



**BELIZE**

**LAW OF PROPERTY ACT  
CHAPTER 190**

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**CHAPTER 190**

**LAW OF PROPERTY**

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**CHAPTER 190****LAW OF PROPERTY****PART I***Preliminary*

Ch. 193,  
R.L., 1958.  
CAP. 154.  
R.E.1980-1990.  
11 of 1958.  
3 of 1964.  
2 of 1977.  
5 of 1992.

[1<sup>st</sup> March, 1954]

Short title      **1.** This Act may be cited as the Law of Property Act.

Interpretation      **2.**-(1) In this Act, unless the context otherwise requires,

“appurtenances”, in relation to land, means all houses (including cellars, areas, courts, courtyards, cisterns, sewers, gutters, drains, passages and lights), buildings, out-houses, erections, fixtures, hedges, ditches, fences, ways, waters, water-courses, easements, rights, privileges and advantages whatever appertaining or reputed to appertain to the land, or any part thereof or, at the time of dealing with the land, demised, occupied or enjoyed with or reputed or known as part or parcel of or appurtenant to the land or any part thereof;

“court” means the Supreme Court;

“deed” means a writing or instrument written on paper or parchment, signed, sealed and delivered, to prove and testify the agreement of the parties whose deed it is, to the things contained in the deed;

“equitable interest” means estates, interests and charges in or over land which are not legal estates, interests and charges in or over land, and “equitable title” means a title to an equitable interest;

“equitable powers” means powers which by this Act are to operate in equity only;

“estate” with reference to an estate owner means his legal estate;

“land” includes land of any tenure, 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, and an easement, right, privilege or benefit in, over or derived from land, but not an undivided share in land;

“legal estates” means the estates, interests and encumbrances in or over land which under section 3 are authorised to subsist, to be conveyed or created at law;

“legal mortgage” means a charge by way of legal mortgage;

“lessee” and “lessor” have the meanings assigned to them in the Landlord and Tenant Act, Cap. 189;

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

“mortgagee” means a person entitled to a charge by way of legal mortgage and includes any person from time to time deriving title under the original mortgagee or entitled to an order for sale under the mortgage;

“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;

“owner” means the owner of a legal estate;

“person of unsound mind” has the meaning assigned to it in the Unsoundness of Mind Act, Cap. 122;

“personal representative” has the meaning assigned to it in the Administration of Estates Act, Cap. 197;

“property” includes anything in action and any interest in real and personal property;

“purchase” has a meaning corresponding with that of “purchaser”;

“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 in Part II and elsewhere where so expressly provided;

“purchaser” only means a person who acquires an interest in or charge on property for money or money’s worth, and in reference to a legal estate includes a chargee by way of legal mortgage:

Provided that where the context so requires “purchaser” includes an intending purchaser;

“residuary estate” has the meaning assigned to it in the Administration of Estates Act, Cap. 197;

“securities” include stocks, funds and shares;

“settlement” and “settled land” have the meanings assigned to them in the Settled Land Act, 1925, c. 18;

“term of years absolute” means a term of years (taking effect either in possession or in reversion whether or not at a rent) with or without impeachment for waste, subject or not to another legal estate, and either certain or liable to determination by notice, re-entry, operation of law or by a provision for cesser on redemption, or in any other event (other than the dropping of a life, or the determination of a determinable life interest), but does not include any term of years determinable with life or lives or with the cesser of a determinable life interest;

“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;

“valuable consideration” includes marriage, but does not include a nominal consideration in money;

“will” includes codicil.

(2) Where an equitable interest in or power over property arises by statute or operation of law, references to the creation of an interest or power include references to any interest or power so arising.

(3) All words and expressions defined in the General Registry Act, Cap. 327, shall have the same meaning in this Act as they have in that Act.

(4) Sections 146 and 148 of this Act, shall not apply to a trust created on or after the 18th day of May, 1992.

## PART II

### *Legal Estates, Equitable Interests and Powers*

3.–(1) After the commencement of this Act, the only estates in land which are capable of subsisting or of being created or transferred at law are,

Legal estates and equitable interests.

- (a) an estate in fee simple absolute in possession; and
- (b) a term of years absolute.

(2) After the commencement of this Act, the only interests in or over land which are capable of subsisting or of being created or transferred at law are,

- (a) an easement, right or privilege in or over land for an interest equivalent to an estate in fee simple absolute in possession or to a term of years absolute;

- (b) rights of entry exercisable over or in respect of a legal term of years absolute, or annexed for any purpose to a legal rent charge.

(3) After the commencement of this Act, the only charges in or over land which are capable of subsisting or of being created or assigned at law are,

- (a) a charge by way of legal mortgage;
- (b) a rentcharge in possession issuing out of or charged on land being either perpetual or for a term of years absolute;
- (c) a charge on crops;
- (d) land tax and any other similar charge on land which is not created by an instrument.

(4) All other estates, interests and encumbrances in or over land shall take effect as equitable interests.

(5) Legal estates have the same incidents as legal estates subsisting at the commencement of this Act.

Legal estates.

**4.**-(1) A legal estate may subsist concurrently with or subject to any other legal estate in the same land in like manner as it could have done before the commencement of this Act.

(2) A legal estate is not capable of subsisting or of being created in an undivided share in land.

Power of appointment generally to operate in equity only.

11 of 1958.

**5.** Every power of appointment over, or power to convey or charge land or any interest therein, whether created by a statute or other instrument or implied by law, and whether created before or after the commencement of this Act (not being a power vested in an owner in right of his estate and exercisable by him or by another person in his name and on his behalf), shall operate only in equity.



6.–(1) The provisions in any statute or other instrument requiring land to be conveyed to uses shall take effect as directions that the land shall (subject to creating or reserving thereout any legal estate authorised by this Act which may be required) be conveyed to a person of full age upon the requisite trusts.

Conveyance to uses operates as conveyance upon trusts, and abolition of Statute of Uses.

(2) The Statute of Uses 27 Hen. 8, c.10 (as amended) shall have effect with regard to dealings which took place before the commencement of this Act, but otherwise shall have no application in Belize.

7. All equitable interests and powers in or over land shall be enforceable against the estate owner of the legal estate affected in manner following,

Manner of giving effect to equitable interests and powers.

- (a) where the legal estate affected is settled land, the tenant for life or statutory owner shall be bound to give effect to the equitable interests and powers in manner provided by the Settled Land Act, 1925, c. 18;
- (b) where the legal estate affected is vested in trustees for sale,
  - (i) the trustees shall stand possessed of the net proceeds of sale after payment of costs and of the net rents and profits of the land until sale after payment of rates, taxes, costs of insurance, repairs and other outgoings, upon such trusts and subject to such powers and provisions as may be requisite for giving effect to the equitable interests and powers affecting the same respectively, of which they have notice, and whether created before or after the disposition upon trust for sale, according to their respective priorities;
  - (ii) where, by reason of the exercise of any equitable power or under any trust affecting the proceeds of sale, any principal sum is required to be raised, or any person of full age becomes

entitled to require a legal estate in the land to be vested in him in priority to the trust for sale, then, unless the claim is satisfied out of the net proceeds of sale, the trustees for sale shall (if so requested in writing) be bound to create such charge by way of legal mortgage as may be necessary for raising the money, or to transfer such legal estate as may be necessary to give possession of the land to the person entitled to the legal estate therein in priority to the trust for sale,

Provided that, if the proceeds of sale are held in trust for persons of full age in undivided shares absolutely free from encumbrances affecting undivided shares, those persons cannot require the land to be conveyed to them in undivided shares, but may (subject to effect being given by way of legal mortgage to encumbrances affecting the entirety) require it to be vested in any of them (not exceeding four) as joint tenants on trust for sale, and if the conveyance purports to transfer the land to any of them in undivided shares or to more than four such persons, it shall operate only as a transfer to them or (if more than four) to the first four persons named therein as joint tenants on trust for sale;

- (c) where the legal estate affected is neither settled land nor vested in trustees for sale, the estate owners shall be bound to give effect to the equitable interests and powers affecting his estate of which he has notice according to their respective priorities,

Provided that this provision does not affect the priority or powers of a legal mortgagee, or the powers of personal representatives for purposes of administration.

**8.** Effect may be given by means of a legal mortgage to an agreement for a mortgage, charge or lien (whether or not arising by operation of law) if the agreement, charge or lien ought to have priority over the trust for sale.

Effecting agreement for mortgage, charge or lien.

**9.**—(1) Where, by reason of a statutory or other right of reverter, or of an equitable right of entry taking effect, or for any other reason, a person becomes entitled to require a legal estate to be vested in him, then and in any such case the estate owner whose estate is affected shall be bound to convey or create such legal estate as the case may require.

Obligation to convey legal estate.  
11 of 1958.

(2) If the trustees for sale or other estate owners refuse or neglect for one month after demand to transfer or create any such legal estate, or if by reason of their being out of Belize or being unable to be found, or for any other reason, the court is satisfied that the transaction cannot otherwise be effected, or cannot be effected without undue delay or expense, it may, on the application of any person interested direct the Registrar to issue to the persons entitled to require the legal estate to be vested in them the appropriate certificate of title or to convey to the persons entitled the requisite legal estate.

(3) If any question arises whether any and what legal estate ought to be transferred or created as aforesaid, any person interested may apply to the court for directions in the manner provided by this Act.

(4) This section does not affect a purchaser of a legal estate taking free from an equitable interest or power.

**10.**—(1) Interests in land validly created or arising after the commencement of this Act which are not capable of subsisting as legal estates, shall take effect as equitable interests.

Creation and disposition of equitable interests.

(2) Except as otherwise expressly provided by statute, interests in land which under the Statute of Uses, 27 Hen. 8, c.10 or otherwise could before the commencement of this Act have been created as legal interests shall be capable of being created as equitable interests,

Provided that, after the commencement of this Act (and except as hereinafter expressly enacted), an equitable interest in land shall only be capable of being validly created in any case in which an equivalent equitable interest in property real or personal could have been validly created before such commencement.

All rights in land disposable.

**11.** All rights and interests in land may be disposed of, including,

- (a) a contingent, executory or future equitable 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.

Rights of entry.

**12.** All rights of entry affecting a legal estate which are exercisable on condition broken or for any other reason may, after the commencement of this Act, be made exercisable by any person and the persons deriving title under him, but, in regard to an estate in fee simple (not being a rent charge held for a legal estate) only within the period authorised by the rule relating to perpetuities.

Satisfied terms whether created out of freehold or leasehold land to cease.

**13.**—(1) Where the purposes of a term of years created or limited at any time out of freehold land become satisfied, either before or after the commencement of this Act (whether or not that term either by express declaration or by construction of law becomes attendant upon the freehold reversion), it 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 after the commencement of this Act, that term shall merge in the reversion expectant thereon and shall cease accordingly.

(3) Where the purposes are satisfied only as respects part of the land comprised in a term, this section shall have effect as if a separate term had been created in regard to that part of the land.

Saving of lessor's and lessee's covenants.

**14.**—(1) Nothing in this Act shall affect prejudicially the right to enforce any lessor's or lessee's covenants, agreements or conditions (including a valid option to purchase or right of preemption over the reversion), contained in any such instrument as is mentioned in this section, the benefit or burden of which runs with the reversion or the term.

(2) This section shall apply where the covenant, agreement or condition is contained in any instrument,

- (a) creating a term of years absolute; or
- (b) varying the rights of the lessor or lessee under the instrument creating the term.

**15.** Except in respect of national land, title to a legal estate or a legal interest in land shall be evidenced either by a certificate of title issued or by a deed recorded under the General Registry Act, Cap. 327.

Title to legal estate.  
11 of 1958.

**16.** Title to a term of less than ten years shall be evidenced by the contract, deed or other instrument creating the term.

Evidence of title to  
a term.

### PART III

#### *Infants and Persons of Unsound Mind*

**17.** A transfer of a legal estate or legal interest in land to an infant alone, or to two or more persons jointly, both or all of whom are infants, shall, subject to the provisions of this Act relating to undivided shares and joint ownership, vest the legal estate or legal interest in such infant or infants alone or jointly, as the case may be, but the said infant or infants shall not have power to administer, sell, mortgage or dispose of the said estate or interest.

Effect of transfer  
to infant.

**18.** A transfer of a legal estate or legal interest in land to an infant alone, or to two or more persons jointly, both or all of whom are infants, on any trust shall operate as a declaration of trust and shall not be effectual to pass any legal estate or legal interest.

Transfer of trust to  
infant.

**19.** The appointment of an infant to be a trustee in relation to any settlement or trust shall be void, but without prejudice to the power to appoint a new trustee to fill the vacancy.

Appointment of in-  
fant as trustee void.

Power of married infant to give receipts.

