

South Australia

Law of Property Act 1936

An Act to consolidate and amend certain Acts relating to property and conveyancing.

Contents

Part 1—Preliminary

- 1 Short title
- 4 Repeal
- 5 Savings
- 6 Application of Act to land under *Real Property Act 1886*
- 7 Interpretation

Part 2—General rules affecting property

- 8 Lands lie in grant only
- 9 Use of word "grant" unnecessary
- 10 Power to dispose of all rights and interests in land
- 11 *Lis pendens* to be registered
- 12 Tenant for life without impeachment of waste, not to commit equitable waste
- 13 No merger at law where none in equity
- 14 Suits for possession of land by mortgagors
- 15 Assignment of debts and choses in action
- 16 Stipulations not of the essence of a contract
- 17 Satisfied terms, whether created out of freehold or leasehold land, to cease
- 18 Vesting order consequential on judgment for sale or mortgage of land
- 19 Vesting order consequential on judgment for specific performance etc
- 20 Rights of pre-emption capable of release
- 21 Purchaser not to be concerned with the trusts of the proceeds of sale
- 22 Right of light not deemed to exist by reason only of enjoyment or presumption of lost grant
- 23 Gift not to be avoided by illegal stipulation attached thereto
- 24 Alien friends may hold real and personal property
- 24A Certain contracts with infants for the repayment of loans to be valid
- 24B Abolition of doctrine of *interesse termini*
- 24C Body corporate may hold property as joint tenant
- 24D Capacities of corporations
- 25 Contingent remainders protected against the premature failure of a preceding estate

Part 3—General rules affecting contracts, conveyances, and other instruments

- 26 Contracts for sale of land to be in writing
- 27 Discharge of incumbrances by the Court on sales or exchanges
- 28 Conveyances to be by deed
- 29 Instruments required to be in writing

- 30 Creation of interests in land by parol
- 31 Savings in regard to last two sections
- 32 Effect of possession of documents
- 33 Interests of persons in possession
- 34 Persons taking who are not parties and as to indentures
- 35 Conditions and certain covenants not implied
- 36 General words implied in conveyances
- 37 All estate clause implied
- 38 Partial release of security from rent-charge
- 39 Release of part of land affected from a judgment
- 40 Conveyances by a person to himself etc
- 41 Execution and attestation of deeds
- 41AA Execution and attestation of other instruments
- 41A Easements without dominant land to be validly created
- 42 Covenants for title

Part 4—Mortgages

- 43 Realisation of equitable charges by the court
- 44 Sale of mortgaged property in action for redemption or foreclosure
- 45 Obligation to transfer instead of reconveying
- 46 Vesting order in place of conveyance by devisee of mortgagee
- 47 Powers incident to estate or interest of mortgagee
- 48 Regulation of exercise of power of sale
- 49 Conveyance on sale
- 50 Application of proceeds of sale
- 51 Provisions as to exercise of power of sale
- 52 Mortgagee's receipts, discharges etc
- 53 Appointment, powers, remuneration and duties of receiver
- 54 Effect of advance on joint account
- 55 Notice of trusts affecting mortgage debts
- 55A Enforcement of rights against mortgagor
- 55B Collateral covenants
- 56 Application to registered land

Part 5—Powers

- 57 Disclaimer etc of powers
- 57A Validation of appointments where objects are excluded or take illusory shares
- 58 Execution of powers not testamentary

Part 6—Class closure, perpetuities and accumulations

Division 1—Preliminary

- 58A Interpretation and jurisdiction
- 59 Application of Part

Division 2—Rules for class ascertainment

- 60 Class ascertainment
- 60A Court's power to reverse statutory limitation on class membership

Division 3—Perpetuities and accumulations

- 61 Abolition of rules against perpetuities and excessive accumulations
- 62 Court may order vesting of interests

62A Preservation of rule in *Saunders v Vautier*

Part 7—Apportionment

- 63 Definitions
- 64 Apportionment of rents in respect of time
- 65 When apportioned part payable or recoverable
- 66 Right of recovering apportioned parts
- 67 Policies of assurance
- 68 Contracting out

Part 8—Partition

- 69 Power to order partition or sale instead of partition
- 70 Sale on application of certain proportion of parties interested
- 71 As to purchase of share of party desiring sale
- 72 Notice to interested parties
- 73 Proceedings where service is dispensed with
- 74 Authority for parties interested to bid
- 75 Court to declare what parties are trustees of lands comprised in any suit, and as to the interests of persons unborn
- 76 Payment and application of moneys arising from settled land
- 77 Trustees may apply moneys in certain cases without application to court
- 78 Until money directed to be applied it is to be invested and dividends to be paid to parties entitled
- 79 Court may direct application of money in respect of leases or reversions as may appear just
- 80 Interpretation of settled land
- 81 Provision for case of successive sales in same auction
- 82 Request by married woman, infant, or person under disability
- 83 Application for partition to include application for sale and distribution of the proceeds
- 84 Costs

Part 9—Voidable dispositions

- 86 Voluntary conveyances to defraud creditors
- 87 Voluntary disposition with intent to defraud voidable as against purchasers
- 88 Acquisitions of reversions at an under value

Part 10—Miscellaneous

- 89 Vesting order in lieu of conveyance
- 90 Vesting order in cases of mentally incapacitated or infant mortgagee
- 91 In what cases the heir, representative, or devisee of a person, who has contracted to sell land, shall be deemed a trustee
- 92 Status of married women
- 93 Property of married women
- 94 Abolition of husband's liability for wife's torts and antenuptial contracts, debts and obligations
- 95 Joint liability of husband and wife
- 95A Husband and wife to be treated as separate persons for purpose of taking property
- 96 Joint powers
- 97 Acknowledgment by married woman not necessary
- 98 Investments with money of husband
- 99 Married woman may effect policy of assurance
- 100 Assurance policy by married men or married women

- 101 Married women to have same civil and criminal redress as *feme sole*
- 102 Act of wife rendering her liable to criminal proceedings
- 103 Married woman's liability for contracts and wrongs antecedent to marriage
- 104 Implied agency of wife
- 105 Questions between husband and wife as to property
- 105A Property in domestic allowance
- 106 Married woman as executrix or trustee
- 107 Legal representative of married woman
- 108 Interpretation of terms
- 109 Will of married woman
- 110 Invalidity of restraints upon anticipations
- 111 Acquisitions and dispositions of trust estates by married women
- 112 Regulations respecting notices
- 114 Power of Court to sell interest of Crown in real estate
- 115 Power to waive right of Crown in certain cases
- 116 Definition of intestacy
- 117 Restrictions on constructive notice
- 118 Lessor to have benefit of an informal insurance
- 119 Payment into court
- 120 Saving of certain rights of the Crown

Schedule 1—Acts repealed

Schedule 2—Implied covenants

- 1 Covenant implied in a conveyance for valuable consideration, other than a mortgage, by a person who conveys and is expressed to convey as beneficial owner
- 2 Further covenant implied in a conveyance of leasehold property for valuable consideration, other than a mortgage, by a person who conveys and is expressed to convey as beneficial owner
- 3 Covenant implied in a conveyance by way of mortgage by a person who conveys and is expressed to convey as beneficial owner
- 4 Covenant implied in a conveyance by way of mortgage of leasehold property by a person who conveys and is expressed to convey as beneficial owner
- 5 Covenant implied in a conveyance by way of settlement, by a person who conveys and is expressed to convey as settlor
- 6 Covenant implied in any conveyance, by every person who conveys and is expressed to convey as trustee or mortgagee, or as personal representative of a deceased person, or as administrator, committee or other person empowered to act on behalf of a mentally incapacitated person or under an order of the court

Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Law of Property Act 1936*.

4—Repeal

The Acts mentioned in Schedule 1 of this Act are repealed to the extent shown in that Schedule.

5—Savings

Any alteration, by this Act, of the law, whether by the repeal of an enactment, or otherwise, shall not, unless otherwise expressly provided by this Act affect—

- (a) any right accrued, or obligation incurred, before the commencement of this Act under the law so altered; or
- (b) the validity or invalidity, or any operation, effect or consequence of any instrument executed or made, or of anything done or suffered before the commencement of this Act; or
- (c) any action, proceeding or thing then pending or uncompleted and every such action, proceeding and thing may be carried on and completed as if the enactment had not been repealed, or the law otherwise altered.

6—Application of Act to land under *Real Property Act 1886*

Except as in this Act expressly provided, this Act, so far as inconsistent with the *Real Property Act 1886* shall not apply to land which is under the provisions of that Act.

7—Interpretation

In this Act unless inconsistent with the context or subject-matter or some other meaning is clearly intended—

bankruptcy includes insolvency and liquidation by arrangement and also any other act or proceeding in law having under any law for the time being in force effects or results similar to those of bankruptcy;

building purposes includes the erecting and improving of and the adding to, and the repairing of buildings; and a **building lease** is a lease for building purposes or purposes connected therewith;

conveyance includes a mortgage, charge, lease, assent, vesting declaration, disclaimer, release, surrender, extinguishment and every other assurance of property or of an interest therein by any instrument, except a will; **convey** has a corresponding meaning;

court means—

- (a) the Supreme Court; or
- (b) the District Court; or
- (c) if the proceedings involve property with a value not exceeding the amount by reference to which the jurisdictional limit of the Magistrates Court is fixed for actions to obtain or recover title to, or possession of, real or personal property—the Magistrates Court;

disposition includes a conveyance and also a devise, bequest, or an appointment of property contained in a will; and **dispose of** has a corresponding meaning;

income includes rents and profits;

incumbrance includes a legal or equitable mortgage and a trust for securing money, and a lien, and a charge of a portion, annuity, or other capital or annual sum; and **incumbrancer** has a meaning corresponding with that of incumbrance, and includes every person entitled to the benefit of an incumbrance, or to require payment or discharge thereof;

instrument includes deed and will but does not include a statute, unless the statute creates a settlement;

interest in property means a legal or equitable interest;

land includes land of any tenure, and mines and minerals whether or not held apart from the surface, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other way) and other corporeal hereditaments; also a rent and other incorporeal hereditaments, and an easement, right, privilege, or benefit in, over, or derived from the land and also an undivided share in land; and **mines and minerals** include any strata or seam of minerals or substances in or under any land, and powers of working and getting the same;

limitation includes a trust;

mentally incapacitated person has the same meaning as in the *Guardianship and Administration Act 1993*;

mining lease means a lease for mining purposes, that is the searching for, winning, working, getting, making merchantable, carrying away, or disposing of mines and minerals, or purposes connected therewith, and includes a grant or licence for mining purposes;

mortgage includes any charge or lien on any property for securing money or money's worth; **mortgage money** means money or money's worth secured by a mortgage; **mortgagor** includes any person from time to time deriving title under the original mortgagor or entitled to redeem a mortgage according to his estate interest or right in the mortgaged property; **mortgagee** includes any person from time to time deriving title under the original mortgagee; and **mortgagee in possession** is, for the purposes of this Act, a mortgagee who, in right of the mortgage, has entered into and is in possession of the mortgaged property; and **right of redemption** includes an option to repurchase only if the option in effect creates a right of redemption;

notice includes constructive notice;

personal representative means the executor, original or by representation, or administrator for the time being of a deceased person;

possession includes receipt of rents and profits or the right to receive the same (if any);

property includes any thing in action, and any interest in real or personal property;

purchaser means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property except that where so expressly provided **purchaser** means a person only who acquires an interest in or charge on property for money or money's worth; and where the context so requires **purchaser** includes an intending purchaser; **purchase** has a meaning corresponding with that of **purchaser**; and **valuable consideration** includes marriage but does not include a nominal consideration in money;

registered land means land which is subject to the *Real Property Act 1886*; and **registrar** means the Registrar-General under that Act;

rent includes a rent service or a rent charge, or other rent toll, duty, royalty, or annual or periodical payment in money or money's worth, reserved or issuing out of or charged upon land, but does not include mortgage interest; **rent charge** includes a fee farm rent; **fine** includes a premium or foregift and any payment consideration, or benefit in the nature of a fine, premium or foregift; **lessor** includes an under-lessor and a person deriving title under a lessor or under-lessor; and **lessee** includes an under-lessee and a person deriving title under a lessee or under-lessee, and **lease** includes an under-lease or other tenancy;

representative means an executor or administrator, and includes the Public Trustee in cases where the Supreme Court shall have authorised him to administer the estate of a deceased person;

sale means a sale properly so called;

securities include stocks, funds and shares;

trust for sale in relation to land, means an immediate binding trust for sale, whether or not exercisable at the request or with the consent of any person, and with or without a power at discretion to postpone the sale; **trustees for sale** means the persons (including a personal representative) holding land on trust for sale; and **power to postpone a sale** means power to postpone in the exercise of a discretion;

vest, in relation to property, means to vest in interest or possession.

Example—

For example, an interest in remainder vests in interest when—

- (a) the persons who are to take the interest are ascertainable; and
- (b) the vesting in possession of the interest is dependent only on the determination of prior interests and no other contingency.

Part 2—General rules affecting property

8—Lands lie in grant only

All lands and all interests therein shall lie in grant and shall be incapable of being conveyed by livery or livery and seisin, or by feoffment, or by bargain and sale; and a conveyance of an interest in land may operate to pass the possession or right to possession thereof, without actual entry, but subject to all prior rights thereto.

9—Use of word "grant" unnecessary

The use of the word "grant" is not necessary to convey land or to create any interest therein.

10—Power to dispose of all rights and interests in land

All rights and interests in land may be disposed of, including—

- (a) a contingent, executory, or future interest in any land, or a possibility coupled with an interest in any land, whether or not the object of the gift or limitation of such interest or possibility be ascertained;

- (b) a right of entry, into or upon land whether immediate or future, and whether vested or contingent.

11—*Lis pendens* to be registered

No *lis pendens* shall bind any *bona fide* purchaser or mortgagee for valuable consideration without express notice thereof, unless and until it is registered under the *Registration of Deeds Act 1935* by delivering to the Registrar-General of Deeds a memorial containing the title of the cause or matter, and the name and address of the persons whose estate or interest is sought to be affected thereby; and every such memorial shall be signed by the solicitor of one of the parties to the cause or matter, or of some person claiming to be entitled to deliver such memorial.

