealment of title documents or falsification of a title under *section 58*.

*Section 8* provides for consequential amendments of other statutes (set out in *Schedule 1*), other than those relating to the Registration of Title Act 1964 which are included in Part 11. Apart from the amendments set out in *Schedule 1*, *subsection (2)* provides a more general amendment of provisions in statutes cross-referring to some statutes being repealed by, but with replacement provisions being contained in, this Bill. These are the Conveyancing Acts 1881 to 1911 and the Settled Land Acts 1882 to 1890. Under *subsection (2)* such cross-references are to be read as referring to the equivalent or substituted provision in this Bill. *Section 8* also provides for the repeal of the numerous pre-1922 statutes set out in *Schedule 2*. This also repeals some provisions in post-1922 Acts of the Oireachtas.

## **PART 2 — OWNERSHIP OF LAND**

*(Sections 9 to 14)*

*Sections 9 to 14* contain provisions to reform and modernise the ownership of land. They remove the remaining vestiges of the old feudal system of landholding introduced by the Normans to Ireland in the 12th century. In particular, the concept of tenure, whereby all land was held from the Crown is abolished. This concept is not compatible with the relationship between the State and its citizens as prescribed by the Constitution. Also abolished are methods of landholding developed by conveyancers over the centuries to meet the needs of earlier times but which are no longer of relevance to modern conditions or will cease to be of significance as a result of other provisions of the Bill. This applies to creation of a fee tail, fee farm grants and leases for lives.

The Bill retains the concept of an “estate” in land which was also part of the feudal system, because this remains a central feature of the modern system of land ownership. The notion of dividing ownership according to different periods of time is what makes land ownership under a common law system flexible. It enshrines the fundamental principle that what is owned is not the physical entity, the land, but rather some estate (giving substantial rights in respect of the land such as the right to occupy it) or interest (giving less substantial rights such as the limited use given by an easement comprising, for example, a right of way over a road on the land, or a *profit à prendre* comprising a right to cut and take away turf) in the land. The full ownership of any particular parcel of land comprises these various estates and interests, including equitable interests, such as those existing under a trust of the land. Article 10.1 of the Constitution refers expressly to “estates and interests” (in the context of natural resources). How many of the various estates and interests will exist in respect of a particular parcel of land will vary from case to case. As part of its objective of simplifying the law, the Bill reduces substantially the number of estates which can be created in future.

### *Ownership and abolition of feudal tenure*

*Section 9* abolishes the feudal concept of tenure but preserves the concept of estates and interests in land as described above. What these estates and interests are is specified in *sections 10 to 14*. Further

provisions relating to particular estates and interests are contained in *Parts 3 to 10* of the Bill. *Subsection (3)* makes it clear that the abolition of feudal tenure does not affect connected matters which remain of relevance in modern times. Thus the position of the State as regards State property under the State Property Act 1954 (for which provision is made by Article 10 of the Constitution), and as ultimate intestate successor to a deceased person's property under section 73 of the Succession Act 1965, is preserved.

Also preserved is a principle which was enshrined in an early feudal statute which was applied to Ireland by Poyning's Act 1495, the Statute Quia Emptores 1290. This is usually referred to as the rule against inalienability and it means that the owner of the largest "freehold" estate, the fee simple, is free to dispose of it. This principle, which contrasts with the position of the owner of a "leasehold" estate, i.e., a tenant in the modern sense who is usually subject to some restriction on alienation, has been invoked in and applied by the Irish courts in recent times: see *Re Dunne's Estate* [1988] IR 155. *Section 12* prohibits the future creation of a fee farm grant, a type of grant which became particularly common in Ireland. In essence it involved the grant of a freehold estate (a fee simple) subject to (potentially) a perpetual rent (i.e., one which would be payable so long as the fee simple, which is the largest estate recognised by the law, lasted). However, *section 12* does not affect existing fee farm grants, which comprise several categories. One of the common categories developed in earlier times in Ireland was a grant involving feudal tenure. Such grants were prohibited by the Statute Quia Emptores 1290 but it was the practice of the Crown when making grants of Irish land in the sixteen and seventeenth centuries to do so "non obstante Quia Emptores", i.e., in derogation of the statutory prohibition. Numerous Acts of the Irish Parliament in the seventeenth century confirmed such grants and because some of them may survive, *subsection (3)* contains a saving for them. It also contains a saving for customary rights or franchises (such as the right to hold a fair or to run a ferry) which were commonly granted by the Crown in earlier times and a few of which may survive. Article 10 of the Constitution again refers to "franchises".

#### *Estates and interests in land*

*Section 10* confirms that the concept of "estates" and "interests" is being retained as denoting the nature and extent of land ownership. As explained earlier, this is the fundamental principle of ownership under the common law system which applies to Ireland and many other parts of the world, but which distinguishes it from civil law systems which apply elsewhere. It also confirms that estates will retain their long-established characteristics apart from any derived from the concept of tenure. This is, however, subject to the other provisions of the Bill, which introduce substantial changes. Apart from the prohibition on future creation of fee farm grants introduced by *section 12*, *section 13* prohibits the future creation of a fee tail and converts most existing ones into a fee simple. Under Part 4 of the Bill, in future the other "freehold" estate recognised by the common law, the life estate, will cease to be a legal estate and will, in future, confer an equitable interest only under a trust of the land (see *section 18(4)*).

#### *Legal estates and interests*

*Section 11* elaborates upon *sections 9* and *10* by specifying the various estates and interests which in future can make up ownership of land. The section is concerned primarily with legal ownership or title to the land, but *subsection (7)* recognises that other interests may

become recognised by the courts in exercise of their equitable jurisdiction. In recent times the courts have developed the equitable doctrines of proprietary estoppel and constructive and resulting trusts, whereby a person who is the strict legal owner of land may be regarded as holding it subject to some equitable interest of another person. *Subsection (6)* also confirms the existence of other equitable estates or interests, which may or may not be the equivalent of the legal ones specified in *subsections (1) to (4)*. *Subsection (1)* confines legal estates in future to the freehold and leasehold estates specified in *subsections (2) and (3)*. The only former “freehold” estate to continue as a legal estate is the largest one recognised by the common law, and the nearest it ever came to recognising absolute ownership, the fee simple.

Ownership of land will remain subject to statutory limits. Under section 73 of the Succession Act 1965 land may pass to the State as the ultimate intestate successor, i.e., where the deceased owner failed to make a valid will disposing of the land, and so dies intestate, and had no surviving relatives or next-of-kin capable of succeeding as intestate successors under the 1965 Act. Land may become the subject of compulsory purchase under statutory powers conferred on public or other statutory bodies. Many restrictions on the development or use of land are imposed by statutes such as the Planning and Development Act 2000. These powers and restrictions on ownership all derive from statute and do not depend on any former Crown rights derived from the concept of tenure or, indeed, any rights of the State as successor to the Crown or under the Constitution. They are, therefore, not affected by the abolition of the concept of tenure.

The other legal estate recognised is a leasehold estate which arises when a tenancy in the modern sense of the relationship of landlord and tenant is created. Under section 3 of Deasy’s Act (the Landlord and Tenant Law Amendment Act, Ireland, 1860) that relationship is based on the parties’ contract or agreement and not on tenure. Such tenancies remain extremely common in relation to both commercial and residential property and have been the subject of much legislation passed by the Oireachtas, such as the Landlord and Tenant Acts 1967 to 1994 and Residential Tenancies Act 2004. The definition of “tenancy” in *section 3* refers to the relationship of landlord and tenant.

Since *section 11* is concerned primarily with the legal title to land, *subsection (2)* provides that it is a fee simple “in possession” only which confers such title. If the fee simple is owned by a person “in reversion” or “in remainder”, some other person will be entitled to some interest in possession. For example, if X, the owner of a fee simple, grants a life estate to A, A has a life estate in possession and X has a fee simple reversion which will not fall into possession until A dies. If, instead, X grants a life estate to A, with remainder to B in fee simple, B has a fee simple remainder which again will not fall into possession until A dies. Both these dispositions are typical settlements of land which under current law attract the provisions of the Settled Land Acts 1882 to 1890. Those Acts are replaced by the provisions in Part 4 under which the land will be held under a trust.

Under Part 4 the legal title, i.e., a fee simple in possession, will be held by trustees on trust for, in the first example, A and X and, in the second example, A and B. The interests of A (the life estate), X (the fee simple reversion) and B (the fee simple remainder) will all be equitable or beneficial interests only. The trustees will be able to deal with the land, but only in the interests of the beneficiaries. The identity of the trustees is dealt with in *section 19*.



The Bill recognises that in certain situations it is not appropriate to impose the trust regime despite the fact that fee simple held by a person is modified or qualified in some way. *Subsection (2)* lists these cases, which all involve a relatively minor qualification on the ownership of the fee simple. *Paragraph (a)* refers to a “determinable fee” which is a fee simple subject to the possibility — and it is only a possibility — that it may end prematurely, i.e., unlike an unqualified fee simple which potentially can last forever. An example would be a grant by X, owner of a fee simple, to A in fee simple until Dublin ceases to be the capital city of Ireland. That event may never happen and the only interest which X has is a possibility of reverter, i.e., the possibility that the event will occur, in which case the fee simple will revert automatically to X. Because this is such a remote possibility, it is appropriate that A should be regarded as the real legal owner of the land and there is little point in imposing a trust of the land in such cases.

*Paragraph (b)* deals with a similar case, a “fee simple subject to a right of entry or of re-entry”. For example, X may grant a fee simple to A, but include a condition that if Dublin ceases to be the capital city of Ireland, X or some other person may exercise a right of entry or re-entry. The nature of these rights is explained in *subsection (10)*. In essence, a right of entry is simply a right to retake possession for a temporary period (e.g., until some obligation is performed), whereas a right of re-entry is the right to take the land permanently, thereby forfeiting the previous owner’s estate or interest.

*Paragraph (c)* lists other cases where the fee simple is subject to some minor qualification. *Subparagraph (iii)* refers to a “right of residence” which is commonly granted to the spouse of a farmer who has left the farm to a child. It has long been held by the Irish courts that in such cases the spouse does not have a substantial interest, such as a life estate, unless the right of residence is an exclusive one relating to the entire farm. If it is, which would be a comparatively rare case, then the farm should be regarded as settled on the spouse for life with remainder to the child in fee simple and the trusts provisions of Part 4 should apply. If, as is more common, the right of residence falls short of this, the child should be regarded as the legal owner, subject to a licence to occupy the farmhouse (or whatever part of the farm the right of residence relates to), or a charge or lien owned by the spouse. Over the years the Irish courts have held that the nature of the interest under a right of residence varies according to the circumstances of the case. This distinction drawn between an exclusive right over the whole land and other rights of residence is also drawn by section 81 of the Registration of Title Act 1964.

The other legal estate which will continue to be recognised is a leasehold estate which arises when a “tenancy” is created. The definition in *section 3* makes it clear that this is the modern relationship of landlord and tenant which, as mentioned earlier, under section 3 of Deasy’s Act 1860 is based upon the contract of the parties and not on tenure. *Subsection (3)* makes it clear that most types of tenancy created in modern times come within this concept, including, in particular, a tenancy for a fixed period of time and a “periodic” tenancy such as a weekly, monthly or yearly tenancy which runs for the successive periods until either party serves notice on the other to end it. Excluded, however, are the categories prohibited by *sections 12* and *14*.

Also excluded by the definition in *section 3* are categories where it has long been disputed whether they truly create the relationship of landlord and tenant. One is a tenancy at will where the occupier

occupies the land entirely at the will of the owner who is entitled to evict the occupier at any time. The modern view is that such an arrangement is more properly regarded as a mere licence to occupy. Apart from that, since usually no rent is payable (if it were, the arrangement would more likely be regarded as a periodic tenancy) the arrangement does not come within Deasy's Act, section 3 of which requires "consideration of any rent" for creation of the relationship of landlord and tenant. The other exclusion is a tenancy at sufferance which arises when a former tenant continues in occupation, without the agreement of the landlord, after the tenancy has ended. It has long been recognised that, notwithstanding the description of this situation as a tenancy, the "tenant" is, in strict law, a trespasser subject to the law which applies to such a person.

*Section 11(4)* lists the various legal interests which may also be owned, i.e., minor interests in respect of land which fall short of the estates in land (the fee simple in possession or a tenancy) which confer major rights in respect of the land, such as the right to possess or occupy it to the exclusion of other persons. These interests confer only limited rights in respect of land which is owned by some other person or persons for some estate.

