



# Law of Property Act 1925

## 1925 CHAPTER 20

### PART XI

#### MISCELLANEOUS.

##### *Miscellaneous.*

#### **180 Provisions as to corporations.**

- (1) Where either after or before the commencement of this Act any property or any interest therein is or has been vested in a corporation sole (including the Crown), the same shall, unless and until otherwise disposed of by the corporation, pass and devolve to and vest in and be deemed always to have passed and devolved to or vested in the successors from time to time of such corporation.
- (2) Where either after or before the commencement of this Act there is or has been a vacancy in the office of a corporation sole or in the office of the head of a corporation aggregate (in any case in which the vacancy affects the status or powers of the corporation) at the time when, if there had been no vacancy, any interest in or charge on property would have been acquired by the corporation, such interest shall notwithstanding such vacancy vest and be deemed to have vested in the successor to such office on his appointment as a corporation sole, or in the corporation aggregate (as the case may be), but without prejudice to the right of such successor, or of the corporation aggregate after the appointment of its head officer, to disclaim that interest or charge.
- (3) Any contract or other transaction expressed or purported to be made with a corporation sole, or any appointment of a corporation sole as a custodian or other trustee-or as a personal representative, at a time (either after or before the commencement of this Act) when there was a vacancy in the office, shall on the vacancy being filled take effect and be deemed to have taken effect as if the vacancy had been filled before the contract, transaction or appointment was expressed to be made or was capable of taking effect, and on the appointment of a successor shall be capable of being enforced, accepted, disclaimed or renounced by him.

**181 Dissolution of a corporation.**

Where, by reason of the dissolution of a corporation either before or after the commencement of this Act, a legal estate in any property has determined, the court may by order create a corresponding estate and vest the same in the person who would have been entitled to the estate which determined had it remained a subsisting estate.

**182 Protection of solicitor and trustees adopting Act.**

- (1) The powers given by this Act to any person, and the covenants, provisions, stipulations, and words which under this Act are to be deemed to be included or implied in any instrument, or are by this Act made applicable to any contract for sale or other transaction, are and shall be deemed in law proper powers, covenants, provisions, stipulations, and words, to be given by or to be contained in any such instrument, or to be adopted in connexion with, or applied to, any such contract or transaction, and a solicitor shall not be deemed guilty of neglect or breach of duty, or become in any way liable, by reason of his omitting, in good faith, in any such instrument, or in connexion with any such contract or transaction, to negative the giving, inclusion, implication, or application of any of those powers, covenants, provisions, stipulations, or words, or to insert or apply any others in place thereof, in any case where the provisions of this Act would allow of his doing so.
- (2) But, save as expressly provided by this Act, nothing in this Act shall be taken to imply that the insertion in any such instrument, or the adoption in connexion with, or the application to, any contract or transaction, of any further or other powers, covenants, provisions, stipulations, or words is improper.
- (3) Where the solicitor is acting for trustees, executors, or other persons in a fiduciary position, those persons shall also be protected in like manner.
- (4) Where such persons are acting without a solicitor, they shall also be protected in like manner.

**183 Fraudulent concealment of documents and falsification of pedigrees.**

- (1) Any person disposing of property or any interest therein for money or money's worth to a purchaser, or the solicitor or other agent of such person, who—
  - (a) conceals from the purchaser any instrument or incumbrance material to the title; or
  - (b) falsifies any pedigree upon which the title may depend in order to induce the purchaser to accept the title offered or produced;with intent in any of such cases to defraud, is guilty of a misdemeanour punishable by fine, or by imprisonment for a term not exceeding two years, or by both.
- (2) Any such person or his -solicitor or agent is also liable to an action for damages by the purchaser or the persons deriving title under him for any loss sustained by reason of—
  - (a) the concealment of the instrument or incumbrance; or
  - (b) any claim made by a person under such pedigree whose right was concealed by such falsification as aforesaid.
- (3) In estimating damages, where the property or any interest therein is recovered from the purchaser or the persons deriving title under him, regard shall be had to any expenditure by him or them in improvements of any land.

