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Blackstone's Statutes on

# Property Law

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Meryl Thomas

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Blackstone's Statutes on

# Property Law

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31st edition

*edited by*

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**OXFORD**  
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# Blackstone's Statutes

## Unsurpassed in authority, reliability, and accuracy

The titles in the Blackstone's Statutes series are a collection of carefully reviewed and selected unannotated legislative material and official documents.

We make every effort to ensure titles in the series meet the needs of their target market. They are reviewed by lecturers to match university courses closely and are expertly edited to be manageable in size, whilst retaining their comprehensive coverage.

The editors only include material from legislation that will be valuable to students and lecturers and it is therefore abridged where necessary.

### **Conventions used in *Blackstone's Statutes on Property Law***

An ellipsis symbol . . . indicates text that has not been included in this edition.

Sections that have been repealed by subsequent legislation are usually not included in the book and where repealed text is within a section, the absence of the text is indicated by an ellipsis in a square bracket [. . .].

The material in this book is reproduced in its most up-to-date form, and all amendments are incorporated within square brackets. Supplementary notes and details of amending provisions are generally not included.

All statutes have been enacted but some very recent legislation may not yet be in force. However there has been a deliberate decision to include some legislation that has been repealed, but which is still referred to in textbooks and may be taught in lectures. In this title they include:

- Law of Property Act 1925, sections 141 and 142, which will inevitably continue to be relevant for some years to come;
- Several sections of the Land Registration Act 1925;
- Some legislation relevant to perpetuities and accumulations, which may be relevant to trusts created before the Perpetuities and Accumulations Act 2009 came into force.

Such repealed legislation is printed in *italics*.

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## Editor's preface

This is the thirty-first edition of *Blackstone's Statutes on Property Law*. The aim is, as ever, to provide a concise and convenient collection of statutes in one book, which is suitable for all students who are studying land law, trusts, succession, and conveyancing, both at undergraduate and postgraduate level. The statutes have been carefully edited to remove extraneous material that is rarely or infrequently used by the student, and the book seeks to provide only the essential text that a student will need in their study of the subject.

The statutes are printed in chronological order with all subsequent amendments incorporated at the appropriate juncture in the statute. The title of the statute, marginal notes referring to the relevant section and the material parts of the section are included in the text, but there are no references to the previous law. Provisions relating to Scotland and Northern Ireland are generally omitted. Senydd Cymru (formerly the Welsh Assembly) has legislative making power in regard to Wales, and is increasingly passing legislation in the areas of planning law and housing law. The provisions of the Renting Homes (Wales) Act 2016 change the way in which landlords rent their properties and came into force on 1 December 2022. There are now substantial differences between the law applicable in England and that in Wales in relation to this area. Thus, I have included some of the sections of the 2016 Act in as far as they are relevant to this book, and amended the relevant statutes, namely, the Landlord and Tenant Act 1927, the Protection from Eviction Act 1977, the Landlord and Tenant Act 1985, the Landlord and Tenant Act 1988, the Landlord and Tenant (Covenants) Act 1995, the Family Law Act 1996, and the Mortgage Repossessions Act 2010. It must be remembered that the focus of this book is not the inclusion of large swathes of landlord and tenant and housing legislation, but it is difficult to study property law without touching on these matters. Thus, this is reflected in the material included in relation to both England and Wales. This edition contains a list of thematic contents, which it is hoped will benefit and aid the student.

The property legislation of 1925 comprises just over a quarter of the book, a far cry from the days when it comprised more than two-thirds. There has yet again been a paucity of primary and secondary legislation affecting property legislation during this Parliamentary session. Nevertheless, this edition includes changes made as a result of the Building Safety Act 2022 and the Product Security and Telecommunications Infrastructure Act 2022. The present text has been updated and revised to include material which received Royal Assent in the 2022–2023 Parliamentary session.

As ever I would like to thank the staff at OUP for all their help, in particular Luke Sarabia. Also I would like to thank my ever-loving husband, Brian Dowrick, for all his patience and support. I am also indebted to all those colleagues in academe who comment on the book and generously offer suggestions on how the book can be improved. Some alterations and amendments in this edition have resulted from their ever-helpful suggestions.

The law is stated as of the end of March 2023.

Meryl Thomas  
14 March 2023

## New to this edition

The 31st edition of *Blackstone's Statutes on Property Law* has been fully revised and updated with all relevant legislation including:

- Inclusion of provisions of Renting Homes (Wales) Act 2016.
- Amendments made as a result of the Building Safety Act 2022.
- Amendments made as a result of the Product Security and Telecommunications Infrastructure Act 2022.
- Amendments made to the Landlord and Tenant Act 1927, amendments made by the Economic Crime (Transparency and Enforcement) Act 2022, the Protection from Eviction Act 1977, the Landlord and Tenant Act 1985, the Landlord and Tenant Act 1988, the Landlord and Tenant (Covenants) Act 1995, the Family Law Act 1996, and the Mortgage Repossessions etc Act 2010 as a result of the coming into force of the Renting Homes (Wales) Act 2016.
- Amendments to the Charities Act 2011.

## Useful websites

Senedd: <https://senedd.wales/senedd-business/legislation/>

Law Commission: [www.lawcom.gov.uk](http://www.lawcom.gov.uk)

Land Registry: [www.gov.uk/government/organisations/land-registry](http://www.gov.uk/government/organisations/land-registry)

Parliament: [www.parliament.uk](http://www.parliament.uk)

Legislation: [www.legislation.gov.uk](http://www.legislation.gov.uk)

Bailii: [www.bailii.org/form/search\\_cases.html](http://www.bailii.org/form/search_cases.html)



# Statutes 1832–2023

## Prescription Act 1832

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(1832, c. 71)

### **1 Claims to right of common and other profits à prendre, not to be defeated after thirty years enjoyment by merely showing the commencement; after sixty years enjoyment the right to be absolute, unless had by consent or agreement**

[...] No claim which may be lawfully made at the common law, by custom, prescription, or grant, to any right of common or other profit or benefit to be taken and enjoyed from or upon any land of our sovereign lord the King, [...] or any land being parcel of the duchy of Lancaster or of the duchy of Cornwall, or of any ecclesiastical or lay person, or body corporate, except such matters and things as are herein specially provided for, and except tithes, rent, and services, shall, where such right, profit, or benefit shall have been actually taken and enjoyed by any person claiming right thereto without interruption for the full period of thirty years, be defeated or destroyed by showing only that such right, profit, or benefit was first taken or enjoyed at any time prior to such period of thirty years, but nevertheless such claim may be defeated in any other way by which the same is now liable to be defeated; and when such right, profit, or benefit shall have been so taken and enjoyed as aforesaid for the full period of sixty years, the right thereto shall be deemed absolute and indefeasible, unless it shall appear that the same was taken and enjoyed by some consent or agreement expressly made or given for that purpose by deed or writing.

### **2 In claims of right of way or other easement the periods to be twenty years and forty years**

[...] No claim which may be lawfully made at the common law, by custom, prescription, or grant, to any way or other easement, or to any watercourse, or the use of any water, to be enjoyed or derived upon, over, or from any land or water of our said lord the King, [...] or being parcel of the duchy of Lancaster or of the duchy of Cornwall, or being the property of any ecclesiastical or lay person, or body corporate, when such way or other matter as herein last before mentioned shall have been actually enjoyed by any person claiming right thereto without interruption for the full period of twenty years, shall be defeated or destroyed by showing only that such way or other matter was first enjoyed at any time prior to such period of twenty years, but nevertheless such claim may be defeated in any other way by which the same is now liable to be defeated; and where such way or other matter as herein last before mentioned shall have been so enjoyed as aforesaid for the full period of forty years, the right thereto shall be deemed absolute and indefeasible, unless it shall appear that the same was enjoyed by some consent or agreement expressly given or made for that purpose by deed or writing.

### **3 Claim to the use of light enjoyed for 20 years**

[...] When the access and use of light to and for any dwelling house, workshop, or other building shall have been actually enjoyed therewith for the full period of twenty years without interruption,

the right thereto shall be deemed absolute and indefeasible, any local usage or custom to the contrary notwithstanding, unless it shall appear that the same was enjoyed by some consent or agreement expressly made or given for that purpose by deed or writing.

#### **4 Before mentioned periods to be deemed those next before suits**

[...] Each of the respective periods of years herein-before mentioned shall be deemed and taken to be the period next before some suit or action wherein the claim or matter to which such period may relate shall have been or shall be brought into question; and [...] no act or other matter shall be deemed to be an interruption, within the meaning of this statute, unless the same shall have been or shall be submitted to or acquiesced in for one year after the party interrupted shall have had or shall have notice thereof, and of the person making or authorizing the same to be made.

#### **5 In actions on the case, the claimant may allege his right generally, as at present. In pleas to trespass and certain other pleadings, the period mentioned in this Act may be alleged. Exceptions, etc. to be replied to specially**

[...] In all actions upon the case and other pleadings, wherein the party claiming may now by law allege his right generally, without averring the existence of such right from time immemorial, such general allegation shall still be deemed sufficient, and if the same shall be denied all and every the matters in this Act mentioned and provided, which shall be applicable to the case, shall be admissible in evidence to sustain or rebut such allegation; and [...] in all pleadings to actions of trespass, and in all other pleadings wherein before the passing of this Act it would have been necessary to allege the right to have existed from time immemorial, it shall be sufficient to allege the enjoyment thereof as of right by the occupiers of the tenement in respect whereof the same is claimed for and during such of the periods mentioned in this Act as may be applicable to the case, and without claiming in the name or right of the owner of the fee, as is now usually done; and if the other party shall intend to rely on any proviso, exception, incapacity, disability, contract, agreement, or other matter herein-before mentioned, or on any cause or matter of fact or of law not inconsistent with the simple fact of enjoyment, the same shall be specially alleged and set forth in answer to the allegation of the party claiming, and shall not be received in evidence on any general traverse or denial of such allegation.

#### **6 Presumption to be allowed in claims herein provided for**

[...] In the several cases mentioned in and provided for by this Act, no presumption shall be allowed or made in favour or support of any claim, upon proof of the exercise or enjoyment of the right or matter claimed for any less period of time or number of years than for such period or number mentioned in this Act as may be applicable to the case and to the nature of the claim.

#### **7 Proviso for infants, etc.**

Provided also, that the time during which any person otherwise capable of resisting any claim to any of the matters before mentioned shall have been or shall be an infant, idiot, non compos mentis, feme covert, or tenant for life, or during which any action or suit shall have been pending, and which shall have been diligently prosecuted, until abated by the death of any party or parties thereto, shall be excluded in the computation of the periods herein-before mentioned, except only in cases where the right or claim is hereby declared to be absolute and indefeasible.