**20.** A married infant shall have power to give valid receipts for all income (including statutory accumulations of income made during the minority) to which the infant may be entitled in like manner as if the infant were of full age.

Grant or assignment of mortgage to infant.

**21.** A grant or assignment of a charge by way of legal mortgage of land to an infant shall operate to vest in the infant the right to the charge upon the land as well as all the rights and powers of a mortgagee to enforce and recover by the guardian of his estate payment of all moneys due under the mortgage.

Disposal of infant's property subject to consent of the court.

**22.** All estates, rights and interests in land belonging to and vested in an infant shall be incapable of being sold, disposed of, charged or transferred by him or the guardian of his estate, except with the previous sanction of the court.

Legal estate in land vested in a person of unsound mind or defective.

**23.** Where a legal estate or legal interest in land (whether settled or not) is vested in a person of unsound mind or defective, either solely or jointly with any other person or persons, his committee shall, under an order of the court or under any statutory power, make or concur in making all requisite dispositions for transferring or creating a legal estate or legal interest in the name and on behalf of the person of unsound mind or defective.

Land held in trust for sale vested in a person of unsound mind or defective.

**24.** If land held on trust for sale is vested in a person of unsound mind or a defective, either solely or jointly with any other person or persons, a new trustee shall be appointed in his place, or he shall be otherwise discharged from the trust, before the legal estate is dealt with under the trust for sale or under the powers vested in the trustees for sale.

#### PART IV

##### *Dispositions on Trust for Sale, Undivided Shares and Joint Ownership*

Duration of trusts for sale.

**25.**—(1) Where land has, either before or after the commencement of this Act, become subject to an express or implied trust for sale, such trust shall, so far as regards the safety and protection of any purchaser

thereunder, be deemed to be subsisting until the land has been transferred to or under the direction of the persons interested in the proceeds of sale.

(2) This section shall apply to sales whether made before or after the commencement of this Act, but shall operate without prejudice to an order of any court restraining a sale.

**26.**—(1) A power to postpone sale shall, in the case of every trust for sale of land, be implied unless a contrary intention appears.

Power to postpone sale.

(2) Where there is a power to postpone the sale, then (subject to any express direction to the contrary in the instrument, if any, creating the trust for sale) the trustees for sale shall not be liable in any way for postponing the sale, in the exercise of their discretion, for any indefinite period, and a purchaser of a legal estate or legal interest shall not be concerned in any case with any directions respecting the postponement of a sale.

(3) This section shall apply whether the trust for sale is created before or after the commencement or by virtue of this Act.

(4) Where a disposition or settlement coming into operation after the commencement of this Act contains a trust either to retain or sell land, it shall be construed as a trust to sell the land with power to postpone the sale.

**27.**—(1) If the consent of more than two persons is by the disposition made requisite to the execution of a trust for sale of land then, in favour of a purchaser, the consent of any two of such persons to the execution of the trust or to the exercise of any statutory or other powers vested in the trustees for sale shall be deemed sufficient.

Consents to the execution of a trust for sale.

(2) Where the person whose consent to the execution of any such trust or power is expressed to be required in a disposition is not *sui juris* or becomes subject to disability, his consent shall not, in favour of a purchaser, be deemed to be requisite to the execution of the trust or the exercise of the power, but the trustees shall, in any such case, obtain the separate consent of the parent or testamentary or other guardian of an infant or of the committee of a person of unsound mind or defective.

Trustees for sale required to consult beneficiaries of full age.

**28.**—(1) Trustees for sale shall so far as practicable consult the persons of full age for the time being beneficially interested in possession in the rents and profits of the land until sale, and shall, so far as consistent with the general interest of the trust, give effect to the wishes of such persons, or, in the case of dispute, of the majority (according to the value of their combined interests) of such persons, but a purchaser shall not be concerned to see that the provisions of this subsection have been complied with.

(2) In the case of a trust for sale, not being a trust for sale created by or in pursuance of the powers conferred by this or any other Act, this subsection shall not apply unless the contrary intention appears in the disposition creating the trust.

(3) This section shall apply whether the trust for sale is created before or after the commencement or by virtue of this Act.

Purchaser not to be concerned with the trusts of the proceeds of sale which are to be paid to two or more trustees.

**29.**—(1) 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 (whether made to attach to such proceeds by virtue of this Act or otherwise), 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.

(2) Notwithstanding anything to the contrary in the instrument (if any) creating a trust for sale of land or in the settlement of the net proceeds, the proceeds of sale or other capital money shall not be paid to or applied by the direction of fewer than two persons as trustees for sale, but this subsection does not affect the right of a sole personal representative as such to give valid receipts for, or direct the application of, the proceeds of sale or other capital money, nor, except where capital money arises on a transaction, render it necessary to have more than one trustee.

Powers of management, etc., conferred on trustees for sale.

**30.**—(1) Trustees for sale shall, in relation to land and to the proceeds of sale, have all the powers of a tenant for life and the trustees of a settlement under the Settled Land Act, 1925, c. 18, including in relation to the land the powers of management conferred by that Act during a minority.



(2) Where by statute settled land is or becomes vested in the trustees of the settlement upon the statutory trusts, such trustees and their successors in office shall also have all the additional or larger powers (if any) conferred by the settlement on the tenant for life, statutory owner or trustees of the settlement, and (subject to any express trust to the contrary) all capital money arising under the said powers shall, unless paid or applied for any purpose authorised by the Settled Land Act, 1925, c. 18, be applicable in the same manner as if the money represented proceeds of sale arising under the trusts for sale.

(3) All land acquired under this section shall be transferred to the trustees on trust for sale.

(4) The power conferred by this section shall be exercised with such consents (if any) as would have been required on a sale under the trust for sale, and when exercised shall operate to overreach any equitable interests or powers which are by virtue of this Act or otherwise made to attach to the net proceeds of sale as if created by a trust affecting those proceeds.

**31.** Subject to any direction to the contrary in the disposition on trust for sale or in the settlement of the proceeds of sale, the net rents and profits of the land until sale, after keeping down costs of repairs and insurance and other outgoings, shall be paid or applied, except so far as any part thereof may be liable to be set aside as capital money under the Settled Land Act, 1925, c. 18, in the like manner as the income of investments representing the purchase money would be payable or applicable if a sale had been made and the proceeds had been duly invested.

Application of net rents and profits pending sale.

**32.**-(1) The powers of and incidental to leasing, accepting surrenders of leases and management, conferred on trusts for sale whether by this Act or otherwise, may, until sale of the land, be revocably delegated from time to time, by writing, signed by them, to any person of full age (not being merely an annuitant) for the time being beneficially entitled in possession to the net rents and profits of the land during his life or for any less period, and in favour of a lessee such writing shall, unless the contrary appears, be sufficient evidence that the person named therein is a person to whom the powers may be delegated, and the production of such writing shall, unless the contrary appears, be sufficient evidence that the delegation has not been revoked.

Delegation of powers of management by trustees for sale.

(2) Any power so delegated shall be exercised only in the names and on behalf of the trustees delegating the power.

(3) The persons delegating any power under this section shall not, in relation to the exercise or purported exercise of the power, be liable for the acts or defaults of the person to whom the power is delegated, but that person shall, in relation to the exercise of the power by him, be deemed to be in the position and to have the duties and liabilities of a trustee.

(4) Where, at the commencement of this Act, an order made under section 7 of the Settled Land Act, 1925, c. 18, is in force, the person on whom any power is thereby conferred shall, while the order remains in force, exercise such power in the names and on behalf of the trustees for sale in like manner as if the power had been delegated to him under this section.

Powers of Court where trustees for sale refuse to exercise powers.

**33.** If the trustees for sale refuse to sell or to exercise any of the powers conferred by sections 30 and 32 of this Act, or any requisite consent cannot be obtained, any person interested may apply to the court for a vesting or other order for giving effect to the proposed transaction or for an order directing the trustees for sale to give effect thereto, and the court may make such order as it thinks fit.

Implied trust for sale in personality settlements.

**34.**—(1) Where a settlement of personal property or of land held upon trust for sale contains a power to invest money in the purchase of land, such land shall, unless the settlement otherwise provides, be held by the trustees on trust for sale, and the net rent and profits until sale, after keeping down costs of repairs and insurance and other outgoings, shall be paid or applied in like manner as the income of investments representing the purchase money would be payable or applicable if a sale had been made and the proceeds had been duly invested in personal estate.

(2) This section applies to settlements (including wills) coming into operation after the commencement of this Act.

Application of Parts II, III and IV to personal representatives, subject to administration needs.

**35.** The provisions of this Part relating to trustees for sale shall apply to personal representatives holding on trust for sale, but without prejudice to their rights and powers for purposes of administration.

**36.**—(1) An undivided share in land shall not be capable of being created except as provided by the Settled Land Act, 1925, c. 18, or as hereinafter mentioned.

Effect of future dispositions to tenants in common.  
11 of 1958.

(2) Where, after the commencement of this Act, the title to land is vested in more persons than one, the certificate of title or the title deed thereto, notwithstanding anything to the contrary in this Act, shall operate to vest the title in the grantees as joint tenants upon the statutory trusts hereinafter mentioned,

(3) A devise, bequest or testamentary appointment of land to two or more persons in undivided shares, coming into operation after the commencement of this Act, shall operate as a devise, bequest or appointment of the land to the trustees (if any) of the will for the purposes of the Settled Land Act, 1925, c. 18, or, if there are no such trustees, then to the personal representatives of the testator, and in each case, but without prejudice to the rights and powers of the personal representatives for purposes of administration, upon the statutory trusts hereinafter mentioned.

(4) Any disposition purporting to make a settlement of an undivided share in land shall only operate as a settlement of a corresponding share of the net proceeds of sale and of the rents and profits until sale of the entirety of the land.

**37.**—(1) For the purposes of this Act, land held upon the “statutory trusts” shall be held upon trust to sell the same and to stand possessed of the net proceeds of sale, after payment of costs and of the net rents and profits until sale after payment of rates, taxes, costs of insurance, repairs and other outgoings, upon such trusts, and subject to such powers and provisions, as may be requisite for giving effect to the rights of the persons (including an encumbrancer of a former undivided share or whose encumbrance is not secured by a legal mortgage) interested in the land.

Meaning of statutory trusts.

(2) The right of a person who, if the land had not been made subject to a trust for sale by virtue of this Act, would have been entitled to an entailed interest in an undivided share in the land, shall be deemed to be a right to a corresponding entailed interest in the net proceeds of sale attributable to that share.

(3) Where,

- (a) an undivided share was subject to a settlement;
- (b) the settlement remains subsisting in respect of other property; and
- (c) the trustees thereof are not the same persons as the trustees for sale,

then the statutory trusts include a trust for the trustees for sale to pay the proper proportion of the net proceeds of sale or other capital money attributable to the share to the trustees of the settlement to be held by them as capital money arising under the Settled Land Act 1925, c. 18.

Joint tenancies.

**38.**—(1) Where a legal estate (not being settled land) is beneficially vested in more than one person or held in trust for any persons as joint tenants, it shall be held on trust for sale, in like manner as if the persons beneficially entitled were tenants in common, but not so as to sever their joint tenancy in equity.

(2) No severance of a joint tenancy of a legal estate, so as to create a tenancy in common in land, shall be permissible, whether by operation of law or otherwise, but this subsection does not affect the right of a joint tenant to release his interest to the other tenants, or the right to sever a joint tenancy in an equitable interest whether or not the legal estate is vested in the joint tenants,

Provided that, where a legal estate (not being settled land) is vested in joint tenants beneficially, and any tenant desires to sever the joint tenancy in equity, he shall give to the other tenants a notice in writing of such desire or do such other acts or things as would, in the case of personal estate, have been effectual to sever the tenancy in equity, and thereupon under the trust for sale affecting the land the net proceeds of sale, and the net rents and profits until sale, shall be held upon the trusts which would have been requisite for giving effect to the beneficial interests if there had been an actual severance.

(3) Nothing in this Act shall affect the right of a survivor of joint tenants, who is solely and beneficially interested, to deal with his legal estate as if it were not held on trust for sale.

(4) Without prejudice to the right of a joint tenant to release his interest to the other joint tenants, no severance of a trust estate, so as to create a tenancy in common, shall be permissible.

**39.** A husband and wife shall, for all purposes of acquisition of any interest in property, under a disposition made or coming into operation after the commencement of this Act, be treated as two persons.

Rights of husband and wife.

## PART V

### *Title to Land, Transfers, Deeds and other Instruments*

**40.**-(1) From and after the commencement of this Act and except in respect of national land, the legal title to all land or any interest in land shall be created either,

Title to land.  
11 of 1958.

- (a) by registration of the certificate of title thereto under and in accordance with the General Registry Act, Cap. 327; or
- (b) by recording the title deed thereto under and in accordance with Part VI of the General Registry Act, Cap. 327.