*Paragraph (a)* refers to an "easement" which is one of the most common rights which an owner of land may have in respect of a neighbour's land. What constitutes an easement has been the subject of much caselaw and the courts have made it clear that the rights which may be recognised as coming within the concept are not necessarily closed. Well-established easements are a right of way over a neighbour's land, a right of support to a building provided by a neighbour's land and a right to light to windows in a building coming over a neighbour's undeveloped land.

*Paragraph (b)* refers to a "freehold covenant", i.e., the right of one fee simple owner to enforce a covenant (such as one requiring repair of a wall or fence separating the properties or restricting the use of land to private residential purposes) against a neighbour's land. This area of the law is modified substantially by *sections 46 to 48*. Both *paragraphs (a) and (b)*, and other paragraphs (*(f)* and *(h)*), refer to what are commonly referred to as "appurtenant" rights, i.e., they are rights which one landowner is entitled to exercise over land owned by a neighbour. As such they are appurtenant to the owner's land, rather than the owner personally. Thus, when the landowner transfers his interest in the land to another person, the right over the neighbour's land passes with the land to that other person who then becomes entitled to enforce the right. Conversely, if the landowner whose land is subject to the rights transfers that land to another person, the burden of those rights passes with the land and that other person becomes subject to them. The law relating to such "appurtenant" rights is substantially modified in Part 7.

*Paragraph (c)* refers to an "incumbrance". The definition in *section 3* of the Bill makes it clear that this covers the wide variety of annuities, liens and other charges over land which may be created in favour of other persons. For example, where land is settled on A for life, with remainder to B in fee simple, and A and B are members of the settlor's family, various other members of the family may be provided for by making A's and B's interests in the land subject to charges like annuities (to provide an income) or portions (to provide a capital sum).

The other main type of incumbrance is a mortgage providing security for a loan made by a lending institution, like a bank or building society. The law of mortgages is substantially modified in Part 9.



Another particular type of mortgage which is commonly created is a judgment mortgage registered by a judgment creditor against the judgment debtor's interest in land. The law relating to judgment mortgages is substantially modified in Part 10.

*Paragraph (d)* refers to a “rent payable under a tenancy”. The right to receive such rent was long regarded as an interest owned by the landlord distinct from the landlord's reversion, e.g., the fee simple which will fall into possession when the tenancy ends. As such it may be assigned to someone else, so that that person becomes entitled to receive the rent, while the landlord retains the reversion and the right to enforce other provisions of the tenancy, such as repairing covenants. *Paragraph (e)* refers to a “possibility of reverter”. As explained earlier in connection with the fee simple estate, this is what is owned by the grantor of a determinable fee. *Subsection (9)* makes it clear that such a possibility is an interest which may be disposed of to someone else.

*Paragraph (f)* refers to a “*profit à prendre*, including a mining right”. These, like easements, are amongst the most common rights which can be exercised in respect of someone else's land. Often they too are “appurtenant” rights, but an important difference is that a profit can also be owned “in gross”, i.e., owned by a person who is not a neighbouring landowner; indeed, a profit can be owned by a person who owns no interest in any land other than the rights in respect of the land which is subject to the profit. A *profit à prendre* is the right to go onto someone else's land and to take from it something which exists on it naturally. The well-established examples are mining rights, the right to cut turf (turbary), the right to graze animals (pasture) and various sporting rights (to fish and hunt wild game).

*Paragraph (g)* refers to a “public or customary right”. A typical example of a public right is a public right of way similar to an easement. The difference is that the right of way is exercisable in this instance not just by a neighbouring landowner but by the general public. Customary rights are usually enjoyed by people in a particular locality, such as a right to use a park or recreational area.

*Paragraph (h)* refers to a “rentcharge”, which is to be distinguished from rent payable under a tenancy. It arises where the rent payable by a landowner is a charge on the land and no relationship of landlord and tenant exists between the person entitled to the rent and the rentpayer. Such rentcharges used to be created as part of a settlement of land and some arose under statutory provisions. They are rarely created nowadays and *section 39* largely prohibits their future creation. However, *paragraph (h)* is a saving for existing ones and new ones which may be created in the future under, e.g., a statute.

*Paragraph (i)* refers to a “right of entry or of re-entry attached to a legal estate”. The nature of such rights, which are defined in *subsection (10)*, was explained earlier in connection with the fee simple estate, but it should be noted that they may also attach to a tenancy. A right of re-entry is invariably reserved by a landlord for breach of covenant by the tenant. *Paragraph (j)* refers to a “wayleave or other right to lay cables, pipes, wires or other conduits”. Such rights are commonly owned by utility bodies providing services like the supply of electricity, gas and water. *Paragraph (k)* is a residuary provision which permits the creation of other rights by statute.

*Subsection (5)* makes it clear that, subject to modifications made by this Bill, the various legal estates and interests retain their well-established attributes. It also confirms what has always been the case, namely, that different persons may own different estates and interests at the same time or in succession in respect of the same land.

*Subsection (8)* confirms that powers which persons may have to dispose of interests in land, such as a power of attorney or power of appointment, continue to operate as before following enactment of this Bill.

*Subsection (9)* clarifies the law by providing that all estates and interests in land, whether legal — as listed in *subsections (1)* and *(4)* — or equitable, may be disposed of. In the past doubts have been expressed as to whether this applied to something like a possibility of reverter on the ground that it comprised only a “possible” interest rather than an “actual” one.

#### *Fee farm grants*

*Section 12* prohibits the future creation of fee farm grants. Such grants involve the grant of a fee simple subject to payment of a perpetual (fee farm) rent. As such they confuse the nature of a freehold (without a rent) estate and leasehold (with a rent) estate. They were once very common and different categories have been created over the centuries. The definition in *section 3* includes all these categories.

Mention was made earlier of feudal grants made out of land granted by the Crown “non obstante Quia Emptores”. Other grants involved creation of a rentcharge. Since the 19th century most grants involved creation of the relationship of landlord and tenant under Deasy’s Act or resulting from conversion of leases for lives or years under statutes like the Renewable Leasehold Conversion Act 1849. Such grants are rarely created nowadays and usually only because it is desired to make covenants bind freehold land on the basis of leasehold law. The need for this is removed in *sections 46* to *48* and so, in the interests of simplifying the law, the future creation of fee farm grants is prohibited. This accords with the policy laid down by the Oireachtas in ground rents legislation which prohibits the granting of leases of dwellings at a ground rent and confers the right on lessees to acquire the fee simple. The definition of “fee simple” in this legislation made it clear that the prohibition on leases covers fee farm grants and that a fee farm grantee may use the legislation to buy out the rent and become relieved of covenants in the grant.

*Subsection (2)* provides that any attempt to create a fee farm grant in future will fail and will instead vest a fee simple in the grantee, which, under *subsection (3)*, will not be subject to any rent. However, it will be subject to any covenants or provisions which are consistent with such a fee simple such as covenants rendered enforceable in *section 47*. *Paragraph (b)* of *subsection (2)* is included because the Bill repeals the Renewable Leasehold Conversion Act 1849. Section 37 of that Act provided that any post-1849 lease for lives or years perpetually renewable automatically operated as a fee farm grant. With its repeal, it is necessary to make provision for the effect of any such lease granted after the commencement of *section 12*. *Subsection (4)* contains a saving for any contract to make a grant entered into before that commencement.

*Subsection (5)* provides a saving for existing fee farm rents. Such rents are not listed amongst the legal interests that may be created or disposed of in *section 11(4)* because that provision is concerned

with the future. While *section 12* prohibits the future creation of fee farm rents, *subsection (5)* provides that existing ones continue as legal interests and may be disposed of notwithstanding that they are not listed in *section 11(4)*.

#### *Fee tail*

*Section 13* prohibits the future creation of a fee tail estate. This was the product of the ancient Statute De Donis Conditionalibus 1285 which was designed to enable feudal landowners to ensure that their land was passed down through generations of the same family. Such family settlement belong to a different era and their effectiveness was greatly reduced by later legislation such as the Fines and Recoveries (Ireland) Act 1834 which enabled an owner in tail to “bar the entail” by executing a “disentailing assurance” (thereby creating a fee simple) and the Settled Land Acts 1882 to 1890 which gave an owner in tail the powers of a tenant for life to sell the fee simple.

*Subsection (2)* provides that any future attempts to create a fee tail will instead create a fee simple. *Subsection (3)* converts most existing fees tail into fees simple thereby achieving automatically what the owner in tail could achieve by executing a disentailing assurance under the 1834 Act. That analogy is carried forward in *subsection (4)*. Under the 1834 Act a barring of the entail was not effective if the consent of the “protector” was not obtained. The protector was usually the owner of a prior interest in the land (but it could be someone else named in the grant), e.g., where the land had been granted to A for life, remainder to B in fee tail, remainder to C in fee simple. So long as A was alive, B could not create a fee simple by executing a disentailing assurance unless A consented to it. Instead, the assurance could create only a “base fee” under which the successors to the fee tail would be barred but not the owner of a remainder like C. *Paragraph (a)* preserves this position so long as the protectorship exists, but once it ends, e.g., on the death of A, the automatic conversion provisions of *subsection (3)* will apply.

Those provisions will also apply under *paragraph (b)* to the other category of a base fee, often referred to as a “determinable” or “voidable” one. This arises where the disentailing assurance has not been enrolled within 6 months in the High Court as required by the 1834 Act, a technicality which was often forgotten. The automatic conversion provisions would not apply, however, to the owner of a fee tail “after possibility of issue extinct”, often referred to as an “unbarrable” entail. This arises where a fee tail “special” has been created, whereby the successors of the original owner must be the children of a specified spouse. If that spouse predeceases the original owner of the fee tail and they have no children, the owner (notwithstanding that he or she may subsequently have children with a new spouse) becomes, in effect, the owner of a life estate only and on his or her death (since there are no successors to the fee tail) the person entitled to the reversion or remainder following the fee tail must succeed to the land. The owner of the fee tail after possibility of issue extinct cannot execute an effective disentailing assurance. *Subsection (4)* recognises this and preserves the rights of the owner of the reversion or remainder due to fall into possession on death of the owner of the fee tail.

*Subsection (5)* clarifies the effect of the automatic vesting of a fee simple under *subsection (2)* (failed attempts to create a fee tail in the future) and *subsection (3)* (conversion of existing fees tail). Following again the analogy of the effect of a valid disentailing assurance under the 1834 Act, the interests of those entitled to reversions or remainders if the fee tail ever came to an end cease to exist. However,

*paragraph (b)* provides that if the fee tail was subject to some modification or qualification entitling some other person to take the land “in defeasance” of the fee tail, and that provision would be valid if attached to a fee simple, it will continue to attach to the fee simple vesting under *subsections (2) or (3)*. An example of such a “defeasance” condition would be a grant to A in fee tail, but if Dublin ceases to be the capital city of Ireland, then to B in fee simple. The fee simple vesting in A under *subsections (2) and (3)* would remain subject to the right of B to take it if the event specified occurs. *Section 11(2)(b)* recognises that such a provision can attach to a fee simple in possession.

#### *Leases for lives*

*Section 14* prohibits the future creation of various categories of leases for lives or for a combination of lives and a period of years. Such grants were once fairly common but are now obsolete. Their prohibition facilitates simplification of the law. The Law Reform Commission took the view that they are so rare in modern times that there was no need for conversion provisions relating to any existing ones. What few ones exist can be left to run their course.

### **PART 3 — FUTURE INTERESTS**

*(Sections 15 to 17)*

Part 3 introduces a substantial simplification of the various rules governing “future interests” in land and, in some cases, such interests in other property. Future interests are interests which do not “vest” in, i.e. come into the possession of, the persons entitled to them until sometime in the future, usually because the land (or other property) is vested in someone else in the meantime. Examples already mentioned are reversions and remainders which generally do not give rise to problems because there is no doubt that they will eventually vest in the person entitled; they are said to be vested “in interest” pending their vesting “in possession”.

The early common law had more difficulty with what are referred to as “contingent” future interests where there was no vesting “in interest” from the beginning because, in addition to prior interests having to run their course, some other condition had to be satisfied or event had to occur before any vesting took place. The disposition could not vest even in interest unless and until that contingency had been met. In early times the common law was concerned that this might result in a period of time when the land would be vested in no-one and so feudal dues payable in respect of the land could not be collected. This resulted in the development of complicated rules designed to avoid such a gap or “abeyance” in what was referred to in feudal times as the “seisin” of the land. These rules were known as the common law contingent remainder rules. Later, as settlements and trusts of land (and of other property) became more and more sophisticated, the courts developed a range of other rules designed to restrict the ability of settlors to decree the ownership of property far into the future. These were rules such as the Rule in *Whitby v Mitchell* and the rule against perpetuities.