- (4) No prosecution for any offence under this section shall be commenced without the leave of the Attorney-General.
- (5) Before leave to prosecute is granted there shall be given to the person intended to be prosecuted such notice of the application for leave to prosecute as the Attorney-General may direct.

**184 Presumption of survivorship in regard to claims to property.**

In all cases where, after the commencement of this Act, two or more persons have died in circumstances rendering it uncertain which of them survived the other or others, such deaths shall (subject to any order of the court), for all purposes affecting the title to property, be presumed to have occurred in order of seniority, and accordingly the younger shall be deemed to have survived the elder.

**185 Merger.**

There is no merger by operation of law only of any estate the beneficial interest in which would not be deemed to be merged or extinguished in equity.

**186 Rights of pre-emption capable of release.**

All statutory and other rights of pre-emption affecting a legal estate shall be and be deemed always to have been capable of release, and unless released shall remain in force as equitable interests only.

**187 Legal easements.**

- (1) Where an easement, right or privilege for a legal estate is created, it shall enure for the benefit of the land to which it is intended to be annexed.
- (2) Nothing in this Act affects the right of a person to acquire, hold or exercise an easement, right or privilege over or in relation to land for a legal estate in common with any other person, or the power of creating or conveying such an easement right or privilege.

**188 Power to direct division of chattels.**

Where any chattels belong to persons in undivided shares, the persons interested in a moiety or upwards may apply to the court for an order for division of the chattels or any of them, according to a valuation or otherwise, and the court may make such order and give any consequential directions as it thinks fit.

**189 Indemnities against rents.**

- (1) A power of distress given by way of indemnity against a rent or any part thereof payable in respect of any land, or against the breach of any covenant or condition in relation to land, is not and shall not be deemed ever to have been a bill of sale within the meaning of the Bills of Sale Acts, 1878 and 1882, as amended by any subsequent enactment.

- (2) The benefit of all covenants and powers given by way of indemnity against a rent or any part thereof payable in respect of land, or against the breach of any covenant or condition in relation to land, is and shall be deemed always to have been annexed to the land to which the indemnity is intended to relate, and may be enforced by the estate owner for the time being of the whole or any part of that land, notwithstanding that the benefit may not have been expressly apportioned or assigned to him or to any of his predecessors in title.

*Redemption and Apportionment of Rents, &c.*

**190 Equitable apportionment of rents and remedies for nonpayment or breach of covenant.**

- (1) Where in a conveyance for valuable consideration, other than a mortgage, of part of land which is affected by a rentcharge, such rentcharge or a part thereof is, without the consent of the owner thereof, expressed to be—

- (a) charged exclusively on the land conveyed or any part thereof in exoneration of the land retained or other land; or
- (b) charged exclusively on the land retained or any part thereof in exoneration of the land conveyed or other land; or
- (c) apportioned between the land conveyed or any part thereof, and the land retained by the grantor or any part thereof;

then, without prejudice to the rights of the owner of the rentcharge, such charge or apportionment shall be binding as between the grantor and the grantee under the conveyance and their respective successors in title.

- (2) Where—

- (a) any default is made in payment of the whole or part of a rentcharge by the person who, by reason of such charge or apportionment as aforesaid, is liable to pay the same; or
- (b) any breach occurs of any of the covenants (other than in the case of an apportionment the covenant to pay the entire rentcharge) or conditions contained in the deed or other document creating the rentcharge, so far as the same relate to the land retained or conveyed, as the case may be;

the owner for the time being of any other land affected by the entire rentcharge who—

- (i) pays or is required to pay the whole or part of the rentcharge which ought to have been paid by the defaulter aforesaid; or
- (ii) incurs any costs, damages or expenses by reason of the breach of covenant or condition aforesaid;

may enter into and distrain on the land in respect of which the default or breach is made or occurs, or any part of that land, and dispose according to law of any distress found, and may also take possession of the income of the same land until, by means of such distress and receipt of income or otherwise the whole or part of the rentcharge (charged or apportioned as aforesaid) so unpaid and all costs, damages and expenses incurred by reason of the non-payment thereof or of the breach of the said covenants and conditions, are fully paid or satisfied.