12—Tenant for life without impeachment of waste, not to commit equitable waste

An estate for life, without impeachment of waste, shall not confer upon the tenant for life any legal right to commit waste of the description known as equitable waste, unless an intention to confer such right expressly appears by the instrument creating such estate.

13—No merger at law where none in equity

There shall not be any merger by operation of law only of any estate, the beneficial interest in which would not be deemed to be merged or extinguished in equity.

14—Suits for possession of land by mortgagors

A mortgagor entitled for the time being to the possession or receipt of the rents and profits of any land, as to which no notice of his intention to take possession or to enter upon the receipt of the rents and profits thereof has been given by the mortgagee, may sue for such possession, or for the recovery of such rents or profits, or to prevent or to recover damages in respect of any trespass or other wrong relative thereto, in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person.

15—Assignment of debts and choses in action

- (1) Any absolute assignment by writing under the hand of the assignor (not purporting to be by way of charge only) of any debt or other legal chose in action, of which express notice in writing has been given to the debtor, trustee, or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action, shall be effectual in law (subject to equities having priority over the right of the assignee), to pass and transfer from the date of such notice—
 - (a) the legal right to such debt or chose in action; and
 - (b) all legal and other remedies for the same; and
 - (c) the power to give a good discharge for the same, without the concurrence of the assignor.
- (2) However, if the debtor, trustee, or other person liable in respect of such debt or chose in action has notice—
 - (a) that such assignment is disputed by the assignor, or any person claiming under him; or

(b) of any other opposing or conflicting claims, to such debt or chose in action, he may, if he thinks fit, either call upon the persons making claim thereto to interplead concerning the same, or pay the debt or other chose in action into court, under the provisions of the *Trustee Act 1936*.

16—Stipulations not of the essence of a contract

Stipulations in a contract, as to time or otherwise, which according to rules of equity are not deemed to be or to have become of the essence of the contract, shall be construed and have effect at law in accordance with the rules of equity.

17—Satisfied terms, whether created out of freehold or leasehold land, to cease

- (1) Where the purposes of a term of years, created or limited at any time out of freehold land, become satisfied (whether or not that term either by express declaration or by construction of law becomes attendant upon the freehold reversion), that term of years shall merge in the reversion expectant thereon and shall cease accordingly.
- (2) Where the purposes of a term of years, created or limited at any time out of leasehold land, become satisfied, that term shall merge in the reversion expectant thereon and cease accordingly.
- (3) Where the purposes are satisfied as respects part only of the land comprised in a term, this section has effect as if a separate term had been created in regard to that part of the land.

18—Vesting order consequential on judgment for sale or mortgage of land

Where the court gives a judgment, or makes an order directing the sale or mortgage of land, every person, whether under disability or not, who is entitled to or possessed of the land, or entitled to any interest therein, and is a party to the action or proceeding, or otherwise bound by the judgment or order, shall be deemed to be so entitled or possessed, as the case may be, as a trustee within the meaning of the *Trustee Act 1936*; and the court may, if it thinks expedient, make an order vesting the land, or any part thereof, for such estate as the court thinks fit in the purchaser or mortgagee, or in any other person.

19—Vesting order consequential on judgment for specific performance etc

Where a judgment is given for the specific performance of a contract concerning any land, or for the partition, or sale in lieu of partition, or exchange of any land, or generally where any judgment is given for the conveyance of any land, either in cases arising out of the doctrine of election or otherwise, the court may declare that any of the parties to the action are trustees of the land, or any part thereof, within the meaning of the *Trustee Act 1936* or may declare that the interests of unborn persons who might claim under any party to the action, or under the will or voluntary settlement of any person deceased who was during his lifetime a party to the contract or transactions concerning which the judgment is given, are the interests of persons who, on coming into existence, would be trustees within the meaning of the *Trustee Act 1936*; and thereupon the court may make a vesting order relating to the rights of those persons, born and unborn, as if they had been trustees.

20—Rights of pre-emption capable of release

All statutory and other rights of pre-emption affecting a legal estate shall be and be deemed always to have been capable of release.

21—Purchaser not to be concerned with the trusts of the proceeds of sale

A purchaser of a legal estate from trustees for sale shall not be concerned with the trusts affecting the proceeds of sale of land subject to a trust for sale or affecting the rents and profits of the land until sale, whether or not those trusts are declared by the same instrument by which the trust for sale is created.

22—Right of light not deemed to exist by reason only of enjoyment or presumption of lost grant

- (1) After the twenty-sixth day of October, 1911, no right to the access or use of light to or for any building shall be capable of coming into existence by reason only of the enjoyment of such access or use for any period of time, or of any presumption of a lost grant based upon such enjoyment.
- (2) This section shall not affect any right actually acquired before the said date.

23—Gift not to be avoided by illegal stipulation attached thereto

- (1) No gift, whether by testamentary disposition or by instrument *inter vivos*, shall be held to be void solely on the ground that the testator or donor has attached an illegal stipulation to such gift, whether such stipulation is in the nature of a limitation of the gift or of a condition precedent or subsequent to the gift, unless it is proved to the satisfaction of the court before which the matter is in question that the donee of such gift consented to such stipulation at or before the time when the testamentary disposition or instrument *inter vivos* was executed by the testator or donor.
- (2) Unless it is proved as aforesaid, in construing the testamentary disposition or instrument *inter vivos*, the gift shall be read as if the illegal stipulation had not been attached thereto.

24—Alien friends may hold real and personal property

Every alien friend may inherit, or otherwise take by representation, acquire, hold, convey, assign, devise, bequeath, or otherwise dispose of every description of property, whether real or personal, in the same manner as if he were a natural-born subject of His Majesty.

24A—Certain contracts with infants for the repayment of loans to be valid

- (1) Notwithstanding anything to the contrary contained in any other Act or in any rule of common law or equity the following contracts, whether entered into before or after the commencement of the *Law of Property Act Amendment Act 1966* shall be as valid and binding on an infant for all purposes as if the infant were of full age at the time he entered into the contract, namely—
 - (a) any contract entered into by an infant not under the age of eighteen years with the State Bank of South Australia for the repayment of moneys advanced or to be advanced to the infant by the said bank under the provisions of the *Advances for Homes Act 1928*; and

- (b) any contract entered into by an infant not under the age eighteen years with the South Australian Housing Trust or any institution or society within the meaning of the *Homes Act 1941* for the repayment of moneys lent or to be lent to the infant by the said Trust or any such institution or society; and
 - (c) any contract entered into by an infant not under the age of eighteen years—
 - (i) with a building society registered under the *Building Societies Act 1881*; or
 - (ii) with an industrial and provident society registered under the *Industrial and Provident Societies Act 1923*,
for the repayment of moneys lent or advanced or to be lent or advanced to the infant by any such society; and
 - (d) any contract entered into by an infant not under the age of eighteen years for the repayment of moneys lent or advanced or to be lent or advanced to the infant by a bank or life assurance company or society for the purpose of purchasing or erecting a dwelling house for his own occupation; and
 - (e) any contract entered into by an infant not under the age of eighteen years with any building contractor for the purchase or erection of a dwelling house for his own occupation.
- (2) An infant who has entered into any contract referred to in the last preceding subsection, whether before or after the commencement of the *Law of Property Act Amendment Act 1966* shall not at any time be entitled on any ground relating to his infancy or former infancy to avoid any of his obligations under the contract or under any instrument executed by the infant whereby the repayment of any moneys lent or advanced is secured or to repudiate any contract or any transfer, conveyance or assignment to any such infant relating to any property charged by him.
- (3) Any instrument executed or purporting to have been executed by an infant by way of security for the repayment of any moneys lent or advanced or to be lent or advanced to the infant in pursuance of a contract of a kind referred to in subsection (1) of this section shall be as valid and effectual for all purposes as if the infant were of full age and capacity at the time he executed the instrument.
- (4) For the purposes of this section—
- (a) any reference in this section to a contract entered into by an infant shall be read and construed as including reference to a contract entered into by an infant jointly with some other person or persons (whether of full age or not); and
 - (b) any reference in this section to moneys lent or advanced or to be lent or advanced to an infant shall be read and construed as including reference to moneys lent or advanced or to be lent or advanced to the order of an infant or to an infant jointly with some other person or persons (whether of full age or not); and
 - (c) any reference in this section to an instrument executed by an infant shall be read and construed as including reference to an instrument executed by an infant jointly with some other person or persons (whether of full age or not); and

- (d) any reference in this section to an instrument shall include an instrument registrable under the provisions of the *Real Property Act 1886*.

24B—Abolition of doctrine of *interesse termini*

- (1) A leasehold estate or interest is capable of taking effect notwithstanding that the lessee has not entered into possession of the land subject to the lease.
- (2) This section applies to leasehold estates or interests whether created before or after the commencement of the *Statutes Amendment (Property) Act 1980*.

24C—Body corporate may hold property as joint tenant

- (1) Subject to subsection (2), a body corporate is capable of acquiring and holding real or personal property in joint tenancy.
- (2) The acquisition and holding of property by a body corporate in joint tenancy is subject to—
- (a) any limitations on the capacity of the body corporate to acquire or hold property in joint tenancy imposed by a statute or other instrument defining or affecting the capacities of the body corporate; and
 - (b) any limitations on the capacity of the body corporate to acquire or hold property that apply whether the property is to be acquired or held in joint tenancy or not.
- (3) Where a body corporate is a joint tenant of property, the property devolves, on dissolution of the body corporate, on the other joint tenant.

24D—Capacities of corporations

- (1) A corporation sole established under an Act has, and will be taken always to have had—
- (a) perpetual succession and a common seal; and
 - (b) the capacity to sue and be sued in the corporation's name; and
 - (c) subject to any limitations imposed under an Act, all the powers of a natural person.
- (2) A right or liability that a corporation sole or corporation aggregate would have acquired or incurred but for the occurrence (before or after the commencement of this section) of a temporary vacancy in the office or offices of the corporation will be treated as having taken effect on the filling of the vacant office or offices as if the vacancy or vacancies had been filled before the right or liability was acquired or incurred.

25—Contingent remainders protected against the premature failure of a preceding estate

A contingent remainder existing at any time after the commencement of this Act shall be capable of taking effect, notwithstanding the want of a particular estate of freehold to support it in the same manner as it would take effect if it were a contingent remainder of an equitable estate supported by an outstanding estate in fee simple.

Part 3—General rules affecting contracts, conveyances, and other instruments

26—Contracts for sale of land to be in writing

- (1) No action shall be brought upon any contract for the sale or other disposition of land or of any interest in land, unless an agreement upon which such action is brought, or some memorandum or note thereof, is in writing, and signed by the party to be charged or by some person thereunto by him lawfully authorised.
- (2) This section does not affect the law relating to part performance, or sale by the court.

27—Discharge of incumbrances by the Court on sales or exchanges

- (1) Where land subject to any incumbrance, whether immediately realisable or payable or not, is sold or exchanged by the court, or out of court, the court may, if it thinks fit, on the application of any party to the sale or exchange, direct or allow payment into court of such sum as is hereinafter mentioned, that is to say—
 - (a) in the case of an annual sum charged on the land, or of a capital sum charged on a determinable interest in the land, the sum to be paid into court shall be of such amount as, when invested in Government securities, the court considers will be sufficient, by means of the dividends thereof, to keep down or otherwise provide for that charge; and
 - (b) in any other case of capital money charged on the land, the sum to be paid into court shall be of an amount sufficient to meet the incumbrance and any interest due thereon

but in either case there shall also be paid into court such additional amount as the court considers will be sufficient to meet the contingency of further costs, expenses and interest, and any other contingency, except depreciation of investments, not exceeding one-tenth part of the original amount to be paid in, unless the court for special reason thinks fit to require a larger additional amount.

- (2) Thereupon, the court may, if it thinks fit, and either after or without any notice to the incumbrancer, as the court thinks fit, declare the land to be freed from the incumbrance, and make any order for conveyance, or vesting order, proper for giving effect to the sale or exchange, and give directions for the retention and investment of the money in court and for the payment or application of the income thereof.
- (3) The court may declare all other land (if any) affected by the incumbrance (besides the land sold or exchanged) to be freed from the incumbrance, and this power may be exercised either after or without notice to the incumbrancer, and notwithstanding that on a previous occasion an order, relating to the same incumbrance, has been made by the court which was confined to the land then sold or exchanged.
- (4) On any application under this section the court may, if it thinks fit, as respects any vendor or purchaser, dispense with the service of any notice which under this Act or otherwise would apart from this subsection be required to be served on the vendor or purchaser.

- (5) After notice served on the persons interested in or entitled to the money or fund in court, the court may direct payment or transfer thereof to the persons entitled to receive or give a discharge for the same on such terms as to delivering up of deeds or other documents or on such other terms as the court thinks fit, and generally may give directions respecting the application or distribution of the capital or income thereof.
- (6) This section shall apply to sales and exchanges, and to incumbrances whether created by statute or otherwise.

28—Conveyances to be by deed

- (1) All conveyances of land or of any interest therein shall be void for the purpose of conveying or creating a legal estate unless made by deed.
- (2) This section shall not apply to—
 - (a) assents by a personal representative:
 - (b) disclaimers made in accordance with the provisions of any law relating to bankruptcy or not required to be evidenced in writing:
 - (c) surrenders by operation of law, including surrenders which may, by law, be effected without writing:
 - (d) leases or tenancies or other assurances not required by law to be made in writing:
 - (e) receipts not required by law to be under seal:
 - (f) vesting orders of the court or other competent authority:
 - (g) conveyances taking effect by operation of law.

29—Instruments required to be in writing

- (1) Subject to the provisions hereinafter contained with respect to the creation of interests in land by parol—
 - (a) no interest in land can be created or disposed of except by writing signed by the person creating or conveying the same, or by his agent thereunto lawfully authorised in writing, or by will, or by operation of law;
 - (b) a declaration of trust respecting any land or any interest therein must be manifested and proved by some writing signed by some person who is able to declare such trust or by his will;
 - (c) a disposition of an equitable interest or trust subsisting at the time of the disposition must be in writing signed by the person disposing of the same, or by his agent thereunto lawfully authorised in writing or by will.
- (2) This section shall not affect the creation or operation of resulting, implied, or constructive trusts.