The Law Reform Commission has concluded that all these rules have served their purpose and that they now give rise to unnecessary complications in the law. Even worse, their application often thwarted the intentions of settlors and created a trap for them and their professional advisers. It recommended that the various rules should be abolished, but subject to an important qualification. Since the abolition of the various rules would enable future settlors to

create settlements and trusts deciding the ownership of property far into the future, there is a risk that future owners might find themselves saddled with a scheme of ownership which is unsuitable. In order to provide a means whereby future generations might secure a modification to a scheme set up many years previously, the Commission recommended that abolition of the rules relating to future interests should be accompanied by the enactment of provisions to permit the variation of trusts. This will be provided for in other legislation.

*Section 15* confirms, as explained earlier, that most future interests in land will be equitable ones only, existing under a trust of land under Part 4. There are, however, two exceptions to this. These are a possibility of reverter and right of entry or re-entry attached to a legal estate. The point about these interests is that they can also exist as legal interests and so are included in the list of such interests in *section 11(4)*.

*Section 16* lists the various rules which are being abolished. As regards *paragraph (a)*, apart from the fact that the original purpose of the contingent remainder rules, i.e., the collection of old feudal dues, has long disappeared, the dangers of a gap in the “seisin” or title to land is removed under the Bill. Under Parts 2 and 4, future interests, whether contingent or not, will in most cases be equitable interests only because the legal title to the property — either a freehold or leasehold estate — will always be vested in possession. Where a settlement or trust creates a succession of future interests, the legal title will be held by trustees and the future interests will be equitable only.

As regards *paragraph (b)* the rule in *Purefoy v Rogers* is an arcane rule connected with the contingent remainder rules and it falls with them. For the same reason, the Contingent Remainders Act 1877 is repealed in *Schedule 2* without any replacement. As regards *paragraphs (c)* and *(d)* these are the later rules developed by the courts to restrict settlors’ powers of disposition of not only land but also other property. *Paragraph (e)* concerns a rule which was originally developed by the courts and then modified substantially by the Accumulations Act 1800. While that Act did not apply to Ireland, confusion arose because later amending legislation, the Accumulations Act 1892, did apply. The 1892 Act is being repealed without replacement.

*Section 17* explains the scope of *section 16*. In summary, the abolition of the various rules listed in *section 16* applies to existing settlements and trusts subject to the important qualifications stated in *section 17*. Those qualifications are designed to protect any person whose position would be materially altered to that person’s detriment because of a distribution or other dealing with property or other actions or omissions committed in reliance on an interest being invalid by virtue of the application of any of the rules being abolished. The time for assessing whether a person has materially altered his or her position is after the abolition of the rules.

## **PART 4 — TRUSTS OF LAND**

*(Sections 18 to 22)*

This Part provides for a radical overhaul and considerable simplification of the law relating to settlements and trusts of land. Many settlements — which involve settling the ownership of the land for successive generations, usually of the same family — do not involve use of a trust. Instead, the land is given by a deed or will to different



persons in succession, e.g., to A for life, remainder to B in fee simple. Sometimes a trust is used so that instead the land is given to trustees to be held by them on trust for the successive beneficiaries. The type of trust used may vary; one may require the trustees to hold on to the land whereas another may be a trust “for sale” requiring the trustees to sell the land at the earliest opportunity, invest the proceeds and hold those investments instead for the beneficiaries.

The law governing settlements and trusts had become complicated. One reason is that while the Settled Land Acts 1882 to 1890 applied to settlements without any trust (usually referred to as a “strict settlement”) and trusts to hold land, they did not apply in the same way to trusts for sale. Part 4 clears up this confusion by replacing the 1882 to 1890 Acts with a single and much more straightforward trust of land scheme. An important aspect of this scheme is that the legal title to the land will always be vested in trustees and they will have full powers of dealing with it and using it for the benefit of the beneficiaries.

*Section 18* specifies the various kinds of settlements and trusts relating to land which will comprise a “trust of land” coming under Part 4. In essence, it covers every kind of settlement (whether or not the instrument creating it creates an express trust), holding trusts and trusts for sale whereby land is to be held for persons in succession to each other, and any other situation where land is subject to a trust, including a constructive or resulting trust declared by a court. It also covers the situation where land is owned by a minor which is also the position under the Settled Land Acts 1882 to 1890. The only exception to this rule is in *subsection (8)*. This is where land is held directly for a charitable purpose. The view has been taken that the law relating to charities gives rise to special considerations and they have long been the subject of special legislation such as the Charities Acts 1961 and 1973.

*Subsection (3)* makes it clear that any trust of land is governed by the general law of trusts, subject to Part 4. The general law comprises the body of law built up by the courts over the centuries relating to, for example, trustees’ duties owed to beneficiaries (based on the principle that they must act always in the interests of the beneficiaries and not seek personal gain) and statute law, such as the provisions of the Trustee Act 1893 dealing with administration of trusts and trustees’ powers.

*Subsection (4)* makes it clear that the conversion of a life estate into an equitable interest under a trust by *section 11* and *15* does not affect a life owner’s liability for waste. The doctrine of waste was developed by the courts to protect the interests of persons entitled to succeed to land after a prior owner holding a limited interest like a life estate. It prohibits such a prior owner from damaging the property (laying waste to it) while he or she occupies it. Such an equitable life owner may, under *section 20(2)*, be permitted by the trustees to occupy or use the land.

*Subsections (5) and (6)* re-enact the substance of the provision in the Life Estates Act 1695 that, after a life owner has been unheard of for at least seven years, there is a presumption that he or she is dead and so it is safe to allow a successor to enjoy the land. *Subsection (7)* provides that any party to a conveyance is to be presumed to have attained full age. Under *section 18(1)(c)* if the person in question was a minor, a trust of that person’s interest in the land would exist and the legal title to it would be vested in, and could only be disposed by, the trustees rather than the minor.

*Section 19* specifies the identity of the trustees of the land depending upon the different situations which will attract the provisions of Part 4. Where a strict settlement not involving an express trust exists at the commencement of Part 4, it will become a trust of land under *section 18(1)(a)*. However, in order to preserve some continuity with the previous law governed by the Settled Land Act 1882 (under which the tenant for life had limited powers of dealing with the land, subject to an indirect role of trustees of the settlement), *section 19(1)(a)* provides that the trustees will be the tenant for life together with the trustees of the settlement. Where a settlement is created after the commencement of Part 4, it will involve a trust and the instrument creating it should specify the trustees. *Paragraph (b)* of *subsection (1)* lists in order of priority other persons connected with the settlement or trust who may become the trustees if none are specified by the instrument creating the trust, such as, in the case of a trust arising under a will, the testator's personal representatives. *Paragraph (c)* applies these provisions to cases where a trust arises under Part 4 because the land is vested in a minor. *Paragraph (d)* deals with other trusts of land which do not involve a settlement creating a succession of interests, such as a constructive or resulting trust declared by a court or a bare trust (where land is vested by the owner in a nominee). In all such cases the person holding the legal title is the trustee.

*Subsection (2)* clarifies the provisions of *subsection (1)* while *subsection (3)* confirms the usual "fallback" provision that as a last resort an application can be made to court for appointment of a trustee.

*Section 20* simplifies the law by removing the need to spell out in detail the various powers of trustees. Instead, under *subsection (1)*, all the powers of an owner to convey or otherwise deal with the land are conferred on the trustees. *Paragraphs (a)* and *(b)*, however, contain very important qualifications on these powers. They are subject to the duties of trustees, which, under the general law of trusts, are aimed at ensuring that the trustees always act in the interests of the beneficiaries. They are also subject to any restrictions imposed by statute law or the general law of trusts or any instrument or court order relating to the land. It will, therefore, remain open to future settlors or testators to impose restrictions on the trustees' powers.

*Subsection (2)* clarifies the powers conferred by *subsection (1)*. *Paragraph (a)* makes it clear that it will be open to the trustees to permit a beneficiary to occupy or make other use of the land on such terms as the trustees think fit. Their duties under the general law of trusts to have regard to the interest of all the beneficiaries, and to act impartially towards them, might require them to consider charging the beneficiary a rent for such occupation or use or payment of outgoings. *Paragraph (b)* makes it clear that it would be open to the trustees to sell a property which is too large or unsuitable for occupation by a beneficiary and to reinvest the proceeds in purchase of a more suitable property. This might be a property outside the State so as to enable a beneficiary to live near a close or only relative.

*Section 21* clarifies and simplifies the position of a purchaser of land from a trustee of any kind. This applies not only to the case where an express trust has been created but to any case where the legal owner is holding the land subject to some equitable interest, such as one which a court would enforce by way of a constructive or resulting trust or by application of an equitable doctrine such as proprietary estoppel.

*Subsection (1)* establishes the general rule of “overreaching”, i.e., that a purchaser from the trustee or legal owner gets a good title to the land. *Paragraph (a)* makes it clear that this general rule is not affected by the fact that the purchaser has notice of the equitable interest. As *subsection (5)* makes clear a consequence of “overreaching” is simply that the equitable interests previously attaching to the land attach thereafter to the proceeds of the sale or other conveyance of the land. Those proceeds will be in the hands of the trustee or trustees who will remain subject to the duties attaching under the general law of trusts to a trustee. The proceeds will have to be held, and usually invested on behalf of, the beneficiaries previously owning equitable interests in the land. This will not be the concern of the purchaser of the land and in this way conveyancing will be facilitated. *Paragraph (b)* of *subsection (1)* re-iterates this because it has long been a matter of controversy how far purchasers, or those advising them, had to make enquiries as to potential equitable interests held by persons in occupation of the land other than the legal owner.

*Subsection (2)* clarifies when overreaching of equitable interests operates in favour of a purchaser. In the case of express trusts, including where land is held for a minor, the conveyance must be by at least two trustees or a trust corporation, i.e., a corporation authorised to act as a trustee (as provided for by section 30(4) of the Succession Act 1965). This is designed to minimise the risk of an inappropriate disposal of the land. There are, however, other safeguards in addition to the general duty of the trustees to act in the interests of the beneficiary, breach of which can involve very severe penalties on the trustees personally. Any beneficiary, or other interested person, who objects to the actions of the trustees will be entitled to seek a court order under *section 22*. Under *subsection (3) (a)* no overreaching in favour of a purchaser will operate where the conveyance is made for a fraudulent or other improper purpose of which the purchaser had actual knowledge at the date of the conveyance or to which the purchaser was a party. This would be particularly important where the conveyance is made by a single legal owner who may not be an express trustee (but would be regarded by a court as a constructive or resulting one) or may be a nominee holding the land for a sole beneficial owner rather than one of a number of beneficiaries.

*Paragraph (b)* of *subsection (3)* lists other cases where no overreaching will occur. One is the obvious one where the conveyance of the land itself rules it out by expressly making it subject to the equitable interest in question. Another is where the title documents have been deposited to protect the equitable interest so as to create a once-common equitable mortgage of the land. The co-operation of the equitable mortgagee (to release the title documents) is usually required to facilitate any later conveyance of the land. Another relates to the situation where there is no express trust or land held for a minor and so a conveyance may be made by a single legal owner, such as a constructive or resulting trustee. In such a case the beneficiary or person entitled to claim an equitable interest may protect it by registration in the Registry of Deeds (in the case of unregistered land) or Land Registry (in the case of registered land), as provided by *subsection (4)*. It is envisaged that the method of registration will be prescribed by general rules under the Registration of Title Act 1964 and the Registration of Deeds and Title Act 2006.

The final safeguard against overreaching applies where the land is a family home within the Family Home Protection Act 1976. Under that Act a conveyance by the “owning” spouse (who has the legal



title) must have the consent of the “non-owning” spouse (whether or not he or she has an equitable interest). *Subsection (6)* preserves that position.

*Section 22* makes provision for resolution of disputes relating to the various trusts of land coming under Part 4. This includes disputes between the trustees themselves, the beneficiaries themselves, the trustees and beneficiaries or the trustees or beneficiaries and other persons interested in the trust. *Subsection (4)* makes it clear that such other persons include mortgagees or other secured creditors. *Subsection (1)* provides that the courts’ jurisdiction, which is summary, relates to a wide variety of matters, including the trustees’ performance of their functions as trustees or other operation of the trust. It also covers the nature and extent of any claimed beneficial or other interest in the land.