(2) Such a deed shall be made according to the form in the Schedule, and, notwithstanding the repeal of the Real Property Conveyancing Ordinance taken to have the same effect and be construed as if the parties thereto had inserted in such deed the form of words ordinarily approved and adopted in England to convey an estate in fee simple, and to express that the grantor, for himself and his representatives, covenanted with the grantee and his representatives for right to convey the said premises free from encumbrances, for quiet enjoyment and for further assurance.

(3) The transfer of the legal title in land or any interest in land shall operate to pass the possession thereof, without actual entry, but subject to all prior rights thereto.

Title to legal estates and interests created by certificates of absolute and indefeasible title.

11 of 1958

**41.**—(1) From and after the commencement of this Act and except in respect of national land, the creation or transfer in law of,

- (a) an estate in fee simple absolute in possession,
- (b) a term of years absolute, and
- (c) any easement, right or privilege in or over any land equivalent to an estate in fee simple absolute,

shall be effected,

- (i) in case of registered land by the issue of a certificate of title under and in accordance with Part III of the General Registry Act, Cap. 327; and
- (ii) in the case of unregistered land by the recording of the title deed thereto under and in accordance with Part VI of the General Registry Act, Cap. 327,

Provided that a certificate of title shall not be issued in respect of a term of years absolute unless the estate thereby created or transferred is for a term of ten years or upwards.

(2) The certificate of title to the legal estate, interest or right in or over any land shall confer upon the registered proprietor,

- (a) the right against all the world to peaceable possession of the land for the estate, interest or right conferred by the certificates;
- (b) subject to the provisions of any statute and to any legal estates and interests, charges and encumbrances noted on the certificate of title, the absolute right to the use and enjoyment of the land against all the world for the estate, interest or right conferred by the certificate; and

- (c) subject to the provisions of any statute and to any legal estates and interests, charges and encumbrances noted on the certificate of title, the absolute right of disposition of the land against all the world by will or dealing *inter vivos*.

(3) A registered title to land under Part III of the General Registry Act, Cap. 327, subject to all estates, interests, charges and encumbrances noted on the certificate of title to the land, shall be an absolute and indefeasible title.

(4) In this section, “absolute and indefeasible” implies that a certificate of title issued by the Registrar under Part III of the General Registry Act, Cap. 327 and the estates, interests, charges and encumbrances noted thereon by the Registrar cannot be challenged in any court of law on the ground that some person, other than the person named therein as the registered proprietor, is the true legal owner of the land therein set forth, or that the estates, interests, charges and encumbrances in the notings thereon are not estates, interests, charges and encumbrances on the said land, except where it is proved to the court that,

- (a) fraud was committed in respect of the issue of the certificate of title, or the noting of such estates, interests, charges or encumbrances; or
- (b) the title of the registered proprietor had been superseded by a later title acquired under section 42 of this Act or barred by the Limitation Act, Cap. 170, in favour of the person making the challenge.

(5) In this section, “land” includes the appurtenances thereto.

**42.**—(1) Title to the fee simple in any land, or to an easement, right or privilege in or over any land, including land belonging to the Government, may be acquired by continuous and undisturbed possession of that land for thirty years if such possession is established to the satisfaction of the Supreme Court which may issue a declaration of title in respect of the said land, easement, right or privilege in favour of the person who has had such possession.

Acquisition of title by long possession.

(2) The possession of some other person through whom the applicant for a declaration of title lawfully derived his possession may be taken into account in computing the period of thirty years possession required by this section.

(3) The application for a declaration of title shall be made in accordance with rules of court.

(4) The title to any land, easement, right or privilege declared by the court under this section shall not vest in any person until the Registrar has issued to him a certificate of title based upon the said declaration.

Instruments re-  
quired to be in  
writing.  
5 of 1992.

**43.**—(1) Subject to the provisions hereinafter contained with respect to the creation of interests in land by parol, no interest in land shall be created or disposed of except by writing signed by the person creating or conveying it, or by his agent thereunto lawfully authorised in writing, or by will, or by operation of law.

(2) This section shall not affect the creation or operation of resulting, implied or constructive trusts.

Creation of in-  
terest in land by  
parol.

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

(2) Nothing in this Part shall affect the creation by parol of,

- (a) 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;
- (b) a tenancy from year to year of any land or house;
- (c) a weekly, monthly or quarterly tenancy of any land or house.



**45.** Nothing in sections 43 and 44 of this Act shall,

Savings in regard to sections 43 and 44.

- (a) invalidate dispositions by will;
- (b) affect any interest validly created before the commencement of this Act;
- (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.

**46.** A person may in equity 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 may not be named as a party to the transfer or other instrument.

Persons taking who are not parties.

**47.**—(1) A transfer of land shall be deemed to include and shall by virtue of this Act operate to transfer with the land all appurtenances thereto.

General words implied in transfers.

(2) 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 transfer gives to him to the land expressed to be transferred, or as transferring to him any property, right or thing mentioned in this section, further or otherwise than as it could have been transferred to him by the transferring parties, and especially shall not transfer any right to houses, buildings, erections and the appurtenances thereto belonging to a tenant or licensee on the land.

**48.**—(1) After the issue of a first certificate of title, every transfer shall be effectual to pass to the transferee the estate, right, title and interest of the transferor in, to or on the property transferred, or expressed or intended so to be, or which the transferor has power to transfer in, to or on the same, and the transferee's title to the land shall be absolute and incapable of being disputed on any ground except fraud to which he is party.

All estates clause implied.

(2) Every transfer by deed shall be effectual to pass to the transferee the estate, right, title and interest of the transferor in, to or on the property transferred, or expressed or intended so to be, or which the transferor has power to transfer in, to or on the same.

Transfers by a person to himself, etc.

**49.**—(1) In transfers made after the commencement of this Act, personal property, including chattels real, may be transferred by a person to himself jointly with another person by the like means by which it might be transferred by him to another person.

(2) In transfers made after the commencement of this Act, freehold land, or a thing in action, may be transferred by a person to himself jointly with another person, by the like means by which it might be transferred by him to another person, and may, in like manner, be transferred by a husband to his wife, and by a wife to her husband alone or jointly with another person.

A deed need not to be indented.

**50.** A deed between parties to effect its objects has the effect of an indenture though not indented or expressed to be an indenture.

Receipt in deed sufficient.

**51.**—(1) A receipt for consideration money or securities in the body of a deed or transfer shall be a sufficient discharge for the same to the person paying or delivering the same, without any further receipt for the same being indorsed on the deed or transfer.

(2) This section shall apply to deeds executed after 31st December, 1881.

Receipt in deed or indorsed.

**52.**—(1) Where a solicitor produces a deed, having in the body thereof or indorsed thereon a receipt for consideration money or other consideration, the deed being executed, or the indorsed receipt being signed, by the person entitled to give a receipt for that consideration, the deed shall be a sufficient authority to the person liable to pay or give it for his paying or giving it to the solicitor, without the solicitor producing any separate or other direction or authority in that behalf from the person who executed or signed the deed or receipt.

(2) This section shall apply whether the consideration was paid or given before or after the commencement of this Act.

(3) After the commencement of this Act, a person may transfer land to or vest land in himself.

(4) Two or more persons (whether or not being trustees or personal representatives) may transfer, and shall be deemed always to have been capable of transferring, any property vested in them to any one or more of themselves in like manner as they could have transferred such property to a third party,

Provided that if the persons in whose favour the transfer is made are, by reason of any fiduciary relationship or otherwise, precluded from validly carrying out the transaction, the transfer shall be liable to be set aside.

**53.**—(1) Where an individual executes a deed, he shall either sign or place his mark upon it and sealing alone shall not be deemed sufficient.

Execution of deeds  
by an individual.

(2) This section shall apply only to deeds executed after the commencement of this Act.

**54.**—(1) In favour of a purchaser, a deed shall be deemed to have been duly executed by a corporation aggregate if its seal be affixed thereto in the presence of and attested by its clerk, secretary or other permanent officer or his deputy, and a member of the board of directors, council or other governing body of the corporation.

Execution of instruments by or on  
behalf of corporations.

(2) Where a seal purporting to be the seal of a corporation has been affixed to a deed, attested by persons purporting to be persons holding such offices as aforesaid, the deed shall be deemed to have been executed in accordance with the requirements of this section, and to have taken effect accordingly.

(3) The board of directors, council or other governing body of a corporation aggregate may, by resolution or otherwise, appoint an agent either generally or in any particular case, to execute on behalf of the

corporation any agreement or other instrument not under seal in relation to any matter within the powers of the corporation.

(4) Where a person is authorised under a power of attorney or under any statutory or other power to convey any interest in property in the name or on behalf of a corporation sole or aggregate, he may as attorney execute the conveyance by signing the name of the corporation in the presence of at least one witness, and in the case of a deed by affixing his own seal, and such execution shall take effect and be valid in like manner as if the corporation had executed the conveyance.

(5) Where a corporation aggregate is authorised under a power of attorney or under any statutory or other power to convey any interest in property in the name or on behalf of any other person (including another corporation), an officer appointed for that purpose by the board of directors, council or other governing body of the corporation by resolution or otherwise, may execute the deed or other instrument in the name of such other person, and where an instrument appears to be executed by an officer so appointed, then in favour of a purchaser the instrument shall be deemed to have been executed by an officer duly authorised.

(6) This section shall apply to transactions wherever effected, but only to deeds and instruments executed after the commencement of this Act, except that, in the case of powers or appointments of an agent or officer, they apply whether the power was conferred or the appointment was made before or after the commencement of this Act or by this Act.

(7) Notwithstanding anything contained in this section, any mode of execution or attestation authorised by law or by practice or by the statute, charter, memorandum or articles, deed of settlement or other instrument, constituting the corporation or regulating the affairs thereof, shall (in addition to the modes authorised by this section) be as effectual as if this section had not been passed.

## PART VI

*Sale of Land etc.*

**55.**—(1) No action may be brought upon any contract for the sale or other disposition of land or any interest in land, unless the 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 other person thereunto by him lawfully authorised.

Contracts for sale, etc., of land to be in writing.

(2) This section shall apply to contracts whether made before or after the commencement of this Act and does not affect the law relating to part performance, or sales by the court.

**56.**—(1) Under a contract to grant or assign a term of years, whether derived or to be derived out of freehold or leasehold land, the intended lessee or assign shall not be entitled to call for the title to the freehold.

Intended lessee cannot demand title of intended lessor.

(2) Under a contract to sell and assign a term of years derived out of a leasehold interest in land, the intended assign shall not have the right to call for the title to the leasehold reversion.

(3) On a contract to grant a lease for a term of years to be derived out of a leasehold interest, with a leasehold reversion, the intended lessee shall not have the right to call for the title to that reversion.

**57.**—(1) Where after the date of any contract for sale or exchange of property, money becomes payable under any policy of insurance maintained by the vendor in respect of any damage to or destruction of property included in the contract, the money shall, on completion of the contract, be held or be receivable by the vendor on behalf of the purchaser and paid by the vendor to the purchaser on completion of the sale or exchange, or so soon thereafter as it is received by the vendor.

Application of insurance money on completion of a sale or exchange.

(2) This section shall apply only to contracts made after the commencement of this Act, and has effect subject to,

- (a) any stipulation to the contrary contained in the contract;
- (b) any requisite consents of the insurers;
- (c) the payment by the purchaser of the proportionate part of the premium from the date of the contract.

(3) This section shall apply to a sale or exchange by an order of the court, as if,

- (a) for references to the “vendor”, there were substituted references to the “person bound by the order”;
- (b) for the reference to the completion of the contract, there were substituted a reference to the payment of the purchase or equality money (if any) into court;
- (c) for the reference to the date of the contract, there were substituted a reference to the time when the contract becomes binding.

Stipulation preventing a purchaser, lessee or under-lessee from employing his own solicitor to be void.

11 of 1958.

**58.**—(1) Any stipulation made on the sale of any interest in land after the commencement of this Act to the effect that the transfer shall be prepared or the registration of the title of the purchaser carried out at the expense of the purchaser by a solicitor appointed by or acting for the vendor, and any stipulation which might restrict a purchaser in the selection of a solicitor to act on his behalf in relation to any interest in land agreed to be purchased, shall be void.

11 of 1958.

(2) If a sale of an interest in land is capable of being effected by demise, sub-demise or assignment then, for the purposes of subsection (1) of this section the instrument required for giving effect to the transaction shall be deemed to be a transfer.

(3) Any covenant or stipulation contained in, or entered into with reference to, any lease or under lease made before or after the commencement of this Act,

- (a) whereby the right of preparing, at the expense of a purchaser, any transfer of the estate or interest of the lessee or under-lessee in the demised premises or in any part thereof, or of otherwise carrying out, at the expense of the purchaser, any dealing with such estate or interest, is expressed to be reserved to or vested in the lessor or under-lessor or his solicitor; or
- (b) which in any way restricts the right of the purchaser to have such transfer carried out on his behalf by a solicitor appointed by him,

shall be void.