30—Creation of interests in land by parol

- (1) All interests in land created by parol and not put in writing and signed by the persons so creating the same, or by their agents thereunto lawfully authorised in writing, shall have, notwithstanding any consideration having been given for the same, the force and effect of interests at will only.

- (2) Nothing in the preceding sections of this Act shall affect the creation by parol of leases taking effect in possession for a term not exceeding three years (whether or not the lessee is given power to extend the term) at the best rent which can be reasonably obtained without taking a fine.

31—Savings in regard to last two sections

Nothing in the two last preceding sections shall—

- (a) invalidate dispositions by will; or
- (b) affect any interest validly created before the commencement of this Act; or
- (c) affect the right to acquire an interest in land by virtue of taking possession; or
- (d) affect the operation of the law relating to part performance.

32—Effect of possession of documents

This Act shall not prejudicially affect the right or interest of any person arising out of or consequent on the possession by him of any documents relating to a legal estate in land, nor affect any question arising out of or consequent upon any omission to obtain or any other absence of possession by any person of any documents relating to a legal estate in land.

33—Interests of persons in possession

This Act shall not prejudicially affect the interest of any person in possession or in actual occupation of land to which he may be entitled in right of such possession or occupation.

34—Persons taking who are not parties and as to indentures

- (1) A person may take an immediate or other interest in land or other property, or the benefit of any condition, right of entry, covenant, or agreement over or respecting land or other property, although he is not named as a party to the conveyance or other instrument.
- (2) A deed between parties, to effect its objects, shall have the effect of an indenture though not indented or expressed to be an indenture.

35—Conditions and certain covenants not implied

- (1) An exchange, a partition, or other conveyance of land made by deed shall not imply any condition in law.
- (2) The word "give" or "grant" shall not, in a deed, imply any covenant in law, save where otherwise provided by statute.

36—General words implied in conveyances

- (1) A conveyance of land shall be deemed to include and shall by virtue of this Act operate to convey, with the land, all buildings, erections, fixtures, commons, hedges, ditches, fences, ways, waters, watercourses, liberties, privileges, easements, rights, and advantages whatsoever, appertaining or reputed to appertain to the land, or any part thereof, or at the time of conveyance, demised, occupied, or enjoyed with, or reputed or known as part or parcel of or appurtenant to the land or any part thereof.

- (2) A conveyance of land, having houses or other buildings thereon, shall be deemed to include and shall by virtue of this Act operate to convey, with the land, houses or other buildings, all outhouses, erections, fixtures, cellars, areas, courts, courtyards, cisterns, sewers, gutters, drains, ways, passages, lights, watercourses, liberties, privileges, easements, rights and advantages whatsoever, appertaining or reputed to appertain to the land, houses or other buildings conveyed, or any of them, or any part thereof, or, at the time of conveyance, demised, occupied, or enjoyed with, or reputed or known as part or parcel of or appurtenant to, the land, houses or other buildings conveyed, or any of them, or any part thereof.
- (3) This section shall apply only if and as far as a contrary intention is not expressed in the conveyance, and shall have effect subject to the terms of the conveyance and to the provisions therein contained.
- (4) This section shall not be construed as giving to any person a better title to any property, right or thing in this section mentioned than the title which the conveyance gives to him to the land expressed to be conveyed, or as conveying to him any property, right, or thing in this section mentioned, further or otherwise than as the same could have been conveyed to him by the conveying parties.

37—All estate clause implied

- (1) Every conveyance shall be effectual to pass all the estate, right, title, interest, claim and demand which the conveying parties respectively have, in, to, or on the property conveyed, or expressed or intended so to be, or which they respectively have power to convey in, to, or on the same.
- (2) This section shall apply only if and as far as a contrary intention is not expressed in the conveyance, and shall have effect subject to the terms of the conveyance and to the provisions therein contained.

38—Partial release of security from rent-charge

A release from a rentcharge of part of the land charged therewith shall not extinguish the whole rentcharge, but shall operate only to bar the right to recover any part of the rentcharge out of the land released, without prejudice to the rights of any persons interested in the land remaining unreleased, and not concurring in or confirming the release.

39—Release of part of land affected from a judgment

- (1) A release from an execution of part of any land charged therewith shall not affect the validity of the execution as respects any land not specifically released.
- (2) This section shall operate without prejudice to the rights of any persons interested in the property remaining unreleased and not concurring in or confirming the release.

40—Conveyances by a person to himself etc

- (1) Personal property, including chattels real, may be conveyed by a person to himself jointly with another person by the like means by which it might be conveyed by him to another person.

- (2) Freehold land, or a thing in action, may be conveyed by a person to himself jointly with another person, by the like means by which it might be conveyed by him to another person; and may, in like manner, be conveyed by a husband to his wife, and by a wife to her husband, alone or jointly with another person.
- (3) A person may convey land or any other property to himself or to himself and others.
- (4) Two or more persons (whether or not being trustees or personal representatives) may convey, and shall be deemed always to have been capable of conveying any property vested in them to any one or more of themselves in like manner as they could have conveyed such property to a third party: Provided that if the persons in whose favour the conveyance is made are, by reason of any fiduciary relationship or otherwise, precluded from validly carrying out the transaction, the conveyance shall be liable to be set aside.

41—Execution and attestation of deeds

- (1) The following rules govern the execution of a deed:
 - (a) a natural person executes a deed by signing, or making a mark, on the deed;
 - (b) a body corporate executes a deed by affixation of the common seal of the body corporate to the deed in accordance with the rules governing the use of the common seal;
 - (c) a deed may be executed on behalf of a party to a deed—
 - (i) by an attorney acting in pursuance of an authority conferred by deed; or
 - (ii) where a party is a natural person—by a person acting at the direction, and in the presence, of the party.
- (2) The execution of a deed must be attested—
 - (a) where the deed is executed by a natural person—by at least one witness who is not a party to the deed;
 - (b) where the deed is executed by a person acting at the direction, and in the presence, of the party—by a person who is authorised by law to take affidavits.
- (3) Delivery and indenting are not necessary in any case.
- (4) Notwithstanding the defective execution of a deed by or on behalf of a party to the deed, the execution will be taken to be valid if it appears from evidence external to the deed that the party intended to be bound by it.
- (5) Notwithstanding any other law, an instrument executed in accordance with this section is a deed if—
 - (a) the instrument is expressed to be an indenture or deed; or
 - (b) the instrument is expressed to be sealed and delivered or, in the case of an instrument executed by a natural person, to be sealed; or
 - (c) it appears from the circumstances of execution of the instrument or from the nature of the instrument that the parties intended it to be a deed.

41AA—Execution and attestation of other instruments

- (1) A party may execute an instrument (not being a will)—
 - (a) subject to a condition that the execution is not to be effective until the party gives (personally or by an agent) some further indication of the party's intention to be bound by the instrument; or
 - (b) subject to some other condition on the fulfilment of which the execution is to become effective.
- (2) The conditional execution of an instrument may be expressed orally, in writing, or by conduct evincing an intention that the execution should be conditional.
- (3) Where an instrument is conditionally executed, then, subject to subsection (4) and any contrary intention that appears from the instrument—
 - (a) the execution cannot be recalled; and
 - (b) on the fulfilment of the condition, the execution takes effect—
 - (i) from the time of execution; or
 - (ii) if it appears from the instrument or the condition of execution that the execution is intended to take effect from some later time—from that later time.
- (4) Where an instrument is conditionally executed and the fulfilment of the condition is within the control of the party by whom the instrument was conditionally executed, then—
 - (a) any party to the instrument may, without breach of obligation, recall execution of the instrument at any time prior to the fulfilment of the condition; and
 - (b) on the fulfilment of the condition, the execution (if not previously recalled) takes effect—
 - (i) from the time of fulfilment of the condition; or
 - (ii) if it appears from the instrument or the condition of execution that the execution is intended to take effect from some later time—from that later time.
- (5) Notwithstanding subsections (3) and (4), where the conditional execution of an instrument is not expressed in the instrument itself, the party by whom the instrument was conditionally executed cannot rely on the condition to defeat the claim of—
 - (a) another party who has acted on the instrument or relied on its execution without actual notice of the condition; or
 - (b) a person claiming under any such party.
- (6) In any legal proceedings—
 - (a) if the execution of an instrument is proved, the execution will be presumed, in the absence of proof to the contrary, to have been unconditional; and
 - (b) if it appears from an instrument or evidence external to an instrument that the instrument was executed conditionally, it will be presumed, in the absence of proof to the contrary, that the condition of execution has been fulfilled.

- (7) The common law doctrine of escrow is abolished.

41A—Easements without dominant land to be validly created

- (1) It is lawful and it is to be taken to have been always lawful for—
- (a) an easement to be created or operate in favour of—
 - (i) the Crown; or
 - (ii) a public or local authority; or
 - (iii) a body declared under this section,
despite the fact that the easement is not appurtenant to any other land;
 - (b) an easement to be made appurtenant or annexed to another easement.
- (2) The Governor may, by proclamation—
- (a) declare a body for the purposes of subsection (1)(a)(iii);
 - (b) vary or revoke a proclamation under this subsection.

42—Covenants for title

- (1) In a conveyance there shall, in the several cases in this section mentioned, be deemed to be included, and there shall in those several cases, by virtue of this Act, be implied, a covenant to the effect in this section stated, by the person or by each person who conveys, as far as regards the subject-matter or share of subject-matter expressed to be conveyed by him, with the person, if one, to whom the conveyance is made, or with the persons jointly, if more than one, to whom the conveyance is made as joint tenants, or with each of the persons, if more than one, to whom the conveyance is made as tenants in common, that is to say:
- (a) in a conveyance for valuable consideration, other than a mortgage, a covenant by a person who conveys and is expressed to convey as beneficial owner in the terms set out in clause 1 of Schedule 2 to this Act;
 - (b) in a conveyance of leasehold property for valuable consideration, other than a mortgage, a further covenant by a person who conveys and is expressed to convey as beneficial owner in the terms set out in clause 2 of Schedule 2 to this Act;
 - (c) in a conveyance by way of mortgage a covenant by a person who conveys and is expressed to convey as beneficial owner in the terms set out in clause 3 of Schedule 2 to this Act;
 - (d) in a conveyance by way of mortgage of leasehold property, a further covenant by a person who conveys and is expressed to convey as beneficial owner in the terms set out in clause 4 of Schedule 2 to this Act;
 - (e) in a conveyance by way of settlement, a covenant by a person who conveys and is expressed to convey as settlor in the terms set out in clause 5 of Schedule 2 to this Act;

- (f) in any conveyance, a covenant by every person who conveys and is expressed to convey as trustee or mortgagee, or as personal representative of a deceased person, or as administrator, committee or other person empowered to act on behalf of a mentally incapacitated person, or under an order of the court, in the terms set out in clause 6 of Schedule 2 to this Act, which covenant shall be deemed to extend to every such person's own acts only, and may be implied in an assent by a personal representative in like manner as in a conveyance by deed.
- (2) Where in a conveyance it is expressed that by direction of a person expressed to direct as beneficial owner another person conveys, then, for the purposes of this section, the person giving the direction, whether he conveys and is expressed to convey as beneficial owner or not, shall be deemed to convey and to be expressed to convey as beneficial owner the subject-matter so conveyed by his direction; and a covenant on his part shall be implied accordingly.
- (3) Where a wife conveys and is expressed to convey as beneficial owner, and the husband also conveys and is expressed to convey as beneficial owner, then, for the purposes of this section, the wife shall be deemed to convey and to be expressed to convey by direction of the husband, as beneficial owner; and, in addition to the covenant implied on the part of the wife, there shall also be implied, first, a covenant on the part of the husband as the person giving that direction, and secondly, a covenant on the part of the husband in the same terms as the covenant implied on the part of the wife.
- (4) Where in a conveyance a person conveying is not expressed to convey as beneficial owner, or as settlor, or as trustee, or as mortgagee, or as personal representative of a deceased person, or as administrator, committee or other person empowered to act on behalf of a mentally incapacitated person, or under an order of the court, or by direction of a person as beneficial owner, no covenant on the part of the person conveying shall be, by virtue of this section, implied in the conveyance.
- (5) In this section a conveyance does not include a demise by way of lease at a rent, but does include a charge, and *convey* has a corresponding meaning.
- (6) The benefit of a covenant implied as aforesaid shall be annexed and incident to, and shall go with, the estate or interest of the implied covenantee, and shall be capable of being enforced by every person in whom that estate or interest is, for the whole or any part thereof, from time to time vested.
- (7) A covenant implied as aforesaid may be varied or extended by a deed or an assent, and, as so varied or extended, shall, as far as may be, operate in the like manner, and with all the like incidents, effects, and consequences, as if such variations or extensions were directed in this section to be implied.

Part 4—Mortgages

43—Realisation of equitable charges by the court

Where an order for sale is made by the court in reference to an equitable mortgage on land the court may, in favour of a purchaser, make a vesting order conveying the land or may appoint a person to convey the land, or may create and vest in the mortgagee a legal estate in the land to enable him to carry out the sale as the case requires, in like manner as if the mortgage had been made by way of legal mortgage, but without prejudice to any incumbrance having priority to the equitable mortgage unless the incumbrancer consents to the sale.