*Subsection (2)* confers a discretionary jurisdiction on the courts to resolve such disputes, taking into account the matters listed in *subsection (3)*. These matters include the purposes intended to be achieved by the trust and the interests of minors or of beneficiaries subject to any incapacity and of secured creditors of any beneficiary. *Subsection (5)* contains a saving for the longstanding jurisdiction of the courts to determine questions relating to title to or possession of property as between spouses, now to be found in section 36 of the Family Law Act 1995.

## **PART 5 — POWERS**

*(Sections 23 to 27)*

Part 5 deals with powers relating to property (both land and personal property), especially powers of appointment. Such powers are commonly used in family settlements and trusts where, instead of allocating property directly to specified beneficiaries, the settlor gives another person (the “donee” of the power) power to “appoint” (i.e. select) from a group of potential beneficiaries (the “objects” of the power) who should become actual beneficiaries (the “appointees”) and in what shares. For the most part, this Part does not deal with the other common power to deal with property, the power of attorney. The law on such powers was modernised by the Powers of Attorney Act 1996. Nor does it deal specifically with various powers to deal with property held by persons such as trustees (currently governed by the Trustee Act 1893), personal representatives (governed by the Succession Act 1965) and mortgagees (governed by Part 9).

*Section 23* makes it clear that, except where stated otherwise (as in *section 24(1)*), Part 5 applies to both existing and future powers. This is because most of its provisions re-enact existing statutory provisions.

*Section 24* replaces section 12 of the Law of Property Amendment Act 1859. It concerns execution of a non-testamentary power, i.e., execution other than by making a will (execution by will is governed by section 79 of the Succession Act 1965). *Subsection (1)* removes the complicated provisions in section 12 of the 1859 Act (which, unlike the usual rule for execution of a deed, required two or more witnesses) and follows the provision in section 79 of the 1965 Act. It requires that a donee exercising a power of appointment by a deed need in future comply only with the usual requirements for execution of a deed (now set out in *section 62*). Because this involves a change in the law, it applies only to appointments made after the commencement of Part 5. *Subsection (2)* re-enacts the provisions in section 12

of the 1859 Act which make it clear that *subsection (1)* does not affect provisions relating to validity of appointments which may be contained expressly in the instrument creating the power of appointment.

*Section 25* relates to release (giving up or surrender) of any kind of power by its donee. *Subsection (1)* re-enacts the substance of section 52 of the Conveyancing Act 1881. The generally accepted view is that this right to surrender a power does not apply to a donee who is a trustee or otherwise subject to a fiduciary duty to exercise it. *Subsection (2)* gives statutory recognition to this principle.

*Section 26* relates to disclaimer of a power, i.e., where the proposed donee refuses from the outset to accept the power. It re-enacts the substance of section 16 of the Conveyancing Act 1881.

*Section 27* re-enacts the substance of the provisions of the Illusory Appointments Act 1830 and the Powers of Appointment Act 1874. It preserves the discretion of a donee of a power of appointment to appoint a very small share of the property to a particular potential appointee or even to exclude such an appointee from any share at all. *Subsection (2)* makes it clear that this is subject to any provision in the instrument creating the power that a particular potential appointee is not to be excluded from a specified share.

## **PART 6 — CO-OWNERSHIP**

*(Sections 28 to 30)*

Part 6 deals with the law relating to co-ownership of land, i.e., where the legal title to the land is vested in two or more persons concurrently. Two main types of such ownership are common nowadays, a joint tenancy and a tenancy in common, with “tenancy” in this context meaning ownership (so that it can relate to both freehold and leasehold land). The key feature of a joint tenancy is the so-called right of survivorship whereby on death of a joint tenant that owner’s interest ceases and the land becomes vested thereafter in the surviving joint tenants. This process continues until the land becomes vested in the last surviving joint tenant as sole owner and the co-ownership ends. On the other hand, in the case of a tenancy in common, each “tenant” has a distinct (but undivided) share which can be succeeded to on the tenant’s death (e.g., by persons named in the tenant’s will).

*Section 28* relates to a long recognised right of joint tenants, the right of “severance”. This involves conversion of the joint tenancy into a tenancy in common, with the important consequence that the right of survivorship will no longer operate on the death of each joint tenant. This may deprive some joint tenants of the expectation or hope of succeeding to the entire land. *Subsection (1)* provides that “unilateral” severance, i.e. by one joint tenant without the consent of the other joint tenants, should no longer be permitted. *Subsection (2)* makes it clear that consent sufficient in future to affect a severance must be given by all the other joint tenants and in writing.

*Subsection (3)* provides clarification of the law concerning events which might be taken to effect an “involuntary” severance. It provides that there is no severance where the estate or interest of one joint tenant vests in the Official Assignee or a liquidator (in the case of a corporation) on insolvency or has a judgment mortgage registered against it (the case law suggests that in the latter situation severance occurs where the joint tenant’s land is unregistered land, but not if it is registered land). *Subsection (4)* preserves the jurisdiction

of the court to find that, although the legal title to the land remains in the joint tenancy, all the joint tenants have agreed or shown by their conduct that it should be severed in equity. In such cases, on the death of a joint tenant, the surviving joint tenants will hold the land on trust for themselves and the successors of the deceased joint tenant (all as tenants in common of equitable or beneficial shares).

*Section 29* replaces the complicated and uncertain provisions of the Partition Acts 1868 and 1876. Those Acts enable co-owners, or persons interested in co-owned land, to apply for a partition order (to divide up the land amongst the co-owners, so that each would be sole owner of a part and the co-ownership would end) or, if this was not practicable, an order for sale of the land and division of the proceeds of sale. *Subsection (1)* confers a new statutory jurisdiction on the courts to make a wide range of orders specified in *subsection (2)*. An application for a court order can be made by any person having an estate or interest in co-owned land. *Subsection (4)* makes it clear that this includes a mortgagee or other secured creditor and a trustee holding the land for other persons. *Subsection (2)* lists a wide variety of orders which the court can make, including orders for partition and a sale and division of the proceeds of sale. It also includes directing accounting adjustments as between the co-owners, which may be appropriate where they have enjoyed different benefits or incurred different expenses in relation to the land. This might arise because one co-owner has lived in a house which is co-owned, while another has lived elsewhere. *Subsection 4(b)* spells out the different kinds of adjustments which might be appropriate according to the circumstances of a particular case. These provisions for accounts replace those originally enacted in section 23 of the Administration of Justice Act 1707.

*Subsection (3)* makes it clear that the court has a wide discretion as to what order it may make, including not making an order in a particular case. *Subsection (5)* saves the courts' jurisdiction under other legislation which also applies to co-owners, such as spouses under the Family Home Protection Act 1976 and the Family Law Acts 1995 and 1996 (which provide for orders relating to matrimonial property in judicial separation and divorce proceedings).

*Section 30* re-enacts the substance of the Bodies Corporate (Joint Tenancy) Act 1899. This was enacted to enable corporate bodies like banks and other financial institutions to hold property in a joint tenancy with others. This is important where such corporations are appointed trustees of property. *Subsection (1)* provides that in such cases the corporate body is treated as if it were an individual and so, under *subsection (2)*, can hold property as a joint tenant with another corporate body or an individual joint tenant. A corporate body does not die like an individual, but it can be dissolved and so *subsection (3)* provides that dissolution triggers the right of survivorship in the same way that death does with an individual joint tenant.

## **PART 7 — APPURTENANT RIGHTS**

*(Sections 31 to 48)*

Part 7 provides for a substantial overhaul of the law relating to “appurtenant” rights. These are rights which are extremely common with respect to land and usually exist as between neighbouring landowners. They permit one landowner to do something on a neighbour's land or entitle that landowner to prevent the neighbour from doing something on that neighbour's land. The most common categories of such rights are “easements” and “*profits à prendre*”, the law of which was developed over the centuries largely by the courts. An

easement is a right like a right of way or right of light over neighbouring land. Although examples of an easement are generally well-settled, the courts have made it clear that the categories are not necessarily “closed” and new rights with similar characteristics may be recognised as changes in society require, e.g. a right to park a vehicle. A *profit à prendre* is the right to go onto someone else’s land and to take from it something which exists on it naturally, such as the right to mine or quarry, cut timber or turf, graze animals on grass, fish and hunt wild game. Such profits are often enjoyed by a neighbouring landowner, and so are appurtenant, but it should be noted that they can also be owned “in gross”, i.e., by a person who is not a neighbour and who may own no land other than the profit exercisable over someone else’s land.

*Chapter 1* deals with easements and *profits à prendre*. *Chapter 2* deals with another type of right which may be owned in respect of someone else’s land, a rentcharge. This is to be distinguished from a leasehold rent, i.e., a rent reserved by a landlord under a tenancy and payable by the tenant. A rentcharge is a rent charged on land to provide an income or regular payments to the owner of the rentcharge. Such a charge used to be commonly created in family settlements in order to provide an income for members who were given no other substantial interest in the land (e.g. siblings of the member, usually the eldest son, who was given a life interest in the land). Such family settlements are no longer common. Another common category of rentcharge is statutory ones, usually created in favour of public bodies as a method of repaying funds expended on the land, e.g., on its drainage and improvement.

*Chapter 3* provides for a new statutory regime to deal with problems which frequently arise in relation to party structures, such as party walls and fences separating neighbouring buildings or lands. This is designed to regulate the rights of the neighbouring owners, especially where a dispute occurs over repairs or works which one owner wishes to carry out. These provisions, which are to some extent based on provisions which apply to Dublin under the Dublin Corporation Act 1890, would replace the long-forgotten provisions in the Boundaries Act 1721. They also extend to situations where there may not be strictly a party structure, but buildings are built so close to the boundary line with a neighbouring property that work (such as repairs) cannot be carried out effectively without access from the neighbouring property. The provisions regulate neighbour disputes in such situations by enabling one landowner to obtain a court “works” order permitting such access on certain conditions.

*Chapter 4* remedies a longstanding defect in the law. This is the limited enforceability of freehold covenants affecting land. Such covenants are frequently entered into when a landowner sells part of the land to someone else. The purchaser will often covenant to restrict the use of the land purchased and to undertake various positive obligations relating to building and repairs. Unlike the case of leasehold covenants which generally bind successors in title, freehold covenants are enforceable against successors in title to a limited extent only, e.g. the burden of negative (or restrictive) freehold covenants only will pass to successors. *Chapter 4* changes the law substantially so as to make the enforceability of freehold covenants, whether positive or negative, accord with that of leasehold covenants.

*Section 31* contains important definitions relating to the provisions of *Chapter 1* which concern easements and *profits à prendre*. Many of them relate to the law of prescription which governs the acquisition of such interests by long user over a substantial period of time. They preserve some of the key features of prescription which have existed for centuries, such as the necessity for the user over the requisite period to be without interruption. Adopting a provision in the Prescription Act 1832 (which was applied to Ireland by the Prescription (Ireland) Act 1858), such an interruption will be effective to prevent acquisition by prescription only if it lasts for a continuous period of at least one year. The user upon which a claim by prescription is based must be user “as of right”, which is now given a statutory definition which accords with what the courts have held over the centuries. The period of long user, which under current law, especially the 1832 Act, varies in length and according to whether an easement or *profit à prendre* is being claimed, is now a single period of 12 years. This coincides with the period for adverse possession claims under the Statute of Limitations 1957. However, in order to protect State authorities which own tracts of land, including the foreshore, every part of which it is impracticable to keep under constant supervision, extended periods of user are required — a minimum of 30 years and 60 years in the case of claim relating to the foreshore.

*Section 32* provides for simplification of the law of prescription. It abolishes two of the three existing methods of prescription: prescription at common law (which is based on user dating back to the year 1189), and under the now discredited “fictional” judicial doctrine of lost modern grant. In future a prescriptive claim must be based upon the provisions in *section 33*, as supplemented by *sections 34* to *36*. These replace the complicated provisions of the Prescription Act 1832.

*Section 33* provides that legal title to an easement or *profit à prendre* will not be obtained unless and until the claimant obtains a court order to this effect and it is registered in the Registry of Deeds (if the claim relates to unregistered land) or Land Registry (if it relates to registered land). *Subsection (2)* maintains a provision in the 1832 Act which requires that the relevant user period upon which a claim is based is that immediately before the commencement of the claimant’s action. Where a court order has been obtained but has not yet been registered, the claimant would have an equitable easement or *profit à prendre* in accordance with the usual position of a party who simply has to complete registration formalities.