#### **8 What time to be excluded in computing the term of forty years appointed by this Act**

Provided always, [...] that when any land or water upon, over, or from which any such way or other convenient watercourse or use of water shall have been or shall be enjoyed or derived hath been or shall be held under or by virtue of any term of life, or any term of years exceeding three years from the granting thereof, the time of the enjoyment of any such way or other matter as herein last before mentioned, during the continuance of such terms, shall be excluded in the computation of the said period of forty years, in case the claim shall within three years next after the end or sooner determination of such term be resisted by any person entitled to any reversion expectant on the determination thereof.

## Wills Act 1837

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(1837, c. 26)

### 1 Meaning of certain words in this Act

The words and expressions herein-after mentioned, which in their ordinary signification have a more confined or a different meaning, shall in this Act, except where the nature of the provision or the context of the Act shall exclude such construction, be interpreted as follows; (that is to say,) the word ‘will’ shall extend to a testament, and to a codicil, and to an appointment by will or by writing in the nature of a will in exercise of a power, [and also to an appointment by will of a guardian of a child] [and also to an appointment by will of a representative under section 4 of the Human Tissue Act 2004] [or section 8 of the Human Transplantation (Wales) Act 2013] [...] and to any other testamentary disposition; and the words ‘real estate’ shall extend to manors, advowsons, messuages, lands, tithes, rents, and hereditaments, [...] whether corporeal, incorporeal, or personal, [...] and to any estate, right, or interest (other than a chattel interest) therein; and the words ‘personal estate’ shall extend to leasehold estates and other chattels real, and also to monies, shares of government and other funds, securities for money (not being real estates), debts, choses in action, rights, credits, goods, and all other property whatsoever which by law devolves upon the executor or administrator, and to any share or interest therein; and every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing; and every word importing the masculine gender only shall extend and be applied to a female as well as a male.

### 3 All property may be disposed of by will

[...] it shall be lawful for every person to devise, bequeath, or dispose of, by his will executed in manner herein-after required, all real estate and all personal estate which he shall be entitled to, either at law or in equity, at the time of his death, and which, if not so devised, bequeathed, or disposed of, would devolve [...] upon his executor or administrator; and [...] the power hereby given shall extend [...] to all contingent, executory or other future interests in any real or personal estate, whether the testator may or may not be ascertained as the person or one of the persons in whom the same respectively may become vested, and whether he may be entitled thereto under the instrument by which the same respectively were created, or under any disposition thereof by deed or will, and also to all rights of entry for conditions broken, and other rights of entry; and also to such of the same estates, interests, and rights respectively, and other real and personal estate, as the testator may be entitled to at the time of his death, notwithstanding that he may become entitled to the same subsequently to the execution of his will.

### 7 No will of a person under age valid

No will made by any person under the age of [eighteen years] shall be valid.

### [9] Signing and attestation of wills

[(1)] No will shall be valid unless—

- (a) it is in writing, and signed by the testator, or by some other person in his presence and by his direction; and
- (b) it appears that the testator intended by his signature to give effect to the will; and
- (c) the signature is made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and
- (d) each witness either—
  - (i) attests and signs the will; or
  - (ii) acknowledges his signature in the presence of the testator (but not necessarily in the presence of any other witness) but no form of attestation shall be necessary.]

[(2) For the purposes of paragraphs (c) and (d) of subsection (1), in relation to wills made on or after 31 January 2020 and on or before 31 January [2024], ‘presence’ includes presence by means of videoconference or other visual transmission.]

**10 Appointments by will to be executed like other wills, and to be valid, although other required solemnities are not observed**

No appointment made by will, in exercise of any power, shall be valid, unless the same be executed in manner herein-before required; and every will executed in manner hereinbefore required shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by will, notwithstanding it shall have been expressly required that a will made in exercise of such power should be executed with some additional or other form of execution or solemnity.

**11 Soldiers and mariners wills excepted**

Provided always, [...] that any soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his personal estate as he might have done before the making of this Act.

**13 Publication of will not be requisite**

Every will executed in manner herein-before required shall be valid without any other publication thereof.

**14 Will not to be void on account of incompetency of attesting witness**

If any person who shall attest the execution of a will shall at the time of the execution thereof or at any time afterwards be incompetent to be admitted a witness to prove the execution thereof, such will shall not on that account be invalid.

**15 Gifts to an attesting witness to be void\***

If any person shall attest the execution of any will to whom or to whose wife or husband any beneficial devise, legacy, estate, interest, gift, or appointment, of or affecting any real or personal estate (other than and except charges and directions for the payment of any debt or debts), shall be thereby given or made, such devise, legacy, estate, interest, gift, or appointment shall, so far only as concerns such person attesting the execution of such will, or the wife or husband of such person, or any person claiming under such person or wife or husband, be utterly null and void, and such person so attesting shall be admitted as a witness to prove the execution of such will, or to prove the validity or invalidity thereof, notwithstanding such devise, legacy, estate, interest, gift, or appointment mentioned in such will.

**16 Creditor attesting to be admitted a witness**

In case by any will any real or personal estate shall be charged with any debt or debts, and any creditor, or the wife or husband or [civil partner] of any creditor, whose debt is so charged, shall attest the execution of such will, such creditor notwithstanding such charge shall be admitted a witness to prove the execution of such will, or to prove the validity or invalidity thereof.

**17 Executor shall be admitted a witness**

No person shall, on account of his being an executor of a will, be incompetent to be admitted a witness to prove the execution of such will, or a witness to prove the validity or invalidity thereof.

**[18 Wills to be revoked by marriage, except in certain cases**

(1) Subject to subsections (2) to [(5)] below, a will shall be revoked by the testator's marriage.

(2) A disposition in a will in exercise of a power of appointment shall take effect notwithstanding the testator's subsequent marriage unless the property so appointed would in default of appointment pass to his personal representatives.

(3) Where it appears from a will that at the time it was made the testator was expecting to be married to a particular person and that he intended that the will should not be revoked by the marriage, the will shall not be revoked by his marriage to that person.

(4) Where it appears from a will that at the time it was made the testator was expecting to be married to a particular person and that he intended that a disposition in the will should not be revoked by his marriage to that person—

(a) that disposition shall take effect notwithstanding the marriage; and

\* **Editor's Note:** This section applies to civil partners under the Civil Partnership Act 2004.

- (b) any other disposition in the will shall take effect also, unless it appears from the will that the testator intended the disposition to be revoked by the marriage.]
- [(5) Nothing in this section applies in the case of a marriage which results from—
  - (a) the conversion of a civil partnership into a marriage under section 9 of the Marriage (Same Sex Couples) Act 2013 and regulations made under that section; or
  - (b) ...]

### **[18A Effect of dissolution or annulment of marriage on wills**

(1) Where, after a testator has made a will, [. . .] a court [of civil jurisdiction in England and Wales] dissolves or annuls his marriage [or his marriage is dissolved or annulled and the divorce or annulment is entitled to recognition in England and Wales by virtue of Part II of the Family Law Act 1986]—

- [(a) provisions of the will appointing executors or trustees or conferring a power of appointment, if they appoint or confer the power on the former spouse, shall take effect as if the former spouse had died on the date on which the marriage is dissolved or annulled, and
- (b) any property which, or an interest in which, is devised or bequeathed to the former spouse shall pass as if the former spouse had died on that date,]

except insofar as a contrary intention appears by the will.

(2) Subsection (1)(b) above is without prejudice to any right of the former spouse under the Inheritance (Provision for Family and Dependents) Act 1975.]

### **[18B Will to be revoked by civil partnership**

(1) Subject to subsections (2) to (6), a will is revoked by the formation of a civil partnership between the testator and another person.

(2) A disposition in a will in exercise of a power of appointment takes effect despite the formation of a subsequent civil partnership between the testator and another person unless the property so appointed would in default of appointment pass to the testator's personal representatives.

- (3) If it appears from a will—
  - (a) that at the time it was made the testator was expecting to form a civil partnership with a particular person, and
  - (b) that he intended that the will should not be revoked by the formation of the civil partnership, the will is not revoked by its formation.
- (4) Subsections (5) and (6) apply if it appears from a will—
  - (a) that at the time it was made the testator was expecting to form a civil partnership with a particular person, and
  - (b) that he intended that a disposition in the will should not be revoked by the formation of the civil partnership.
- (5) The disposition takes effect despite the formation of the civil partnership.
- (6) Any other disposition in the will also takes effect, unless it appears from the will that the testator intended the disposition to be revoked by the formation of the civil partnership.]

### **[18C Effect of dissolution or annulment of civil partnership on wills**

- (1) This section applies if, after a testator has made a will—
  - (a) a court of civil jurisdiction in England and Wales dissolves his civil partnership or makes a nullity order in respect of it, or
  - (b) his civil partnership is dissolved or annulled and the dissolution or annulment is entitled to recognition in England and Wales by virtue of Chapter 3 of Part 5 of the Civil Partnership Act 2004.
- (2) Except in so far as a contrary intention appears by the will—
  - (a) provisions of the will appointing executors or trustees or conferring a power of appointment, if they appoint or confer the power on the former civil partner, take effect as if the former civil partner had died on the date on which the civil partnership is dissolved or annulled, and

(b) any property which, or an interest in which, is devised or bequeathed to the former civil partner shall pass as if the former civil partner had died on that date.

(3) Subsection (2)(b) does not affect any right of the former civil partner to apply for financial provision under the Inheritance (Provision for Family and Dependents) Act 1975.]

**[18D Effect on subsisting will of conversion of civil partnership into marriage]**

[(1) The conversion of a civil partnership into a marriage does not—

- (a) revoke any will made by a party to the civil partnership before the conversion; or
- (b) affect any disposition in such a will.

(2) The conversion of a civil partnership into a marriage does not affect any previous application of section 18B(2) to (6) to—

- (a) a will made by a party to the civil partnership before the conversion; or
- (b) a disposition in such a will.

(3) Subsections (1) and (2) are subject to subsection (4).

(4) Any reference in a will to a civil partnership or civil partners (howsoever expressed) is to be read in relation to any civil partnership that has been converted into a marriage, or civil partners who have converted their civil partnership into a marriage, as referring to that marriage or married couple, as appropriate.

(5) Subsection (4) is subject to any contrary intention appearing from the will.

(6) In this section ‘conversion’ means—

- (a) the conversion of a civil partnership into a marriage under section 9 of the Marriage (Same Sex Couples) Act 2013 and regulations made under that section;
- (b) ...].