- (3) Where in a conveyance for valuable consideration, other than a mortgage, of part of land comprised in a lease, for the residue of the term or interest created by the lease,

the rent reserved by such lease or a part thereof is, without the consent of the lessor, expressed to be—

- (a) charged exclusively on the land conveyed or any part thereof in exoneration of the land retained by the assignor or other land; or
- (b) charged exclusively on the land retained by the assignor or any part thereof in exoneration of the land conveyed or other land; or
- (c) apportioned between the land conveyed or any part thereof and the land retained by the assignor or any part thereof;

then, without prejudice to the rights of the lessor, such charge or apportionment shall be binding as between the assignor and the assignee under the conveyance and their respective successors in title.

(4) Where—

- (a) any default is made in payment of the whole or part of a rent by the person who, by reason of such charge or apportionment as aforesaid, is liable to pay the same; or
- (b) any breach occurs of any of the lessee's covenants (other than in the case of an apportionment the covenant to pay the entire rent) or conditions contained in the lease, so far as the same relate to the land retained or conveyed, as the case may be;

the lessee for the time being of any other land comprised in the lease, in whom, as respects that land, the residue of the term or interest created by the lease is vested, who—

- (i) pays or is required to pay the whole or part of the rent which ought to have been paid by the defaulter aforesaid; or
- (ii) incurs any costs, damages or expenses by reason of the breach of covenant or condition aforesaid;

may enter into and distrain on the land comprised in the lease in respect of which the default or breach is made or occurs, or any part of that land, and dispose according to law of any distress found, and may also take possession of the income of the same land until (so long as the term or interest created by the lease is subsisting) by means of such distress and receipt of income or otherwise, the whole or part of the rent (charged or apportioned as aforesaid) so unpaid and all costs, damages and expenses incurred by reason of the non-payment thereof or of the breach of the said covenants, and conditions, are fully paid or satisfied.

- (5) The remedies conferred by this section take effect so far only as they might have been conferred by the conveyance whereby the rent or any part thereof is expressed to be charged or apportioned as aforesaid, but a trustee, personal representative, mortgagee or other person in a fiduciary position has, and shall be deemed always to have had, power to confer the same or like remedies.
- (6) This section applies only if and so far as a contrary intention is not expressed in the conveyance whereby the rent or any part thereof is expressed to be charged or apportioned as aforesaid, and takes effect subject to the terms of that conveyance and to the provisions therein contained.
- (7) The remedies conferred by this section apply only where the conveyance whereby the rent or any part thereof is expressed to be charged or apportioned is made after the commencement of this Act, and do not apply where the rent is charged exclusively as aforesaid or legally apportioned with the consent of the owner or lessor.

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- (8) The rule of law relating to perpetuities does not affect the powers or remedies conferred by this section or any like powers or remedies expressly conferred, before or after the commencement of this Act, by an instrument.

### **191 Redemption and apportionment of rents.**

- (1) Where there is a rent being either—
- (a) a quit rent, chief rent or other annual or periodical sum issuing out of land; or
  - (b) a rent reserved on a sale, or made payable under a grant or licence (not operating as an agreement for a lease or tenancy) for building purposes; or
  - (c) a compensation rentcharge created as the consideration for the extinguishment of manorial incidents;

the Minister shall at any time, on the requisition of the owner of the land or of any person interested therein, certify the amount of money in consideration whereof the rent may be redeemed.

Where the rent is not perpetual, the Minister may authorise the purchase of a Government annuity of an amount equal to the rent, payable during the residue of the period for which the rent would have been payable, in such names as he may think fit, and give directions as to the payment of the annuity, and the amount required to purchase that annuity shall be the redemption money.