*Section 34* deals with the position where the claim relates to land subject to a tenancy. It simplifies provisions in the Prescription Act which also dealt with land subject to a limited freehold estate (like a life estate). Such a limited estate would be an equitable interest only under Part 2 and the legal title would be vested in a trustee or trustees under Part 4. There is, therefore, no need to deal with such cases in *section 34*. *Subsection (1)* provides that where the claimant by prescription holds a tenancy only in the land which the easement or *profit à prendre* benefits, the easement or profit attaches to the land and, when the tenancy ends, it passes with the land to the landlord. *Subsection (2)* deals with the converse case where the easement or profit is exercisable over land which is currently occupied by a tenant. The easement or profit ends with the tenancy unless the tenant either acquires a superior interest (in which case it attaches to that extension or renewal). *Subsection (3)* makes it clear that this does not prevent the owner of an easement or profit coming to an



end under *subsection (2)* from claiming against a landlord who resumes possession of the land when the tenancy ends. Provided the requisite period of user continues, the claimant may in due course be able to apply for a court order against the landlord (or a new tenant put into possession by the landlord) under *section 33*.

*Section 35* protects a landowner who is subject to a mental incapacity from prescriptive claims, by interrupting the running of the prescriptive period so long as the incapacity exists, but this is subject to the rule that it does not apply once a period of 30 years' user has been enjoyed. This adapts provisions in the *Prescription Act 1832*. It does not deal with minors because under Part 4 a minor can no longer hold the legal title to land and instead it will be vested in trustees who will be under a duty to protect the interests of the minor and liable if they failed to do so. *Subsection (2)* furthers this principle by providing it will be open to the court in any particular case of mental incapacity not to apply the interruption provided for by *subsection (1)* where it is reasonable, in the circumstances of the case, to have expected some other person to have acted for the incapacitated owner, such as a trustee, committee of a ward of court or an attorney under an enduring power of attorney coming within the Powers of Attorney Act 1996.

*Section 36* relates to the situation where a claimant by prescription commenced the user period before *Chapter 1* comes into force. It makes the new provisions applicable as soon as possible while at the same time takes into account vested rights, bearing in mind that the period of user required under *Chapter 1* is much shorter than the periods (ranging from 20 to 60 years) required under the preceding law. *Paragraph (a)* makes it clear that a claimant after the commencement of *Chapter 1* can apply to the court under *section 33* as soon as the requisite 12-year user period expires after that commencement, however many years of user before that commencement also occurred. Thus a person who commenced user of a potential right of way 5 years before the commencement of *Chapter 1* could under *section 33* apply 12 years after that commencement, i.e., after a total of 17 years instead of having to wait the minimum of 20 years which the preceding law would have required. Furthermore, once 12 years expires after the commencement of *Chapter 1*, all subsequent claims must be based on the new law. *Paragraph (b)* deals with the case where the period of user required under the existing law was actually or was close to being completed before the commencement of *Chapter 1*, but the court action to claim the easement or profit is not made until after that commencement. In such a case the claimant can rely on the old law provided the action is brought within 3 years of that commencement. Once that transitional period has expired, any subsequent claim must rely upon the new provisions in *Chapter 1*. This means that the relevant user period must be the immediate past 12 years before the date of initiation of the court proceedings. Under the old law, such as prescription based on the common law, this rule did not necessarily apply.

*Section 37* modifies the law relating to extinguishment of easements and *profits à prendre*. It introduces a new presumption which applies only to easements and profits acquired by prescription or by implication (such as where the court implies them when land is subdivided without any reference to easements or profits).

The new presumption is that a 12 year continuous period of non-user will extinguish the easement or profit but this will not apply if it has been protected by registration in the Registry of Deeds or Land Registry. Nor does this presumption apply to easements or

profits which have been created expressly by the parties. The presumption, which is designed to facilitate conveyancing by relieving purchasers of the need to make enquiries or search for possible easements or profits not mentioned in any documents of title, will apply largely to easements and profits acquired by prescription before the commencement of *Chapter 1* or, under *section 36(b)*, within 3 years of that commencement. Any acquired by prescription thereafter will have to be registered under *section 33*.

*Subsection (2)* applies the new presumption even where the period of non-user commenced before the commencement of *Chapter 1*, but only if at least 3 of the 12 years non-user occur after that commencement. This protects the owner of the easement or profit by giving that owner a period of grace to prevent extinguishment by either resuming user (so as to prevent the 12 year period expiring) or protecting the easement or profit by registering it. *Subsection (3)* preserves the existing law under which the court may declare that an easement or profit has been extinguished on the basis of evidence establishing a clear intention by the owner to abandon it, however it was acquired.

*Section 38* clarifies and simplifies the law relating to acquisition of easements or *profits à prendre* by implied grant. This usually arises when a landowner (grantor) conveys (grants) part of the land to another person (the grantee), but no express provision is made in the deed for creation of easements or profits in favour of the grantee (for the benefit of the grantee's land and exercisable over the part of the land retained by the grantor). *Subsection (1)* abolishes the complex and uncertain rule developed by the courts to deal with this situation, known as the rule in *Wheeldon v Burrows*. The Supreme Court pointed out in the recent case of *William Bennett Construction Ltd v Greene* [2004] ILRM 96, that this rule was based essentially on the wider principle that a grantor must not derogate from his or her grant, i.e., having conveyed land to a person, the grantor must not deny or prevent that person from full enjoyment of it. *Subsection (2)* provides for this and gives statutory expression to the principle as described in numerous cases, including the recent decision of the Supreme Court.

#### *Rentcharges*

*Section 39* prohibits the future creation of rentcharges, subject to the exceptions listed in *subsection (2)*. These cover implementation of any contract to create a rentcharge entered into before the commencement of *Chapter 2* and creation of rentcharges under a court order or statutory provision.

*Section 40* simplifies the statutory provisions governing enforcement of rentcharges contained in section 44 of the Conveyancing Act 1881. In future such rentcharges will be enforceable as a simple contract debt, but this is subject to any other statutory provision (not including section 44 of the 1881 Act which is repealed by the Bill).

#### *Party structures*

*Section 41* provides various definitions for the provisions relating to party structures contained in *Chapter 3*. In particular, it contains a comprehensive definition of a "party structure" and of the "works" which may be the subject of a "works order". For the purposes of these provisions the court is the District Court.

*Section 42* confers a new statutory right on a landowner to carry out works to a party structure subject to the terms and conditions set out in the section. *Subsection (1)* sets out the circumstances where

this right arises, e.g., in order to comply with a statutory provision, notice or order or to preserve the party structure or the building or land of which it forms part. It also covers the case where the works to the party structure relate to other works which will not cause substantial damage to or inconvenience the adjoining owner or, if they cause this, it is nevertheless reasonable to carry the works out. *Subsection (2)* requires the building owner to make good any damage caused to the adjoining owner or to reimburse the reasonable costs and expenses of making good any damage, and to pay professional costs and compensation for any inconvenience incurred. *Subsection (3)* entitles the building owner to claim a contribution to or make deductions from such amounts so as to take account of the proportionate use or enjoyment of the party structures which the adjoining owner makes or is likely to make. *Subsection (4)* entitles both the building and adjoining owner to recover such amounts as a simple contract debt.

*Section 43* enables a building owner who is in dispute over works to a party structure to apply for a District Court order (“works order”) authorising the works. *Subsection (2)* requires the Court, in deciding whether to make a works order and, if one is to be made, what its terms and conditions should be, to have regard to the provisions of *section 42*. It also gives the Court a discretion to take into account any other circumstances which it considers relevant.

*Section 44* gives the court a wide discretion as to the terms and conditions which may be attached to a works order. Without prejudice to the generality of *subsection (1)*, *subsection (2)* makes it clear that such terms and conditions may authorise entry on the adjoining owner’s land and require the building owner to give security or an indemnity to the adjoining owner. *Subsection (3)* makes it clear that a works order must not authorise permanent interference with or loss of any easement of light or other easement (such as a right of support) or any other right relating to a party structure.

*Section 45* gives the District Court jurisdiction to discharge or modify a works order, on such terms and conditions as it thinks fit.

#### *Freehold covenants*

*Section 46* provides definitions for the provisions relating to freehold covenants contained in *Chapter 4*.

*Section 47* provides new statutory provisions governing enforceability of freehold covenants against successors in title. *Subsection (1)* makes it clear that the new provisions replace the old law, including the limited rule in *Tulk v Moxhay* (whereby the burden of a negative — as opposed to a positive — covenant only binds successors). *Subsection (2)* contains the new law which makes freehold covenants bind successors fully, in the sense that the benefit will run with the land intended to be benefited and the burden will run with the land subject to the covenant. Generally the benefit and burden will attach to the owner for the time being of the lands in question so long as they are such owners. However, a person who has ceased to be the owner of the benefited land may enforce breaches of covenant which occurred before he or she ceased to be the owner. Similarly, a person may be liable for breaches which occurred while the owner of the land was subject to the covenant, but which are pursued after that person ceased to be owner of that land.

*Subsection (3)* clarifies the operation of the new provisions. *Paragraph (a)(i)* preserves the principles relating to a “scheme of development” evolved by the courts (sometimes known as the rule



in *Elliston v Reacher*). As the definition in *section 46* explains, in such a development (such as a housing estate or shopping centre developed by a common vendor or landlord) the benefit of a covenant may be enforced by a person who is not strictly a successor in title to the person who originally took the benefit of the covenant, but rather by another purchaser or lessee owning a house or commercial unit in the same development. *Paragraph (a)(ii)* excludes covenants for title, the enforceability of which is governed by *section 77*. *Paragraph (b)* makes it clear that it is possible to contract out of the new provisions, by making it clear that a particular covenant is personal to a party or the parties to it and does not pass to successors in title.

*Section 48* contains new provisions entitling a person subject to a freehold covenant to apply for a court order discharging it in whole or in part or modifying it on the ground that it now constitutes an unreasonable interference with the use and enjoyment of the land subject to it. Freehold covenants may last for ever and over time may become obsolete or no longer serve a useful purpose, but there is no mechanism under current law for discharging or modifying them except by agreement of the parties. Obtaining such agreement may be difficult and expensive and the person entitled to the benefit may refuse to negotiate even though the purpose behind the covenant has long gone.

*Subsection (2)* sets out various matters to which the court must have regard in determining whether to make an order and, if one is made, what its terms and conditions should be. These include such matters as changes in the character of the lands affected by the covenant, what benefit, if any, it still secures, whether continued compliance has become unduly onerous compared with that benefit and any other matter which the court considers relevant. *Subsection (3)* makes it clear that the court may include as part of its order a requirement that compensation is paid to cover a quantifiable loss resulting from the order.

## **PART 8 — CONTRACTS AND CONVEYANCES**

*(Sections 49 to 85)*

This Part deals with contracts and conveyances relating to land and replaces the provisions of the Conveyancing Acts 1881 to 1911 and other pre-1922 statutes. It aims at both reforming the law and simplifying those provisions. In so doing it prepares the ground for eConveyancing, but also deals with the interim period before such a fully electronic and paperless system of conveyancing becomes operative. Until that happens written documents and deeds in the traditional form will continue to be used. *Chapter 1* deals with contracts relating to land, such as contracts for sale. *Chapter 2* deals with title matters, in particular deduction of title by a vendor and investigation of title by a purchaser. *Chapter 3* deals with deeds and their operation, including the formalities for proper execution of deeds and the effect of particular provisions in deeds. *Chapter 4* deals with the contents of deeds, in particular statutory provisions to be implied in them. *Chapter 5* contains some general provisions concerning conveyancing.

### *Contracts*

*Section 49* re-enacts the substance of section 2 of the Statute of Frauds 1695 which requires written evidence of a contract relating to land to be produced in court if enforcement of the contract is sought. *Subsection (2)* makes it clear that equitable doctrines, such as part

performance or estoppel, will continue to be available as an alternative method of enforcement. *Subsection (3)* clarifies a matter upon which there has been some doubt. It provides that payment of a deposit, and reference to such in the written evidence of the contract, is not necessary to an enforceable contract, unless there is an express agreement otherwise (as is the case where the Law Society's General Conditions of Sale are used).