**[18E Effect on subsisting will of conversion of marriage into civil partnership]**

(1) The conversion of a marriage into a civil partnership does not—

- (a) revoke any will made by a party to the marriage before the conversion; or
- (b) affect any disposition in such a will.

(2) The conversion of a marriage into a civil partnership does not affect any previous application of section 18(2) to (4) to—

- (a) a will made by a party to the marriage before the conversion; or
- (b) a disposition in such a will.

(3) Subsections (1) and (2) are subject to subsection (4).

(4) Any reference in a will to a marriage or spouses (howsoever expressed) is to be read in relation to any marriage that has been converted into a civil partnership, or a married couple who have converted their marriage into a civil partnership, as referring to that civil partnership or the parties to it, as appropriate.]

**19 No will to be revoked by presumption**

No will shall be revoked by any presumption of an intention on the ground of an alteration in circumstances.

**20 No will to be revoked but by another will or codicil, or by a writing executed like a will, or by destruction**

No will or codicil, or any part thereof, shall be revoked otherwise than as aforesaid, or by another will or codicil executed in manner herein-before required, or by some writing declaring an intention to revoke the same, and executed in the manner in which a will is herein-before required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

**21 No alteration in a will shall have any effect unless executed as a will**

No obliteration, interlineation, or other alteration made in any will after the execution thereof shall be valid or have any effect, except so far as the words or effect of the will before such alteration shall not be apparent, unless such alteration shall be executed in like manner as herein-before is required for

the execution of the will; but the will, with such alteration as part thereof, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will.

## **22 No will revoked to be revived otherwise than by re-execution or a codicil to revive it**

No will or codicil, or any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner herein-before required and showing an intention to revive the same; and when any will or codicil which shall be partly revoked, and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown.

## **23 A devise not to be rendered inoperative by any subsequent conveyance or act**

No conveyance or other Act made or done subsequently to the execution of a will of or relating to any real or personal estate therein comprised, except an act by which such will shall be revoked as aforesaid, shall prevent the operation of the will with respect to such estate or interest in such real or personal estate as the testator shall have power to dispose of by will at the time of his death.

## **24 A will shall be construed to speak from the death of the testator**

Every will shall be construed, with reference to the real estate and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will.

## **25 Residuary devise shall include estates comprised in lapsed and void devises**

Unless a contrary intention shall appear by the will, such real estate or interest therein as shall be comprised or intended to be comprised in any devise in such will contained, which shall fail or be void by reason of the death of the devisee in the lifetime of the testator, or by reason of such devise being contrary to law or otherwise incapable of taking effect shall be included in the residuary devise (if any) contained in such will.

## **26 A general devise of the testator's lands shall include copyhold and leasehold as well as freehold lands**

A devise of the land of the testator, or of the land of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, and any other general devise which would describe a [...] leasehold estate if the testator had no freehold estate which could be described by it, shall be construed to include the [...] leasehold estates of the testator, or his [...] leasehold estates, or any of them, to which such description shall extend, as the case may be, as well as freehold estates, unless a contrary intention shall appear by the will.

## **27 A general gift shall include estates over which the testator has a general power of appointment**

A general devise of the real estate of the testator, or of the real estate of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, shall be construed to include any real estate, or any real estate to which such description shall extend (as the case may be), which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will; and in like manner a bequest of the personal estate of the testator, or any bequest of personal property described in a general manner, shall be construed to include any personal estate, or any personal estate to which such description shall extend (as the case may be), which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will.

**28 A devise without any words of limitation shall be construed to pass as free**

Where any real estate shall be devised to any person without any words of limitation, such devise shall be construed to pass the fee simple, or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a contrary intention shall appear by the will.

**29 The words ‘die without issue,’ or ‘die without leaving issue,’ shall be construed to mean die without issue living at the death**

In any devise or bequest of a real or personal estate the words ‘die without issue,’ or ‘die without leaving issue,’ or ‘have no issue,’ or any other words which may import either a want or failure of issue of any person in his lifetime or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in the lifetime or at the time of the death of such person, and not an indefinite failure of his issue, unless a contrary intention shall appear by the will, by reason of such person having a prior estate tail, or of a preceding gift, being, without any implication arising from such words, a limitation of an estate tail to such person or issue, or otherwise:

Provided, that this Act shall not extend to cases where such words as aforesaid import if no issue described in a preceding gift shall be born, or if there shall be no issue who shall live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue.

**30 No devise to trustees or executors, except for a term or a presentation to a church, shall pass a chattel interest**

Where any real estate (other than or not being a presentation to a church) shall be devised to any trustee or executor, such devise shall be construed to pass the fee simple or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a definite term of years, absolute or determinable, or an estate of freehold, shall thereby be given to him expressly or by implication.

**31 Trustees under an unlimited devise, where the trust may endure beyond the life of a person beneficially entitled for life, shall take the fee**

Where any real estate shall be devised to a trustee, without any express limitation of the estate to be taken by such trustee, and the beneficial interest in such real estate, or in the surplus rents and profits thereof, shall not be given to any person for life, or such beneficial interest shall be given to any person for life, but the purposes of the trust may continue beyond the life of such person, such devise shall be construed to vest in such trustee the fee simple, or other the whole legal estate which the testator had power to dispose of by will in such real estate, and not an estate determinable when the purposes of the trust shall be satisfied.

**[33 Gifts to children or other issue who leave issue living at the testator’s death shall not lapse**

(1) Where—

- (a) a will contains a devise or bequest to a child or remote descendant of the testator; and
- (b) the intended beneficiary dies before the testator, leaving issue; and
- (c) issue of the intended beneficiary are living at the testator’s death,

then, unless a contrary intention appears by the will, the devise or bequest shall take effect as a devise or bequest to the issue living at the testator’s death.

(2) Where—

- (a) a will contains a devise or bequest to a class of person consisting of children or remoter descendants of the testator; and
- (b) a member of the class dies before the testator, leaving issue; and
- (c) issue of that member are living at the testator’s death,

then, unless a contrary intention appears by the will, the devise or bequest shall take effect as if the class included the issue of its deceased member living at the testator’s death.

(3) Issue shall take under this section through all degrees, according to their stock, in equal shares if more than one, any gift or share which their parent would have taken and so that [(subject to section 33A)] no issue shall take whose parent is living at the testator’s death and that no issue shall take whose parent is living at the testator’s death and so capable of taking.

- (4) For the purposes of this section
- (a) the illegitimacy of any person is to be disregarded; and
  - (b) a person conceived before the testator's death and born living thereafter is to be taken to have been living at the testator's death.]

### **[33A Disclaimer or forfeiture of gift]**

- (1) This section applies where a will contains a devise or bequest to a person who—
- (a) disclaims it, or
  - (b) has been precluded by the forfeiture rule from acquiring it.
- (2) The person is, unless a contrary intention appears by the will, to be treated for the purposes of this Act as having died immediately before the testator.
- (3) But in a case within subsection (1)(b), subsection (2) does not affect the power conferred by section 2 of the Forfeiture Act 1982 (power of court to modify the forfeiture rule).
- (4) In this section 'forfeiture rule' has the same meaning as in the Forfeiture Act 1982.]

## **Common Law Procedure Act 1852**

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(1852, c. 76)

### **210 Proceedings in ejectment by landlord for non-payment of rent**

In all cases between landlord and tenant, as often as it shall happen that one half year's rent shall be in arrear, and the landlord or lessor, to whom the same is due, hath right by law to re-enter for the nonpayment thereof, such landlord or lessor shall and may, without any formal demand or re-entry, serve a writ in ejectment for the recovery of the demised premises, [...] which service [...] shall stand in the place and stead of a demand and re-entry; and in case of judgment against the defendant for nonappearance, if it shall be made appear to the court where the said action is depending, by affidavit, or be proved upon the trial in case the defendant appears, that half a year's rent was due before the said writ was served, [and that either of the conditions in section 210A was met in relation to the arrears], and that the lessor had power to re-enter, then and in every such case the lessor shall recover judgment and execution, in the same manner as if the rent in arrear had been legally demanded, and a re-entry made and in case the lessee or his assignee, or other person claiming or deriving under the said lease, shall permit and suffer judgment to be had and recovered on such trial in ejectment, and execution to be executed thereon, without paying the rent and arrears, together with full costs, and without proceeding for relief in equity within six months after such execution executed, then in such case the said lessee, his assignee, and all other persons claiming and deriving under the said lease, shall be barred and foreclosed from all relief or remedy in law or equity, other than by bringing error for reversal of such judgment, in case the same shall be erroneous; and the said landlord or lessor shall from thenceforth hold the said demised premises discharged from such lease; [...], provided that nothing herein contained shall extend to bar the right of any mortgagee of such lease, or any part thereof, who shall not be in possession, so as such mortgagee shall and do, within six months after such judgment obtained and execution executed pay all rent in arrear, and all costs and damages sustained by such lessor or person entitled to the remainder or reversion as aforesaid, and perform all the covenants and agreements which, on the part and behalf of the first lessee, are and ought to be performed.

### **211 Lessee proceeding in equity not to have injunction or relief without payment of rent and costs**

In case the said lessee, his assignee, or other person claiming any right, title, or interest, in law or equity, of, in, or to the said lease, shall, within the time aforesaid, proceed for relief in any court of equity, such person shall not have or continue any injunction against the proceedings at law on such ejectment, unless he does or shall, within forty days next after a full and perfect answer shall be made by the claimant in such ejectment, bring into court, and lodge with the proper officer such sum and

sums of money as the lessor or landlord shall in his answer swear to be due and in arrear over and above all just allowances, and also the costs taxed in the said suit, there to remain till the hearing of the cause, or to be paid out to the lessor or landlord on good security, subject to the decree of the court; and in case such proceedings for relief in equity shall be taken within the time aforesaid, and after execution is executed, the lessor or landlord shall be accountable only for so much and no more as he shall really and bona fide, without fraud, deceit, or wilful neglect, make of the demised premises from the time of his entering into the actual possession thereof; and if what shall be so made by the lessor or landlord happen to be less than the rent reserved on the said lease, then the said lessee or his assignee, before he shall be restored to his possession, shall pay such lessor or landlord, what the money so by him made fell short of the reserved rent for the time such lessor or landlord held the said lands.

### **212 Tenant paying all rent with costs, proceedings to cease**

If the tenant or his assignee do or shall, at any time before the trial in such ejectment, pay or tender to the lessor or landlord, his executors or administrators, or his or their attorney in that cause, or pay into the court where the same cause is depending, all the rent and arrears, together with the costs, then and in such case, all further proceedings on the said ejectment shall cease and be discontinued; and if such lessee, his executors, administrators, or assigns, shall, upon such proceedings as aforesaid, be relieved in equity, he and they shall have, hold, and enjoy the demised lands, according to the lease thereof made, without any new lease.