44—Sale of mortgaged property in action for redemption or foreclosure

- (1) Any person entitled to redeem mortgaged property may have a judgment or order for sale instead of for redemption in an action brought by him either for redemption alone, or for sale alone, or for sale or redemption in the alternative.
- (2) In any action, whether for foreclosure, or for redemption, or for sale, or for the raising and payment in any manner of mortgage money, the court, on the request of the mortgagee, or of any person interested either in the mortgage money or in the right of redemption, and, notwithstanding that—
 - (a) any other person dissents; or
 - (b) the mortgagee or any person so interested does not appear in the action,and without allowing any time for redemption or for payment of any mortgage money, may, if it thinks fit, direct a sale of the mortgaged property, on such terms as it thinks fit, including the deposit in court of a reasonable sum fixed by the court to meet the expenses of sale and to secure performance of the terms.
- (3) But, in an action brought by a person interested in the right of redemption and seeking a sale, the court may, on the application of any defendant, direct the plaintiff to give such security for costs as the court thinks fit, and may give the conduct of the sale to any defendant, and may give such directions as it thinks fit respecting the costs of the defendants or any of them.
- (4) In any case within this section the court may, if it thinks fit, direct a sale without previously determining the priorities of incumbrancers.
- (5) In this section—

mortgaged property shall include the estate or interest which a mortgagee would have had power to convey if the statutory power of sale were applicable.
- (6) For the purposes of this section the court may, in favour of a purchaser, make a vesting order conveying the mortgaged property, or appoint a person to do so, subject or not to any incumbrance, as the court thinks fit; or, in the case of an equitable mortgage, may create and vest in the mortgagee a legal estate to enable him to carry out the sale in like manner as if the mortgage had been made by way of legal mortgage.

45—Obligation to transfer instead of reconveying

- (1) Where a mortgagor is entitled to redeem, then subject to compliance with the terms on compliance with which he would be entitled to require a reconveyance or surrender, or in the case of registered land a transfer of the mortgage, he shall be entitled to require the mortgagee, instead of reconveying or surrendering, to assign the mortgage debt and convey the mortgaged property, or in the case of registered land to transfer the mortgage, to any third person, as the mortgagor directs; and the mortgagee shall be bound to assign, convey, or transfer accordingly.
- (2) The rights conferred by this section shall belong to and shall be capable of being enforced by each incumbrancer, or by the mortgagor, notwithstanding any intermediate incumbrance; but a requisition of an incumbrancer shall prevail over a requisition of the mortgagor, and, as between incumbrancers, a requisition of a prior incumbrancer shall prevail over a requisition of a subsequent incumbrancer.
- (3) This section shall take effect notwithstanding any stipulation to the contrary.
- (4) The foregoing provisions of this section do not apply in the case of a mortgagee being or having been in possession.

46—Vesting order in place of conveyance by devisee of mortgagee

Where a mortgagee of land has died without having entered into possession or into the receipt of the rents and profits thereof, and the money due in respect of the mortgage has been paid to a person entitled to receive the same, or such person consents to an order for the reconveyance of the land, the court may make an order vesting the land in such person or persons in such manner and for such estate as the court may direct in any of the following cases, namely:

- (a) Where the representative or devisee of the mortgagee is out of the jurisdiction of the court, or cannot be found: and
- (b) Where the representative or devisee of the mortgagee, on demand made by or on behalf of a person entitled to require a conveyance of the land, has stated in writing that he will not convey the same, or does not convey the same for twenty-eight days next after a proper instrument conveying the land has been tendered to him by or on behalf of the person so entitled: and
- (c) Where it is uncertain which of several devisees of the mortgagee, was the survivor: and
- (d) Where it is uncertain as to the survivor of several devisees of the mortgagee, or as to the representative of the mortgagee, whether he is living or dead: and
- (e) Where there is no representative of a mortgagee who has died intestate as to the land, or where the mortgagee has died and it is uncertain who is his representative or devisee.

47—Powers incident to estate or interest of mortgagee

- (1) A mortgagee, where the mortgage is made by deed, shall, by virtue of this Act, and in the case of registered land by virtue of the *Real Property Act 1886* and of this Act, have the following powers, to the like extent as if they had been in terms conferred by the mortgage deed, but not further, namely:
 - (a) A power, when the mortgage money has become due, to sell, or to concur with any other person in selling, the mortgaged property, or any part thereof, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, and for a sum payable either in one sum or by instalments, subject to such conditions respecting title, or evidence of title, or other matter, as he, the mortgagee, thinks fit, with power to vary any contract for sale, and to buy in at an auction, or to rescind any contract for sale, and to re-sell, without being answerable for any loss occasioned thereby, with power to make such roads, streets, and passages and grant such easements of right of way or drainage over the same as the circumstances may require and he thinks fit; and
 - (b) A power, at any time after the date of the mortgage deed, to insure and keep insured against loss or damage by fire any building, or any effects or property of an insurable nature, whether affixed to the freehold or not, being or forming part of the property which or an estate or interest wherein is mortgaged, and the premiums paid for any such insurance shall be a charge on the mortgaged property or estate or interest, in addition to the mortgage money, and with the same priority, and with interest at the same rate, as the mortgage money; and
 - (c) A power, when the mortgage money has become due, to appoint a receiver of the income of the mortgaged property, or any part thereof; or, if the mortgaged property consists of an interest in income, or of a rent charge or an annual or other periodical sum, a receiver of that property or any part thereof.
- (2) The power of sale aforesaid shall include the following powers is incident thereto, namely:
 - (a) A power to impose or reserve or make binding, as far as the law permits, by covenant, condition, or otherwise, on the unsold part of the mortgaged property or any part thereof, or on the purchaser and any property sold, any restriction or reservation with respect to building on or other user of land, or with respect to mines and minerals, or for the purpose of the more beneficial working thereof, or with respect to any other thing:
 - (b) A power to sell the mortgaged property, or any part thereof, or all or any mines and minerals apart from the surface—
 - (i) With or without a grant or reservation of rights of way, rights of water, easements, rights and privileges for or connected with building or other purposes in relation to the property remaining unsold or any part thereof, or to any property sold; and

- (ii) With or without an exception or reservation of all or any of the mines and minerals in or under the mortgaged property, and with or without a grant or reservation of powers of working, wayleaves, or rights-of-way, rights of water, and drainage and other powers, easements, rights and privileges for or connected with mining purposes in relation to the property remaining unsold or any part thereof, or to any property sold; and
 - (iii) With or without covenants by the purchaser to expend money on the land sold.
- (3) The provisions of this Act relating to the foregoing powers, comprised either in this section, or in any other section regulating the exercise of those powers, may be varied or extended by the mortgage deed, and, as so varied or extended, shall, as far as may be, operate in the like manner and with all the like incidents, effects, and consequences as if such variations or extensions were contained in this Act.
- (4) This section shall apply only if and as far as a contrary intention is not expressed in the mortgage deed, and shall have effect subject to the terms of the mortgage deed and to the provisions therein contained.

48—Regulation of exercise of power of sale

A mortgagee shall not exercise the power of sale conferred by this Act unless and until—

- (a) notice requiring payment of the mortgage money has been served on the mortgagor or one of two or more mortgagors, and default has been made in payment of the mortgage money, or of part thereof, for one month or any less time provided by the mortgage after such service; or
- (b) some interest under the mortgage is in arrear and unpaid for one month after becoming due; or
- (c) there has been a breach of some provision contained in the mortgage deed or in this Act, and on the part of the mortgagor, or of some person concurring in making the mortgage, to be observed or performed, other than and besides a covenant for payment of the mortgage money or interest thereon.

49—Conveyance on sale

- (1) A mortgagee exercising the power of sale conferred by this Act shall have power to convey or to transfer, as the case may be, the property sold, for such estate and interest therein as he is by this Act authorised to sell or convey, or as may be the subject of the mortgage, freed from all estates, interests, and rights to which the mortgage has priority, but subject to all estates, interests, and rights which have priority to the mortgage.
- (2) Where a conveyance or transfer is made in exercise of the power of sale conferred by this Act, the title of the purchaser shall not be impeachable on the ground—
 - (a) that no case had arisen to authorise the sale; or
 - (b) that due notice was not given; or
 - (c) that permission of the court, when so required, was not obtained; or
 - (d) that the power was otherwise improperly or irregularly exercised;

and a purchaser shall not, either before or on conveyance or transfer, be concerned to see or inquire whether a case has arisen to authorise the sale, or due notice has been given, or the power is otherwise properly and regularly exercised; but any person damnified by an unauthorised, or improper, or irregular exercise of the power shall have his remedy in damages against the person exercising the power.

- (3) A conveyance or transfer on sale by a mortgagee shall be deemed to have been made in exercise of the power of sale conferred by this Act or by the *Real Property Act 1886* unless a contrary intention appears.

50—Application of proceeds of sale

The money which is in fact received by the mortgagee, arising from the sale, after discharge of prior incumbrances to which the sale is not made subject (if any) or after payment into court under this Act of a sum to meet any prior incumbrance, shall be held by him in trust to be applied by him, first, in payment of all costs, charges, and expenses properly incurred by him as incident to the sale or any attempted sale, or otherwise; and secondly, in discharge of the mortgage money, interest, and costs, and other money (if any) due under the mortgage; and the residue of the money so received shall be paid to the person entitled to the mortgaged property, or authorised to give receipts for the proceeds of the sale thereof.

51—Provisions as to exercise of power of sale

- (1) The power of sale conferred by this Act may be exercised by any person for the time being entitled to receive and give a discharge for the mortgage money.
- (2) The power of sale conferred by this Act shall not affect the right of foreclosure.
- (3) The mortgagee shall not be answerable for any involuntary loss happening in or about the exercise or execution of the power of sale conferred by this Act, or of any trust connected therewith, or of any power or provision contained in the mortgage deed.
- (4) At any time after the power of sale conferred by this Act has become exercisable, the person entitled to exercise the power may demand and recover from any person, other than a person having in the mortgaged property an estate, interest or right in priority to the mortgage, all the deeds and documents relating to the property, or to the title thereto, which a purchaser under the power of sale would be entitled to demand and recover from him.

52—Mortgagee's receipts, discharges etc

- (1) The receipt in writing of a mortgagee shall be a sufficient discharge for any money arising under the power of sale conferred by this Act, or for any money or securities comprised in his mortgage, or arising thereunder; and a person paying or transferring the same to the mortgagee shall not be concerned to inquire whether any money remains due under the mortgage or as to the application of the money or securities so paid or transferred.

- (2) Money received by a mortgagee under his mortgage or from the proceeds of securities comprised in his mortgage shall be applied in like manner as in this Act directed respecting money received by him arising from a sale under the power of sale conferred by this Act, but with this variation, that the costs, charges, and expenses payable shall include the costs, charges, and expenses properly incurred of recovering and receiving the money or securities, and of conversion of securities into money, instead of those incident to sale.

53—Appointment, powers, remuneration and duties of receiver

- (1) A mortgagee entitled to appoint a receiver under the power in that behalf conferred by this Act shall not appoint a receiver until he has become entitled to exercise the power of sale conferred by this Part, or by the *Real Property Act 1886* or by the mortgage, but may then, by writing under his hand, appoint a receiver.
- (2) A receiver appointed under the powers conferred by this Act shall be deemed to be the agent of the mortgagor; and the mortgagor shall be solely responsible for the receiver's acts or defaults unless the mortgage deed otherwise provides.
- (3) The receiver shall have power to demand and recover all the income of which he is appointed receiver, by action, distress, or otherwise, in the name either of the mortgagor or of the mortgagee, to the full extent of the estate or interest which the mortgagor could dispose of, and to give effectual receipts accordingly for the same, and to exercise any powers which may have been delegated to him by the mortgagee pursuant to this Act.
- (4) A person paying money to the receiver shall not be concerned to inquire whether any case has happened to authorise the receiver to act.
- (5) The receiver may be removed, and a new receiver may be appointed, from time to time by the mortgagee by writing under his hand.
- (6) The receiver shall for his remuneration, and in satisfaction of all costs, charges, and expenses incurred by him as receiver, be entitled to retain out of any money received by him, a commission at such rate, not exceeding five per centum on the gross amount of all money received, as is specified in his appointment, and if no rate is so specified, then at the rate of five per centum on that gross amount, or at such higher rate as the court thinks fit to allow, on application made by him for that purpose.
- (7) 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, out of the money received by him, any building, effects or property comprised in the mortgage, whether affixed to the freehold or not, being of an insurable nature.
- (8) Subject to the provisions of this Act as to the application of insurance money, the receiver shall apply all money received by him as follows, namely:
 - (a) In discharge of all rents, taxes, rates, and outgoings whatever affecting the mortgaged property; and
 - (b) In keeping down all annual sums or other payments, and the interest on all principal sums, having priority to the mortgage in right whereof he is receiver; and

- (c) In payment of his commission, and of the premiums on fire, life, or other insurances (if any) properly payable under the mortgage deed or under this Act, and the cost of executing necessary or proper repairs directed in writing by the mortgagee; and
- (d) In payment of the interest accruing due in respect of any principal sum due under the mortgage; and
- (e) In or towards discharge of the principal money if so directed in writing by the mortgagee;

and shall pay the residue (if any) of the money received by him to the person who, but for the possession of the receiver, would have been entitled to receive the income of which he is appointed receiver, or who is otherwise entitled to the mortgaged property.

54—Effect of advance on joint account

- (1) Where—
 - (a) in a mortgage, or an obligation for payment of money, or a transfer of a mortgage or of such an obligation, the sum, or any part of the sum, advanced or owing is expressed to be advanced by or owing to more persons than one out of money, or as money, belonging to them on a joint account; or
 - (b) a mortgage, or such an obligation, or such a transfer is made to more persons than one, jointly and not in shares,

the mortgage money, or other money or money's worth, for the time being due to those persons on the mortgage or obligation, shall, as between them and the mortgagor or obligor, be deemed to be and remain money or money's worth belonging to those persons on a joint account; and the receipt in writing of the survivors or last survivor of them, or of the personal representative of the last survivor shall be 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 the joint account.

- (2) This section shall apply if and so far as a contrary intention is not expressed in the mortgage, obligation or transfer, and shall have effect subject to the terms of the mortgage, obligation, or transfer, and to the provisions therein contained.

55—Notice of trusts affecting mortgage debts

- (1) A person dealing in good faith with a mortgagee, or with the mortgagor if the mortgage has been discharged, released, or postponed as to the whole or any part of the mortgaged property, shall not be concerned with any trust at any time affecting the mortgage money or the income thereof, whether or not he has notice of the trust, and may assume unless the contrary is expressly stated in the instruments relating to the mortgage—
 - (a) that the mortgagees (if more than one) are or were entitled to the mortgage money on a joint account; and
 - (b) that the mortgagee has or had power to give valid receipts for the purchase-money or mortgage-money and the income thereof (including any arrears of interest) and to release or postpone the priority of the mortgage debt or any part thereof or to deal with the same or the mortgaged property or any part thereof,

without investigating the equitable title to the mortgage debt or the appointment or discharge of trustees in reference thereto.