*Section 50* deals with a controversial aspect of the majority decision of the Supreme Court in the case of *Tempamy v Hynes* [1976] IR 101. *Subsection (1)* restores the previously accepted view that the entire beneficial interest in land passes to the purchaser upon the entering into of the contract for sale regardless of how much of the purchase price is paid at that time (usually only a 10% deposit is paid then). *Subsection (2)* clarifies the effect of *subsection (1)* and again reflects the generally accepted view as to the position of the parties under a contract for sale of land. In particular it confirms the vendor's obligation to maintain the land so long as possession is retained pending completion and to carry the risk of loss or damage under a contractual provision such as the Law Society's General Conditions of Sale. It also confirms the vendor's right to rescind where the purchaser fails to complete or otherwise breaches the contract. Finally it makes it clear that *subsection (1)* can be excluded by an express provision in the contract.

*Section 51* abolishes the outmoded rule in *Bain v Fothergill* (1874) which restricted the damages recoverable by a purchaser for a breach of contract by a vendor who fails to make good title to the land contracted to be sold. This rule has been criticised by the Irish courts. *Subsection (2)* makes it clear that this abolition applies only to future contracts for sale.

*Section 52* clarifies a point upon which there has been much uncertainty. It confirms that where a court refuses to order specific performance of a contract against a purchaser, it has an unfettered discretion to order a refund of the whole or any part of any deposit paid by the purchaser. Previous case law had suggested that this could only be done where there was clear evidence of fraud or other clear default by the vendor.

*Section 53* re-enacts the substance of section 9 of the Vendor and Purchaser Act 1874. *Subsection (1)* provides a summary jurisdiction for resolving questions which may arise concerning a contract for the sale or other disposition of land. *Subsection (2)* confirms the court's wide discretion as the orders which can be made, including orders as to costs. *Subsection (3)* retains the limitation on the scope of the summary jurisdiction, that it cannot be used to determine questions affecting the existence or validity of the contract.

#### *Title*

*Section 54* deals with the title a vendor is required to deduce under an "open" contract for sale (i.e., where there is no express provision on the matter in the contract). *Subsection (1)* reduces the period of title from the 40 years prescribed by section 1 of the Vendor and Purchaser Act 1874 to 20 years. *Subsection (2)* confirms the long-standing rule that where the title commences with a fee farm grant or lease, that grant or lease must be produced. Although *section 12* of the Bill prohibits the creation of fee farm grants, existing ones will remain a feature of some titles for a limited period. *Subsection (3)* confirms that the statutory period applies only to an "open" contract.

*Section 55* replaces, with some modification, the provisions relating to deduction of titles comprising a tenancy in the Vendor and Purchaser Act 1874 and Conveyancing Acts 1881 and 1882. *Subsection (1)* re-enacts the rule that in such cases the intended grantee or assignee cannot call for the title to the freehold or a superior tenancy. *Subsection (2)* qualifies *subsection (1)* and modifies the provisions in the 1874 and 1881 Acts. Where a tenancy or subtenancy exceeding 5 years is being granted, the intended grantee may call for more of the grantor's title, as recommended in the Law Society's guidelines. However, *subsection (5)* makes it clear that this is subject to the terms of the contract for the grant. *Subsection (3)* re-enacts the provision in section 4 of the Conveyancing Act 1882 excluding a contract for a tenancy as a title document once the contract has been completed by a grant of the tenancy itself. *Subsection (4)* abolishes the rule known as the rule in *Patman v Harland* by providing that a purchaser is not affected by notice of any matter or thing which exists in the title which *subsection (1)* debars the purchaser from seeing.

*Section 56* re-enacts the substance of other provisions relating to title in the 1874 and 1881 Acts. *Subsection (1)* prohibits a purchaser from calling for "pre-root" title (i.e., title earlier than that prescribed by *section 54* or the contract for sale) and requires him or her to assume that recitals in documents of title produced relating to such prior title are correct and recited instruments were properly executed. *Subsection (2)* re-enacts exceptions to *subsection (1)* covering situations where the validity or effectiveness of a produced document of title depends on some pre-root instrument, e.g., a power of attorney. That pre-root instrument should also be produced. *Subsection (3)* re-enacts the requirement that the purchaser should bear the expenses of production of documents relating to the title.

*Subsection (4)* re-enacts provisions relating to a sale of land in lots, whereby a purchaser of two or more lots must meet the expense of production of more than one copy of any document relating to the common title of the whole land. *Subsection (5)* re-enacts the provision that a purchaser cannot refuse to complete where a vendor cannot furnish an acknowledgment of the right to production and delivery of documents of title, if a right to such production arises on completion of the contract. *Subsection (6)* re-enacts the requirement that the purchaser must meet the expense of acknowledgments and undertakings for safe custody of documents which the vendor retains (because part only of the vendor's land is being sold). Further provisions for such acknowledgments and undertakings are contained in *section 81*.

*Subsection (7)* re-enacts provisions entitling the vendor to retain documents of title in certain situations, such as a sale of part only of his or her land. *Subsection (8)* re-enacts the rule that these provisions are subject to the terms of the contract for sale. *Subsection (9)* re-enacts the rule that a purchaser is not bound by stipulations in the contract similar to the statutory ones if the court would not enforce the contract against the purchaser. *Subsection (10)* provides definitions for certain expressions used throughout *section 56*.

*Section 57* re-enacts provisions in section 2 of the 1874 Act designed to protect purchasers in conveyancing transactions. *Subsection (1)* re-enacts the presumption that recitals, statements and descriptions in instruments, statutory provisions or statutory declarations at least 20 years old are accurate. *Subsection (2)* re-enacts the presumption that, where the land sold is held under a tenancy, the tenancy was duly granted and, where the receipt for the last payment of rent is produced, that the covenants and provisions of the tenancy

have been performed and observed up to completion of the purchase. *Subsection (3)* contains equivalent presumptions where the land sold is held under a subtenancy.

*Section 58* re-enacts provisions in the Law of Property Amendment Acts 1859 and 1860. *Subsection (1)* makes it a criminal offence for a vendor, or the vendor's solicitor or other agent, to conceal or falsify documents of title or matters relating to the title. *Subsection (2)* gives the purchaser or any person deriving title from the purchaser a right of action for damages for any loss sustained from such offences. *Subsection (3)* provides for inclusion in such an award of damages of compensation for improvements made by the purchaser to the land before it is recovered by the rightful owner. *Subsection (4)* contains a saving for the provisions of the Criminal Justice (Theft and Fraud Offences) Act 2001.

*Section 59* re-enacts provisions in section 11 of the Conveyancing Act 1911 which entitle a purchaser of part of land held under a common title to require an endorsement or annexation of a notice on one of the documents of title retained by the vendor showing restrictive covenants or other rights (such as easements) being conferred on the purchaser over the vendor's retained land. *Subsection (1)* makes it clear that this right cannot be contracted out of. *Subsection (2)* makes it clear that *subsection (1)* confers a right to have a notice endorsed or annexed, not an obligation to require one, so that omitting to exercise the right does not prejudice the purchaser's title. *Subsection (3)* excludes application of the section to registered land because such matters would in such a case be dealt with by entries on the relevant folio.

### *Deeds*

*Section 60* substantially modifies the law relating to conveyances of land. *Subsection (1)* substitutes the modern deed as the only method of conveying legal title subject to the exceptions set out in section 61. *Subsection (4)* abolishes the various methods developed under the feudal system and which were preserved by the Real Property Act 1845. *Subsection (2)* makes it clear that a deed is fully effective without the need for a "conveyance to uses" or the grantee having to enter into physical possession of the land conveyed. The Bill repeals the Statute of Uses 1634 and removes the complicated law which arose from it. *Subsection (3)* reinforces this by removing the main reason why a conveyance to uses has continued to be adopted here, i.e., that otherwise a resulting trust for the grantor might arise.

*Section 61* lists well-established exceptions to the rule that a deed must be used in order to create or convey a legal estate or interest in land. These include assents by personal representatives (which under section 52 of the Succession Act 1965 need be in writing only) and transfers taking effect by operation at law, such as a surrender of a tenancy by the tenant giving up the property with the consent of the landlord.

*Section 62* modifies substantially the formalities for proper execution of deeds. *Subsection (1)* abolishes the need for a seal in the case of execution by an individual. A seal will remain necessary for corporations. It also abolishes the rule that authority given to another person to deliver a deed must itself be given by deed. This has already been done for powers of attorney by section 15 of the Powers of Attorney Act 1996.

*Subsection (2)* sets out the new requirements for deeds following abolition of the need for sealing by individuals. *Paragraph (a)* provides for identification of a document as a deed by giving it an appropriate heading or otherwise making it clear on its face that it is intended to be a deed or by expressing it to be executed or signed as a deed. *Paragraph (b)* then sets out the different methods of execution depending upon the status of the person or body executing. *Subparagraph (i)* makes it clear that while an individual need no longer use a seal, it will remain open to do so. *Subparagraphs (ii) and (iii)* preserve the existing law relating to corporations. *Subparagraph (iv)* resolves doubts as to the position regarding foreign corporations executing instruments (many do not have provision for sealing), by providing that the instrument is a deed if executed in accordance with the legal requirements governing execution in the jurisdiction where the body in question is incorporated. *Paragraph (c)* retains the requirement of delivery of a deed. *Subsection (3)* re-enacts the provision in section 5 of the Real Property Act 1845 removing the need to “indent” (give it an indented edge) or to call it an indenture.

*Section 63* clarifies the law relating to execution of deeds by corporations. *Subsection (1)* abolishes the rule that the mere affixing of the corporate seal constitutes full delivery and *subsection (2)* makes it clear now that a corporation can deliver a deed “in escrow” (subject to a condition which must be satisfied before it becomes effective) just like an individual.

*Section 64* consolidates provisions in section 21 of the Law of Property Amendment Act 1859 and section 50 of the Conveyancing Act 1881. *Subsection (1)* re-enacts the rule that a person can convey property (both land and personal property) jointly to himself or herself and another person. Under *section 80* covenants in such a conveyance are enforceable as if entered into with that other person alone. *Subsection (2)* modifies existing law by enabling a person generally to convey property to himself or herself in a different capacity. Section 52 of the Succession Act 1965 permits a personal representative to execute an assent in his or her own favour. Now a trustee can convey property to himself or herself as a beneficiary of the trust or a donee can exercise a general power of appointment in his or her own favour. *Paragraph (a)* excepts from this the leasing of property because a lease to oneself would merge with the lessor’s reversion and create unenforceable covenants. *Subsection (4)* contains the rule that a covenant entered into with oneself is unenforceable. *Paragraph (b)* confirms the rule that two or more persons can convey property to a lesser number of themselves. *Subsection (3)* makes it clear that the relaxation of the rules concerning conveyances to oneself does not validate any conveyance otherwise voidable for breach of trust or other fiduciary obligation.

*Section 65* abolishes the need for “words of limitation” (special words denoting the freehold estate being conveyed) in conveyances of unregistered land. This was done for transfers of registered land by section 123 of the Registration of Title Act 1964. *Subsection (1)* provides that a conveyance without such words will nevertheless convey whatever estate or interest the grantor has. *Subsection (2)* applies the same rule to conveyances by a corporation sole, such as a bishop or Government minister (words of limitation are not needed in conveyances by other corporations).

*Subsection (3)* abolishes an arcane rule derived from the feudal system known as the rule in *Shelley’s Case*, by providing that a conveyance such as “to A for life, remainder to A’s heirs” will take effect as stated, i.e., giving A a life estate only (operating as a trust



of land under Part 4 of the Bill) and his or her heirs a fee simple in remainder. The meaning of “heirs” is given by section 15(3) of the Succession Act 1965. *Subsection (4)* applies these provisions to cure defects in conveyances executed before the commencement of this Chapter of Part 8, but without prejudice to existing rights acquired by application of the previous law. *Subsection (5)* requires any person claiming such an existing interest to claim it within 12 years by obtaining a court order and registering this under *subsection (7)*. *Subsection (6)* gives the court a wide discretion as to how to deal with such claims. Under *paragraph (a)* it may refuse to make an order in favour of the claimant if satisfied that no substantial injustice will be done to any party and under *paragraph (b)* it may order compensation to be paid to the claimant instead of granting a declaration of entitlement to the interest claimed.