## **Wills (Soldiers and Sailors) Act 1918**

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(1918, c. 58)

### **1 Explanation of s. 11 of 7 Will. 4 & 1 Vict. c. 26. 1837 c. 26**

In order to remove doubts as to the construction of the Wills Act 1837, it is hereby declared and enacted that section eleven of that Act authorises and always has authorised any soldier being in actual military service, or any mariner or seaman being at sea, to dispose of his personal estate as he might have done before the passing of that Act, though under the age of [eighteen years].

### **2 Extension of s. 11 of Wills Act, 1837**

Section eleven of the Wills Act, 1837, shall extend to any member of His Majesty's naval or marine forces not only when he is at sea but also when he is so circumstanced that if he were a soldier he would be in actual military service within the meaning of that section.

### **3 Validity of testamentary dispositions of real property made by soldiers and sailors**

(1) A testamentary disposition of any real estate in England or Ireland made by a person to whom section eleven of the Wills Act 1837, applies, and who dies after the passing of this Act, shall, notwithstanding that the person making the disposition was at the time of making it under [eighteen years] of age or that the disposition has not been made in such manner or form as was at the passing of this Act required by law, be valid in any case where the person making the disposition was of such age and the disposition has been made in such manner and form that if the disposition had been a disposition of personal estate made by such a person domiciled in England or Ireland it would have been valid.

### **5 Short title and interpretation**

(2) For the purposes of section eleven of the Wills Act, 1837, and this Act the expression 'soldier' includes a member of the Air Force, and references in this Act to the said section eleven include a reference to that section as explained and extended by this Act.

## Law of Property Act 1922

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(1922, c. 16)

### 145 Conversion of perpetually renewable leaseholds

For the purpose of converting perpetually renewable leases and underleases (not being an interest in perpetually renewable copyhold land enfranchised by Part V. of this Act, but including a perpetually renewable underlease derived out of an interest in perpetually renewable copyhold land) into long terms, for preventing the creation of perpetually renewable leasehold interests and for providing for the interests of the persons affected, the provisions contained in the Fifteenth Schedule to this Act shall have effect.

## FIFTEENTH SCHEDULE PROVISIONS RELATING TO PERPETUALLY RENEWABLE LEASES AND UNDERLEASES

### 1 Conversion of perpetually renewable leases into long terms

(1) Land comprised in a perpetually renewable lease which was subsisting at the commencement of this Act shall, by virtue of this Act, vest in the person who at such commencement was entitled to such lease, for a term of two thousand years, to be calculated from the date at which the existing term or interest commenced, at the rent and subject to the lessees' covenants and conditions (if any) which under the lease would have been payable or enforceable during the subsistence of such term or interest.

(2) The rent, covenants and conditions (if any) shall (subject to the express provisions of this Act to the contrary) be payable and enforceable during the subsistence of the term created by this Act; and that term shall take effect in substitution for the term or interest created by the lease, and be subject to the like power of re-entry (if any) and other provisions which affected the term or interest created by the lease, but without any right of renewal.

### 2 Conversion of perpetually renewable underleases into long terms

(1) Land comprised in any underlease, which at the commencement of this Act was perpetually renewable and was derived out of a head term affected by this Act, shall, by virtue of this Act, vest in the person who at such commencement was entitled to the subterm or interest for a term of two thousand years less one day, to be calculated from the date at which the head term created by this Act commenced, at the rent and subject to the underlessee's covenants and conditions (if any) which under the underlease would have been payable or enforceable during the subsistence of such subterm or interest.

(2) The rent, covenants and conditions (if any) shall (subject to the express provisions of this Act to the contrary) be payable and enforceable during the subsistence of the subterm created by this Act; and that subterm shall take effect in substitution for the subterm or interest created by the underlease, and be subject to the like power of re-entry (if any) and other provisions which affected the subterm or interest created by the underlease, but without any right of renewal.

(3) The foregoing provisions of this section shall also apply to any perpetually renewable subterm or interest which, at the commencement of this Act, was derived out of any other subterm or interest, but so that in every case the subterm created by this Act shall be one day less in duration than the derivative term created by this Act, out of which it takes effect.

### 5 Dispositions purporting to create perpetually renewable leaseholds

[(1)] A grant, after the commencement of this Act, of a term, subterm, or other leasehold interest with a covenant or obligation for perpetual renewal, which would have been valid if this Part of this Act had not been passed, shall (subject to the express provisions of this Act) take effect as a demise for a term of two thousand years or in the case of a subdemise for a term less in duration by one day than the term out of which it is derived, to commence from the date fixed for the commencement of the term, subterm, or other interest, and in every case free from any obligation for renewal or for payment of any fines, fees, costs, or other money in respect of renewal.

[(2) Sub-paragraph (3) applies where a grant—

- (a) relates to commonhold land, and
- (b) would take effect by virtue of sub-paragraph (1) as a demise for a term of two thousand years or a subdemise for a fixed term.

(3) The grant shall be treated as if it purported to be a grant of the term referred to in sub-paragraph (2)(b) (and sections 17 and 18 of the Commonhold and Leasehold Reform Act 2002 (residential & non-residential leases) shall apply accordingly).]

## Settled Land Act 1925

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(1925, c. 18)

### PART 1 GENERAL PRELIMINARY PROVISIONS

#### *Settlements and settled land*

#### 1 What constitutes a settlement

(1) Any deed, will, agreement for a settlement or other agreement, Act of Parliament, or other instrument, or any number of instruments, whether made or passed before or after, or partly before and partly after, the commencement of this Act, under or by virtue of which instrument or instruments any land, after the commencement of this Act, stands for the time being—

- (i) limited in trust for any persons by way of succession; or
- (ii) limited in trust for any person in possession—
  - (a) for an entailed interest whether or not capable of being barred or defeated;
  - (b) for an estate in fee simple or for a term of years absolute subject to an executory limitation, gift, or disposition over on failure of his issue or in any other event;
  - (c) for a base or determinable fee [(other than a fee which is a fee simple absolute by virtue of section 7 of the Law of Property Act 1925)] or any corresponding interest in leasehold land;
  - (d) being an infant, for an estate in fee simple or for a term of years absolute; or
- (iii) limited in trust for any person for an estate in fee simple or for a term of years absolute contingently on the happening of any event; or
- (iv) [...]
- (v) charged, whether voluntarily or in consideration of marriage or by way of family arrangement, and whether immediately or after an interval, with the payment of any rentcharge for the life of any person, or any less period, or of any capital, annual, or periodical sums for the portions, advancement, maintenance, or otherwise for the benefit of any persons, with or without any terms of years for securing or raising the same; creates or is for the purposes of this Act a settlement and is in this Act referred to as a settlement, or as the settlement, as the case requires:

Provided that, where land is the subject of a compound settlement, references in this Act to the settlement shall be construed as meaning such compound settlement, unless the context otherwise requires.

(2) Where an infant is beneficially entitled to land for an estate in fee simple or for a term of years absolute and by reason of an intestacy or otherwise there is no instrument under which the interest of the infant arises or is acquired, a settlement shall be deemed to have been made by the intestate, or by the person whose interest the infant has acquired.

(3) An infant shall be deemed to be entitled in possession notwithstanding any subsisting right of dower\* (not assigned by metes and bounds) affecting the land, and such a right of dower shall

\* **Editor's Note:** See Administration of Estates Act 1925, ss. 45(1)(c) and 51(2).

be deemed to be an interest comprised in the subject of the settlement and coming to the dowress under or by virtue of the settlement.

Where dower has been assigned by metes and bounds, the letters of administration or probate granted in respect of the estate of the husband of the dowress shall be deemed a settlement made by the husband.

(4) An estate or interest not disposed of by a settlement and remaining in or reverting to the settlor, or any person deriving title under him, is for the purposes of this Act an estate or interest comprised in the subject of the settlement and coming to the settlor or such person under or by virtue of the settlement.

(5) Where—

- (a) a settlement creates an entailed interest which is incapable of being barred or defeated, or a base or determinable fee, whether or not the reversion or right of reverter is in the Crown, or any corresponding interest in leasehold land; or
- (b) the subject of a settlement is an entailed interest, or a base or determinable fee, whether or not the reversion or right of reverter is in the Crown, or any corresponding interest in leasehold land;

the reversion or right of reverter upon the cesser of the interest so created or settled shall be deemed to be an interest comprised in the subject of the settlement, and limited by the settlement.

(6) Subsections (4) and (5) of this section bind the Crown.

[(7) This section does not apply to land held upon trust for sale.]

#### **4 Authorised method of settling land inter vivos**

(1) Every settlement of a legal estate in land inter vivos shall, save as in this Act otherwise provided, be effected by two deeds, namely, a vesting deed and a trust instrument and if effected in any other way shall not operate to transfer or create a legal estate.

(2) By the vesting deed the land shall be conveyed to the tenant for life or statutory owner (and if more than one as joint tenants) for the legal estate the subject of the intended settlement:

Provided that, where such legal estate is already vested in the tenant for life or statutory owner, it shall be sufficient, without any other conveyance, if the vesting deed declares that the land is vested in him for that estate.

(3) The trust instrument shall—

- (a) declare the trusts affecting the settled land;
- (b) appoint or constitute trustees of the settlement;
- (c) contain the power, if any, to appoint new trustees of the settlement;
- (d) set out, either expressly or by reference, any powers intended to be conferred by the settlement in extension of those conferred by this Act;
- (e) bear any ad valorem stamp duty which may be payable (whether by virtue of the vesting deed or otherwise) in respect of the settlement.

#### **5 Contents of vesting deeds**

(1) Every vesting deed for giving effect to a settlement or for conveying settled land to a tenant for life or statutory owner during the subsistence of the settlement (in this Act referred to as a 'principle vesting deed') shall contain the following statements and particulars, namely:—

- (a) A description, either specific or general, of the settled land;
- (b) A statement that the settled land is vested in the person or persons to whom it is conveyed or in whom it is declared to be vested upon the trusts from time to time affecting the settled land;
- (c) The names of the persons who are the trustees of the settlement;
- (d) Any additional or larger powers conferred by the trust instrument relating to the settled land which by virtue of this Act operate and are exercisable as if conferred by this Act on a tenant for life;

- (e) The name of any person for the time being entitled under the trust instrument to appoint new trustees of the settlement.

(2) The statements or particulars required by this section may be incorporated by reference to an existing vesting instrument, and, where there is a settlement subsisting at the commencement of this Act, by reference to that settlement and to any instrument whereby land has been conveyed to the uses or upon the trusts of that settlement, but not (save as last aforesaid) by reference to a trust instrument nor by reference to a disentailing deed.