- (2) This section shall not affect the liability of any person in whom the mortgage debt is vested for the purposes of any trust to give effect to that trust.

55A—Enforcement of rights against mortgagor

- (1) A right of sale or foreclosure in respect of mortgaged land, a right to enter into possession of mortgaged land or a right to appoint a receiver in respect of mortgaged land shall not be enforceable by the mortgagee under a mortgage to which this section applies against the mortgagor by action or otherwise unless—
- (a) the mortgagee has served upon the mortgagor a notice in writing—
 - (i) alleging a breach of a covenant or condition of the mortgage by the mortgagor; and
 - (ii) if the breach is capable of remedy, requiring the mortgagor within one month after service of the notice, or such longer period as may be stipulated in the notice, to remedy the breach; and
 - (iii) if the mortgagee seeks compensation for the breach, requiring the mortgagor within one month after service of the notice or such longer period as may be stipulated in the notice, to pay to the mortgagee the amount of the cost and expenses, stipulated in the notice, that the mortgagee has reasonably incurred in consequence of the breach; and
 - (b) where requirements are made of the mortgagor in the notice, he has failed to comply with those requirements.
- (2) Where a mortgage to which this section applies contains a provision by virtue of which a liability to repay moneys under the mortgage falls due in the event of a breach of a covenant or condition of the mortgage at an earlier date than if there were no such breach, that provision shall be inoperative unless a notice has been served upon the mortgagor in conformity with the provisions of subsection (1) of this section and where requirements are made of the mortgagor in the notice, he has failed to comply with those requirements.
- (2a) Upon the application of a mortgagee, a court may dispense, upon such terms and conditions as it thinks fit, with the requirement of notice under this section.
- (2b) Where such a dispensation has been granted, the provisions of subsection (1) and subsection (2) of this section shall not apply in respect of the mortgage.
- (3) In any proceedings brought by a mortgagee for the recovery of a mortgage debt or for the enforcement of a mortgage, or in proceedings instituted by a mortgagor within twenty-one days after service of a notice under this section, a court may, upon such fair and equitable terms as it may determine, grant relief to a mortgagor against the enforcement of rights of a kind referred to in subsection (1) of this section, and may reinstate the position of the mortgagor in all respects as if no breach of a covenant or condition of the mortgage had occurred.
- (5) This section applies to a mortgage of land (whether or not the land has been brought under the provisions of the Real Property Act where—
- (a) the mortgagor is a natural person; and

- (b) the land is appropriated for domestic or agricultural use.
- (6) For the purposes of this section—
 - (a) land shall be deemed to be appropriated for domestic or agricultural use unless the mortgagor has made a statutory declaration that during the currency of the mortgage—
 - (i) no part of the land is to be used as a place of dwelling for the mortgagor's own personal occupation; and
 - (ii) in the case of land exceeding two hectares in area, no part of the land is to be used by the mortgagor for the business of primary production; and
 - (b) where such a declaration has been made it shall be conclusively presumed that the land is not appropriated for domestic or agricultural use.
- (7) In this section—

business of primary production means the business of agriculture, pasturage, horticulture, viticulture, apiculture, poultry farming, dairy farming, forestry, or any other business consisting of the cultivation of the soil, the gathering in of crops, or the rearing of livestock.
- (8) This section shall not apply to any mortgage granted before the commencement of the *Law of Property Act Amendment Act (No. 2) 1972*.

55B—Collateral covenants

- (1) Notwithstanding any covenant to the contrary, a mortgagee shall be deemed to have covenanted with the mortgagor that where the mortgagee makes demand of any amount in pursuance of the mortgage, he will at the request of the mortgagor, supply him with reasonable particulars of how the amount of the demand is arrived at.
- (2) Where a mortgage is entered into after the commencement of the *Law of Property Act Amendment Act 1972* and a covenant collateral to the mortgage is made between the mortgagor and mortgagee, the collateral covenant shall have no further force or effect upon extinguishment of the mortgage debt.
- (3) Any covenant by which a mortgagee might enforce a personal right to the repayment of a debt secured by a mortgage after and without re-opening the foreclosure of the mortgage is invalid.

56—Application to registered land

The provisions of this Part so far as the same apply to registered land shall apply subject to compliance with the provisions of the *Real Property Act 1886* relating to the registration of instruments and the priority conferred by registration.

Part 5—Powers

57—Disclaimer etc of powers

- (1) Any person to whom any power, whether coupled with an interest or not, is given may by deed disclaim, release, or contract not to exercise the power, and after such disclaimer, release, or contract shall not be capable of exercising or joining in the exercise of the power.

- (2) On such disclaimer, release, or contract the power may be exercised by the other person or persons or the survivor or survivors of the other persons to whom the power is given unless the contrary is expressed in the instrument creating the power.

57A—Validation of appointments where objects are excluded or take illusory shares

- (1) Subject to subsections (2) and (3) of this section, no appointment purported to be made in exercise of any power to appoint any property among two or more objects shall be invalid on the ground that—
- (a) an unsubstantial, illusory or nominal share only is appointed or left unappointed to devolve upon any object of the power; or
 - (b) any object of the power is thereby altogether excluded.
- (2) Subsection (1) of this section shall not affect any provision in the instrument creating the power which indicates the amount or proportion of any share from which any object of the power is not to be excluded.
- (3) Subsection (1) of this section shall apply only—
- (a) to any appointment purported to be made after the enactment of this section, in exercise of a power created before or after the enactment of this section; and
 - (b) to any appointment purported to be made by a will executed before the enactment of this section, if the testator dies after the enactment of this section.

58—Execution of powers not testamentary

- (1) A deed executed in the presence of and attested by two or more witnesses (in the manner in which deeds are ordinarily executed and attested) shall so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by deed or by any instrument in writing, not testamentary, notwithstanding that it is expressly required that a deed or instrument in writing, made in exercise of the power, is to be executed or attested with some additional or other form of execution or attestation or solemnity.
- (2) This section shall not operate to defeat any direction in the instrument creating the power that—
- (a) the consent of any particular person is to be necessary to a valid execution;
 - (b) in order to give validity to any appointment, any act is to be performed having no relation to the mode of executing and attesting the instrument.
- (3) This section shall not prevent the donee of a power from executing it in accordance with the power by writing, or otherwise than by an instrument executed and attested as a deed; and where a power is so executed this section shall not apply.

Part 6—Class closure, perpetuities and accumulations

Division 1—Preliminary

58A—Interpretation and jurisdiction

- (1) In this Part—
court means the Supreme Court.
- (2) The District Court does not have jurisdiction in respect of a matter in respect of which the Supreme Court has jurisdiction under this Part.

59—Application of Part

- (1) This Part applies to—
 - (a) dispositions of property made before or after the commencement of this Part; and
 - (b) rights and powers granted or conferred before or after the commencement of this Part.
- (2) However, this Part does not validate a disposition of property if, before the commencement of this Part, property subject to the disposition had been wholly or partly distributed on the basis that the disposition is invalid.
- (3) This Part applies to land whether or not it has been brought under the provisions of the *Real Property Act 1886*.

Division 2—Rules for class ascertainment

60—Class ascertainment

For the purpose of ascertaining whether the membership of a class is presently ascertainable and, if so, the membership of the class—

- (a) the possibility that a person might, while under the age of 12 years, become the natural or adoptive parent of a child is to be ignored; and
- (b) the possibility that a male or female over the age of 55 years might become the adoptive parent of a child is to be ignored; and
- (c) the possibility that a female over the age of 55 years might bear a child is to be ignored; and
- (d) the possibility that a child might be born to a living person is to be ignored if it is established to the satisfaction of the court that there is no real prospect that the possibility will be realised; and
- (e) the possibility of biological parentage arising from an artificial reproductive procedure involving the use of reproductive material from a person who is dead at the time of the procedure is to be ignored.

60A—Court's power to reverse statutory limitation on class membership

- (1) The court may, on application by an interested person, expand the membership of a class by including in the class a living person who would, but for this Division, have been a member of the class.
- (2) A new member included in a class under this section becomes entitled, subject to any conditions stated in the court's order, to share in a distribution of property to members of the class made after the date of the order.
- (3) The inclusion of a new member in the class under this section does not affect a distribution of property made before the date of the court's order.

Division 3—Perpetuities and accumulations

61—Abolition of rules against perpetuities and excessive accumulations

- (1) A disposition of property is not invalid—
 - (a) because of the remoteness from the date of the disposition of the time an interest will, or may, vest in pursuance of the disposition; or
 - (b) because, under the terms of the disposition, an interest is limited, for life, to a person who was unborn at the date of the disposition, with a remainder over to a child or other issue of that person; or
 - (c) because it provides for or permits the accumulation of income.
- (2) A right or power in respect of property is not invalid because of the remoteness of the time it is to be, or may be, exercised.
- (3) A purported exercise of a right or power in respect of property is not invalid because of its remoteness from the time the right or power was created.

62—Court may order vesting of interests

- (1) If, 80 years or more after the date of a disposition of property, there remain interests in the property that have not vested, the court may, on application under this section, vary the terms of the disposition so that the interests vest immediately.
- (2) The court may, on application under this section, vary the terms of a disposition of property so that interests that cannot vest, or are unlikely to vest, within 80 years after the date of the disposition, will vest within that period.
- (3) If a disposition provides for the accumulation, or partial accumulation, of income from property over a period that will or may terminate 80 years or more after the date of the disposition, the court may, on application under this section, vary the terms of the disposition so that both capital and income will vest within 80 years from the date of the disposition.
- (4) In varying the terms of a disposition under this section the court should give effect to the spirit of the original disposition insofar as that is possible given that interests are to vest earlier than contemplated by the person who made the disposition.
- (5) An application under this section may be made by—
 - (a) the Attorney-General; or
 - (b) a trustee of property to which the disposition relates; or

- (c) the next-of-kin of a deceased person to whose estate the disposition relates; or
 - (d) a person who has, under the terms of the disposition, an actual or potential interest in property subject to the disposition; or
 - (e) a person who would, assuming the existence and continuance of lineal issue, be the ancestor of a person (as yet unborn) who would have an actual or potential interest in property subject to the disposition.
- (6) This section does not apply to—
- (a) a trust constituted by statute or letters patent; or
 - (b) a trust of which the purposes are wholly charitable; or
 - (c) a trust wholly for the provision of benefits of the following kinds, or of any one or more of the following kinds:
 - (i) superannuation or retirement benefits; or
 - (ii) medical, hospital or funeral benefits; or
 - (iii) other benefits payable in the event of death, sickness or incapacity; or
 - (d) a trust for the benefit of the members of an unincorporated association.
- (7) A disposition of property by will is, for the purposes of this section, taken to have been made at the date of death of the testator or testatrix.

62A—Preservation of rule in *Saunders v Vautier*

This Part does not affect the principle under which a beneficiary who is *sui juris* may put an end to an accumulation and require distribution of his or her presumptive share of property subject to the accumulation¹.

Note—

- 1 The rule in *Saunders v Vautier* applies where there is more than one beneficiary, even though their several interests are not immediate but successive, provided they are unanimous in wishing to end the trust—See *Jacobs on Trusts*, 5th ed. para 2308.

Part 7—Apportionment

63—Definitions

In this Part—

annuities includes salaries and pensions;

dividends includes (besides dividends strictly so called) all payments made by the name of dividends, bonus, or otherwise out of the revenue of trading or other public companies, divisible between all or any of the members of such respective companies, whether such payments shall be usually made or declared at any fixed times or otherwise; and all such divisible revenue shall, for the purposes of this Act, be deemed to have accrued by equal daily increment during and within the period for or in respect of which the payment of the same revenue shall be declared or expressed to be made; but the said word **dividend** does not include payments in the nature of a return or reimbursement of capital;

rent includes all periodical payments or renderings in lieu of or in the nature of rent.

64—Apportionment of rents in respect of time

All rent, annuities, dividends, and other periodical payments in the nature of income (whether reserved or made payable under an instrument in writing, or otherwise) shall, like interest on money lent, be considered as accruing from day to day, and shall be apportionable in respect of time accordingly.

65—When apportioned part payable or recoverable

The apportioned part of any such rent, annuity, dividend, or other payment shall be payable or recoverable, in the case of a continuing rent, annuity, or other such payment, when the entire portion of which such apportioned part shall form part shall become due and payable, and not before; and in the case of a rent, annuity, or other such payment determined by re-entry, death, or otherwise when the next entire portion of the same would have been payable if the same had not so determined, and not before.

66—Right of recovering apportioned parts

All persons and their respective executors, administrators, and assigns, and also the executors, administrators, and assigns respectively of persons whose interests determine with their own deaths, shall have such or the same remedies at law and in equity for recovering such apportioned parts as aforesaid when payable (allowing proportionate parts of all just allowances) as they respectively would have had for recovering such entire portions as aforesaid if entitled thereto respectively: Provided that persons liable to pay rent reserved out of or charged on lands or other hereditaments of any tenure and the same lands or other hereditaments shall not be resorted to for any such apportioned part forming part of an entire or continuing rent as aforesaid specifically; but the entire or continuing rent, including such apportioned part, shall be recovered and received by the person who, if the rent had not been apportionable under this Part, or otherwise, would have been entitled to such entire or continuing rent; and such apportioned part shall be recoverable from such person by the executors or other parties entitled under this Part to the same by action at law or in equity.

67—Policies of assurance

Nothing in this Part shall render apportionable any annual sums made payable in policies of assurance of any description.

68—Contracting out

This Part shall not extend to any case in which it is or shall be expressly stipulated that no apportionment shall take place.

Part 8—Partition

69—Power to order partition or sale instead of partition

- (1) On any application for partition the court may order a partition of the said land or other property, and may give all necessary or proper consequential directions.

- (2) On any such application if it appears to the court that, by reason of the nature of the property, or of the number of the parties interested or presumptively interested therein, or of the absence or disability of some of those parties, or of any other circumstance, a sale of the property and a distribution of the proceeds would be more beneficial for the parties interested than a division of the property between or among them, the court may, if it thinks fit, on the request of any of the parties interested, and notwithstanding the absence, dissent or disability of any others of them, direct a sale of the property accordingly, and may give all necessary or proper consequential directions.