(4) In this section, “lease” and “under-lease” include any agreement therefor or other tenancy, and “lessee” and “under-lessee” and “lessor” and “under-lessor” have corresponding meanings.

**59.**—(1) A vendor or purchaser of any legal estate or interest in land, or their representatives respectively, may apply in a summary way to the court, in respect of any question arising out of or connected with the contract (not being a question affecting the existence or validity of the contract), and the court may make such order upon the application as it thinks fit, and may order how and by whom all or any of the costs of and incidental to the application are to be borne and paid.

Applications to the court by vendor and purchaser.

(2) Where the court refuses to grant specific performance of a contract, or in any action for the return of a deposit, the court may, if it thinks fit, order the repayment of any deposit.

(3) This section shall apply to a contract for the sale or exchange of any interest in land.

**60.**—(1) Where land subject to any legal charge or encumbrance, 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,

Discharge of legal charges or encumbrances by the court on sales or exchanges.

- (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 legal charge or encumbrance 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 interests, 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 encumbrancer, as the court thinks fit, declare the land to be freed from the legal charge or encumbrance, and make any order for transfer, 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 legal charge or encumbrance (besides the land sold or exchanged) to be freed from the legal charge or encumbrance, and this power may be exercised either after or without notice to the encumbrancer, and notwithstanding that on a previous occasion an order relating to the same legal charge or encumbrance had 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 would otherwise 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, and generally may give directions respecting the application or distribution of the capital or income thereof.

(6) This section shall apply to sales or exchanges whether made before or after the commencement of this Act, and to legal charges or encumbrances whether created by statute or otherwise.

**61.**—(1) A covenant relating to any land of the covenantee shall be deemed to be made with the covenantee and his successors in title and the persons deriving title under him or them, and subject as aforesaid, shall have effect as if such successors and other persons were expressed.

Benefit of covenants relating to land.

(2) For the purposes of this subsection in connection with covenants restrictive of the user of land, “successors in title” shall be deemed to include the owners and occupiers for the time being of the land of the covenantee intended to be benefited.

(3) This section shall apply to covenants made after the commencement of this Act.

**62.**—(1) A covenant relating to any land of a covenantor or capable of being bound by him shall, unless a contrary intention is expressed, be deemed to be made by the covenantor on behalf of himself, his successors in title and the persons deriving title under him or them and, subject as aforesaid shall have effect as if such successors and other persons were expressed.

Burden of covenants relating to land.

(2) Subsection (1) of this section, shall extend to a covenant to do some act relating to the land, notwithstanding that the subject-matter may not be in existence when the covenant is made.

(3) For the purposes of this section in connection with covenants restrictive of the user of land, “successors in title” shall include the owners and the occupiers for the time being of such land.

(4) This section shall apply only to covenants made after the commencement of this Act.

Covenants binding  
land.

**63.**—(1) A covenant and a bond and an obligation or contract under seal made after 31st December, 1881, binds the real estate as well as the personal estate of the person making it if and so far as a contrary intention is not expressed in the covenant, bond, obligation or contract.

(2) Every covenant running with the land, whether entered into before or after the commencement of this Act, shall take effect in accordance with any statutory enactment affecting the devolution of the land, and accordingly the benefit or burden of every such covenant shall vest in or bind the persons who by virtue of such enactment, or otherwise succeed to the title of the covenantee or the covenantor, as the case may be.

(3) The benefit of a covenant relating to land entered into after the commencement of this Act may be made to run with the land without the use of any technical expression if the covenant is of such a nature that the benefit could have been made to run with the land before the commencement of this Act.

(4) For the purposes of this section, a covenant runs with the land when the benefit or burden of it, whether at law or in equity, passes to the successors in title of the covenantee or the covenantor, as the case may be.

## PART VII

### *Charges, Mortgages and Encumbrances, etc.*

**64.**—(1) A legal charge on an estate in fee simple or a term of years or an easement right or privilege or on any other interest in or over land shall only be created,

- (a) in the case of registered land by a deed expressed to be by way of legal mortgage or a rent charge or a lien on crops executed and registered under and in accordance with Part III, IV or V of the General Registry Act, Cap. 327; or

Legal charges cre-  
ated by deed.  
11 of 1958.

- (b) in the case of unregistered land by a deed expressed to be by way of legal mortgage or a rent charge or a lien on crops executed and recorded under and in accordance with Part VI of the General Registry Act, Cap. 327.

(2) A deed creating a charge by way of legal mortgage shall,

- (a) in the case of registered land be in such form as may be prescribed under the General Registry Act, Cap. 327; and
- (b) in the case of unregistered land shall be in a similar form with such modification as in many case may be necessary.

(3) Subject to Part III of the General Registry Act, Cap. 327, a legal charge shall remain attached to and shall accompany the property, income or crops on which it is imposed or charged notwithstanding any transfer of the land, and shall bind the property, income or crops with the payment of the sum secured by the mortgage in priority to all unsecured debts and other legal charges subsequent in date of registration or recording.

(4) Every assignment or discharge of a legal charge on land or any interest in or over land shall be effected by deed.

**65.** Without prejudice to this Act respecting legal and equitable powers, every power to mortgage or to lend money on mortgage of an estate in fee simple or of a term of years absolute or of an easement, right or privilege, or of any other interest in or over land shall be construed as a power to mortgage the estate or the term, or the easement, right or privilege, or the other interest in or over land by a charge by way of legal mortgage or to lend on such security.

Power to create mortgage.

**66.** A second mortgage or any number of mortgages may be created to affect the same land and in that case they shall, as regards the taking effect, have priority in the order in which they are registered in the Land Charges Register or recorded under Part V of the General Registry Act, Cap. 327, as the case may be.

Priority of second and other mortgages.  
11 of 1958.

Mode of protecting mortgage security.

**67.**—(1) The legal estate, right or interest of the mortgagor in any property shall, notwithstanding a mortgage thereon, continue to be vested in him, and the mortgagee shall take no estate in the property mortgaged, but shall have as his security a charge on the property and a right to an order for sale of the property in order to recover the mortgage money together with all costs, charges and expenses of the application for that order.

(2) The mortgagee shall not be entitled, except by special agreement in writing between himself and the mortgagor, to have possession of the mortgaged property or the custody of the documents of title relating to the mortgaged property, but shall have the right upon breach of some covenant contained in the mortgage deed or some provision of this Part to apply to the court for an order for sale under this Part.

Rights incident to interest of mortgagee.

**68.**—(1) A mortgagee shall by virtue of this Act have the following rights, to the like extent as if they had been in terms conferred by the mortgage deed, but not further, namely,

- (a) a right, where the mortgage money has become due and has remained unpaid, to apply to the court for an order for the sale of the mortgaged freehold or leasehold;
- (b) a right in the alternative, notwithstanding anything contained in this Part, to obtain in an action for debt a judgment against the mortgagor on the personal covenant contained in the deed to pay the mortgage money which has become due and remained unpaid, which judgment shall be exigible against any property, real or personal, of the mortgagor under the Supreme Court Rules, although that property is not mortgaged under the deed;
- (c) a right, at any time after the date of the mortgage deed, to insure and keep insured against loss or damage by fire or hurricane 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 or an estate or interest therein which 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;

- (d) a right, in the alternative, at any time after the date of the mortgage deed, to require the mortgagor to insure and keep insured against loss or damage by fire or hurricane 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 or an estate or interest therein which is mortgaged, at the mortgagor's expense and to assign the policy or policies therefor to him (the mortgagee) to be held as security during the continuance of the mortgage; and
- (e) a right, if the mortgaged property consists of an interest in income, or of a rent charge or of an annual or other periodical sum, to appoint a receiver of the income of the mortgaged property, or any part thereof.

(2) Notwithstanding anything contained in paragraph (b) of subsection (1) of this section, a sale of the mortgaged property shall only be effected by and under an order for sale obtained in accordance with this Part.

(3) The provisions of this Part relating to the foregoing rights, comprised either in this section, or in any other section regulating the exercise of those rights, 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.

Mortgagees power of sale without order of Court.  
3 of 1964.

**69.**—(1) Where, by virtue of section 68 (3) of this Act, the mortgage deed provides that when the mortgage money has become due the mortgagee shall have a power without any order of the Court 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, subject to such conditions respecting title, or evidence of title, or other matter, as 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 resell without being answerable for any loss occasioned thereby, the mortgagee may exercise such power without applying to the court for an order for the sale of the mortgaged property.

(2) Where an estate in fee simple has been mortgaged by the creation of a charge by way of legal mortgage and the mortgagee sells under the power of sale conferred by this section,

- (a) the conveyance or transfer by him shall operate to vest in the purchaser the fee simple in the land conveyed or transferred subject to any legal mortgage having priority to the mortgage in right of which the sale is made and to any money thereby secured, and thereupon;
- (b) the charge by way of legal mortgage and any subsequent charges shall merge or be extinguished as respects the land conveyed or transferred,

and such conveyance or transfer may, as respects the fee simple, be made in the name of the estate owner in whom it is vested.

(3) Where a term of years absolute has been mortgaged by the creation of a charge by way of legal mortgage and the mortgagee sells under the power of sale conferred by this section,

- (a) the conveyance or transfer by him shall operate to convey or transfer to the purchaser (unless expressly excepted with the leave of the court) the leasehold

reversion affected by the mortgage, subject to any legal mortgage having priority to the mortgage in right of which the sale is made and to any money thereby secured and thereupon;

- (b) the charge by way of legal mortgage and any subsequent charge shall be extinguished unless excepted as aforesaid,

and such conveyance or transfer may, as respects the leasehold reversion, be made in the name of the estate owner in whom it is vested.

(4) Where a licence to assign is required on a sale by a mortgagee, such licence shall not be unreasonably withheld.

(5) Where the Registrar is satisfied that a transfer of registered land under this section vesting the freehold or leasehold in the purchaser of mortgaged property has been duly made in accordance with this Act, he shall give effect thereto and issue the necessary transfer certificate of title as if an application therefore together with all the necessary documents had been presented to him in accordance with the General Registry Rules.

**70.**-(1) There shall be deemed to be included, and there shall by virtue of this Act be implied, in every mortgage deed made under this Act,

Implied covenants  
by mortgagor.

- (a) a covenant with the mortgagee by the person therein expressed to charge as mortgagor to the effect that the mortgagor will, on the stated day, pay to the mortgagee the stated mortgage money, with interest thereon in the meantime at the stated rate, and will thereafter, if and as long as the mortgage money or any part thereof remains unpaid, pay to the mortgagee (as well after as before any judgment is obtained or order for sale made under the mortgage) interest thereon, or on the unpaid part thereof, at the stated rate, by equal half-yearly payments, the first thereof to be made at the end of six months from the day stated as the date of the advancement of the principal money;

- (b) a covenant with the mortgagee to the effect that if the mortgagor pays to the mortgagee the stated mortgage money, with interest thereon in the meantime at the stated rate, the mortgagee at any time thereafter, at the request and cost of the mortgagor, shall discharge the mortgaged property or assign the benefit of the mortgage as the mortgagor may direct;
- (c) a covenant with the mortgagee that the mortgagor will insure and keep insured against loss or damage by fire or hurricane any building, or any effects or property of an insurable nature, whether affixed to the freehold or not, being or forming part of the mortgaged property, at his own expense and will assign the policy or policies therefore to the mortgagee;
- (d) a covenant with the mortgagee that the mortgagor will during the subsistence of the mortgage keep the buildings, messuages and other erections on the mortgaged land in such reasonable state of repair as will prevent deterioration of the same, and will permit the mortgagee or his agents at all reasonable times to enter upon the mortgaged land for the purpose of viewing the state of repair thereof; and
- (e) a covenant with the mortgagee that the mortgagor will pay all taxes and rates levied and charged on the mortgaged land as and when the same becomes due, and that he will produce for inspection by the mortgagee or his agents the receipts for the same if required to do so.

(2) The mortgagor and the mortgagee may in the mortgage deed include any other lawful covenant affecting the mortgage as well as exclude from the mortgage any of the covenants implied in subsection (1) of this section which they may think fit.



71.–(1) In a deed of mortgage, or of transfer of mortgage under this Act, where more persons than one are expressed to charge as mortgagors, or to join as covenantors, every implied covenant on their part shall be deemed to be a joint and several covenant by them.

Implied covenants,  
joint and several.

(2) Where there are more mortgagees or more transferees than one, every implied covenant with them shall be deemed to be a covenant with them jointly, unless the amount secured is expressed to be secured to them in shares or distinct sums, in which latter case every implied covenant with them shall be deemed to be a covenant with each severally in respect of the share or distinct sum secured to him.