- (2) Where the rent is perpetual and was reserved on a sale, or was made payable under a grant or licence for building purposes, the redemption money shall be such sum as would (according to the average price, at the date of redemption, of such Government securities as may for the time being be prescribed by the Treasury) purchase sufficient of such Government securities to yield annual dividends equal to the amount of the yearly rent redeemed.
- (3) Where the person entitled to the rent is absolutely entitled thereto in fee simple in possession, or is empowered to dispose thereof absolutely, or to give an absolute discharge for the capital value thereof, the owner of the land, or any person interested therein, may, after serving one month's notice on the person entitled to the rent, pay or tender to that person the amount certified by the Minister.
- (4) If the Minister is satisfied—
- (a) that any person who has been in receipt of a rent, or claims to be entitled thereto, is unable or unwilling to prove his title either to dispose thereof absolutely, or to give an absolute discharge for the capital value thereof, or neglects to apply to any competent body or person for any requisite order or consent; or
  - (b) that a person entitled to the rent or any part thereof cannot be found or ascertained; or
  - (c) that by reason of complications in the title to the rent, or the want of two or more trustees, or for any other reason a tender of the redemption money cannot be effected, or cannot be effected without incurring or involving unreasonable cost or delay;

the Minister may authorise the owner or other person interested in the land affected by the rent to pay the amount of the redemption money certified by the Minister or the Government annuity into court, to an account entitled in the matter of the rent and of the land affected.

- (5) On proof to the Minister that such payment (whether into court or otherwise) or tender has been made, he shall certify that the rent is redeemed under this Act; and that certificate shall be final and conclusive, and the land shall be thereby absolutely freed and discharged from the rent.
- (6) Any person claiming to be interested in the annuity or fund in court, or who would have been interested in the rent had it not been redeemed, may apply to the court for an order giving directions for the payment of the annuity or of the fund in court or any part thereof, or of the income thereof to the persons entitled to give a receipt therefor, and it shall not be necessary to serve the owner of the land or the Minister with notice of the proceedings.
- (7) Where any person interested in the whole or any part of the land affected by the rent desires to effect a discharge of a part of the land, and the remainder of the land is not exonerated or indemnified from the rent by means of a charge on the aforesaid part, the Minister may, on his application, by a certificate, apportion the rent between the aforesaid part of the land and the remainder of the land affected (regard being had to the security which will be left for the payment of any part of the rent, and to any apportionment which is not binding on the owner of the rent), and any apportioned part of the rent shall be redeemable under this section, and, on such redemption, the part of the land to which the redemption applies shall be discharged from the entire rent.
- (8) Every requisition under this section shall be in writing; and every certificate under this section may be in writing, sealed with the seal of the Minister.
- (9) Rules may be made by the Minister for regulating proceedings to be taken under this section, and as to the manner in which costs are to be borne by the respective parties.
- (10) All decisions of the Minister made under this section shall (subject only to such appeal to the court as may be prescribed by rules of court) be final.
- (11) This section applies whether or not the rent is settled or is held on trust for sale, or on trust for charitable, ecclesiastical, public or other purposes, or is subject to incumbrances, and whether the rent was created before or after the commencement of this Act.
- (12) This section does not apply to tithe rentcharge or a charge or other payment redeemable under the Tithe Acts, 1836 to 1918, or to a rent reserved by a lease or tenancy.

## **192 Apportionment of charges payable for redemption of tithe rentcharge.**

An order of apportionment of a charge on land by way of annuity for redemption of tithe rentcharge may be made by the Minister under sections ten to fourteen (inclusive) of the Inclosure Act, 1854, on the application of any person interested, according to the provisions of the Inclosure Acts, 1845 to 1882, in the land charged or any part thereof without the concurrence of any other person :

Provided that the Minister may, in any such case, on the application of any person interested in the annuity, require as a condition of making the order that any apportioned part of the annuity which does not exceed the yearly sum of two pounds shall be redeemed forthwith.