70—Sale on application of certain proportion of parties interested

On any application for partition, if the party or parties interested individually or collectively, to the extent of one moiety or upwards in the property, request the court to direct a sale of the property and a distribution of the proceeds, instead of a division of the property between or among the parties interested, the court shall, unless it sees good reason to the contrary, direct a sale of the property accordingly, and shall give all necessary or proper consequential directions.

71—As to purchase of share of party desiring sale

On any application for partition, if any party interested in the property requests the court to direct a sale of the property and a distribution of the proceeds instead of a division of the property between or among the parties interested, the court may, if it thinks fit, unless the other parties interested in the property, or some of them, undertake to purchase the share of the party requesting a sale, direct a sale of the property, and give all necessary or proper consequential directions, and in case of such undertaking being given the court may order a valuation of the share of the party requesting a sale in such manner as the court thinks fit, and may give all necessary or proper consequential directions.

72—Notice to interested parties

- (1) Notice of every application for partition shall be served on all other parties interested in the property unless the court otherwise directs.
- (2) Any party served with notice may attend the proceedings.
- (3) The court may direct such inquiries as to the nature of the property and the persons interested therein and other matters as it thinks necessary or proper with a view to an order for partition or sale.
- (4) If it appears to the court that notice of the application cannot be served on all parties interested in the property, or cannot be served without undue delay or expense disproportionate to the value of the property the court may dispense with the service of notice of the application on any person or class of person specified in the order dispensing with service.
- (5) The court may direct advertisements to be published in such manner as the court thinks fit, calling on all persons interested to come in and establish their claims within a time limited by the advertisements.
- (6) If an order is made by the court dispensing with service or for the publication of advertisements, all parties interested shall be bound by the proceedings in the application, whether they are within or without the jurisdiction of the court (including persons under any disability) as if they had been served with notice.

73—Proceedings where service is dispensed with

Where an order is made under the preceding section dispensing with service, and property is sold by order of the court, the following provisions shall have effect, subject to any contrary order of the court:

- (a) the proceeds of sale shall be paid into court to abide the further order of the court;
- (b) the court shall, by order, fix a time, at the expiration of which the proceeds will be distributed, and may from time to time, by further order, extend that time;
- (c) the court shall direct such notices to be given by advertisements or otherwise as it thinks best adapted for notifying to any persons who may not have previously come in and established their claims, the fact of the sale, the time of the intended distribution, and the time within which a claim to participate in the proceeds must be made;
- (d) if at the expiration of the time so fixed or extended the interests of all the persons interested have been ascertained, the court shall distribute the proceeds in accordance with the rights of those persons;
- (e) if at the expiration of the time so fixed or extended the interests of all the persons interested have not been ascertained, and it appears to the court that they cannot be ascertained, or cannot be ascertained without undue delay or expense disproportionate to the value of the property or of the unascertained interest, the court shall distribute the proceeds in such manner as appears to the court to be most in accordance with the rights of the persons whose claims to participate in the proceeds have been established, whether all those persons are or are not before the court, and with such reservations (if any) as to the court may seem fit in favour of any other persons (whether ascertained or not) who may appear from the evidence before the court to have any *prima facie* rights which ought to be so provided for, although such rights may not have been fully established, but to the exclusion of all other persons, and thereupon all such other persons shall by virtue of this Part be excluded from participation in those proceeds on the distribution thereof, but notwithstanding the distribution any excluded person may recover from any participating person any portion received by him of the share of the excluded person.

74—Authority for parties interested to bid

On any sale under this Part the court may, if it thinks fit, allow any of the parties interested in the property to bid at the sale, on such terms as to non-payment of deposit, or as to setting off or accounting for the purchase-money, or any part thereof, instead of paying the same, or as to any other matters as to the court seem reasonable.

75—Court to declare what parties are trustees of lands comprised in any suit, and as to the interests of persons unborn

In any application for partition where an order shall be made by the court for the sale instead of the partition of the property, it shall be lawful for the court to declare that any of the parties are trustees of such property or any part thereof within the meaning of this Part, or to declare concerning the interests of unborn persons who might claim under any party or under the will or voluntary settlement of any person deceased who was during his lifetime a party to the transaction concerning which such order is made, that such interests of unborn persons are the interests of persons who, upon coming into existence, would be trustees within the meaning of this Part, and thereupon it shall be lawful for the court to make such order or orders as to the estates, rights, and interests of such persons, born or unborn, as the said court might, under the provisions of this Part make concerning the estates, rights, and interests of trustees born or unborn.

76—Payment and application of moneys arising from settled land

All moneys to be received on any sale effected under the authority of this Part, when the property sold is settled land, may, if the court shall think fit be paid to any trustees of whom it shall approve, or otherwise the same shall be paid into court, and such money shall be applied as the court shall from time to time direct to some one or more of the following purposes, namely:

- (a) The discharge or redemption of any incumbrance affecting the hereditaments in respect of which such money was paid, or affecting any other hereditaments, subject to the same uses as trusts; or
- (b) The purchase of other hereditaments to be settled in the same manner as hereditaments in respect of which the money was paid; or
- (c) The payment to any person becoming absolutely entitled.

77—Trustees may apply moneys in certain cases without application to court

The application of the money in manner aforesaid may, if the court shall so direct, be made by the trustees (if any) without any application to the court, or otherwise upon an order of the court, upon the application of the person who would be entitled to the possession or the receipt of the rents and profits of the land if the money had been invested in the purchase of land.

78—Until money directed to be applied it is to be invested and dividends to be paid to parties entitled

Until the money shall be directed by the court to be applied as aforesaid, the same shall be invested as the court shall direct in some or one of the investments in which money under the control of the court is for the time being authorised to be invested, and the interest and dividends of such investments shall be paid to the person who would have been entitled to the rents and profits of the land if the money had been invested in the purchase of land.

79—Court may direct application of money in respect of leases or reversions as may appear just

Where any purchase money paid into court under the provisions of this Part shall have been paid in respect of any lease or any estate in lands less than the whole fee simple thereof, or of any reversion dependent on any such lease or estate, the court may, on the application of any party interested in such money, order that the same shall be laid out, invested, accumulated, and paid in such manner as the court may consider will give to the parties interested in such money the same benefit therefrom as they might lawfully have had from the lease, estate, or reversion in respect of which such money shall have been paid, or as near thereto as may be.

80—Interpretation of settled land

- (1) The term *settled land*, as used in this Part, shall signify all hereditaments of any tenure, and all estates or interest in any such hereditaments, which are or shall be the subject of a settlement; and for the purpose of this Part a tenant in tail after possibility of issue extinct, shall be deemed to be a tenant for life.
- (2) All estates or interests in remainder or reversion not disposed of by the settlement, or reverting to a settlor, or descending to the heirs, executors, or administrators of a testator, shall be deemed to be estates coming to such settlor or heirs, executors, and administrators under or by virtue of the settlement.
- (3) In determining what are settled lands within the meaning of this Part, the court shall be governed by the state of facts, and by trusts or limitations of the settlement at the time of the said settlement taking effect.

81—Provision for case of successive sales in same auction

If on any application for partition two or more sales are made and if any person who has by virtue of this Part been excluded from participation in the proceeds of any of those sales establishes his claim to participate in the proceeds of a subsequent sale, the shares of the other persons interested in the proceeds of the subsequent sale shall abate to the extent (if any) to which they were increased by the non-participation of the excluded person in the proceeds of the previous sale, and shall to that extent be applied in or towards payment to that person of the share to which he would have been entitled in the proceeds of the previous sale if his claim thereto had been established in due time.

82—Request by married woman, infant, or person under disability

In an application for partition a request for sale may be made or an undertaking to purchase given on the part of a married woman, infant, person of unsound mind, or person under any other disability, by the married woman, next friend, guardian, committee (if so authorised by order of the court) or other person authorised to act on behalf of the person under such disability, but the court shall not be bound to comply with any such request or undertaking on the part of an infant unless it appears that the sale or purchase will be for his benefit.

83—Application for partition to include application for sale and distribution of the proceeds

In an application for partition it shall be sufficient to claim a sale and distribution of the proceeds, and it shall not be necessary to claim a partition.

84—Costs

In any application for partition the court may make such order as it thinks just respecting costs.

Part 9—Voidable dispositions

86—Voluntary conveyances to defraud creditors

- (1) Every conveyance of property made with intent to defraud creditors shall be voidable at the instance of the party prejudiced thereby.
- (2) This section shall not extend to any estate or interest in property conveyed for valuable consideration and in good faith or upon good consideration and in good faith to any person not having, at the time of the conveyance, notice of the intent to defraud creditors.

87—Voluntary disposition with intent to defraud voidable as against purchasers

- (1) Every voluntary disposition of land made with intent to defraud a subsequent purchaser is voidable at the instance of that purchaser.
- (2) For the purposes of this section no voluntary disposition shall be deemed to have been made with intent to defraud by reason only that a subsequent conveyance for valuable consideration was made. In this section *disposition* includes every mode of disposition mentioned or referred to in the *Real Property Act 1886*.

88—Acquisitions of reversions at an under value

- (1) No acquisition made in good faith, without fraud or unfair dealing, of any reversionary interest in real or personal property, for money or money's worth, shall be liable to be opened or set aside merely on the ground of under value.
- (2) In this section—
reversionary interest includes an expectancy or possibility.
- (3) This section shall not affect the jurisdiction of the court to set aside or modify unconscionable bargains.

Part 10—Miscellaneous

89—Vesting order in lieu of conveyance

Where a person entitled to or possessed of land or any interest therein, either solely or jointly with any other person, by way of security for money, is an infant, or a mentally incapacitated person, the court may make an order vesting or releasing or disposing of the land or interest therein in like manner as in the case of a trustee who is an infant or a mentally incapacitated person.

90—Vesting order in cases of mentally incapacitated or infant mortgagee

Where a person entitled alone or jointly with another person to stock or a chose in action by way of security for money is a mentally incapacitated person, or an infant, the court may make an order vesting the right to transfer, or call for a transfer of the stock, or receive the dividends or income thereof, or to sue for or recover the chose in action in like manner as in the case of a trustee who is a mentally incapacitated person, or an infant.

91—In what cases the heir, representative, or devisee of a person, who has contracted to sell land, shall be deemed a trustee

Where a person having contracted in writing to sell land dies without having conveyed the land in pursuance of his contract, and the consideration for the sale has been paid or satisfied in his lifetime, or after his decease, or the person entitled to receive the consideration money or such part thereof as may remain unsatisfied, is willing to receive the same, and there is no dispute or question as to the making of the contract, or as to the right of the purchaser of the land so agreed to be sold to demand specific performance of such contract, and the court shall be satisfied that the only impediment to the performance thereof arises from the fact that the legal estate in the land has become vested in the representative or devisee of the deceased vendor, who is an infant, or a mentally incapacitated person, the court may make an order declaring the representative or devisee, as the case may be, of the deceased vendor to be a trustee of the land contracted to be sold, and such representative or devisee shall thereupon be deemed to be a trustee thereof within the meaning of *Trustee Act 1936* and at the same time or subsequently the court may order that the land shall vest in such person in such manner and for such estate as the court may direct, and may give directions as to the payment and satisfaction of any unpaid or unsatisfied purchase-money.

92—Status of married women

- (1) A married woman shall—
 - (a) be capable of acquiring, holding, and disposing of, any property; and
 - (b) be capable of rendering herself, and being rendered, liable in respect of any tort, contract, debt, or obligation; and
 - (ba) be capable of appointing an agent or attorney to act on her behalf; and
 - (c) be capable of suing and being sued, either in tort or in contract or otherwise; and
 - (d) be subject to the law relating to the enforcement of judgments and orders,in all respects as if she were a *feme sole*.
- (2) This section has, since the date of its enactment, conferred on a married woman the same power as is possessed by a *feme sole* to dispose of property by will, or to make any other form of testamentary provision.

93—Property of married women

All property which—

- (a) immediately before the commencement of this Act was the separate property of a married woman or held for her separate use in equity; or

- (b) belonged at the time of her marriage to a woman; or
 - (c) is acquired by or devolves upon a married woman,
- shall belong to her in all respects as if she were a *feme sole*, and may be disposed of accordingly.

94—Abolition of husband's liability for wife's torts and antenuptial contracts, debts and obligations

The husband of a married woman shall not, by reason only of his being her husband, be liable—

- (a) in respect of any tort committed by her whether before or after the marriage, or in respect of any contract entered into, or debt or obligation incurred, by her before the marriage; or
- (b) to be sued, or made a party to any legal proceeding brought, in respect of any such tort, contract, debt, or obligation.

95—Joint liability of husband and wife

A husband and wife may acquire, hold, and dispose of property jointly, or as tenants in common, and may render themselves or become rendered jointly liable in respect of any tort, contract, debt, or obligation, and may sue and be sued either in tort or in contract or otherwise in like manner as if they were not married.

95A—Husband and wife to be treated as separate persons for purpose of taking property

A husband and wife shall—

- (a) for the purposes of the law of intestate succession; and
- (b) for the purpose of acquisition of any interest in property pursuant to a disposition that comes into operation after the commencement of the *Statutes Amendment (Law of Property and Wrongs) Act 1972*,

be treated as two persons.

96—Joint powers

A husband and wife may exercise any joint power given to them jointly.

97—Acknowledgment by married woman not necessary

It shall not be necessary to the validity of any deed or instrument executed by a married woman that such deed or instrument be acknowledged by her.

98—Investments with money of husband

If any investment shall have been made by a married woman by means of moneys of her husband without his consent, the court may order such investment and the proceeds thereof or any part thereof to be transferred and paid respectively to the husband.

99—Married woman may effect policy of assurance

A married woman may effect a policy of assurance upon her own life for her own benefit, and the same and all benefit thereof shall enure accordingly.