72.–(1) A mortgagor of any freehold or leasehold shall have power from time to time,

Leasing powers of  
mortgagor.

(a) to grant any lease or sublease of the mortgaged land for a term not exceeding five years absolute without the consent of the mortgagee; and

(b) to grant any lease or sublease of the mortgaged land for a term exceeding five years absolute with the consent in writing of the mortgagee, which consent shall not be unreasonably withheld.

(2) The provisions of this section referring to a lease shall be construed to extend and apply, as far as circumstances admit, to any letting, and to an agreement whether in writing or not, for leasing or letting.

(3) The grant of any lease or sublease under this section shall not prejudice the rights of the mortgagee against that portion of the freehold or leasehold demised, and the said portion of the freehold or leasehold shall be and remain liable to the obligations under the mortgage deed, as if the lease or sublease had not been granted.

(4) Nothing contained in this section shall prevent the mortgagor or the mortgagee from providing in the deed of mortgage that the mortgagor shall have no power during the subsistence of the mortgage to lease or let the land, whether freehold or leasehold.

Obligation to transfer mortgage.

73.—(1) Where a mortgagor desires to pay off the mortgage money then, subject to compliance with the terms on compliance with which he would be entitled to require a discharge of the mortgage, he shall be entitled to require the mortgagee, instead of discharging the mortgage, to assign the mortgage debt to any third person as the mortgagor directs, and the mortgagee shall be bound to assign accordingly.

(2) This section shall apply to mortgages made either before or after the commencement of this Act, and take effect notwithstanding any stipulation to the contrary.

Priorities as between puisne mortgages. 11 of 1958.

74. Every mortgage affecting a legal estate in land made after the commencement of this Act shall rank according to its date of registration as a land charge pursuant to Part IV or recording pursuant to Part VI of the General Registry Act, Cap. 327.

Restriction on consolidation of mortgages.

75.—(1) No mortgages affecting any lands or tenements shall have any priority by reason of being held by or vested in the same person with another mortgage of prior date and registration.

(2) A mortgagor seeking to pay off any one mortgage is entitled to do so without paying any money due under any separate mortgage made by him, or by any person through whom he claims, solely on property other than that comprised in the mortgage which he seeks to pay off.

(3) Nothing in this section shall operate to defeat the right of a mortgagee to recover at one time sums of money advanced at different times under the terms of any mortgage providing for advances made and to be made during the subsistence of the mortgage.

Mortgagee's receipts, discharges, etc.

76. The receipt in writing of a mortgagee shall be a sufficient discharge 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.

Amount and application of insurance money.

77.—(1) The amount of an insurance effected by a mortgagee against loss or damage by fire or hurricane under the power in that behalf conferred by this Act shall not exceed the amount specified in the mortgage deed

or, if no amount is therein specified, two third parts of the amount that would be required in case of total destruction to restore the property insured.

(2) An insurance shall not, under the power conferred by this Act, be effected by a mortgagee in any of the following cases,

- (a) where there is a declaration in the mortgage deed that no insurance is required;
- (b) where an insurance is kept up by or on behalf of the mortgagor in accordance with the mortgage deed;
- (c) where the mortgage deed contains no stipulation respecting insurance, and an insurance is kept up by or on behalf of the mortgagor with the consent of the mortgagee to the amount to which the mortgagee is by this Act authorised to insure.

(3) All moneys received on an insurance of mortgaged property against loss or damage by fire or hurricane effected under this Act, or on an insurance for the maintenance of which the mortgagor is liable under the mortgage deed, shall, if the mortgagee so requires, be applied in making good the loss or damage for which the money is received.

(4) Without prejudice to any obligation to the contrary imposed by law, or by special contract, a mortgagee may require that all money received on an insurance of mortgaged property against loss or damage by fire or hurricane effected under this Act, or on an insurance for the maintenance of which the mortgagor is liable under the mortgage deed, be applied in or towards the discharge of the mortgage money, notwithstanding that no portion of the mortgage money has accrued due at the date of the receipt of the insurance money.

**78.**—(1) Where,

- (a) in a mortgage, or an obligation for payment of money, or an assignment of a mortgage or of such an obligation, the sum or any part of the sum advanced

Effect of advance  
on joint account.

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 an assignment is made to more persons than one jointly,

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 assignment, and has effect subject to the terms of the mortgage, obligation or assignment, and to the provisions therein contained.

**79.**—(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,

Notice of trusts affecting mortgage debts.

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.

**80.**—(1) A deed executed by a mortgagee purporting to assign his mortgage or the benefit thereof shall, unless a contrary intention is therein expressed, and subject to any provisions therein contained, operate to assign to the assignee,

Assignment of mortgagee.

- (a) the right to demand, sue for, recover and give receipts for, the mortgage money or the unpaid part thereof, and the interest then due, if any, and thenceforth to become due thereon; and
- (b) the benefit of all securities for the same, and the benefit of and the right to sue on all covenants with the mortgagee, and the right to exercise all the powers of the mortgagee.

(2) In this section, “assignee” includes his personal representatives.

(3) An assignment of mortgage shall be made,

- (a) in the case of registered land, in such form as may be prescribed under the General Registry Act, Cap. 327; and
- (b) in the case of unregistered land in a similar form with such modification as in any case may be required.

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(4) This section shall not extend to an assignment of a bill of sale of chattels by way of security.

**81.** A deed of cancellation of a legal mortgage shall be executed by the mortgagee upon payment of the mortgage money and shall,

Form of discharging statutory mortgage or charge.

- (a) in the case of registered land be in such form as may be prescribed under the General Registry Act, Cap. 327; and
- (b) in the case of unregistered land in a similar form with such modification as in any case may be required.

Regulation of exercise of power of sale.

**82.**—(1) A mortgagee shall not exercise his right to an order for sale of the mortgaged property conferred by this Act unless and until,

- (a) notice in writing 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 three months after such service;
- (b) some interest or instalment of principal money due under the mortgage is in arrears and unpaid for fourteen days after it became due; or
- (c) there has been a breach of some covenant contained in the mortgage deed or of some provision of this Part, and on the part of the mortgagor, or of some person concurring in making the mortgage, to be observed or performed, other than a covenant for payment of the mortgage money.

(2) A mortgagee shall not exercise his power of sale under section 69 of this Act unless and until,

- (a) notice in writing 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 three months after such service;
- (b) some interest or instalment of principal money due under the mortgage is in arrears and unpaid for fourteen days after it became due; or

- (c) there has been a breach of some covenant contained in the mortgage deed or of some provision of this Part, and on the part of the mortgagor, or of some person concurring in making the mortgage, to be observed or performed, other than a covenant for payment of the mortgage money; and
- (d) he has given at least two months' notice of his intention to exercise his power of sale by publication thereof in three issues of the *Gazette* and of one newspaper circulating in the country.

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**83.**—(1) Upon an application for an order for sale of mortgaged property on the ground of non-payment of any interest due on the mortgage money or of default in payment of any instalment of mortgage money, the court or a judge may, if it or he thinks fit, postpone the making of the order for a period not exceeding six months, and if within that period the mortgagor pays to the mortgagee the interest or instalment of the mortgage money in arrears together with the cost of the application to date, the proceedings for the order shall be discontinued by the mortgagee.

Power of court to grant relief on application for order for sale.

(2) Where an application for an order for sale is made after the expiration of the period within which the whole principal money due under the mortgage is covenanted to be repaid, no postponement of the making of the order for sale shall be granted.

**84.**—(1) Where the mortgagee has obtained an order for sale of any mortgaged property,

Realisation of freehold mortgages.

- (a) the order shall operate to authorise the Registrar to sell and transfer the land to, and vest the fee simple therein in, any purchaser thereof, subject to any legal mortgage having priority to the mortgage in right of which the sale is made and to any money thereby secured;
- (b) the charge by way of legal mortgage in satisfaction of which the sale is made and every mortgage charge subsequent thereto shall, upon the transfer of the land to any purchaser, be extinguished.

(2) Where the mortgage includes fixtures or chattels personal any right to sell shall extend to the absolute or other interest therein affected by the charge.

Realisation of leasehold mortgages.

**85.**—(1) Where a term of years absolute has been mortgaged by a charge by way of legal mortgage and the mortgagee has obtained an order for sale of the leasehold,

- (a) the order shall operate to authorise the Registrar to sell and assign to any purchaser the unexpired portion of the term of years which was the subject of the charge, subject to any legal mortgage having priority to the mortgage in right of which the sale is made and to any money thereby secured;
- (b) the charge by way of legal mortgage in satisfaction of which the sale is made and any subsequent charge shall, upon the transfer of the term of years to a purchaser, be extinguished.

(2) Where any mortgagee obtains an order for sale of a term of years absolute, and the sale is effected,

- (a) a licence to assign, if required on a sale of the leasehold, shall not be unreasonably refused; and
- (b) the order for sale shall not give rise to a forfeiture for want of a licence to assign.

(3) Where the mortgage includes fixtures or chattels personal, any right to sell shall extend to the absolute or other interest therein affected by the charge.

Procedure relating to mortgages and the realisation of the security.

**86.**—(1) A sale of any mortgaged property under an order for sale declaring that any mortgage money has become due and payable to the mortgagee, by reason of the breach of some provision contained in the mortgage deed or in this Part and directing that the mortgagee be at liberty to recover it by sale of the property, shall be effected by the Registrar forthwith



upon the making of the order, subject to this Part, under Order XLII of the Supreme Court Rules, the mortgagee being deemed “the holder of a judgment for money” within the meaning of rule 4 thereof.

(2) Every transfer vesting the freehold or the leasehold in the purchaser of mortgaged property shall in the case of registered land be made by the Registrar in the manner prescribed by rules, under the General Registry Act, Cap. 327, or by deed in the case of other land.

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(3) The mortgagee shall be entitled to bid at a sale of the mortgaged freehold or leasehold and to become the purchaser thereof.

**87.** Where an order for sale of any mortgaged freehold, leasehold or other property is made, the court may, on the application of the mortgagee and the mortgagor or their respective assignees, direct the Registrar to dispose,

Powers to authorise land and minerals to be dealt with separately.

- (a) of the land, with an exception or reservation of all or any mines and minerals, and with or without rights and powers of or incidental to the working, getting or carrying away of minerals; or
- (b) of all or any mines or minerals, with or without the said rights or powers separately from the land,

and thenceforth the powers so conferred shall have effect as if the same were contained in the mortgage.

**88.**—(1) The proceeds of a sale of mortgaged freehold, leasehold or other property under this Part shall be applied in payment of the following claims arising in respect of the land in the following order,

Priority of payment of claims out of proceeds of sale.

- (a) the taxed costs, charges and expenses of and incidental to obtaining the order for sale and for effecting the sale;
- (b) any Government debt due in respect of the freehold, leasehold or other property;

- (c) all taxes and rates due to the Government or to the Belize City Council or to any town council;
- (d) all interest and other sums in the nature of interest payable on the principal money secured by the mortgage;
- (e) the principal money, or any balance thereof remaining unpaid and directed to be recovered by the order for sale.

(2) If, after payment in full of the principal money or any balance thereof, any surplus proceeds of sale remain in the hands of the Registrar he shall, if there is any legal mortgage subject to which the freehold, leasehold or other property was sold, pay to the person entitled to such legal mortgage the whole or so much of such surplus proceeds as is sufficient to discharge any money thereby secured.

(3) If, after payment in full of the principal money or any balance thereof, any surplus proceeds of the sale remain in the hands of the Registrar and there is no legal mortgage subject to which the freehold, leasehold or other property was sold, the Registrar shall pay such surplus proceeds to the person entitled to the mortgaged property at the date of the sale, or other person authorised to give receipts for the proceeds of the sale.

Transfer after sale.

**89.**—(1) The Registrar shall have power to transfer the mortgaged property sold by him under an order for sale to the purchaser freed from all estates, interests, rights, legal charges and encumbrances to which the mortgage has priority, but subject to all estates, interests and rights which have priority to the mortgage.

(2) Where a transfer is made by the issue of a certificate of title in exercise of the power conferred by this Act, the title of the purchaser shall be absolute and indefeasible within the meaning of section 41 (4) of this Act.

(3) Any person damnified by an unauthorised, improper or irregular exercise of the right to an order for sale shall have his remedy in damages against the person exercising the right.

90. 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.

Right to exercise power of sale.

91.--(1) Where a person is entitled to receive out of any land, or out of the income of any land, any annual sum, payable half-yearly or otherwise, whether charged on the land or on the income of the land, and whether by way of rent charge or otherwise, not being rent incident to a reversion then, subject and without prejudice to all estates, interests and rights having priority to the annual sum, the person entitled to receive the annual sum, shall have the remedies for recovering and compelling payment thereof as are described in this section, as far as those remedies might have been conferred by the instrument under which the annual sum arises, but not further.