*Commons and Waste Lands.***193 Rights of the public over commons and waste lands.**

- (1) Members of the public shall, subject as hereinafter provided, have rights of access for air and exercise to any land which is a metropolitan common within the meaning of the Metropolitan Commons Acts, 1866 to 1898, or manorial waste, or a common, which is wholly or partly situated within a borough or urban district, and to any land which at the commencement of this Act is subject to rights of common and to which this section may from time to time be applied in manner hereinafter provided:

Provided that:—

- (a) such rights of access shall be subject to any Act, scheme, or provisional order for the regulation of the land, and to any byelaw, regulation or order made thereunder or under any other statutory authority; and
  - (b) the Minister shall, on the application of any person entitled as lord of the manor or otherwise to the soil of the land, or entitled to any commonable rights affecting the land, impose such limitations on and conditions as to the exercise of the rights of access or as to the extent of the land to be affected as, in the opinion of the Minister, are necessary or desirable for preventing any estate, right or interest of a profitable or beneficial nature in, over, or affecting the land from being injuriously affected, or for protecting any object of historical interest and, where any such limitations or conditions are so imposed, the rights of access shall be subject thereto; and
  - (c) such rights of access shall not include any right to draw or drive upon the land a carriage, cart, caravan, truck, or other vehicle, or to camp or light any fire thereon; and
  - (d) the rights of access shall cease to apply—
    - (i) to any land over which the commonable rights are extinguished under any statutory provision ;
    - (ii) to any land over which the commonable rights are otherwise extinguished if the council of the county or county borough in which the land is situated by resolution assent to its exclusion from the operation of this section, and the resolution is approved by the Minister.
- (2) The lord of the manor or other person entitled to the soil of any land subject to rights of common may by deed, revocable or irrevocable, declare that this section shall apply to the land, and upon such deed being deposited with the Minister the land shall, so long as the deed remains operative, be land to which this section applies.
- (3) Where limitations or conditions are imposed by the Minister under this section, they shall be published by such person and in such manner as the Minister may direct.
- (4) Any person who, without lawful authority, draws or drives upon any land to which this section applies any carriage, cart, caravan, truck, or other vehicle, or camps or lights any fire thereon, or who fails to observe any limitation or condition imposed by the Minister under this section in respect of any such land, shall be liable on summary conviction to a fine not exceeding forty shillings for each offence.
- (5) Nothing in this section shall prejudice or affect the right of any person to get and remove mines or minerals or to let down the surface of the manorial waste or common.



- (6) This section does not apply to any common or manorial waste which is for the time being held for Naval, Military or Air Force purposes and in respect of which rights of common have been extinguished or cannot be exercised.

#### **194 Restrictions on inclosure of commons.**

- (1) The erection of any building or fence, or the construction of any other Work, whereby access to land to which this section applies is prevented or impeded, shall not be lawful unless the consent of the Minister thereto is obtained, and in giving or withholding his consent the Minister shall have regard to the same considerations and shall, if necessary, hold the same inquiries as are directed by the Commons Act, 1876, to be taken into consideration and held by the Minister before forming an opinion whether an application under the Inclosure Acts, 1845 to 1882, shall be acceded to or not.
- (2) Where any building or fence is erected, or any other work constructed without such consent as is required by this section, the county court within whose jurisdiction the land is situated, shall, on an application being made by the council of any county or borough or district concerned, or by the lord of the manor or any other person interested in the common, have power to make an order for the removal of the work, and the restoration of the land to the condition in which it was before the work was erected or constructed, but any such order shall be subject to the like appeal as an order made under section thirty of the Commons Act, 1876.
- (3) This section applies to any land which at the commencement of this Act is subject to rights of common:
- Provided that this section shall cease to apply—
- (a) to any land over which the rights of common are extinguished under any statutory provision;
- (b) to any land over which the rights of common are otherwise extinguished, if the council of the county or county borough in which the land is situated by resolution assent to its exclusion from the operation of this section and the resolution is approved by the Minister.
- (4) This section does not apply to any building or fence erected or work constructed if specially authorised by Act of Parliament, or in pursuance of an Act of Parliament or Order having the force of an Act, or if lawfully erected or constructed in connexion with the taking or working of minerals in or under any land to which the section is otherwise applicable, or to any telegraphic line as defined by the Telegraph Act, 1878 of the Postmaster-General.