*Section 66* simplifies the law relating to reservation of rights by a grantor in a conveyance. It removes complications involving the Statute of Uses 1634, which is repealed, and replaces provisions in section 62 of the Conveyancing Act 1881 relating to reservation of easements. *Subsection (1)* removes the need for the grantee to execute the conveyance in order to render a reservation in favour of the grantor effective (e.g. a right of way reserved by the grantor over the land conveyed to the grantee). *Subsection (2)* confirms the rule that a conveyance subject to an estate or interest not in existence involves a reservation, as opposed to an “exception” which involves the grantor retaining an existing interest (e.g., minerals in the land). *Subsection (3)* reinforces the new rule in *subsection (1)* that a reservation does not need execution or a “re-grant” by the grantee. This ensures that in future any ambiguities in the wording of a reservation will be construed against the grantor in accordance with the general rule of construction (that a deed is construed against the grantor). *Subsection (4)* makes it clear that the new rules in *section 66* apply to future reservations only.

*Section 67* replaces and clarifies section 5 of the Real Property Act 1845, which enables a person not a party to a deed, but named in it as entitled to an estate or interest, or the benefit of a covenant or right, to enforce the deed. *Subsection (1)* now makes it clear that this provision operates only where the deed expressly confers the interest or benefit on that person and is confined to deeds relating to land. *Subsection (2)* makes it clear that the provision does not otherwise affect the doctrine of privity of contract, under which generally only the parties to a contract can enforce it.

*Section 68* replaces and clarifies the operation of section 6 of the Conveyancing Act 1881, which specifies what features and rights are included in a conveyance of land. *Subsections (1)* and *(2)* largely reproduce the substance of section 6(1) and (2) of the 1845 Act (section 6(3) related to the feudal concept of manors and is not reproduced). *Subsection (3)* provides the clarification. *Paragraph (a)* makes it clear that the section does not create any new rights or convert any quasi-right into a full one or extend the scope of an existing right or convert one into a greater one. This reflects the views of the Supreme Court in the case of *William Bennett Construction Ltd v Greene* [2004] ILRM 96. *Paragraph (b)* makes it clear that the section does not give the grantee any better title or greater interest than the grantor had. *Paragraph (c)*, however, makes it clear that the section has effect subject to the terms of the conveyance.

*Section 69* re-enacts the substance of section 53 of the Conveyancing Act 1881, but extends the provisions governing supplemental

instruments to all instruments and not just deeds. *Subsection (2)* confirms that the provisions do not affect the position as regards title which a purchaser can require the vendor to produce.

*Section 70* re-enacts the substance of sections 10 and 11 of the Law of Property Amendment Act 1859. It deals with partial releases of a rentcharge or judgment charged on land and reverses the common law rule that a partial release released the entire land charged. *Paragraph (b)* of *subsection (2)* clarifies the law by making it clear that, unless the parties agree otherwise, the whole rentcharge or judgment can be enforced against the part of the land not released from it.

*Section 71* replaces the complicated and uncertain provisions governing fraudulent dispositions in sections 1 to 5, 10, 11 and 14 of the Conveyancing Act 1634, as amended by the Voluntary Conveyances Act 1893. *Subsection (1)* recasts sections 1 to 5, *subsection (2)* recasts the provisions of the 1893 Act and *subsection (3)* recasts the provisions of sections 10 and 11. *Paragraph (a)* of *subsection (4)* recasts the provisions of section 14 of the 1634 Act. *Paragraph (b)* contains a saving for the provisions of other laws relating to bankruptcy or corporate insolvency, such as sections 57 to 59 of the Bankruptcy Act 1988.

#### *Contents of deeds*

*Section 72* introduces a new aid to construction of private documents by making available the general rules of construction and definitions of key words in statutes provided by the Interpretation Act 2005. *Paragraph (b)* makes it clear that where the same word is defined in both the 2005 Act and this Bill, the definition which is most appropriate should be relied upon. For example, the definition of “land” in *section 3* of this Bill is more extensive.

*Section 73* re-enacts the substance of section 63 of the Conveyancing Act 1881 and provides that, subject to the terms of the conveyance, it passes everything the grantor had power to convey.

*Section 74* re-enacts, with some modifications, the provisions in sections 54 to 56 of the Conveyancing Act 1881 dealing with receipts in deeds. *Subsection (1)* re-enacts section 54. *Subsection (2)* re-enacts section 55, but renders the receipt conclusive rather than merely sufficient evidence. *Subsection (3)* re-enacts section 56 with a similar modification. *Subsection (4)* clarifies *subsection (3)* by making it clear that it extends to employees and agents of solicitors.

*Section 75* re-enacts the substance of section 4 of the Real Property Act 1845 and ensures that conveyances do not have an unintended effect, such as implying conditions or covenants.

*Sections 76 to 78* recast the provisions relating to statutory covenants for title contained in section 7 of the Conveyancing Act 1881.

*Section 76* clarifies the scope of *sections 77 and 78*. In particular it makes it clear that they do not apply to a conveyance comprising the initial grant of a tenancy or subtenancy (as opposed to subsequent assignments of the tenancy). Covenants implied on such a grant are governed by section 41 of Deasy’s Act 1860.

*Section 77* makes provision for implied covenants relating to title according to different classes of conveyance. The actual covenants themselves are set out in *Schedule 3*. *Section 77* removes the flaw in section 7 of the 1881 Act by requiring only that a person be “expressed” to convey in a particular capacity (e.g. as beneficial

owner), whether or not he or she actually has it. This restores the essential purpose and value of the implied covenants. *Subsection (4)* makes it clear that no covenant is implied unless a person is expressed to convey in one of the capacities specified in the section, but there is a saving for the exception provided by section 52(6) of the Succession Act 1965 (covenants implied in an assent whether or not a personal representative is expressed to convey as such).

*Section 78* provides for additional covenants to be implied in conveyances of land comprised in a lease, on the part of both an assignor and assignee. It includes provisions relating to assignments of part of the land, where adjustments, including apportionment, of the rent may be made.

*Section 79* re-enacts the substance of section 60 of the Conveyancing Act 1881 and deals with enforceability of covenants entered into by two or more persons.

*Section 80* resolves a problem which exists at common law owing to the rule that a person may not contract with himself or herself. It provides that a covenant entered into by a person with himself or herself and another person is enforceable by that other person. This is the equivalent for covenants of the provisions for conveyances in *section 64*.

*Section 81* recasts the provisions in section 9 of the Conveyancing Act 1881 which apply where a person conveys part only of land and so retains the documents of title relating to the entire land (i.e., including the part conveyed). It provides protection for the purchaser of the part conveyed in the form of a statutory acknowledgment by the vendor of the purchaser's right to production of the retained documents (which may be needed in later transactions concerning the purchaser's land) and an undertaking to keep them safe.

*Section 82* applies the provisions relating to service of notices under the Bill contained in *section 4* to service of notices required by private instruments, subject to the terms of any particular instrument.

### *General*

*Section 83* re-enacts section 3 of the Conveyancing Act 1882, which deals with the doctrine of constructive notice. This doctrine governs the duty of a purchaser in investigating title, but this is subject to the modifications introduced by *section 21* of the Bill.

*Section 84* re-enacts section 70 of the Conveyancing Act 1881 and protects the efficacy of court orders.

*Section 85* makes provision for making regulations relating to contracts and conveyances to facilitate electronic conveyancing or provide further protection for vendors and purchasers of land.

## **PART 9 — MORTGAGES**

*(Sections 86 to 110)*

Part 9 introduces substantial simplification and modernisation of the law of mortgages. In particular it assimilates the law relating to unregistered land with registered land, by making a charge the sole method of creating a legal mortgage. Mortgages by conveyance or assignment of the borrower's estate or interest in the land or by demise in the case of leasehold land are abolished. This does not affect the security interests of mortgagees. The Bill also introduces



provisions to ensure that mortgagee's remedies to enforce security are exercised only when appropriate.

### *Creation of mortgages*

*Section 86* introduces the charge as the only method of mortgaging unregistered land. *Subsection (1)* refers to such a charge as a "charge by way of legal mortgage" to distinguish it from other charges on land which do not amount to a mortgage, such as an annuity or rent-charge. Such other charges do not confer all the remedies a mortgagee has, such as the right to sell the land without a court order when the mortgagor defaults (as provided by *section 97*). *Subsection (2)* makes any attempt in future to create a mortgage of unregistered land by any other method operate as a charge by way of legal mortgage. *Subsection (3)* makes future powers to mortgage land operate as a power to charge the land. *Subsection (4)* confirms that the provisions of Part 9 dealing with mortgages otherwise apply to both registered and unregistered land. *Subsection (5)* provides a saving for equitable mortgages which may be created informally. *Subsection (6)* prohibits the creation of a "Welsh mortgage" — defined in *subsection (7)* — because such a mortgage is inconsistent with a fundamental principle reflected in Part 9, i.e. that a mortgagee should be entitled to exercise remedies only where this is necessary to protect or enforce the mortgagee's security.

*Section 87* confirms that the new form of mortgage by way of a charge will confer on a mortgagee the usual security rights and remedies which the traditional mortgage by conveyance or assignment does. This is, however, subject to modifications introduced by other provisions in Part 9. *Subsection (2)* makes it clear that a mortgagee with a charge only still has the right to take possession of the documents of title until the mortgage is paid off. *Subsection (3)* makes a mortgagee who exercises this right responsible for the safe custody of the documents.

### *Powers and rights of mortgagor*

*Section 88* re-enacts the substance of section 16 of the Conveyancing Act 1881, which entitles the mortgagor to inspect and take copies of documents of title in the possession of the mortgagee.

*Section 89* alters the provisions in *section 17* of the Conveyancing Act 1881 by abolishing the mortgagee's right to consolidate mortgages (i.e., the right to insist that the mortgagor pays off all mortgages held with the same mortgagee or none at all). *Subsection (1)* confirms that a mortgagor can redeem any mortgage without having to redeem any other, whether it relates to the same or other property mortgaged to the same mortgagee.

*Section 90* re-enacts the substance of section 15 of the Conveyancing Act 1881, as amended by section 12 of the Conveyancing Act 1882, which entitled a mortgagor to require a transfer of the mortgage instead of redeeming it. *Subsection (3)(a)* excludes the case where the mortgagee is in possession of the land because such a mortgagee is liable to account strictly to the mortgagor and would remain so even after a transfer.

*Section 91* puts in statutory form a jurisdiction which has probably long existed under the courts' inherent equitable jurisdiction. It entitles a mortgagor to seek an order for sale of the land whenever an action is brought in relation to the land, such as for redemption. The mortgagor may wish to obtain a sale in order to reduce mounting debt, but the court is given a wide discretion under *subsection (2)* as

to whether to make an order and the terms of any order made. *Subsection (3)* sets out a variety of orders which the court may make.

*Section 92* re-enacts the substance of section 61 of the Conveyancing Act 1881, which deals with mortgages by two or more mortgagors and their discharge.

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

*Section 93* lays down general principles which will in future govern exercise of a mortgagee's statutory powers and rights. *Paragraph (a)* of *subsection (1)* preserves the rule under the Conveyancing Act 1881 that these powers and rights apply to all mortgages created by deed (including equitable mortgages so created). *Paragraph (b)* alters the law by providing that remedies, such as the power to sell or appoint a receiver, vest as soon as the mortgage is created (instead of arising initially on creation but not becoming exercisable until a default occurs). However, *paragraph (c)* makes it clear that notwithstanding this, in future no remedy can be exercised unless notice is given to the mortgagor and it is for the purpose of protecting the mortgaged property or realising the mortgagee's security. Other provisions (in particular *sections 94 to 107*) impose further restrictions on exercise of particular remedies. *Subsection (2)* abolishes the mortgagee's right of foreclosure (this remedy has not been granted by an Irish court since the 19th century).

*Subsection (3)* enables the parties to exclude or vary the statutory provisions except where they specify otherwise. It makes it clear that the provisions in *subsection (1)* cannot be excluded or varied. *Subsection (4)* contains a saving for the provisions in section 62 of the Registration of Title Act 1964 which govern the effect of a charge on registered land. That section is amended by *section 121* of this Bill.

*Section 94* governs the obtaining by a mortgagee of a court order for possession of the mortgaged property. *Subsection (1)* makes it clear that in future such an order must be sought if the mortgagee wants to take possession, unless the mortgagor consents in writing to such taking. Under *section 93(1)(c)* prior notice of application for such an order must be given to the mortgagor and the purpose of seeking an order must be for protecting the property or realising the mortgagee's security. *Section 95* deals with emergency applications where the mortgaged property has been abandoned by the mortgagor. *Subsections (2) to (4)* confer a wide discretion on the court as to whether to make a possession order and the terms and conditions of any order made, taking account of the circumstances of the particular case. *Subsection (5)* empowers the court to revoke or vary such terms and conditions. *Subsection (6)* saves the jurisdiction of the court under section 62(7) of the Registration of Title Act 1964 and sections 7 and 8 of the Family Home Protection Act 1976.