Remedies for the recovery of annual sums charged on land.

(2) The right to receive any such annual sum may be created by will or instrument *inter vivos* under seal.

(3) If at any time the annual sum or any part thereof is unpaid for twenty-one days next after the time appointed for any payment in respect thereof, the person entitled to receive the annual sum may apply to the court for an order for sale of the land, or the right or interest therein, charged with the payment of the annual sum to the intent that thereby or otherwise the annual sum and all arrears thereof, and all costs and expenses occasioned by non-payment thereof, may be fully paid.

(4) Where an order for sale is applied for and granted, the person entitled to receive the annual sum shall be bound to accept a commuted sum in full satisfaction of his right to all annual payments to which he is entitled under the instrument creating the right to those annual sums, and the court shall have power in making the order for sale to determine the amount of the commuted sum to be paid to the person so entitled.

(5) On the application to the court for an order for sale of any land or right or interest therein charged with the payment of an annual sum on the ground of the failure to pay the sum after it has become due, the court may, instead of making the order for sale, appoint a receiver with the powers and for the purposes described in subsection (7) of this section.

(6) All provisions relating to the sale of mortgaged property under this Act shall apply *mutatis mutandis* to the sale of the land, or the right or interest therein, charged with the payment of the annual sum.

(7) In the like case of default in payment of any such annual sum, the person entitled to the annual sum may in the alternative apply to the court for an order appointing a receiver to take possession of the land charged with the payment of the annual sum, or to exercise or appropriate the right or interest therein, and to receive the rents, profits and income arising therefrom for the purpose of paying the annual sum and all arrears thereof due or to become due, and the court shall have power to make such order and to direct that all costs and expenses occasioned by non-payment of the annual sum, or incurred in compelling or obtaining payment thereof, or otherwise relating thereto, including the costs of the application to the court, the remuneration of the receiver and all other costs and expenses incidental to his appointment and the execution of the order of the court, be paid and discharged out of the rents, profits and income of the land.

(8) The surplus proceeds of sale of the land or the right or interest therein charged with the payment of the annual sum, or of the rents, profits and income received by the receiver (if any) shall be paid to the person for the time being entitled to the land or the right or interest therein which was charged with the payment of the annual sum.

(9) The rule of law relating to perpetuities shall not apply to any powers or remedies conferred by this section, nor to the same or like powers or remedies conferred by any instrument for recovering or compelling the payment of any annual sum within the meaning of this section.

Rent charge on leased land.

**92.** Where land is subject to a lease, the transfer of a reversion in the land expectant on the determination of the lease, or the creation or assignment of a rent charge to issue or issuing out of the land shall be valid without any attornment of the lessee.

Partial release of security from rent charge.

**93.** A release from a rent charge of part of the land charged therewith does not extinguish the whole rent charge, but operates only to bar the right to recover any part of the rent charge out of the land released,

without prejudice to the rights of any persons interested in the land remaining unreleased, and not conferring in or confirming the release.

**94.**—(1) A deed providing for advances to a person in possession of land or money or money's worth which are expressed to be made on the security of growing or future crops of any kind on that land shall create a charge on the growing or future crops in favour of the person making such advance.

Deed charging crops.  
11 of 1958.

(2) Such deed shall be registered or recorded under the General Registry Act, Cap. 327, within one month from the execution thereof.

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(3) The person in whose favour the charge is created shall have a preferable claim upon the crops, whether growing or reaped and shall, upon failure of the person creating the charge to pay the sum charged on the crops after it has become due or breach of any of the provisions of the said deed, be entitled to apply to the court for an order for sale of the crops to recover the money advanced under the said deed and all interest and other sums agreed to be paid by the person creating the charge.

**95.** No such charge duly created and registered or recorded shall be extinguished or otherwise prejudicially affected by any sale, mortgage or other encumbrance of or upon the land on which any such crop is growing, or by the death or insolvency of the person creating the charge.

Charge on crops not prejudiced by subsequent transaction.

**96.** The person entitled to the charge shall have the power to enter upon the land on which the crops are growing,

Power of entry on land.

(a) with or without experts for the purpose of viewing and examining the said crops;

(b) with or without workmen and servants, carts and trucks, for the purpose of cutting and reaping the said crops for sale in accordance with an order of the court made under section 94 (3) of this Act.

**97.** If the person in whose favour a charge is created obtains an order for sale of growing crops subject to a charge, he may reap the whole of the

Right of chargee to reap and sell crops.

said crops (or such part thereof as may be sufficient when sold) for sale to satisfy the debt due to him, with interest and the costs, charges and expenses of reaping and selling the same.

Mode of realizing mortgages applied to charge on crops.

**98.** All the provisions relating to the sale of mortgaged property under this Act shall apply *mutatis mutandis* to the sale of growing crops subject to a charge under section 94 of this Act.

Expiration of charge on crops.  
11 of 1958.

**99.** Every charge on growing or future crops shall cease to exist after the expiration of two years from the date of the registration or recording of the charge.

Public notice of charge on crops.  
11 of 1958.

**100.** The Registrar shall, within ten days after the delivery to him of any deed creating a charge on crops, advertise it in the *Gazette*, in a tabular form, stating the date of the charge, and of its being lodged for registration or recording, the names of the chargee and chargor, and the situation of the lands wherein the encumbered crops are growing or may be grown.

Penalty for fraudulent disposition of crops charged.

**101.**—(1) Every person creating a charge on crops who,

- (a) without the written consent of the chargee reaps, sells or otherwise disposes of any such crop affected by such charge or any part thereof; or
- (b) by any other means, defrauds the chargee of such crops, or the value thereof,

shall be guilty of a misdemeanour and on conviction thereof shall be liable to a fine not exceeding three times the amount of the loss thereby sustained, or to imprisonment for any period not exceeding two years.

(2) The court before which any such person is convicted may direct that the sum due to the chargee in respect of any such charge together with interest and costs be paid out of any such fine.

(3) Every person who, after the publication in the *Gazette* required by section 100, buys, receives or takes any crop affected by such charge, or any part thereof, without the written consent of the chargee, shall

thereupon become liable to such chargee for the amount of any advances secured on such crops which remains unpaid, together with the interest thereon, to be recovered with costs of suit.

**102.** A land tax or other charge on land imposed by and under the provisions of any statute shall not be registered under the General Registry Act, Cap. 327, but shall,

Land tax not to be registered.

- (a) in the case of a tax or charge on land for the benefit of the Consolidated Revenue Fund or of the funds of any town established by law, have priority over all other charges and debts not being Government debts;
- (b) in the case of any other statutory tax or charge on land, rank amongst other legal charges of whatever kind in order of the date of its imposition or creation, subject to the provisions of the law imposing it.

**103.**—(1) The following rights, burdens and dealings other than legal charges, that is to say,

Definition of encumbrances.

- (a) rights for life or any other limited or conditional rights in or over the land enduring for three years and upwards;
- (b) burdens, securities, mortgages or liens upon land, arising in equity by which the land is subjected to particular interests in favour of individuals, or the revenues thereof or affected for the payment of annuities or temporary charges;
- (c) dealing with the land which, in the event of sale, would limit the free use and disposal thereof by the purchaser, such as leases for three years and upwards, restrictive covenants, easements, rights and privileges in, over or out of the land, rights in or over the land arising out of any trust or settlement, whether created by will or deed;

(d) judgments or orders of the Supreme Court affecting the land or to recover a sum of money against the proprietor thereof;

(e) an option to purchase the land for which a consideration amounting to five hundred dollars or upwards has been given,

11 of 1958. shall be encumbrances registrable under Part IV or which may be recorded under Part VI of the General Registry Act, Cap. 327.

(2) Such encumbrances in the case of registered land shall upon registration be noted by the Registrar on the certificate of title relating to the land affected thereby.

11 of 1958. (3) An encumbrance of the nature described in paragraph (a), (c) or (e) of subsection (1) of this section, shall have priority to a legal charge registered or recorded subsequent to such encumbrance, and every such legal charge shall be held and be exigible subject to the rights, dealings, privileges, restrictions and interests created by any such encumbrance.

11 of 1958. (4) Subject to subsection (3) of this section, a legal charge in the case of registered land shall have priority over every encumbrance noted on a certificate of title, whenever that encumbrance was registered.

11 of 1958. (5) Subject to subsection (3) of this section a legal charge shall, in the case of unregistered land, have priority over every encumbrance upon the same land whenever that encumbrance was recorded.

Mode of constituting encumbrances over unregistered land.

11 of 1958.

**104.** An encumbrance in respect of unregistered land shall be made, constituted or created by a deed of encumbrance which shall be recorded under Part VI of the General Registry Act, Cap. 327.

Time from which encumbrances binding.

11 of 1958.

**105.** Subject to the provisions of the General Registry Act, Cap. 327, an encumbrance over and upon any land registered or recorded under that Act shall become binding on the land from the moment of the registration or recording thereof.



**106.** Encumbrances shall rank among themselves in the order of their dates of recording or registration, and in the case of registered land the date of presenting a memorandum of encumbrance to the Registrar shall be the date of registration.

Encumbrances to rank by date.  
11 of 1958.

**107.**—(1) Where land is seized and sold for non-payment of any legal charge or encumbrance, any encumbrance of the nature described in section 103 (1) (a), (c) or (e) of this section, if it is prior in date to the mortgage or encumbrance in regard to which the sale is prosecuted, may be cleared from the title with the consent of the encumbrancee, and any such encumbrance which is of later date, shall be cleared from the title without such consent.

Clearing of encumbrances on seizure and sale of land.

(2) In order that the land may be cleared with the consent of the encumbrancee, the encumbrance shall be valued at its then present value, and shall be paid off in its order out of the proceeds of the sale, if the purchase money is sufficient for the purpose, unless the encumbrance should remain a burden upon the land.

**108.** For the purpose of ascertaining the then present value of any encumbrance, the court shall give such directions and orders for the employment of skilled persons, either in or out of Belize, to value it as it may deem requisite and, necessary.

Valuation of encumbrance.

**109.** An encumbrance which is not specially limited to a payment out of revenue, or other special form of encumbrance of a like nature shall extend over the land to which the encumbrance relates and upon all appurtenances thereto, growing crops, stock and other property belonging to the encumbrancer of such land.

Extent of encumbrance.  
11 of 1958.

**110.**—(1) A lease for three years and upwards is an encumbrance within the meaning of this Act.

Leases for three years and upwards to be encumbrances.

(2) No lessee or purchaser of land shall be deemed an encumbrancee for the purpose of suing forth or prosecuting any sale of the land, in the manner provided in this Act for encumbrancees other than lessees or purchasers of land, for any breach of the conditions of his lease or contract of sale, but he shall be entitled to pursue his ordinary legal remedies.

Release of part of land affected from a judgment.

**111.**—(1) A release from a judgment (including any writ or order imposing a charge) of part of any land charged therewith does not affect the validity of the judgment as respects any land not specifically released.

(2) This section shall operate without prejudice to the right of any persons interested in the property remaining unreleased and not concurring in or confirming the release.

Sale of breach of conditions of encumbrance.

**112.**—(1) When an encumbrancer has failed to perform the conditions of the encumbrance, or when the encumbrancee may lawfully demand the amount or right secured by the encumbrance, the encumbrancee may, after such notice as may be prescribed, apply to the court for an order that,

- (a) the land charged with the encumbrance be sold to recover the amount thereby secured; or
- (b) the encumbrancee exercise such right as he may be entitled to by reason of the failure of the encumbrancer.

(2) Every sale of land for failure to pay the amount secured by an encumbrance shall be effected in the same manner and form, and have the same consequences, as a sale made in pursuance of an order for sale in realisation of a mortgage charge under this Act.

Rights of encumbrancees to be preserved unless they consent to unreserved sale.

**113.** The rights of all persons holding estates for life or lesser estates which entitle such encumbrancees to the possession and enjoyment of the property, if their encumbrances are entitled to priority over the rights of a legal chargee or encumbrancee prosecuting the sale, unless the consent of such prior encumbrancees has been obtained to an unreserved sale, shall be reserved in the conditions of sale of such land.

Conveyance of sale by order of court.  
11 of 1958.

**114.**—(1) Subject to the General Registry Act, Cap. 327, the court shall, at any time after payment of the price, order and direct the Registrar,

- (a) in the case of registered land, to issue a certificate of title to the land sold, free from any noting of legal charges and encumbrances on the former certificate of title registered subsequent to the encumbrance in respect of which the sale was made; or

- (b) in the case of unregistered land, to convey the land sold free from any legal charges and encumbrances recorded subsequent to the encumbrance in respect of which the sale was made.

(2) The date of the new certificate of title or conveyance, as the case may be, shall relate back to the day on which the sale was made.