(3) A principal vesting deed shall not be invalidated by reason only of any error in any of the statements or particulars by this Act required to be contained therein.

## **6 Procedure in the case of settlements by will**

Where a settlement is created by the will of an estate owner who dies after the commencement of this Act—

- (a) the will is for the purposes of this Act a trust instrument; and
- (b) the personal representatives of the testator shall hold the settled land on trust, if and when required so to do, to convey it to the person who, under the will, or by virtue of this Act, is the tenant for life or statutory owner, and, if more than one, as joint tenants.

## **13 Dispositions not to take effect until vesting instrument is made**

Where a tenant for life or statutory owner has become entitled to have a principal vesting deed or a vesting assent executed in his favour, then until a vesting instrument is executed or made pursuant to this Act in respect of the settled land, any purported disposition thereof inter vivos by any person, other than a personal representative (not being a disposition which he has power to make in right of his equitable interests or powers under a trust instrument), shall not take effect except in favour of a purchaser of a legal estate [without notice of such tenant for life or statutory owner having become so entitled as aforesaid.] but, save as aforesaid, shall operate only as a contract for valuable consideration to carry out the transaction after the requisite vesting instrument has been executed or made, and a purchaser of a legal estate shall not be concerned with such disposition unless the contract is registered as a land charge.

### *Restrictions on dispositions of settled land where trustees have not been discharged*

## **18 Restrictions on dispositions of settled land where trustees have not been discharged**

(1) Where land is the subject of a vesting instrument and the trustees of the settlement have not been discharged under this Act, then—

- (a) any disposition by the tenant for life or statutory owner of the land, other than a disposition authorised by this Act or any other statute, or made in pursuance of any additional or larger powers mentioned in the vesting instrument, shall be void, except for the purpose of conveying or creating such equitable interests as he has power, in right of his equitable interests and powers under the trust instrument, to convey or create; and
  - (b) if any capital money is payable in respect of a transaction, a conveyance to a purchaser of the land shall only take effect under this Act if the capital money is paid to or by the direction of the trustees of the settlement or into court; and
  - (c) notwithstanding anything to the contrary in the vesting instrument, or the trust instrument, capital money shall not, except where the trustee is a trust corporation, be paid to or by the direction of fewer persons than two as trustees of the settlement.
- (2) The restrictions imposed by this section do not affect—
- (a) the right of a personal representative in whom the settled land may be vested to convey or deal with the land for the purposes of administration;
  - (b) the right of a person of full age who has become absolutely entitled (whether beneficially or as [trustee of land] or personal representative or otherwise) to the settled land, free

from all limitations, powers, and charges taking effect under the trust instrument, to require the land to be conveyed to him;

- (c) the power of the tenant for life, statutory owner, or personal representative in whom the settled land is vested to transfer or create such legal estates, to take effect in priority to the settlement, as may be required for giving effect to any obligations imposed on him by statute, but where any capital money is raised or received in respect of the transaction the money shall be paid to or by the direction of the trustees of the settlement or in accordance with an order of the court.

### *Tenants for life and persons with powers of tenant for life*

#### **19 Who is tenant for life**

(1) The person of full age who is for the time being beneficially entitled under a settlement to possession of settled land for his life is for the purposes of this Act the tenant for life of that land and the tenant for life under that settlement.

(2) If in any case there are two or more persons of full age so entitled as joint tenants, they together constitute the tenant for life for the purposes of this Act.

(3) If in any case there are two or more persons so entitled as joint tenants and they are not of full age, such one or more of them as is or are for the time being of full age is or (if more than one) together constitute the tenant for life for the purposes of this Act, but this subsection does not affect the beneficial interests of such of them as are not for the time being of full age.

(4) A person being tenant for life within the foregoing definitions shall be deemed to be such notwithstanding that, under the settlement or otherwise, the settled land, or his estate or interest therein, is incumbered or charged in any manner or to any extent, and notwithstanding any assignment by operation of law or otherwise of his estate or interest under the settlement, whether before or after it came into possession, other than an assurance which extinguishes that estate or interest.

#### **20 Other limited owners having powers of tenant for life**

(1) Each of the following persons being of full age shall, when his estate or interest is in possession, have the powers of a tenant for life under this Act, (namely):—

- (i) A tenant in tail, including a tenant in tail after possibility of issue extinct, and a tenant in tail who is by Act of Parliament restrained from barring or defeating his estate tail, and although the reversion is in the Crown, but not including such a tenant in tail where the land in respect whereof he is so restrained was purchased with money provided by Parliament in consideration of public services;
- (ii) A person entitled to land for an estate in fee simple or for a term of years absolute with or subject to, in any of such cases, an executory limitation, gift, or disposition over on failure of his issue or in any other event;
- (iii) A person entitled to a base or determinable fee, although the reversion or right of reverter is in the Crown, or to any corresponding interest in leasehold land;
- (iv) A tenant for years determinable on life, not holding merely under a lease at a rent;
- (v) A tenant for the life of another, not holding merely under a lease at a rent;
- (vi) A tenant for his own or any other life, or for years determinable on life, whose estate is liable to cease in any event during that life, whether by expiration of the estate, or by conditional limitation, or otherwise, or to be defeated by an executory limitation, gift, or disposition over, or is subject to a trust for accumulation of income for any purpose;
- (viii) A person entitled to the income of land under a trust or direction for payment thereof to him during his own or any other life, whether or not subject to expenses of management or to a trust for accumulation of income for any purpose, or until sale of the land, or until forfeiture, cesser or determination by any means of his interest therein, unless the land is subject to a [trust of land];

- (ix) A person beneficially entitled to land for an estate in fee simple or for a term of years absolute subject to any estates, interests, charges, or powers of charging, subsisting or capable of being exercised under a settlement;

(2) In every such case as is mentioned in subsection (1) of this section, the provisions of this Act referring to a tenant for life, either as conferring powers on him or otherwise, shall extend to each of the persons aforesaid, and any reference in this Act to death as regards a tenant for life shall, where necessary, be deemed to refer to the determination by death or otherwise of the estate or interest of the person on whom the powers of a tenant for life are conferred by this section.

(3) For the purposes of this Act the estate or interest of a tenant by the curtesy shall be deemed to be an estate or interest arising under a settlement made by his wife.

(4) Where the reversion or right of reverter or other reversionary right is in the Crown, the exercise by a person on whom the powers of a tenant for life are conferred by this section of his powers under this Act, binds the Crown.

### **23 Powers of trustees, etc. when there is no tenant for life**

(1) Where under a settlement there is no tenant for life nor, independently of this section, a person having by virtue of this Act the powers of a tenant for life then—

- (a) any person of full age on whom such powers are by the settlement expressed to be conferred; and  
 (b) in any other case the trustees of the settlement; shall have the powers of a tenant for life under this Act.

(2) This section applies to trustees of settlements of land purchased with money provided by Parliament in consideration of public services where the tenant in tail is restrained from barring or defeating his estate tail, except that, if the tenant in tail is of full age and capacity, the powers shall not be exercised without his consent, but a purchaser shall not be concerned to see or inquire whether such consent has been given.

### *Trustees of settlement*

### **30 Who are trustees for purposes of Act**

(1) Subject to the provisions of this Act, the following persons are trustees of a settlement for the purposes of this Act, and are in this Act referred to as the ‘trustees of the settlement’ or ‘trustees of a settlement,’ namely—

- (i) the persons, if any, who are for the time being under the settlement, trustees with power of sale of the settled land (subject or not to the consent of any person), or with power of consent to or approval of the exercise of such a power of sale, or if there are no such persons; then  
 (ii) the persons, if any, for the time being, who are by the settlement declared to be trustees thereof for the purposes of the Settled Land Acts, 1882 to 1890, or any of them, or this Act, or if there are no such persons; then  
 (iii) the persons, if any, who are for the time being under the settlement trustees with [a power or duty to sell] any other land comprised in the settlement and subject to the same limitations as the land to be sold or otherwise dealt with, or with power of consent to or approval of the exercise of such power of sale, or, if there are no such persons; then  
 (iv) the persons, if any, who are for the time being under the settlement trustees with [a future power or duty to sell] the settled land, or with power of consent to or approval of the exercise of such a future power of sale, and whether the power [or duty] takes effect in all events or not, or, if there are no such persons; then

- (v) the persons, if any, appointed by deed to be trustees of the settlement by all the persons who at the date of the deed were together able, by virtue of their beneficial interests or by the exercise of an equitable power, to dispose of the settled land in equity for the whole estate the subject of the settlement.

(2) Paragraphs (i), (iii) and (iv) of the last preceding subsection take effect in like manner as if the powers therein referred to had not by this Act been made exercisable by the tenant for life or statutory owner.

(3) Where a settlement is created by will, or a settlement has arisen by the effect of an intestacy, and apart from this subsection there would be no trustees for the purposes of this Act of such settlement, then the personal representatives of the deceased shall, until other trustees are appointed, be by virtue of this Act the trustees of the settlement, but where there is a sole personal representative, not being a trust corporation, it shall be obligatory on him to appoint an additional trustee to act with him for the purposes of this Act, and the provisions of the Trustee Act, 1925, relating to the appointment of new trustees and the vesting of trust property shall apply accordingly.

### **34 Appointment of trustees by court**

(1) If at any time there are no trustees of a settlement, or where in any other case it is expedient, for the purposes of this Act, that new trustees of a settlement be appointed, the court may, if it thinks fit, on the application of the tenant for life, statutory owner, or of any other person having, under the settlement, an estate or interest in the settled land, in possession, remainder or otherwise, or, in the case of an infant, of his testamentary or other guardian or next friend, appoint fit persons to be trustees of the settlement.

### *Provisions as to undivided shares*

### **36 Undivided shares to take effect behind a [trust of land]**

(1) If and when, after the commencement of this Act, settled land is held in trust for persons entitled in possession under a trust instrument in undivided shares, the trustees of the settlement (if the settled land is not already vested in them) may require the estate owner in whom the settled land is vested (but in the case of a personal representative subject to his rights and powers for purposes of administration), at the cost of the trust estate, to convey the land to them, or assent to the land vesting in them as joint tenants, and in the meantime the land shall be held on the same trusts as would have been applicable thereto if it had been so conveyed to or vested in the trustees.

(2) If and when the settled land so held in trust in undivided shares is or becomes vested in the trustees of the settlement, the land shall be held by them (subject to any incumbrances affecting the settled land which are secured by a legal mortgage, but freed from any incumbrances affecting the undivided shares or not secured as aforesaid, and from any interests, powers and charges subsisting under the trust instrument which have priority to the trust for the persons entitled to the undivided shares) [in trust for the persons interested in the land].