#### *Judgments, &c. affecting Land.*

#### **195 Equitable charges in right of judgment debt, &c.**

- (1) Subject as hereinafter mentioned a judgment entered up in the Supreme Court (whether before or after the commencement of this Act) against any person (in this section called a "judgment debtor") shall operate as an equitable charge upon every estate or interest (whether legal or equitable) in all land to or over which the judgment debtor at the date of entry or at any time thereafter is or becomes—
- (a) beneficially entitled; or

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- (b) entitled to exercise a power of disposition for his own benefit without the assent of any other person;
- and the judgment shall bind—
- (i) the judgment debtor; and
  - (ii) all persons deriving title under him subsequently to the entry of the judgment; and
  - (iii) all persons capable of being bound by a disposition by the judgment debtor made after the entry of the judgment, including the issue of his body and all other persons, if any, whom he might, without the assent of another person, have barred from any remainder, reversion or other interest, in the land.
- (2) Every judgment creditor shall have the same remedies against the estate or interest in the land so charged or any part thereof as he would have been entitled to if the judgment debtor had power to charge the same, and had by writing, under his hand, agreed to charge the same, with the amount of the judgment debt and interest thereon.
- (3) Provided that—
- (i) A judgment, whether obtained (on behalf of the Crown or otherwise) before or after the commencement of this Act, shall not operate as a charge on any interest in land or on the unpaid purchase money for any land unless or until a writ or order, for the purpose of enforcing it, is registered in the register of writs and orders at the Land Registry;
  - (ii) No judgment creditor shall be entitled to take proceedings to obtain the benefit of his charge until after the expiration of one year from the time of entering up the judgment;
  - (iii) No such charge shall operate to give the judgment creditor any preference, in case of the bankruptcy of the judgment debtor, unless the judgment has been entered up one year at least before the bankruptcy;
  - (iv) A judgment against a mortgagee, who is paid off before or at the time of a conveyance of an estate or interest in land to a purchaser, shall not create a charge upon the estate or interest in the land vested in the purchaser by such conveyance.
- (4) A recognisance, on behalf of the Crown or otherwise, whether entered into before or after the commencement of this Act, and an inquisition finding a debt due to the Crown, and any obligation or specialty made to or in favour of the Crown, whatever may have been its date, shall not operate as a charge on any interest in land, or on the unpaid purchase money for any land, unless or until a writ or order, for the purpose of enforcing it, is registered in the register of writs and Orders at the Land Registry.
- (5) In this section " judgment " includes any decree, order, or rule having the effect of a judgment.

*Notices.*

**196 Regulations respecting notices.**

- (1) Any notice required or authorised to be served or given by this Act shall be in writing.
- (2) Any notice required or authorised by this Act to be served on a lessee or mortgagor shall be sufficient, although only addressed to the lessee or mortgagor by that designation, without his name, or generally to the persons interested, without any

name, and notwithstanding that any person to be affected by the notice is absent, under disability, unborn, or unascertained.

- (3) Any notice required or authorised by this Act to be served shall be sufficiently served if it is left at the last-known place of abode or business in the United Kingdom of the lessee, lessor, mortgagee, mortgagor, or other person to be served, or, in case of a notice required or authorised to be served on a lessee or mortgagor, is affixed or left for him on the land or any house or building comprised in the lease or mortgage, or, in case of a mining lease, is left for the lessee at the office or counting-house of the mine.
- (4) Any notice required or authorised by this Act to be served shall also be sufficiently served, if it is sent by post in a registered letter addressed to the lessee, lessor, mortgagee, mortgagor, or other person to be served, by name, at the aforesaid place of abode or business, office, or counting-house, and if that letter is not returned through the post-office undelivered; and that service shall be deemed to be made at the time at which the registered letter would in the ordinary course be delivered.
- (5) The provisions of this section shall extend to notices required to be served by any instrument affecting property executed or coming into operation after the commencement of this Act unless a contrary intention appears.
- (6) This section does not apply to notices served in proceedings in the court.