(3) The Registrar shall, if the land is registered land, also cancel the former certificate of title, the duplicate of which shall be delivered up to the Registrar by the former registered proprietor or other person having custody of it.

**115.** In the case of any seizure at the instance of a legal chargee or encumbrancee, an application may be made to the court for the appointment of a receiver to manage and carry on the land, estate or interest until a sale is effected or the land or estate is released from the seizure by payment or satisfaction of the debt or liability for which it was seized.

Appointment of a receiver in certain cases.

**116.**—(1) The person giving the legal charge or encumbrance may, at any time before the sale, pay off the debt or liability and all costs incurred up to that moment, and thereupon all proceedings for the sale of the land or estate shall be terminated.

Right of person giving the legal charge or encumbrance to pay off debt before sale.

(2) Every payment to discharge any such debt or liability made after the seizure of the land, estate or interest shall be made to the Registrar of the court,

Provided that nothing herein contained shall operate to prevent a legal chargee or encumbrancee from withdrawing proceedings and directing the Registrar to vacate the seizure.

**117.**—(1) Every lease for less than three years of any portion of the land seized made after the seizure shall be *ipso facto* null, and no lease for three years or upwards shall be registered or recorded after an order for sale had been made.

Effect of seizure on leases and rents.  
11 of 1958.

(2) All rents due for any portion of the land seized shall be paid, after seizure, to the Registrar of the court.

Equitable mortgage constituted by deposit of certificate of title.

11 of 1958.

**118.** An equitable mortgage may be created by the deposit of the proprietor's duplicate certificate of title or the proprietor's title deeds relating to the land to be charged.

Equitable mortgage may be for a definite sum, or to cover advances made.

**119.** An equitable mortgage may be created to secure, the repayment of,

- (a) a definite sum then advanced to, or placed to the account of, the borrower; or
- (b) advances to be made; or
- (c) advances made and to be made; or
- (d) sums of money already due.

Registration or recording of equitable mortgage.

11 of 1958.

**120.**—(1) In order to protect its preference amongst other encumbrances, an equitable mortgage shall,

- (a) in the case of registered land, be registered in accordance with Part IV of the General Registry Act, Cap. 327; and
- (b) in the case of unregistered land, be recorded in accordance with Part VI of the General Registry Act, Cap. 327.

(2) If the equitable mortgagee does not register or record the equitable mortgage, the charge shall, notwithstanding, bind the property mortgaged, but shall not have preference over a subsequent equitable mortgage registered or recorded as aforesaid.

Conversion of an equitable mortgage into a mortgage.

**121.**—(1) An equitable mortgage may be converted into a legal mortgage, with all the rights, powers and privileges which a legal mortgage creates against the mortgaged property or the legal mortgagor by way of sale of the land and otherwise, by obtaining in the prescribed manner an order of the court fixing the amount due to him by the equitable mortgagor, or

obtaining from the equitable mortgagor a deed acknowledging a specific sum therein stated as being due by him to the equitable mortgagee under the equitable mortgage.

(2) The equitable mortgagee may present the order or the deed to the Registrar, and request him to register or record it as a legal mortgage in his favour for the amount of the equitable mortgage stated in the order or deed, and the date of the legal mortgage shall be the date of registration or recording of the equitable mortgage.

11 of 1958.

**122.**—(1) Where a freehold or leasehold is subject to an equitable mortgage, which has been converted into a charge by way of legal mortgage, and the mortgagee has become entitled to recover any mortgage money, the court may make an order for sale of the land in like manner and with the same effect as in the case of a legal mortgage of freehold or leasehold.

Realisation of equitable charges.

(2) Where such an order for sale has been made, the court may authorise the Registrar to sell the land or the leasehold and to transfer the land or assign the lease, but without prejudice to any encumbrance having priority to the equitable mortgage before its conversion, unless the encumbrancer consents to the sale.

## PART VIII

### *Miscellaneous*

**123.** The donee of a power of attorney may, if he thinks fit, execute or do any assurance, instrument or thing in and with his own name and signature, and under his own seal, where sealing is required, by the authority of the donor of the power, and every assurance, instrument and thing so executed and done shall be effectual in law, to all intents, as if it had been executed or done by the donee of the power in the name and with the signature and seal of the donor thereof.

Execution under power of attorney.

**124.**—(1) Any person making any payment or doing any act, in good faith, in pursuance of a power of attorney, shall not be liable in respect of the payment or act by reason that before the payment or act the donor of the power had died or become subject to disability or bankruptcy, or

Payment by attorney under power without notice of death, etc.

had revoked the power, if the fact of death, disability, bankruptcy or revocation was not at the time of the payment or act known to the person making or doing it.

(2) A statutory declaration by an attorney to the effect that he has not received any notice or information of the revocation of such power of attorney by death or otherwise shall, if made immediately before or within three months after any such payment or act aforesaid, be taken to be conclusive proof of such non-revocation at the time when such payment or act was made or done.

(3) Where the donee of the power of attorney is a corporation aggregate, the officer appointed to act for the corporation in the execution of the power may make the statutory declaration in like manner as if that officer had been the donee of the power.

(4) Where probate or letters of administration have been granted to any person, as attorney for some other person, this section applies as if the payment made or acts done under the grant had been made or done under a power of attorney.

(5) This section does not affect any right against the payee of any person interested in any money so paid, and that person shall have the like remedy against the payee as he would have had against the payer if the payment had not been made by him.

(6) In this section, “power of attorney” includes a power of attorney implied by statute.

**125.** Where an instrument creating a power of attorney confers a power to dispose of or deal with any interest in or charge upon land, the instrument or a certified copy thereof or of such portions thereof as refer to or are necessary to the interpretation of such power shall be recorded in the General Registry under Part VI of the General Registry Act, Cap. 327.

**126.** If a power of attorney given for valuable consideration is in the instrument creating the power expressed to be irrevocable, then, in favour of a purchaser,

Recording of instrument conferring power to dispose of land.

Irrevocability of power expressed to be irrevocable.

- (a) the power shall not be revoked at any time, whether by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, disability or bankruptcy of the donor of the power; and
- (b) any act done at any time by the donee of the power in pursuance of the power shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power, or the death, disability or bankruptcy of the donor of the power, had not been done or had not happened; and
- (c) neither the donee of the power nor the purchaser shall at any time be prejudicially affected by notice of anything done by the donor of the power without the concurrence of the donee of the power, or of the death, disability or bankruptcy of the donor of the power.

**127.** If a power of attorney, whether given for valuable consideration or not, is in the instrument creating the power expressed to be irrevocable for a fixed time therein specified, not exceeding one year from the date of the instrument, then, in favour of a purchaser,

Effect of power of attorney irrevocable for a fixed time.

- (a) the power shall not be revoked for and during that fixed time either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, disability or bankruptcy of the donor of the power; and
- (b) any act done within that fixed time by the donee of the power in pursuance of the power shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power, or the death, disability or bankruptcy of the donor of the power, had not been done or happened; and
- (c) neither the donee of the power, nor the purchaser, shall at any time be prejudicially affected by notice

either during or after that fixed time of anything done by the donor of the power during that fixed time without the concurrence of the donee of the power, or of the death, disability or bankruptcy of the donor of the power, within that fixed time.

Devolution of power of attorney given to a purchaser.

**128.** A power of attorney given for valuable consideration may be given, and shall be deemed to have been always capable of being given, to a purchaser of property or any interest therein, and to the persons deriving title under him thereto, and those persons shall be the duly constituted attorneys for all purposes of the power, but without prejudice to any right to appoint substitutes given by the power.

Creation of entailed interests in real and personal property.

**129.**—(1) An interest in tail or in tail male or in tail female or in tail special may be created by way of trust in any property, real or personal, but only by the like expressions as those by which before the commencement of this Act a similar estate tail could have been created by deed (not being an executory instrument) in freehold land, and with the like results, including the right to bar the entail either absolutely or so as to create an interest equivalent to a base fee, and accordingly all provisions relating to estates tail in real property shall apply to entailed interests in personal property.

(2) Personal estate so entailed (not being chattels settled as heirlooms) may be invested, applied and otherwise dealt with as if the same were, capital money or securities representing capital money arising under the Settled Land Act, 1925, c.18, from land settled on the like trusts.

(3) Where personal estate (including the proceeds of sale of land directed to be sold and chattels directed to be held as heirlooms) is, after the commencement of this Act, directed to be enjoyed or held with, or upon trusts corresponding to trusts affecting, land in which, either before or after the commencement of this Act an entailed interest has been created, and is subsisting, such direction shall be deemed sufficient to create a corresponding entailed interest in such personal estate.

(4) In default of and subject to the execution of a disentailing assurance or the exercise of the testamentary power conferred by this Act, an entailed interest (to the extent of the property affected) shall devolve as an



equitable interest, from time to time, upon the persons who would have been successively entitled thereto as the heirs of the body (either generally or of a particular class) of the tenant in tail or other person, or as tenant by the curtesy, if the entailed interest had, before the commencement of this Act, been limited in respect of freehold land governed by the general law in force immediately before such commencement, and such law had remained unaffected.

(5) Where personal chattels are settled without reference to settled land on trusts creating entailed interests therein, the trustees, with the consent of the usufructuary for the time being if of full age, may sell the chattels or any of them, and the net proceeds of any such sale shall be held in trust for and shall go to the same persons successively, in the same manner and for the same interests, as the chattels sold would have been held and gone if they had not been sold, and the income of investments representing such proceeds of sale shall be applied accordingly.

(6) An entailed interest shall only be capable of being created by a settlement of real or personal property or the proceeds of sale thereof (including the will of a person dying after the commencement of this Act), or by an agreement for a settlement in which the trusts to affect the property are sufficiently declared.

**130.**—(1) Where by any instrument coming into operation after the commencement of this Act, an interest in any property is expressed to be given to the heir or heirs or issue or any particular heir or any class of the heirs or issue of any person in words which, but for this section would, under the rule of law known as the Rule in Shelley's case, have operated to give to that person an interest in fee simple or an entailed interest, such words shall operate in equity as words of purchase and not of limitation, and shall be construed and have effect accordingly.

Abolition of the Rule in Shelley's case.

(2) In the case of an interest in any property expressed to be given to an heir or heirs or any particular heir or class of heirs, the same person or persons shall take as would in the case of freehold land have answered that description under the general law in force before the commencement of this Act.

Restriction on  
executory limita-  
tions.

**131.** Where there is a person entitled to,

- (a) an equitable interest in land for an estate in fee simple or for any less interest not being an entailed interest; or
- (b) any interest in other property not being an entailed interest,

with an executory limitation over on default or failure of all or any of his issue, whether within or at any specified period of time or not, that executory limitation shall be or become void and incapable of taking effect, if and as soon as there is living any issue who has attained the age of eighteen years of the class on default or failure whereof the limitation over was to take effect.

Equitable waste.

**132.** An equitable interest for life without impeachment of waste shall not confer upon the tenant for life any 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 equitable interest.

Legal assignments  
of things in action.

**133.**—(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 thing 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 claim such debt or thing 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 thing in action;
- (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,

Provided that, if the debtor, trustee or other person liable in respect of such debt or thing in action has notice,

- (i) that the assignment is disputed by the assignor or any person claiming under him; or
- (ii) of any other opposing or conflicting claims to such debt or thing 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 thing in action into court under the Trusts Act, Cap. 202.

(2) This section shall not affect any Act relating to assignments of policies of assurances or transfers of rights required to be made in any statutory form.

**134.**—(1) Subject to this Act, the law applicable to dealings with equitable things in action which regulates the priority of competing interests therein, shall, as respects dealings with equitable interests in land, capital money and securities representing capital money effected after the commencement of this Act, apply to and regulate the priority of competing interests therein.

Dealings with life interests, reversions and other equitable interests.

(2) Subsection (1) of this section, shall apply whether or not the money or securities are in court.

**135.**—(1) In the case of a dealing with an equitable interest in settled land, capital money or securities representing capital money, the persons to be served with notice of the dealing shall be the trustees of the settlement, and where the equitable interest is created by a derivative or subsidiary settlement, the persons to be served with notice shall be the trustees of that settlement.

Persons to be served with notice of dealing with settled land, etc.

(2) In the case of a dealing with an equitable interest in the proceeds of sale of land or in the rents and profits until sale, the persons to be served with notice shall, as heretofore, be the trustees for sale.

(3) In any other case, the person to be served with notice of a dealing with an equitable interest in land shall be the estate owner of the land affected.

(4) The persons on whom notice is served pursuant to this subsection shall be affected thereby in the same manner as if they had been trustees of personal property out of which the equitable interest was created or arose.

(5) This section shall not apply where the money or securities are in court.

Notice not to affect  
priority of claims.