100—Assurance policy by married men or married women

- (1) A policy of assurance effected by any man on his own life, and expressed to be for the benefit of his wife, or of his children, or of his wife and children, or any of them, or by any woman on her own life, and expressed to be for the benefit of her husband, or of her children, or of her husband and children, or any of them, shall create a trust in favour of the objects therein named, and the moneys payable under any such policy shall not, so long as any object of the trust remains unperformed, form part of the estate of the insured, or be subject to his or her debts.
- (2) The insured may by the policy, or by any memorandum under his or her hand, appoint a trustee or trustees of the moneys payable under the policy, and from time to time appoint a new trustee or new trustees thereof, and may make provision for the appointment of a new trustee or new trustees thereof, and for the investment of the moneys payable under any such policy. In default of any such appointment of a trustee, such policy, immediately on its being effected, shall vest in the insured and his or her legal personal representatives, in trust for the purposes aforesaid. If, at the time of the death of the insured, or at any time afterwards, there shall be no trustee, or it shall be expedient to appoint a new trustee or new trustees, a trustee or trustees, or a new trustee or new trustees may be appointed by the court.
- (3) The receipt of a trustee or trustees duly appointed, or, in default of any such appointment, or in default of notice to the insurance office, the receipt of the legal personal representative of the insured, shall be a discharge to the office for the sum secured by the policy, or for the value thereof, in whole or in part.

101—Married women to have same civil and criminal redress as *feme sole*

- (1) Every married woman shall have in her own name against all persons whomsoever, including her husband, the same civil remedies, and also the same remedies and redress by way of criminal proceedings for the protection and security of her property as if she were a *feme sole*.
- (2) In any indictment or other proceeding under this section it shall be sufficient to allege such property to be her property.
- (3) No criminal proceedings shall be taken by any wife against her husband by virtue of this Act while they are living together, as to or concerning any property claimed by her, nor while they are living apart, as to or concerning any act done by the husband while they were living together, concerning property claimed by the wife, unless such property shall have been wrongfully taken by the husband when leaving or deserting or about to leave or desert his wife.

102—Act of wife rendering her liable to criminal proceedings

A married woman doing any act with respect to any property of her husband, which, if done by the husband with respect to property of the wife, would make the husband liable to criminal proceedings by the wife, shall in like manner be liable to criminal proceedings by her husband.

103—Married woman's liability for contracts and wrongs antecedent to marriage

- (1) Every married woman after her marriage shall continue to be liable for all debts contracted, and all contracts entered into or wrongs committed by her before her marriage.
- (2) Every married woman may be sued for any such debt and for any liability in damages or otherwise under any such contract, or in respect of any such wrong; and all sums recovered against her in respect thereof, or for any costs relating thereto, shall be payable by her in the same manner as if she were a *feme sole*.

104—Implied agency of wife

A husband shall not be liable for debts contracted nor for any contracts entered into by his wife after the marriage on the ground of the implied agency of the wife.

105—Questions between husband and wife as to property

- (1) In any question between husband and wife as to the title to or possession of property, either party or any other person interested may apply to the court.
- (2) The court may make such order with respect to the property in dispute as such court shall think fit.
- (3) Any order made under the provisions of this section shall be subject to appeal in the same manner as any other order or judgment of the court.
- (4) Any application under this section may be heard in a private room.
- (5) If any person other than the husband or wife is the applicant, such person shall in the matter of any such application for the purposes of costs or otherwise be treated as a stakeholder only.

105A—Property in domestic allowance

If any question arises as to the right of a husband or wife to money derived from an allowance made by the husband to the wife for the purpose of defraying domestic expenses, or to property acquired with such money, the money or property shall, in the absence of agreement to the contrary, be treated as belonging to the husband and wife in equal shares.

106—Married woman as executrix or trustee

A married woman who is an executrix or administratrix alone or jointly with any other person or persons of the estate of any deceased person, or a trustee alone or jointly as aforesaid of property subject to any trust, may sue or be sued, and may transfer or join in transferring any such estate or the property subject to any trust, without her husband, as if she were a *feme sole*.

107—Legal representative of married woman

For the purposes of this Part the representative of any married woman shall in respect of her estate have the same rights and liabilities and be subject to the same jurisdiction as she would if she were living: Provided that nothing herein contained shall take away the effect of any statute of limitations or of the rule that personal actions die with the person.

108—Interpretation of terms

The word *contract* in this Part shall include the acceptance of any trust, or of the office of executrix or administratrix, and the provisions of this Part as to liabilities of married women shall extend to all liabilities by reason of any breach of trust or devastavit committed by any married woman being a trustee or executrix or administratrix either before or after her marriage, and her husband shall not be subject to such liabilities unless he has acted or intermeddled in the trust or administration.

109—Will of married woman

The rule that every will shall be construed with reference to the real estate and personal estate comprised in it to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will, shall apply to the will of a married woman made during coverture, whether she is or is not possessed of or entitled to any separate property at the time of making it, and such will shall not require to be re-executed or republished after the death of her husband.

110—Invalidity of restraints upon anticipations

Any restraint or restriction upon anticipation or alienation affecting the enjoyment of property by a woman that could not have been validly made or imposed in respect of the enjoyment of property by a man, is invalid.

111—Acquisitions and dispositions of trust estates by married women

- (1) A married woman may acquire as well from her husband as from any other person, and hold, any interest in property real or personal either solely or jointly with any other person (whether or not including her husband) as a trustee or personal representative, in like manner as if she were a *feme sole*; and no interest in such property shall vest or be deemed to have vested in the husband by reason only of the acquisition by his wife.
- (2) A married woman may, without her husband, dispose of, or join in disposing of, any interest in real or personal property held by her solely or jointly with any other person (whether or not including her husband) as trustee or personal representative, in like manner as if she were a *feme sole*.

112—Regulations respecting notices

- (1) Any notice required or authorised to be served or given by this Act shall be in writing.
- (2) Any notice required or authorised by this Act to be served on a mortgagor shall be sufficient, although only addressed to the mortgagor by that designation, without his name, or generally to the persons interested, without any name, and notwithstanding that any person to be affected by the notice is absent, under disability, unborn, or unascertained.
- (3) Any notice required or authorised by this Act to be served shall be sufficiently served if it is left at the last-known place of abode or business in South Australia of the mortgagee, mortgagor, or other person to be served, or, in case of a notice required or authorised to be served on a mortgagor, is affixed or left for him on the land or any house or building comprised in the mortgage.

- (4) Any notice required or authorised by this Act to be served shall also be sufficiently served if it is sent by post in a registered letter addressed to the mortgagee, mortgagor, or other person to be served, by name, at the aforesaid place of abode or business, and if that letter is not returned through the post office undelivered; and that service shall be deemed to be made at the time at which the registered letter would in the ordinary course be delivered.

114—Power of Court to sell interest of Crown in real estate

- (1) Where in any proceeding it appears to the court that His Majesty is entitled to any hereditament, corporeal or incorporeal, or to any estate, legal or equitable, therein, the court may, on the application or with the consent of the Attorney-General, notwithstanding that no office has been found and no commission issued, order a sale of the hereditament, estate, or interest; and the net proceeds of such sale, or such portion thereof as represents the interest of His Majesty, shall be paid to the Treasurer for the purposes of the public revenue.
- (2) The court on any such sale may make an order for the Public Trustee to convey the hereditament, estate, or interest to or vesting the same in the purchaser.
- (3) Any money paid to the Treasurer under this section shall be subject to the provisions of section 117 of the *Administration and Probate Act 1919* and for the purposes of such section shall be deemed to have been paid to the Treasurer under section 116 of the same Act.

115—Power to waive right of Crown in certain cases

- (1) Where a person dies intestate in respect of land and without leaving anyone entitled to succeed thereto, whether his estate or interest therein is legal or equitable, and application is made to the Governor for the waiver of any right of His Majesty in respect of such intestacy in favour of any person to whom, or to a trustee for whom, His Majesty would, if His Majesty's title had been duly proved by inquisition, have power to grant such land, the Governor may, by warrant under his hand, authorise the waiver of such right on such terms, whether for the payment of money or otherwise, as may be specified in the warrant; and the Public Trustee may, in pursuance of such warrant, convey to the person in whose favour the waiver is made the right of His Majesty so waived.
- (2) If at any time within two years after such conveyance any person claiming an estate or interest in or to the said land applies to the court for an annulment of the said conveyance, and proves that His Majesty had not the right which the Governor purported to waive, the court may annul the conveyance.
- (3) If the conveyance be not so annulled it shall, as from the date thereof, have the same effect as a grant from His Majesty after office found, and every person bringing an action to establish any claim to such real estate, or any part thereof or interest therein, shall be in the same position and have the same rights as if he were traversing such office found.
- (4) If the conveyance be not so annulled the court may as to land under the provisions of the *Real Property Act 1886* on the application of the person to whom the conveyance shall have been made, or any person claiming through or under him, make an order vesting any estate or interest in the land in any person who shall appear to be entitled thereto.

116—Definition of intestacy

Where any beneficial interest in land of a deceased person, whether the estate or interest of such deceased person therein was legal or equitable, is owing to the failure of the objects of the devise or other circumstances happening before or after the death of such person in whole or in part not effectually disposed of, such person shall be deemed for the purposes of this Act to have died intestate in respect of such part of the said beneficial interest as is ineffectually disposed of.

117—Restrictions on constructive notice

- (1) A purchaser shall not be prejudicially affected by notice of any instrument, fact, or thing unless—
 - (a) it is within his own knowledge, or would have come to his knowledge if such inquiries and inspections had been made as ought reasonably to have been made by him; or
 - (b) in the same transaction with respect to which a question of notice to the purchaser arises, it has come to the knowledge of his solicitor or other agent, as such, or would have come to the knowledge of his solicitor or other agent, as such, if such inquiries and inspections had been made as ought reasonably to have been made by the solicitor or other agent.
- (2) This section shall not exempt a purchaser from any liability under, or any obligation to perform or observe, any covenant, condition, provision, or restriction contained in any instrument under which his title is derived, mediately or immediately; and such liability or obligation may be enforced in the same manner and to the same extent as if this section had not been passed.
- (3) A purchaser shall not by reason of anything in this section be affected by notice in any case where he would not have been so affected if this section had not been passed.

118—Lessor to have benefit of an informal insurance

The person entitled to the benefit of a covenant on the part of a lessee or mortgagor to insure against loss or damage by fire, shall, on loss or damage by fire happening, have the same advantage from any then subsisting insurance relating to the building covenanted to be insured effected by the lessee or mortgagor, in respect of his interest under the lease or in the property, or by any person claiming under him, but not effected in conformity with the covenant, as he would have from an insurance effected in conformity with the covenant.

119—Payment into court

Payment of money into court effectually exonerates therefrom the person making the payment.

120—Saving of certain rights of the Crown

- (1) Nothing in this Act shall be construed as rendering any property of the Crown subject to distress, or liable to be taken or disposed of by means of any distress.
- (2) Subject as aforesaid, and subject to any enactment to the contrary, the provisions of this Act shall bind the Crown.

Schedule 1—Acts repealed

Number and year of Act	Short or long title of Act	Extent of repeal
15 of 1843	An Ordinance to facilitate conveyances of real estate	The whole
15 of 1845	An Ordinance to render effectual conveyances by married women and to declare the effect of certain deeds in relation to dower	The whole
25 of 1852	An Ordinance to amend the law of real property	The whole
5 of 1853	An Act for the more effectual administration of justice by means of the Supreme Court	Sections 171 and 172
6 of 1860	An Act to amend the law of property and for other purposes	The whole Act so far as the same is unrepealed except sections 22 and 23
7 of 1862	An Act to give to trustees, mortgagees, and others, certain powers now commonly inserted in settlements, mortgages, and wills	Sections 10 to 22 both inclusive
5 of 1864	An Act to amend and consolidate the laws relating to aliens	The whole
7 of 1866	<i>Supreme Court Procedure Act</i>	Sections 15 and 26
20 of 1866-7	<i>The Equity Act</i>	Sections 150 and 151
23 of 1872	<i>The Married Women's Acknowledgements Act</i>	Section 1
116 of 1878	<i>Supreme Court Act</i>	Section 6, I. to VII., inclusive
142 of 1879	An Act to amend the law relating to sales of reversions	The whole
203 of 1881	<i>Partition Act</i>	The whole
300 of 1883-4	<i>Married Women's Property Act</i>	The whole
486 of 1890	<i>Public Trustee Amendment Act</i>	The whole so far as the same is unrepealed
586 of 1893	<i>Trustee Act</i>	Sections 30, 31, 32, 33, 34, 38, 39(2), 43, 69, 72, 73, 74, and 75
898 of 1905	<i>Apportionment Act</i>	The whole
796 of 1902	<i>Married Women's Property Act Amendment Act</i>	The whole
1043 of 1911	<i>Ancient Lights Act</i>	The whole
1045 of 1911	<i>Law of Property Amendment Act</i>	The whole
1084 of 1912	<i>Married Women's Property Act Amendment Act</i>	The whole
1502 of 1922	<i>Partition Act Amendment Act</i>	The whole

Schedule 2—Implied covenants

1—Covenant implied in a conveyance for valuable consideration, other than a mortgage, by a person who conveys and is expressed to convey as beneficial owner

- (1) That, notwithstanding anything by the person who so conveys or any one through whom he derives title otherwise than by purchase for value, made, done, executed or omitted, or knowingly suffered, the person who so conveys, has, with the concurrence of every other person (if any) conveying by his direction, full power to convey the subject-matter expressed to be conveyed, subject as, if so expressed, and in the manner in which, it is expressed to be conveyed, and that, notwithstanding anything as aforesaid, that subject-matter shall remain to and be quietly entered upon, received, and held, occupied, enjoyed, and taken, by the person to whom the conveyance is expressed to be made, and any person deriving title under him, and the benefit thereof shall be received and taken accordingly, without any lawful interruption or disturbance by the person who so conveys or any person conveying by his direction, or rightfully claiming or to claim by, through, under, or in trust for the person who so conveys, or any person conveying by his direction, or by, through, or under any one (not being a person claiming in respect of an estate or interest subject whereto the conveyance is expressly made), through whom the person who so conveys derives title, otherwise than by purchase for value.
- (2) And that, freed and discharged from, or otherwise by the person who so conveys sufficiently indemnified against, all such estates, incumbrances, claims, and demands, other than those subject to which the conveyance is expressly made, as, either before or after the date of the conveyance, have been or shall be made, occasioned or suffered by that person or by any person conveying by his direction, or by any person rightfully claiming by, through, under or in trust for the person who so conveys, or by, through or under any person conveying by his direction, or by, through, or under any one through whom the person who so conveys derives title, otherwise than by purchase for value.
- (3) And further, that the person who so conveys, and any person conveying by his direction, and every other person having or rightfully claiming any estate or interest in the subject-matter of conveyance, other than an estate or interest subject whereto the conveyance is expressly made, by, through, under or in trust for the person who so conveys, or by, through, or under any person conveying by his direction, or by, through or under any one through whom the person who so conveys derives title, otherwise than by purchase for value, will, from time to time and at all times after the date of the conveyance, on the request and at the cost of any person to whom the conveyance is expressed to be made, or of any person deriving title under him, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of the conveyance to the person to whom the conveyance is made, and to those deriving title under him, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by him or them or any of them shall be reasonably required.
- (4) In the above covenant a purchase for value shall not be deemed to include a conveyance in consideration of marriage.