(4) An undivided share in land shall not be capable of being created except under a trust instrument or under the Law of Property Act, 1925, and shall then only take effect behind a [trust of land].

## **PART VI GENERAL PROVISIONS AS TO TRUSTEES**

### **94 Number of trustees to act**

(1) Notwithstanding anything in this Act, capital money arising under this Act shall not be paid to fewer than two persons as trustees of a settlement, unless the trustee is a trust corporation.

(2) Subject as aforesaid the provisions of this Act referring to the trustees of a settlement apply to the surviving or continuing trustees or trustee of the settlement for the time being.

## **PART VII RESTRICTIONS, SAVINGS, AND PROTECTION OF PURCHASERS**

### **104 Powers not assignable, and contract not to exercise powers void**

(1) The powers under this Act of a tenant for life are not capable of assignment or release, and do not pass to a person as being, by operation of law or otherwise, an assignee of a tenant for life, and remain exercisable by the tenant for life after and notwithstanding any assignment, by operation of law or otherwise, of his estate or interest under the settlement.

This subsection applies notwithstanding that the estate or interest of the tenant for life under the settlement was not in possession when the assignment was made or took effect by operation of law.

(2) A contract by a tenant for life not to exercise his powers under this Act or any of them shall be void.

### **105 Effect of surrender of life estate to the next remainderman**

(1) Where the estate or interest of a tenant for life under the settlement has been or is absolutely assured with intent to extinguish the same, either before or after the commencement of this Act, to the person next entitled in remainder or reversion under the settlement, then, [...] the statutory powers of the tenant for life under this Act shall, in reference to the property affected by the assurance, and notwithstanding the provisions of the last preceding section, cease to be exercisable by him, and the statutory powers shall thenceforth become exercisable as if he were dead, but without prejudice to any incumbrance affecting the estate or interest assured, and to the rights to which any incumbrancer would have been entitled if those powers had remained exercisable by the tenant for life.

This subsection applies whether or not any term of years or charge intervenes, or the estate of the remainderman or reversioner is liable to be defeated, and whether or not the estate or interest of the tenant for life under the settlement was in possession at the date of the assurance.

This subsection does not prejudice anything done by the tenant for life before the commencement of this Act, in exercise of any power operating under the Settled Land Acts, 1882 to 1890, or, unless the assurance provides to the contrary, operate to accelerate any such intervening term of years or charge as aforesaid.

(2) In this section ‘assurance’ means any surrender, conveyance, assignment or appointment under a power (whether vested in any person solely, or jointly in two or more persons) which operates in equity to extinguish the estate or interest of the tenant for life, and ‘assured’ has a corresponding meaning.

### **107 Tenant for life trustee for all parties interested**

(1) A tenant for life or statutory owner shall, in exercising any power under this Act, have regard to the interests of all parties entitled under the settlement, and shall, in relation to the exercise thereof by him, be deemed to be in the position and to have the duties and liabilities of a trustee for those parties.

[(1A) The following provisions apply to the tenant for life as they apply to the trustees of the settlement—

- (a) sections 11, 13 to 15 and 21 to 23 of the Trustee Act 2000 (power to employ agents subject to certain restrictions),
- (b) section 32 of that Act (remuneration and expenses of agents etc.),
- (c) section 19 of the Trustee Act 1925 (power to insure), and
- (d) in so far as they relate to the provisions mentioned in paragraphs (a) and (c), Part I of, and Schedule 1 to, the Trustee Act 2000 (the duty of care).]

(2) The provision by a tenant for life or statutory owner, at his own expense, of dwellings available for the working classes on any settled land shall not be deemed to be an injury to any interest in reversion or remainder in that land, but such provision shall not be made by a tenant for life or statutory owner without the previous approval in writing of the trustees of the settlement.

### **109 Saving for additional or larger powers under settlement**

(1) Nothing in this Act precludes a settlor from conferring on the tenant for life, or (save as provided by the last preceding section) on the trustees of the settlement, any powers additional to or larger than those conferred by this Act.

### 110 Protection of purchasers, etc.

(1) On a sale, exchange, lease, mortgage, charge, or other disposition, a purchaser dealing in good faith with a tenant for life or statutory owner shall, as against all parties entitled under the settlement, be conclusively taken to have given the best price, consideration, or rent as the case may require, that could reasonably be obtained by the tenant for life or statutory owner, and to have complied with all the requisitions of this Act.

(2) A purchaser of a legal estate in settled land shall not, except as hereby expressly provided, be bound or entitled to call for the production of the trust instrument or any information concerning that instrument or any ad valorem stamp duty thereon, and whether or not he has notice of its contents he shall, save as hereinafter provided, be bound and entitled if the last or only principal vesting instrument contains the statements and particulars required by this Act to assume that—

- (a) the person in whom the land is by the said instrument vested or declared to be vested is the tenant for life or statutory owner and has all the powers of a tenant for life under this Act, including such additional or larger powers, if any, as are therein mentioned;
- (b) the persons by the said instrument stated to be the trustees of the settlement, or their successors appearing to be duly appointed, are the properly constituted trustees of the settlement;
- (c) the statements and particulars required by this Act and contained (expressly or by reference) in the said instrument were correct at the date thereof;
- (d) the statements contained in any deed executed in accordance with this Act declaring who are the trustees of the settlement for the purposes of this Act are correct;
- (e) the statements contained in any deed of discharge, executed in accordance with this Act, are correct:

Provided that, as regards the first vesting instrument executed for the purpose of giving effect to—

- (a) a settlement subsisting at the commencement of this Act; or
- (b) an instrument which by virtue of this Act is deemed to be a settlement; or
- (c) a settlement which by virtue of this Act is deemed to have been made by any person after the commencement of this Act; or
- (d) an instrument inter vivos intended to create a settlement of a legal estate in land which is executed after the commencement of this Act and does not comply with the requirements of this Act with respect to the method of effecting such a settlement; a purchaser shall be concerned to see—
  - (i) that the land disposed of to him is comprised in such settlement or instrument;
  - (ii) that the person in whom the settled land is by such vesting instrument vested, or declared to be vested, is the person in whom it ought to be vested as tenant for life or statutory owner;
  - (iii) that the persons thereby stated to be the trustees of the settlement are the properly constituted trustees of the settlement.

(3) A purchaser of a legal estate in settled land from a personal representative shall be entitled to act on the following assumptions:—

- (i) If the capital money, if any, payable in respect of the transaction is paid to the personal representative, that such representative is acting under his statutory or other powers and requires the money for purposes of administration;
- (ii) If such capital money is, by the direction of the personal representative, paid to persons who are stated to be the trustees of a settlement, that such persons are the duly constituted trustees of the settlement for the purposes of this Act, and that the personal representative is acting under his statutory powers during a minority;
- (iii) In any other case, that the personal representative is acting under his statutory or other powers.

(4) Where no capital money arises under a transaction, a disposition by a tenant for life or statutory owner shall, in favour of a purchaser of a legal estate, have effect under this Act notwithstanding that at the date of the transaction there are no trustees of the settlement.

(5) If a conveyance of or an assent relating to land formerly subject to a vesting instrument does not state who are the trustees of the settlement for the purposes of this Act, a purchaser of a legal estate shall

be bound and entitled to act on the assumption that the person in whom the land was thereby vested was entitled to the land free from all limitations, powers, and charges taking effect under that settlement, absolutely and beneficially, or, if so expressed in the conveyance or assent, as personal representative, or [trustee of land] or otherwise, and that every statement of fact in such conveyance or assent is correct.

## PART IX SUPPLEMENTARY PROVISIONS

### 117 Definitions

(1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say:—

- (i) 'Building purposes' include the erecting and the improving of, and the adding to, and the repairing of buildings; and a 'building lease' is a lease for any building purposes or purposes connected therewith;
- (ii) 'Capital money arising under this Act' means capital money arising under the powers and provisions of this Act or the Acts replaced by this Act, and receivable for the trusts and purposes of the settlement and includes securities representing capital money;
- (iii) 'Death duty' means estate duty [ . . . ] and every other duty leviable or payable on death;
- (iv) 'Determinable fee' means a fee determinable whether by limitation or condition;
- (v) 'Disposition' and 'conveyance' include a mortgage, charge by way of legal mortgage, lease, assent, vesting declaration, vesting instrument, disclaimer, release and every other assurance of property or of an interest therein by any instrument, except a will, and 'dispose of' and 'convey' have corresponding meanings;
- (vi) 'Dower' includes 'freebench';
- (vii) 'Hereditaments' mean real property which on an intestacy might before the commencement of this Act have devolved on an heir;
- (viii) 'Instrument' does not include a statute unless the statute creates a settlement;
- (ix) 'Land' includes land of any tenure, and mines and minerals whether or not held apart from the surface, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other way) and other corporeal hereditaments; also a manor, an advowson, and a rent and other incorporeal hereditaments, and an easement, right, privilege, or benefit in, over, or derived from land, and any estate or interest in land [ , but does not (except in the phrase 'trust of land') include] an undivided share in land;
- (x) 'Lease' includes an agreement for a lease, and 'forestry lease' means a lease to the Forestry Commissioners for any purpose for which they are authorised to acquire land by the Forestry Act, 1919;
- (xi) 'Legal mortgage' means a mortgage by demise or subdemise or a charge by way of legal mortgage, and 'legal mortgagee' has a corresponding meaning; 'legal estate' means an estate interest or charge in or over land (subsisting or created at law) which is by statute authorised to subsist or to be created at law; and 'equitable interests' mean all other interests and charges in or over land or in the proceeds of sale thereof; an equitable interest 'capable of subsisting at law' means such an equitable interest as could validly subsist at law, if clothed with the legal estate; and 'estate owner' means the owner of a legal estate;
- (xii) 'Limitation' includes a trust, and 'trust' includes an implied or constructive trust;
- (xiv) 'Manor' includes lordship, and reputed manor or lordship; and 'manorial incident' has the same meaning as in the Law of Property Act, 1922;\*
- (xv) 'Mines and minerals' mean mines and minerals whether already opened or in work or not, and include all minerals and substances in, on, or under the land, obtainable by underground or by surface working; and 'mining purposes' include the sinking and searching for, winning, working, getting, making merchantable, smelting or otherwise

\* **Editor's Note:** All manorial incidents have now been extinguished, Law of Property Act 1922, Pt. VI.

converting or working for the purposes of any manufacture, carrying away, and disposing of mines and minerals, in or under the settled land, or any other land, and the erection of buildings, and the execution of engineering and other works suitable for those purposes; and a 'mining lease' is a lease for any mining purposes or purposes connected therewith, and includes a grant or licence for any mining purposes;