*Section 95* entitles a mortgagee to seek an emergency order for possession in order to protect mortgaged property abandoned by the mortgagor, either from the District Court or any court already seised of any applications or proceedings relating to the mortgaged property. Again the court is given discretion in dealing with applications for such an order. *Subsection (3)* reverses the usual rule which applies where a mortgagee takes possession — liability to account strictly to the mortgagor is not appropriate in cases coming within *section 95*. *Subsection (4)* contains a saving for the commonly used jurisdiction of the court to order a sale of the mortgaged property, on the basis of a “well-charged” order.

*Section 96* regulates the position of a mortgagee in possession of the mortgaged property. Subject to the terms of any order made under *sections 94 or 95, subsection (1)* requires the mortgagee to proceed within a reasonable time to a sale or, if this is not appropriate, to lease the property and use the rent to reduce the mortgage debt. *Subsection (2)* removes an anomaly in the current law, whereby, notwithstanding that a mortgagee in possession is liable to account strictly to the mortgagor, its possession is regarded as “adverse” to the mortgagor and so the mortgagor’s right to redeem may become barred under the Statute of Limitations 1957.

*Section 97* re-enacts the substance of the various provisions in the Conveyancing Acts 1881 and 1911 governing the mortgagee’s statutory power of sale. *Section 98* re-enacts the substance of the supplementary provisions relating to the power of sale also in the 1881 and 1911 Acts.

*Section 99* extends to all mortgagees the mortgagee’s statutory duty to obtain the best price reasonably obtainable when selling the mortgaged property imposed on building societies by section 26 of the Building Societies Act 1989. *Subsection (1)* makes it clear that this duty applies also to any receiver or other person acting on behalf of the mortgagee. *Subsection (2)* imposes a duty to notify the mortgagor of the outcome of a sale (the mortgagor may sue for damages under *section 101(2)* for any loss resulting from a sale below the best price). *Subsection (3)* renders it an offence not to serve such notice. *Subsection (4)* contains a saving for the general duty of a mortgagee to account to the mortgagor, which is governed by *section 103*.

*Section 100* makes provision for giving effect to a sale by a mortgagee taking account of the fact that under *section 86* the mortgagee has a charge only and no other title to the property vested in it. It enables the mortgagee to vest the mortgagor’s estate or interest in the land in the purchaser without the need for a power of attorney. *Subsection (1)* makes it clear that these provisions apply to both the statutory and an express power of sale. *Subsection (2)* makes it clear that the vesting of title in the purchaser also extinguishes the mortgage (but without prejudice to any personal liability of the mortgagor for any outstanding debt not covered by the sale proceeds). *Subsection (3)* deals with cases where there is a sub-mortgage or a mortgage of part only of a tenancy. *Subsection (4)* applies the usual rule with respect to registered land, that the legal title will not vest in the purchaser until it is registered in the Land Registry.

*Section 101* re-enacts the substance of provisions in the Conveyancing Acts 1881 and 1911 protecting a purchaser buying the property from a mortgagee who is professing to exercise the statutory power of sale.

*Section 102* re-enacts the provisions in section 22 of the 1881 Act, with the modification that the mortgagee’s receipt is now a conclusive, as opposed to sufficient, discharge for the purchaser, unless the purchaser has actual knowledge of an improper or irregular exercise of the power of sale, or knowingly participates in such an exercise. *Subsection (3)* provides that money received by a mortgagee under the mortgage or from the proceeds of securities comprised in it is to be applied in the same way as the proceeds of a sale should be applied under *section 103*.

*Section 103* re-enacts the provisions in section 21(3) of the 1881 Act governing application of the proceeds of sale, but clarifies them. *Subsection (3)* makes it clear that if any residue is passed to other mortgagees, each of them must comply with *subsections (1) and (2)*.

*Subsection (5)* clarifies what costs may be met out of the proceeds of sale.

*Section 104* re-enacts the substance of provisions in the 1881 Act dealing with the mortgagee's statutory power to appoint a receiver. *Subsection (2)* confirms the rule that, although appointed by the mortgagee, the receiver is regarded as agent of the mortgagor. *Subsection (4)* makes it clear that any power delegated to the receiver must be exercised in accordance with the provisions in the Bill dealing with that power, e.g., *sections 97 to 103* in relation to the power of sale.

*Section 105* re-enacts, with modifications, the substance of the provisions in the 1881 Act dealing with application of income received by a receiver. *Subsection (1)* makes it clear that the order of application set out in it must be followed unless the mortgagee directs otherwise. *Subsection (2)* makes it clear that a mortgagee may waive particular payments or vary the order of application by written directions to this effect.

*Section 106* re-enacts the substance of the provisions in the 1881 Act relating to insurance by the mortgagee of the mortgaged property, with the modification in *subsection (2)* that the modern practice of insuring to the full reinstatement cost of repairing any loss or damage should be followed.

*Section 107* amends the law relating to "tacking" (whereby a mortgagee may obtain priority over another mortgagee by attaching priority to certain loans). *Subsection (1)* deals with tacking future advances which is common in banking practice. *Paragraphs (a)* and *(c)* reflect current law but *paragraph (b)* reverses the common law position. *Section 124* amends the equivalent provision in the Registration of Title Act 1964 (*section 75*) accordingly. *Subsection (2)* defines "future advances". *Subsection (3)* abolishes the obscure other form of tacking known as *tabula in naufragio* (whereby an equitable mortgagee could obtain priority over a prior equitable mortgagee by acquiring the legal title to the property). It was abolished by section 7 of the Vendor and Purchaser Act 1874 but restored by section 73 of the Conveyancing Act 1881. It is ineffective in any event because priorities are usually governed in such cases under the registration systems applicable here.

#### *Leases and surrenders of leases*

*Section 108* recasts the provisions in the Conveyancing Acts 1881 and 1911 conferring statutory powers of leasing on mortgagors and mortgagees. *Subsection (1)* now confers a general power of leasing on the mortgagor, subject to the mortgagee's consent (which cannot be unreasonably withheld). *Subsection (2)* clarifies the position where the mortgagor leases without consent — the mortgagee can get the lease set aside only if the lessee had actual knowledge of the mortgage at the time of the granting of the lease and if it is prejudicial to the mortgagee. *Subsection (3)* now confines the mortgagee's power to lease to the listed situations, such as for the purpose of preserving the value of the land or protecting the mortgagee's security.

*Section 109* recasts the provisions in the 1881 and 1911 Acts governing exercise of the power of leasing. *Subsections (1)* and *(2)* make it clear that non-compliance with their provisions governing the terms of leases renders the lease totally void. This does not apply to the provisions of *subsections (3)* and *(4)*.

*Section 110* recasts the provisions of section 3 of the Conveyancing Act 1911 dealing with surrender of a lease in order to grant a new lease.

## **PART 10 — JUDGMENT MORTGAGES**

*(Sections 111 to 119)*

This Part replaces with substantial modification the provisions of the Judgment Mortgage (Ireland) Acts 1850 and 1858.

*Section 111* re-enacts provisions in sections 3 and 4 of the 1858 Act. *Section 112* re-enacts the substance of section 4 of the 1850 Act. The detailed requirements for registration of judgments will be prescribed by regulations made under *section 5*. *Section 113* re-enacts the substance of section 5 of the 1850 Act.

*Section 114* replaces the complicated provisions of section 6 of the 1850 Act relating to registration of judgment mortgages. It is envisaged that the requirements for registration will be prescribed in general rules under the Registration of Title Act 1964 and the Registration of Deeds and Title Act 2006. *Subsection (3)* clarifies a number of matters upon which there has been doubt. *Paragraph (a)* confirms that, unlike in the case of a judgment registered under *section 112*, there is no need to re-register a judgment mortgage every 5 years. *Paragraph (b)(i)* confirms that a creditor may still register a judgment mortgage even though the judgment debtor has been granted a stay of execution, unless the court orders otherwise. *Subparagraph (ii)* confirms that a judgment mortgage can be registered against a beneficiary's interest under a trust for sale, even though the doctrine of conversion deems that interest to be personalty. Until actual conversion takes place on a sale, the trustees continue to hold the land.

*Section 115* amends section 99(2) of the Companies Act 1963 to ensure that a judgment mortgage is treated like other charges which must be notified to the Registrar of Companies.

*Section 116* replaces the provisions of sections 7 and 8 of the 1850 Act dealing with the effect of registration of a judgment mortgage. *Subsection (1)* confirms that it creates the equivalent of a mortgage by deed and so attracts the powers, rights and obligations conferred under Part 9 of the Bill. *Subsection (2)* reflects the one difference from an ordinary mortgage, that it is created by the unilateral action of the judgment creditor and so in this respect is more like a voluntary conveyance which is subject to prior equities and encumbrances attaching to the land. *Subsection (3)* implements the suggestion in the case of *AS v GS and AIB* [1994] 1 IR 407 that, unless the land is a family home, a claim lodged in court is not a prior equity unless it seeks a specific order against the land. *Subsection (4)* confers on a judgment mortgagee the same priority as an ordinary mortgagee has where the debtor becomes insolvent. This is subject to the general rule that security created shortly before insolvency is void against the Official Assignee or a company liquidator. *Subsection (5)* re-enacts the substance of section 8 of the 1850 Act, substituting a reference to the provisions in section 71 which replace those in the Conveyancing Act 1634.

*Section 117* re-enacts the substance of section 9 of the 1850 Act and section 5 of the 1858 Act. Discharge of judgment mortgages of registered land is governed by section 65 of the Registration of Title Act 1964. *Section 118* clarifies the operation of section 32 of the Statute of Limitations 1957 in relation to judgment mortgages.



*Section 119* abolishes the power of the sheriff to seize land subject to a tenancy under a writ of *feri facias*, a remedy rarely invoked and of doubtful efficacy. This simplifies conveyancing by removing the need to make searches in the Sheriff's Office.

## **PART 11 — AMENDMENTS TO REGISTRATION OF TITLE ACT 1964**

*(Sections 120 to 124)*

This Part contains substantial consequential amendments to the 1964 Act. Other minor amendments are set out in *Schedule 1*. The repeal of provisions in the 1964 Act is also provided for in Part 5 of *Schedule 2*.

*Section 120* adjusts some of the definitions in section 3 of the 1964 Act. *Section 121* adjusts the provisions in section 62 of the 1964 Act relating to a chargee's remedies. *Section 122* adds a new burden to the list of burdens in section 69 of the 1964 Act which may be registered as affecting registered land, namely a freehold covenant coming within *section 46* of this Bill. *Section 123* substitutes a new section 71 in the 1964 Act to reflect the provisions in *section 114* of the Bill dealing with judgment mortgages. *Section 124* substitutes a new subsection (1) in section 75 of the 1964 Act to reflect the provisions relating to future advances in *section 108* of the Bill.

## **SCHEDULES**

*Schedule 1* contains various consequential amendments to other statutes, including the Registration of Title Act 1964.

*Schedule 2* contains repeals of numerous pre-1922 statutes falling into different categories (Parts 1 to 4) and some Acts of the Oireachtas (Part 5).

The current statutory provisions relating to land and conveyancing law are contained in pre — 1922 statutes which fall into four categories:

- (a) Pre-Union Irish Statutes (enacted by various Irish Parliaments prior to the Act of Union 1800);
- (b) Pre-Union English Statutes (enacted by the English Parliament between 1226 and 1707 and applied to Ireland either by Poyning's Act 1495 or by express or implied provision);
- (c) Pre-Union British Statutes (enacted by the British Parliament between 1708 and 1800 and applied to Ireland);
- (d) United Kingdom Statutes (enacted by the Parliament of the United Kingdom of Great Britain and Ireland between 1801 and 1922 and applied to Ireland).

*Schedule 3* sets out the different classes of covenants for title implied in conveyances under *sections 77* and *78*. Part 1 also specifies the scope of the covenantor's liability under the covenants.

**Financial implications**

The proposals contained in this Bill provide for a comprehensive reform and modernisation of land law and conveyancing law. Reforming and modernising the law will help to streamline the conveyancing of land and reduce delays and associated costs. Reducing delays and making it easier to convey and register land will also contribute to an improved business environment and enhance competitiveness. The repeal of outdated and redundant statutory provisions will also contribute to the broader process of regulatory reform outlined in the White Paper 'Regulating Better'.

As regards public expenditure, the Bill does not create any additional costs for the Exchequer.

*An Roinn Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí Meitheamh, 2006.*