2—Further covenant implied in a conveyance of leasehold property for valuable consideration, other than a mortgage, by a person who conveys and is expressed to convey as beneficial owner

- (1) That, notwithstanding anything by the person who so conveys, or any one through whom he derives title, otherwise than by purchase for value, made, done, executed or omitted, or knowingly suffered, the lease or grant creating the term or estate for which the land is conveyed is, at the time of conveyance, a good, valid, and effectual lease or grant of the property conveyed, and is in full force, unforfeited, unsurrendered, and has in nowise become void or voidable, and that, notwithstanding anything as aforesaid, all the rents reserved by, and all the covenants, conditions and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed and performed, have been paid, observed, and performed up to the time of conveyance.
- (2) In the above covenant a purchase for value shall not be deemed to include a conveyance in consideration of marriage.

3—Covenant implied in a conveyance by way of mortgage by a person who conveys and is expressed to convey as beneficial owner

- (1) That the person who so conveys, has, with the concurrence of every other person, if any, conveying by his direction, full power to convey the subject-matter expressed to be conveyed by him, subject as, if so expressed, and in the manner in which it is expressed to be conveyed.
- (2) And also that, if default is made in payment of the money intended to be secured by the conveyance, or any interest thereon, or any part of that money or interest, contrary to any provision in the conveyance, it shall be lawful for the person to whom the conveyance is expressed to be made, and the persons deriving title under him, to enter into and upon, or receive, and thenceforth quietly hold, occupy and enjoy or take and have, the subject-matter expressed to be conveyed, or any part thereof, without any lawful interruption or disturbance by the person who so conveys, or any person conveying by his direction, or any other person (not being a person claiming in respect of an estate or interest subject whereto the conveyance is expressly made).
- (3) And that, freed and discharged from, or otherwise by the person who so conveys sufficiently indemnified against, all estates, incumbrances, claims and demands whatever other than those subject whereto the conveyance is expressly made.

- (4) And further, that the person who so conveys and every person conveying by his direction, and every person deriving title under any of them, and every other person having or rightfully claiming any estate or interest in the subject-matter of conveyance, or any part thereof, other than an estate or interest subject whereto the conveyance is expressly made, will from time to time and at all times, on the request of any person to whom the conveyance is expressed to be made, or of any person deriving title under him, but, as long as any right of redemption exists under the conveyance, at the cost of the person so conveying, or of those deriving title under him, and afterwards at the cost of the person making the request, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of conveyance and every part thereof to the person to whom the conveyance is made, and to those deriving title under him, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by him or them or any of them shall be reasonably required.

4—Covenant implied in a conveyance by way of mortgage of leasehold property by a person who conveys and is expressed to convey as beneficial owner

- (1) That the lease or grant creating the term or estate for which the land is held is, at the time of conveyance, a good, valid and effectual lease or grant of the land conveyed and is in full force, unforfeited and unsurrendered and has in nowise become void or voidable, and that all the rents reserved by, and all the covenants, conditions and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed and performed, have been paid, observed and performed up to the time of conveyance.
- (2) And also that the person so conveying, or the persons deriving title under him, will at all times, as long as any money remains owing on the security of the conveyance, pay observe and perform, or cause to be paid, observed and performed all the rents reserved by, and all the covenants, conditions and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed and performed, and will keep the person to whom the conveyance is made, and those deriving title under him, indemnified against all actions, proceedings, costs, charges, damages, claims and demands (if any) to be incurred or sustained by him or them by reason of the non-payment of such rent or the non-observance or non-performance of such covenants, conditions and agreements, or any of them.

5—Covenant implied in a conveyance by way of settlement, by a person who conveys and is expressed to convey as settlor

That the person so conveying, and every person deriving title under him by deed or act or operation of law in his lifetime subsequent to that conveyance, or by testamentary disposition or devolution in law, on his death, will, from time to time, and at all times, after the date of that conveyance, at the request and cost of any person deriving title thereunder, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of the conveyance to the persons to whom the conveyance is made and those deriving title under them, as by them or any of them shall be reasonably required, subject as if so expressed, and in the manner in which the conveyance is expressed to be made.

6—Covenant implied in any conveyance, by every person who conveys and is expressed to convey as trustee or mortgagee, or as personal representative of a deceased person, or as administrator, committee or other person empowered to act on behalf of a mentally incapacitated person or under an order of the court

That the person so conveying has not executed or done, or knowingly suffered, or been party or privy to any deed or thing, whereby or by means whereof the subject-matter of the conveyance or any part thereof, is or may be impeached, charged, affected or incumbered in title, estate, or otherwise, or whereby or by means whereof the person who so conveys is in anywise hindered from conveying the subject-matter of the conveyance, or any part thereof, in the manner in which it is expressed to be conveyed.

Legislative history

Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes.

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1936	2328	<i>Law of Property Act 1936</i>	3.12.1936	1.11.1937 (<i>Gazette 25.3.1937 p646</i>)
1945	18	<i>Law of Property Act Amendment Act 1945</i>	6.12.1945	6.12.1945
1956	16	<i>Law of Property Act Amendment Act 1956</i>	8.11.1956	8.11.1956
1958	14	<i>Law of Property Act Amendment Act 1958</i>	23.10.1958	23.10.1958
1960	12	<i>Law of Property Act Amendment Act 1960</i>	18.8.1960	18.8.1960
1966	44	<i>Law of Property Act Amendment Act 1966</i>	22.9.1966	22.9.1966
1969	57	<i>Law of Property Act Amendment Act 1969</i>	4.12.1969	21.5.1970 (<i>Gazette 21.5.1970 p1841</i>)
1969	77	<i>Law of Property Act Amendment Act (No. 2) 1969</i>	11.12.1969	31.8.1970 (<i>Gazette 20.8.1970 p696</i>)
1971	15	<i>Age of Majority (Reduction) Act 1971</i>	8.4.1971	15.4.1971 (<i>Gazette 15.4.1971 p1598</i>)
1972	2	<i>Law of Property Act Amendment Act 1972</i>	16.3.1972	1.11.1973 (<i>Gazette 6.9.1973 p1899</i>)
1972	19	<i>Statutes Amendment (Law of Property and Wrongs) Act 1972</i>	30.3.1972	18.5.1972 (<i>Gazette 18.5.1972 p1926</i>)
1972	138	<i>Law of Property Act Amendment Act (No. 2) 1972</i>	7.12.1972	1.11.1973 (<i>Gazette 6.9.1973 p1899</i>)
1974	42	<i>Statute Law Revision Act 1974</i>	11.4.1974	11.4.1974
1975	87	<i>Law of Property Act Amendment Act 1975</i>	20.11.1975	29.1.1976 (<i>Gazette 29.1.1976 p357</i>)
1980	32	<i>Statutes Amendment (Property) Act 1980</i>	17.4.1980	22.5.1980 (<i>Gazette 22.5.1980 p1373</i>)
1984	22	<i>Law of Property Act Amendment Act 1984</i>	10.5.1984	10.5.1984

1984	23	<i>Law of Property Act Amendment Act (No. 2) 1984</i>	10.5.1984	10.5.1984
1989	13	<i>Law of Property Act Amendment Act 1989</i>	20.4.1989	1.7.1989 (<i>Gazette 8.6.1989 p1552</i>)
1991	33	<i>Statutes Amendment (Attorney-General's Portfolio) Act 1991</i>	24.4.1991	6.6.1991 (<i>Gazette 6.6.1991 p1776</i>)
1995	27	<i>Statutes Amendment (Attorney-General's Portfolio) Act 1995</i>	27.4.1995	s 15—4.5.1995 (<i>Gazette 4.5.1995 p1705</i>)
1996	7	<i>Law of Property (Perpetuities and Accumulations) Amendment Act 1996</i>	4.4.1996	1.5.1996 (<i>Gazette 18.4.1996 p1990</i>)
1996	67	<i>Statutes Amendment (Attorney-General's Portfolio) Act 1996</i>	15.8.1996	s 22—17.10.1996 (<i>Gazette 17.10.1996 p1361</i>)
1997	59	<i>Statutes Amendment (Attorney-General's Portfolio) Act 1997</i>	31.7.1997	Pt 6 (ss 9—14) & Sch—14.9.1997 (<i>Gazette 11.9.1997 p704</i>)
2003	44	<i>Statute Law Revision Act 2003</i>	23.10.2003	Sch 1—24.11.2003 (<i>Gazette 13.11.2003 p4048</i>)
2006	17	<i>Statutes Amendment (New Rules of Civil Procedure) Act 2006</i>	6.7.2006	Pt 44 (ss 152—154)—4.9.2006 (<i>Gazette 17.8.2006 p2831</i>)

Provisions amended since 3 February 1976

- Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 5 of The Public General Acts of South Australia 1837-1975 at page 620.

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
<i>s 2</i>	<i>deleted by 44/2003 s 3(1) (Sch 1)</i>	<i>24.11.2003</i>
<i>s 3</i>	<i>deleted in pursuance of the Acts Republication Act 1967</i>	<i>14.9.1997</i>
s 7		
court	substituted by 33/1991 s 13	6.6.1991
	substituted by 59/1997 s 9	14.9.1997
interest	inserted by 7/1996 s 3(a)	1.5.1996
<i>mental defective and mentally defective person and committee</i>	<i>deleted by 59/1997 s 14 (Sch)</i>	<i>14.9.1997</i>
mentally incapacitated person	inserted by 59/1997 s 14 (Sch)	14.9.1997
vest	inserted by 7/1996 s 3(b)	1.5.1996
Pt 2		
<i>heading preceding s 8</i>	<i>deleted by 44/2003 s 3(1) (Sch 1)</i>	<i>24.11.2003</i>

Law of Property Act 1936—4.9.2006
Legislative history

s 15		
s 15(1)	s 15 amended and designated as s 15(1) by 44/2003 s 3(1) (Sch 1)	24.11.2003
s 15(2)	s 15 amended and designated as s 15(2) by 44/2003 s 3(1) (Sch 1)	24.11.2003
s 24B	inserted by 32/1980 s 5	22.5.1980
s 24C	inserted by 23/1984 s 2	10.5.1984
s 24D	inserted by 27/1995 s 15	4.5.1995
<i>heading preceding s 25</i>	<i>deleted by 44/2003 s 3(1) (Sch 1)</i>	<i>24.11.2003</i>
Pt 3		
<i>heading preceding s 28</i>	<i>deleted by 44/2003 s 3(1) (Sch 1)</i>	<i>24.11.2003</i>
s 41	amended by 22/1984 s 2	10.5.1984
	substituted by 13/1989 s 3	1.7.1989
s 41AA	inserted by 13/1989 s 3	1.7.1989
s 41A	inserted by 32/1980 s 6	22.5.1980
	substituted by 67/1996 s 22	17.10.1996
<i>heading preceding s 42</i>	<i>deleted by 44/2003 s 3(1) (Sch 1)</i>	<i>24.11.2003</i>
s 42		
s 42(1)	amended by 59/1997 s 14 (Sch)	14.9.1997
	amended by 44/2003 s 3(1) (Sch 1)	24.11.2003
s 42(4)	amended by 59/1997 s 14 (Sch)	14.9.1997
Pt 4		
s 49		
s 49(2)	amended by 17/2006 s 152	4.9.2006
s 55A		
s 55A(2a)	amended by 59/1997 s 10(a)	14.9.1997
<i>s 55A(4)</i>	<i>deleted by 59/1997 s 10(b)</i>	<i>14.9.1997</i>
Pt 6	substituted by 7/1996 s 4	1.5.1996
s 58A	inserted by 59/1997 s 11	14.9.1997
Pt 7		
s 66	amended by 17/2006 s 153	4.9.2006
Pt 8		
s 73	s 73 I—V redesignated as s 73(a)—(e) by 44/2003 s 3(1) (Sch 1)	24.11.2003
Pt 9		
s 85	<i>deleted by 59/1997 s 12</i>	<i>14.9.1997</i>
Pt 10	heading amended by 59/1997 s 14 (Sch)	14.9.1997
ss 89—91	amended by 59/1997 s 14 (Sch)	14.9.1997
<i>heading preceding s 92</i>	<i>deleted by 59/1997 s 14 (Sch)</i>	<i>14.9.1997</i>
s 105		
s 105(1)	amended by 59/1997 s 13(a)	14.9.1997

s 105(2)	amended by 59/1997 s 13(b)	14.9.1997
s 105(3)	amended by 59/1997 s 13(c)	14.9.1997
s 114		
s 114(1)	amended by 17/2006 s 154	4.9.2006
Pt 11		
<i>heading</i>	<i>deleted by 59/1997 s 14 (Sch)</i>	<i>14.9.1997</i>
Sch 2	amended by 59/1997 s 14 (Sch)	14.9.1997
	Pts 1—6 redesignated as cll and scll by 44/2003 s 3(1) (Sch 1)	24.11.2003

Historical versions

Reprint No 1—1.10.1991

Reprint No 2—4.5.1995

Reprint No 3—1.5.1996

Reprint No 4—17.10.1996

Reprint No 5—14.9.1997

Reprint No 6—24.11.2003