- (xvii) 'Notice' includes constructive notice;
- (xviii) 'Personal representative' means the executor, original or by representation, or administrator, for the time being of a deceased person, and where there are special personal representatives for the purposes of settled land means those personal representatives;
- (xix) 'Possession' includes receipt of rents and profits, or the right to receive the same, if any; and 'income' includes rents and profits;
- (xx) 'Property' includes any thing in action, and any interest in real or personal property;
- (xxi) 'Purchaser' means a purchaser in good faith for value, and includes a lessee, mortgagee or other person who in good faith acquires an interest in settled land for value; and in reference to a legal estate includes a chargee by way of legal mortgage;
- (xxii) 'Rent' includes yearly or other rent, and toll, duty, royalty, or other reservation, by the acre, or the ton, or otherwise; and, in relation to rent, 'payment' includes delivery; and 'fine' includes premium or fore-gift, and any payment, consideration, or benefit in the nature of a fine, premium, or fore-gift;
- (xxiii) 'Securities' include stocks, funds, and shares;
- (xxiv) 'Settled land' includes land which is deemed to be settled land; 'settlement' includes an instrument or instruments which under this Act or the Acts which it replaces is or are deemed to be or which together constitute a settlement, and a settlement which is deemed to have been made by any person or to be subsisting for the purposes of this Act; 'a settlement subsisting at the commencement of this Act' includes a settlement created by virtue of this Act immediately on the commencement thereof; and 'trustees of the settlement' mean the trustees thereof for the purposes of this Act howsoever appointed or constituted;
- (xxv) 'Small dwellings' mean dwelling-houses of a rateable value not exceeding one hundred pounds per annum;
- (xxvi) 'Statutory owner' means the trustees of the settlement or other persons who, during a minority, or at any other time when there is no tenant for life, have the powers of a tenant for life under this Act, but does not include the trustees of the settlement, where by virtue of an order of the court or otherwise the trustees have power to convey the settled land in the name of the tenant for life;
- (xxvii) 'Steward' includes deputy steward, or other proper officer, of a manor;
- (xxviii) 'Tenant for life' includes a person (not being a statutory owner) who has the powers of a tenant for life under this Act, and also (where the context requires) one of two or more persons who together constitute the tenant for life, or have the powers of a tenant for life, and 'tenant in tail' includes a person entitled to an entailed interest in any property; and 'entailed interest' has the same meaning as in the Law of Property Act, 1925;
- (xxix) A 'term of years absolute' means a term of years, taking effect either in possession or in reversion, with or without impeachment for waste, whether at a rent or not and whether subject or not to another legal estate, and whether 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, nor, if created after the commencement of this Act, a term of years which is not expressed to take effect in possession within twenty-one years after the creation thereof where required by statute to take effect within that period; and in this definition

the expression ‘term of years’ includes a term for less than a year, or for a year or years and a fraction of a year or from year to year;

(xxx) ‘Trust corporation’ means the Public Trustee or a corporation either appointed by the court in any particular case to be a trustee or entitled by rules made under subsection (3) of section four of the Public Trustee Act, 1906, to act as custodian trustee, and ‘trust for sale’ [has the same meaning] as in the Law of Property Act, 1925;

(xxxi) In relation to settled land ‘vesting deed’ or ‘vesting order’ means the instrument whereby settled land is conveyed to or vested or declared to be vested in a tenant for life or statutory owner, ‘vesting assent’ means the instrument whereby a personal representative, after the death of a tenant for life or statutory owner, or the survivor of two or more tenants for life or statutory owners, vests settled land in a person entitled as tenant for life or statutory owner; ‘vesting instrument’ means a vesting deed, a vesting assent or, where the land affected remains settled land, a vesting order ‘principal vesting instrument’ includes any vesting instrument other than a subsidiary vesting deed; and ‘trust instrument’ means the instrument whereby the trusts of the settled land are declared, and includes any two or more such instruments and a settlement or instrument which is deemed to be a trust instrument,

(xxxii) ‘United Kingdom’ means Great Britain and Northern Ireland;

(xxxiii) ‘Will’ includes codicil.

[(1A) Any reference in this Act to money, securities or proceeds of sale being paid or transferred into court shall be construed as referring to the money, securities or proceeds being paid or transferred into the [Senior Courts] or any other court that has jurisdiction, and any reference in this Act to the court, in a context referring to the investment or application of money, securities or proceeds of sale paid or transferred into court, shall be construed, in the case of money, securities or proceeds paid or transferred into the [Senior Courts] as referring to the High Court, and, in the case of money, securities or proceeds paid or transferred into another court, as referring to that other court.]

(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 any interest or power so arising.

(3) Reference to registration under the Land Charges Act, 1925,\* apply to any registration made under any statute which is by the Land Charges Act, 1925,\*\* to have effect as if the registration had been made under that Act.

## Trustee Act 1925

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(1925, c. 19)

### PART II GENERAL POWERS OF TRUSTEES AND PERSONAL REPRESENTATIVES

#### *General powers*

#### **12 Power of trustees for sale to sell by auction, etc.**

(1) Where [a trustee has a duty or power to sell property], he may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to any such conditions respecting title or evidence of title or other matter as the Trustee thinks fit, with power to vary any contract for

\* Editor’s Note: Now the Land Charges Act 1972.

\*\* Editor’s Note: Now the Land Charges Act 1972.

sale, and to buy in at any auction, or to rescind any contract for sale and to re-sell, without being answerable for any loss.

(2) A [duty] or power to sell or dispose of land includes a [duty] or power to sell or dispose of part thereof, whether the division is horizontal, vertical, or made in any other way.

(3) This section does not enable an express power to sell settled land to be exercised where the power is not vested in the tenant for life or statutory owner.

### **13 Power to sell subject to depreciatory conditions**

(1) No sale made by a trustee shall be impeached by any beneficiary upon the ground that any of the conditions subject to which the sale was made have been unnecessarily depreciatory, unless it also appears that the consideration for the sale was thereby rendered inadequate.

(2) No sale made by a trustee shall, after the execution of the conveyance, be impeached as against the purchaser upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it appears that the purchaser was acting in collusion with the trustee at the time when the contract for sale was made.

(3) No purchaser, upon any sale made by a trustee, shall be at liberty to make any objection against the title upon any of the grounds aforesaid.

(4) This section applies to sales made before or after the commencement of this Act.

### **14 Power of trustees to give receipts**

(1) The receipt in writing of a trustee for any money, securities, [investments] or other personal property or effects payable, transferable, or deliverable to him under any trust or power shall be a sufficient discharge to the person paying, transferring, or delivering the same and shall effectually exonerate him from seeing to the application or being answerable for any loss or misapplication thereof.

(2) This section does not, except where the trustee is a trust corporation, enable a sole trustee to give a valid receipt for—

- [(a) proceeds of sale or other capital money arising under a trust of land;]
- (b) capital money arising under the Settled Land Act, 1925.

(3) This section applies notwithstanding anything to the contrary in the instrument, if any, creating the trust.

### **15 Power to compound liabilities**

A personal representative, or two or more trustees acting together, or, subject to the restrictions imposed in regard to receipts by a sole trustee not being a trust corporation, a sole acting trustee where by the instrument, if any, creating the trust, or by statute, a sole trustee is authorised to execute the trusts and powers reposed in him, may, if and as he or they think fit—

- (a) accept any property, real or personal, before the time at which it is made transferable or payable; or
- (b) sever and apportion any blended trust funds or property; or
- (c) pay or allow any debt or claim on any evidence that he or they think sufficient; or
- (d) accept any composition or any security, real or personal, for any debt or for any property, real or personal claimed; or
- (e) allow any time of payment of any debt; or
- (f) compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the testator's or intestate's estate or to the trust;

and for any of those purposes may enter into, give, execute, and do such agreements, instruments of composition or arrangement, releases, and other things as to him or them seem expedient, without being responsible for any loss occasioned by any act or thing so done by him or them [if he has or they have discharged the duty of care set out in section 1(1) of the Trustee Act 2000].

## 16 Power to raise money by sale, mortgage, etc.

(1) Where trustees are authorised by the instrument, if any, creating the trust or by law to pay or apply capital money subject to the trust for any purpose or in any manner, they shall have and shall be deemed always to have had power to raise the money required by sale, conversion, calling in, or mortgage of all or any part of the trust property for the time being in possession.

(2) This section applies notwithstanding anything to the contrary contained in the instrument, if any, creating the trust, but does not apply to trustees of property held for charitable purposes, or to trustees of a settlement for the purposes of the Settled Land Act, 1925, not being also the statutory owners.

## 17 Protection to purchasers and mortgagees dealing with trustees

No purchaser or mortgagee, paying or advancing money on a sale or mortgage purporting to be made under any trust or power vested in trustees, shall be concerned to see that such money is wanted, or that no more than is wanted is raised, or otherwise as to the application thereof.

## 18 Devolution of powers or trusts

(1) Where a power or trust is given to or imposed on two or more trustees jointly, the same may be exercised or performed by the survivors or survivor of them for the time being.

(2) Until the appointment of new trustees, the personal representatives or representative for the time being of a sole trustee, or, where there were two or more trustees of the last surviving or continuing trustee, shall be capable of exercising or performing any power or trust which was given to, or capable of being exercised by, the sole or last surviving or continuing trustee, or other the trustees or trustee for the time being of the trust.

(3) This section takes effect subject to the restrictions imposed in regard to receipts by a sole trustee, not being a trust corporation.

(4) In this section 'personal representative' does not include an executor who has renounced or has not proved.

## [19 Power to insure

(1) A trustee may—

- (a) insure any property which is subject to the trust against risks of loss or damage due to any event, and
- (b) pay the premiums out of the trust funds.

(2) In the case of property held on a bare trust, the power to insure is subject to any direction given by the beneficiary or each of the beneficiaries—

- (a) that any property specified in the direction is not to be insured;
- (b) that any property specified in the direction is not to be insured except on such conditions as may be so specified.

(3) Property is held on a bare trust if it is held on trust for—

- (a) a beneficiary who is of full age and capacity and absolutely entitled to the property subject to the trust, or
- (b) beneficiaries each of whom is of full age and capacity and who (taken together) are absolutely entitled to the property subject to the trust.

(4) If a direction under subsection (2) of this section is given, the power to insure, so far as it is subject to the direction, ceases to be a delegable function for the purposes of section 11 of the Trustee Act 2000 (power to employ agents).

(5) In this section 'trust funds' means any income or capital funds of the trust.]