**136.**—(1) A notice, otherwise than in writing given to or received by a trustee after the commencement of this Act as respects any dealing with an equitable interest in real or personal property, shall not affect the priority of competing claims of purchasers in that equitable interest.

(2) Where, as respects any dealing with an equitable interest in real or personal property,

- (a) the trustees are not persons to whom a valid notice of the dealing can be given;
- (b) there are no trustees to whom a notice can be given;  
or
- (c) for any other reason a valid notice cannot be served, or cannot be served without unreasonable cost or delay,

a purchaser may at his own cost require that,

- (i) a memorandum of the dealings be indorsed, written on or permanently annexed to the instrument creating the trust;
- (ii) the instrument be produced to him by the person having possession or custody thereof to prove that a sufficient memorandum has been placed thereon or annexed thereto.

(3) Such memorandum shall, as respects priorities, operate in like manner as if notice in writing of the dealing had been given to trustees

duly qualified to receive the notice at the time when the memorandum is placed on or annexed to the instrument creating the trust.

(4) Where the property affected is settled land, the memorandum shall be placed on or annexed to the trust instrument and not the vesting instrument.

(5) Where the property affected is land held on trust for sale, the memorandum shall be placed on or annexed to the instrument whereby the equitable interest is created.

(6) Where the trust is created by statute or by operation of law, or in any case where there is no instrument whereby the trusts are declared, the instrument under which the equitable interest is acquired or which is evidence of the devolution thereof shall, for the purposes of this section, be deemed the instrument creating the trust.

(7) In particular, where the trust arises by reason of an intestacy, the letters of administration or probate in force when the dealing was effected shall be deemed such instrument.

(8) Nothing in this section affects any priority acquired before the commencement of this Act.

(9) Where a notice in writing of a dealing with an equitable interest in real or personal property has been served on a trustee under this section, the trustees from time to time of the property affected shall be entitled to the custody of the notice, and the notice shall be delivered to them by any person who for the time being may have the custody thereof, and subject to the payment of costs, any person interested in the equitable interest may require production of the notice.

(10) The liability of the estate owner of the legal estate affected to produce documents and furnish information to persons entitled to equitable interests therein shall correspond to the liability of a trustee for sale to produce documents and furnish information to persons entitled to equitable interests in the proceeds of sale of the land.

Release of powers simply collateral.

**137.** A person to whom any power, whether coupled with an interest or not, is given, may by deed release, or contract not to exercise, the power.

Disclaimer of power.

**138.**—(1) A person to whom any power, whether coupled with an interest or not, is given, may by deed disclaim the power and, after disclaimer, shall not be capable of exercising or joining in the exercise of the power.

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

Protection of purchaser claiming under certain appointments.

**139.**—(1) An instrument purporting to exercise a power of appointment over property which, in default of and subject to any appointment, is held in trust for a class or number of persons of whom the appointee is one, shall not (except as hereinafter provided) be void on the ground of fraud on the power as against a purchaser in good faith,

Provided that, if the interest appointed exceeds, in amount or value, the interest in such property to which immediately before the execution of the instrument the appointee was presumptively entitled under the trust in default of appointment, having regard to any advances made in his favour and to any hotchpot provision, the protection afforded by this section to a purchaser shall not extend to such excess.

(2) In this section, “a purchaser in good faith” means a person dealing with an appointee of the age of not less than twenty-five years for valuable consideration in money or money’s worth, and without notice of the fraud, or of any circumstances from which, if reasonable inquiries had been made, the fraud might have been discovered.

(3) Persons deriving title under any purchaser entitled to the benefit of this section shall be entitled to the like benefit.

(4) This section shall apply only to dealings effected after the commencement of this Act.

**140.**—(1) No appointment made in exercise of any power to appoint any property among two or more objects shall be invalid on the ground that,

Validation of appointments where objects are excluded or take illusory shares.

- (a) an unsubstantial, illusory or nominal share only is appointed to or left un-appointed to devolve upon any one or more of the objects of the power; or
- (b) any object of the power is thereby altogether excluded, but every such appointment shall be valid notwithstanding that any one or more of the objects is not thereby, or in default of appointment, to take any share in the property.

(2) This section shall not affect any provision in the instrument creating the power which declares the amount of any share from which any object of the power is not to be excluded.

(3) This section shall apply to appointments made before or after the commencement of this Act.

**141.**—(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 has been expressly required that a deed or instrument in writing, made in exercise of the power, shall be executed or attested with some additional or other form of execution or attestation or solemnity.

Execution of powers not testamentary.

(2) This section shall not operate to defeat any direction in the instrument creating the power that,

- (a) the consent of any particular person shall 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.

(4) This section shall apply to appointments by deed made after 13th August, 1859.

Application of Part V to existing powers.

**142.** This Part shall apply to powers created or arising either before or after the commencement of this Act.

Abolition of the double possibility rule.

**143.**—(1) The rule of law prohibiting the limitation, after a life interest to an unborn person, of an interest in land to the unborn child or other issue of an unborn person is hereby abolished, but without prejudice to any other rule relating to perpetuities.

(2) This section shall only apply to limitations or trusts created by an instrument coming into operation after the commencement of this Act.

Restrictions on the perpetuity rule.

**144.**—(1) For removing doubts, it is hereby declared that the rule of law relating to perpetuities shall not apply and shall be deemed never to have applied,

- (a) to any power to distrain on or to take possession of land or the income thereof given by way of indemnity against a rent, whether charged upon or payable in respect of any part of that land or not;
- (b) to any rent charge created only as an indemnity against another rent charge, although the indemnity rent charge may only arise or become payable on breach of a condition or stipulation;
- (c) to any power, whether exercisable on breach of a condition or stipulation or not, to retain or withhold payment of any instalment of a rent charge as an indemnity against another rent charge; or



- (d) to any grant, exception or reservation of any right of entry on, or user of, the surface of land or of any easements, rights or privileges over or under land for the purpose of,
- (i) winning, working, inspecting, measuring, converting, manufacturing, carrying away and disposing of mines and minerals;
  - (ii) inspecting, grubbing up, felling and carrying away timber and other trees and the tops and lops thereof;
  - (iii) executing repairs, alterations or additions to any adjoining land, or the buildings and erections thereon;
  - (iv) constructing, laying down, altering, repairing, renewing, cleansing and maintaining sewers, water-courses, cess-pools, gutters, drains, water-pipes, gas-pipes, electric wires or cables or other like works.

(2) This section shall apply to instruments coming into operation before or after the commencement of this Act.

**145.**—(1) Where in a will, settlement or other instrument the absolute vesting either of capital or income of property, or the ascertainment of a beneficiary or class of beneficiaries, is made to depend on the attainment by the beneficiary or members of the class of an age exceeding eighteen years, and thereby the gift to that beneficiary or class or any member thereof, or any gift over, remainder, executory limitation or trust arising on the total or partial failure of the original gift, is, or but for this section would be rendered void for remoteness, the will, settlement or other instrument shall take effect for the purposes of such gift, gift over, remainder, executory limitation or trust as if the absolute vesting or ascertainment aforesaid had been made to depend on the beneficiary or member of the class attaining the age of eighteen years, and that age shall be substituted for the age stated in the will, settlement or other instrument.

Validation of certain gifts void for remoteness.

(2) This section shall apply to any instrument executed after the commencement of this Act and to any testamentary appointment (whether made in exercise of a general or special power), devise or bequest contained in the will of a person dying after such commencement, whether the will is made before or after such commencement.

(3) This section shall apply without prejudice to any provision whereby the absolute vesting or ascertainment is also made to depend on the marriage of any person, or any other event which may occur before the age stated in the will, settlement or other instrument is attained.

**146.**—(1) No person may by any instrument or otherwise settle or dispose of any property in such manner that the income thereof shall, except as hereinafter mentioned, be wholly or partially accumulated for any longer period than one of the following, namely,

- (a) the life of the grantor or settlor;
- (b) a term of twenty-one years from the death of the grantor, settlor or testator; or
- (c) the duration of the minority or respective minorities of any person or persons living or *en ventre sa mere* at the death of the grantor, settlor or testator; or
- (d) the duration of the minority or respective minorities only of any person or persons who under the limitations of the instrument directing the accumulations would, for the time being, if of full age, be entitled to the income directed to be accumulated.

(2) In every case where any accumulation is directed otherwise than as aforesaid, the direction shall (except as hereinafter mentioned) be void, and the income of the property directed to be accumulated shall, so long as it is directed to be accumulated contrary to this section, go to and be received by the person or persons who would have been entitled thereto if such accumulation had not been directed.

General restrictions on accumulation of income.

- (3) This section shall not extend to any provision,
- (a) for payment of the debts of any grantor, settlor, testator or other person;
  - (b) for raising portions for,
    - (i) any child, children or remoter issue of any grantor, settlor or testator; or
    - (ii) any child, children or remoter issue of a person taking any interest under any settlement or other disposition directing the accumulations or to whom any interest is thereby limited;
  - (c) respecting the accumulation of the produce of timber or wood, and accordingly such provisions may be made as if no statutory restrictions on accumulation of income had been imposed.

(4) The restrictions imposed by this section shall apply to instruments made on or after 28th July, 1800, but in the case of wills only where the testator was living and of testamentary capacity after the end of one year from that date.

**147.** Where accumulations of surplus income are made during a minority under any statutory power or under the general law, the period for which such accumulations are made is not (whether the trust was created or the accumulations were made before or after the commencement of this Act) to be taken into account in determining the periods for which accumulations are permitted to be made by section 146 of this Act, and accordingly an express trust for accumulation for any other permitted period shall not be deemed to have been invalidated or become invalid, by reason of accumulations also having been made as aforesaid during such minority.

Qualification of restrictions on accumulation.

**148.**—(1) No person may settle or dispose of any property in such manner that the income thereof shall be wholly or partially accumulated for the purchase of land only, for any longer period than the duration of the minority or respective minorities of any person or persons who, under

Restriction on accumulation for the purchase of land.

the limitations of the instrument directing the accumulation, would for the time being, if of full age, be entitled to the income so directed to be accumulated.

(2) This section shall not, nor do the enactments which it replaces apply to accumulations to be held as capital money for the purposes of the Settled Land Act, 1925, c. 18, or the enactments replaced by that Act, whether or not the accumulations are primarily liable to be laid out in the purchase of land.

(3) This section shall apply to settlements and dispositions made after 27th June, 1892.

Voluntary transfer to defraud creditors voidable.

**149.**—(1) Except as provided in this section, every transfer of property made, whether before or after the commencement of this Act, with intent to defraud creditors, shall be voidable, at the instance of any person thereby prejudiced.

(2) This section shall not affect the operation of a disentailing assurance, or the law of bankruptcy for the time being in force.

(3) This section shall not extend to any estate or interest in property transferred for valuable consideration and in good faith or upon consideration and in good faith to any person not having, at the time of the transfer, notice of the intent to defraud creditors.

Voluntary disposition of land how far voidable as against purchasers.

**150.**—(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, whenever made, shall be deemed to have been made with intent to defraud by reason only that a subsequent transfer for valuable consideration was made, if such subsequent transfer was made after 28th June, 1893.

Acquisitions of reversions at an under value.

**151.**—(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.

**152.** The Chief Justice shall have power to make rules for carrying this Part into effect and, without prejudice to the generality of this section, shall make rules for regulating,

Power of Chief Justice to make rules.

- (a) the application of the mortgagee or his assignee for obtaining, and the conditions precedent to, the order for sale;
- (b) subject to this Act, the conditions of sale of the mortgaged property; and
- (c) any other matter relating to the realisation of the mortgage charge, the recovery of the mortgage money and the disposition of the surplus proceeds.

**153.** Subject to the provisions of section 4 of the Imperial Laws (Extension) Act, Cap. 2, the Settled Land Act, 1925, c.18, shall extend to, and have effect in, Belize.

Extension of Settled Land.

## SCHEDULE

## LAW OF PROPERTY ACT

*Deed of Conveyance**[Section 40 (2)]*

BELIZE:

This indenture, made this                    day of                    , two thousand and                    , between A.B. , of                    (hereinafter called the grantor) of the one part, and C.D., of                    (hereinafter called the grantee), of the other part. Witnesseth that in consideration of the sum of                    paid to him by the grantee, the receipt whereof is hereby acknowledged, the grantor doth grant and convey to the grantee, his heirs and assigns for ever, all, etc. [describing the premises to be conveyed]. And the grantor for himself, his heirs, executors, administrators, and assigns covenants with the grantee, that he has the right to convey to him the said premises, notwithstanding any act of him the grantor; that the grantee shall have quiet possession of the said premises free from all encumbrances; and that he the grantor will execute such further assurances of the said premises as may be requisite. In witness whereof the parties hereto have hereunto set their hands and seals, the day and year above written.

Witness,

A. (L.S.) B.

C. (L.S.) D.