**197 Notice of memorials registered in Middlesex and Yorkshire.**

- (1) The registration in a local deeds registry of a memorial of any instrument transferring or creating a legal estate or charge by way of legal mortgage, shall be deemed to constitute actual notice of the transfer or creation of the legal estate or charge by way of legal mortgage, to all persons and for all purposes whatsoever, as from the date of registration or other prescribed date, and so long as the registration continues in force.
- (2) The registration of a memorial of an instrument not required to be registered does not operate to give notice of such instrument or of the contents thereof.
- (3) This section operates without prejudice to the provisions of this Act respecting the making of further advances by a mortgagee, and only applies to land within the jurisdiction of the registry.

**198 Registration under the Land Charges Act, 1925, to be notice.**

- (1) The registration of any instrument or matter under the provisions of the Land Charges Act, 1925, or any enactment which it replaces, in any register kept at the land registry or elsewhere, shall be deemed to constitute actual notice of such instrument or matter, and of the fact of such registration, to all persons and for all purposes connected with the land affected, as from the date of registration or other prescribed date and so long as the registration continues in force.
- (2) This section operates without prejudice to the provisions of this Act respecting the making of further advances by a mortgagee, and applies only to instruments and matters required or authorised to be registered under the Land Charges Act, 1925.

**199 Restrictions on constructive notice.**

- (1) A purchaser shall not be prejudicially affected by notice of—

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- (i) any instrument or matter capable of registration under the provisions of the Land Charges Act, 1925, or any enactment which it replaces, which is void or not enforceable as against him under that Act or enactment, by reason of the non-registration thereof;
  - (ii) any other instrument or matter or any fact or thing unless—
    - (a) it is within his own knowledge, or would have come to his knowledge if such inquiries and inspections had been made as ought reasonably to have been made by him; or
    - (b) in the same transaction with respect to which a question of notice to the purchaser arises, it has come to the knowledge of his counsel, as such, or of his solicitor or other agent, as such, or would have come to the knowledge of his solicitor or other agent, as such, if such inquiries and inspections had been made as ought reasonably to have been made by the solicitor or other agent.
- (2) Paragraph (ii) of the last subsection shall not exempt a purchaser from any liability under, or any obligation to perform or observe, any covenant, condition, provision, or restriction contained in any instrument under which his title is derived, mediately or immediately; and such liability or obligation may be enforced in the same manner and to the same extent as if that paragraph had not been enacted.
- (3) A purchaser shall not by reason of anything in this section be affected by notice in any case where he would not have been so affected if this section had not been enacted.
- (4) This section applies to purchases made either before or after the commencement of this Act.

## **200 Notice of restrictive covenants and easements.**

- (1) Where land having a common title with other land is disposed of to a purchaser (other than a lessee or a mortgagee) who does not hold or obtain possession of the documents forming the common title, such purchaser, notwithstanding any stipulation to the contrary, may require that a memorandum giving notice of any provision contained in the disposition to him restrictive of user of, or giving rights over, any other land comprised in the common title, shall, where practicable, be written or indorsed on, or, where impracticable, be permanently annexed to some one document selected by the purchaser but retained in the possession or power of the person who makes the disposition, and being or forming part of the common title.
- (2) The title of any person omitting to require an indorsement to be made or a memorandum to be annexed shall not, by reason only of this enactment, be prejudiced or affected by the omission.
- (3) This section does not apply to dispositions of registered land.
- (4) Nothing in this section affects the obligation to register a land charge in respect of—
  - (a) any restrictive covenant or agreement affecting freehold land; or
  - (b) any estate contract; or
  - (c) any equitable easement, liberty or privilege.