## 20 Application of insurance money where policy kept up under any trust, power or obligation

(1) Money receivable by trustees or any beneficiary under a policy of insurance against the loss or damage of any property subject to a trust or to a settlement within the meaning of the Settled Land Act, 1925, [...] shall, where the policy has been kept up under any trust in that behalf or under any power statutory or otherwise, or in performance of any covenant or of any obligation statutory

or otherwise, or by a tenant for life impeachable for waste, be capital money for the purposes of the trust or settlement, as the case may be.

(2) If any such money is receivable by any person, other than the trustees of the trust or settlement, that person shall use his best endeavours to recover and receive the money, and shall pay the net residue thereof, after discharging any costs of recovering and receiving it, to the trustees of the trust or settlement, or, if there are no trustees capable of giving a discharge therefor, into court.

(3) Any such money—

- (a) if it was receivable in respect of settled land within the meaning of the Settled Land Act, 1925, or any building or works thereon, shall be deemed to be capital money arising under that Act from the settled land, and shall be invested or applied by the trustees, or, if in court, under the direction of the court, accordingly;
- (b) if it was receivable in respect of personal chattels settled as heirlooms within the meaning of the Settled Land Act, 1925, shall be deemed to be capital money arising under that Act, and shall be applicable by the trustees, or, if in court, under the direction of the court, in like manner as provided by that Act with respect to money arising by a sale of chattels settled as heirlooms as aforesaid;
- (c) if it was receivable in respect of [land subject to a trust of land or personal property held on trust for sale], shall be held upon the trusts and subject to the powers and provisions applicable to money arising by a sale under such trust;
- (d) in any other case, shall be held upon trusts corresponding as nearly as may be with the trusts affecting the property in respect of which it was payable.

(4) Such money, or any part thereof, may also be applied by the trustees, or, if in court, under the direction of the court, in rebuilding, reinstating, replacing, or repairing the property lost or damaged, but any such application by the trustees shall be subject to the consent of any person whose consent is required by the instrument, if any, creating the trust to the investment of money subject to the trust, and, in the case of money which is deemed to be capital money arising under the Settled Land Act, 1925, be subject to the provisions of that Act with respect to the application of capital money by the trustees of the settlement.

(5) Nothing contained in this section prejudices or affects the right of any person to require any such money or any part thereof to be applied in rebuilding, reinstating, or repairing the property lost or damaged, or the rights of any mortgagee, lessor, or lessee, whether under any statute or otherwise.

(6) This section applies to policies effected either before or after the commencement of this Act, but only to money received after such commencement.

## **22 Reversionary interests, valuations and audit**

(1) Where trust property includes any share or interest in property not vested in the trustees, or the proceeds of the sale of any such property, or any other thing in action, the trustees on the same falling into possession, or becoming payable or transferable may—

- (a) agree or ascertain the amount or value thereof or any part thereof in such manner as they may think fit;
- (b) accept in or towards satisfaction thereof, at the market or current value, or upon any valuation or estimate of value which they may think fit, any authorised investments;
- (c) allow any deductions for duties, costs, charges and expenses which they may think proper or reasonable;
- (d) execute any release in respect of the premises so as effectually to discharge all accountable parties from all liability in respect of any matters coming within the scope of such release;

without being responsible in any such case for any loss occasioned by any act or thing so done by them [if they have discharged the duty of care set out in section 1(1) of the Trustee Act 2000].

(2) The trustees shall not be under any obligation and shall not be chargeable with any breach of trust by reason of any omission—

- (a) to place any distringas notice or apply for any stop or other like order upon any securities or other property out of or on which such share or interest or other thing in action as aforesaid is derived, payable or charged; or
- (b) to take any proceedings on account of any act, default, or neglect on the part of the persons in whom such securities or other property or any of them or any part thereof are for the time being, or had at any time been, vested;

unless and until required in writing so to do by some person, or the guardian of some person, beneficially interested under the trust, and unless also due provision is made to their satisfaction for payment of the costs of any proceedings required to be taken:

Provided that nothing in this subsection shall relieve the trustees of the obligation to get in and obtain payment or transfer of such share or interest or other thing in action on the same falling into possession.

(3) Trustees may, for the purpose of giving effect to the trust, or any of the provisions of the instrument, if any, creating the trust or of any statute, from time to time (by duly qualified agents) ascertain and fix the value of any trust property in such manner as they think proper, and any valuation so made [...] shall be binding upon all persons interested under the trust [if the trustees have discharged the duty of care set out in section 1(1) of the Trustee Act 2000].

(4) Trustees may, in their absolute discretion, from time to time, but not more than once in every three years unless the nature of the trust or any special dealings with the trust property make a more frequent exercise of the right reasonable, cause the accounts of the trust property to be examined or audited by an independent accountant, and shall, for that purpose, produce such vouchers and give such information to him as he may require; and the costs of such examination or audit, including the fee of the auditor, shall be paid out of the capital or income of the trust property, or partly in one way and partly in the other, as the trustees, in their absolute discretion, think fit, but, in default of any direction by the trustees to the contrary in any special case, costs attributable to capital shall be borne by capital and those attributable to income by income.

## 24 Power to concur with others

Where an undivided share in [any] property, is subject to a trust, or forms part of the estate of a testator or intestate, the trustees or personal representatives may (without prejudice to the [trust] affecting the entirety of the land and the powers of the [trustees] in reference thereto) execute or exercise any [duty or] power vested in them in relation to such share in conjunction with the persons entitled to or having power in that behalf over the other share or shares, and notwithstanding that any one or more of the trustees or personal representatives may be entitled to or interested in any such other share, either in his or their own right or in a fiduciary capacity.

## [25 Delegation of trustee's functions by power of attorney

(1) Notwithstanding any rule of law or equity to the contrary, a trustee may, by power of attorney, delegate the execution or exercise of all or any of the trusts, powers and discretions vested in him as trustee either alone or jointly with any other person or persons.\*

(2) A delegation under this section—

- (a) commences as provided by the instrument creating the power or, if the instrument makes no provision as to the commencement of the delegation, with the date of the execution of the instrument by the donor; and
- (b) continues for a period of twelve months or any shorter period provided by the instrument creating the power.

(3) The persons who may be donees of a power of attorney under this section include a trust corporation.

\* **Editor's Note:** Subsection (1) affects powers of attorney created after the commencement of the Trustee Delegation Act 1999.

(4) Before or within seven days after giving a power of attorney under this section the donor shall give written notice of it (specifying the date on which the power comes into operation and its duration, the donee of the power, the reason why the power is given and, where some only are delegated, the trusts, powers and discretions delegated) to—

- (a) each person (other than himself), if any, who under any instrument creating the trust has power (whether alone or jointly) to appoint a new trustee; and
- (b) each of the other trustees, if any;

but failure to comply with this subsection shall not, in favour of a person dealing with the donee of the power, invalidate any act done or instrument executed by the donee.

(5) A power of attorney given under this section by a single donor—

- (a) in the form set out in subsection (6) of this section; or
- (b) in a form to the like effect but expressed to be made under this subsection, shall operate to delegate to the person identified in the form as the single donee of the power the execution and exercise of all the trusts, powers and discretions vested in the donor as trustee (either alone or jointly with any other person or persons) under the single trust so identified.

(6) The form referred to in subsection (5) of this section is as follows—

‘THIS GENERAL TRUSTEE POWER OF ATTORNEY is made on [date] by [name of one donor] of [address of donor] as trustee of [name or details of one trust].

I appoint [name of one donee] of [address of donee] to be my attorney [if desired, the date on which the delegation commences or the period for which it continues (or both)] in accordance with section 25(5) of the Trustee Act 1925. [To be executed as a deed].’

(7) The donor of a power of attorney given under this section shall be liable for the acts or defaults of the donee in the same manner as if they were the acts or defaults of the donor.

(8) For the purpose of executing or exercising the trusts or powers delegated to him, the donee may exercise any of the powers conferred on the donor as trustee by statute or by the instrument creating the trust, including power, for the purpose of the transfer of any inscribed stock, himself to delegate to an attorney power to transfer, but not including the power of delegation conferred by this section.

(9) The fact that it appears from any power of attorney given under this section, or from any evidence required for the purposes of any such power of attorney or otherwise, that in dealing with any stock the donee of the power is acting in the execution of a trust shall not be deemed for any purpose to affect any person in whose books the stock is inscribed or registered with any notice of the trust.

(10) This section applies to a personal representative, tenant for life and statutory owner as it applies to a trustee except that subsection (4) shall apply as if it required the notice there mentioned to be given—

- (a) in the case of a personal representative, to each of the other personal representatives, if any, except any executor who has renounced probate;
- (b) in the case of a tenant for life, to the trustees of the settlement and to each person, if any, who together with the person giving the notice constitutes the tenant for life; and
- (c) in the case of a statutory owner, to each of the persons, if any, who together with the person giving the notice constitute the statutory owner and, in the case of a statutory owner by virtue of section 23(1)(a) of the Settled Land Act 1925, to the trustees of the settlement.]

### *Indemnities*

## **26 Protection against liability in respect of rents and covenants**

(1) Where a personal representative or trustee liable as such for—

- (a) any rent, covenant, or agreement reserved by or contained in any lease; or
- (b) any rent, covenant or agreement payable under or contained in any grant made in consideration of a rentcharge; or
- (c) any indemnity given in respect of any rent, covenant or agreement referred to in either of the foregoing paragraphs;

satisfies all liabilities under the lease or grant [which may have accrued and been claimed] up to the date of the conveyance hereinafter mentioned, and, where necessary, sets apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum which the lessee or grantee agreed to lay out on the property demised or granted, although the period for laying out the same may not have arrived, then and in any such case the personal representative or trustee may convey the property demised or granted to a purchaser, legatee, devisee, or other person entitled to call for a conveyance thereof and thereafter—

- (i) he may distribute the residuary real and personal estate of the deceased testator or intestate, or, as the case may be, the trust estate (other than the fund, if any, set apart as aforesaid) to or amongst the persons entitled thereto, without appropriating any part, or any further part, as the case may be, of the estate of the deceased or of the trust estate to meet any future liability under the said lease or grant;
- (ii) notwithstanding such distribution, he shall not be personally liable in respect of any subsequent claim under the said lease or grant.

[(1A) Where a personal representative or trustee has as such entered into, or may as such be required to enter into, an authorised guarantee agreement with respect to any lease comprised in the estate of a deceased testator or intestate or a trust estate (and, in a case where he has entered into such an agreement, he has satisfied all liabilities under it which may have accrued and been claimed up to the date of distribution)—

- (a) he may distribute the residuary real and personal estate of the deceased testator or intestate, or the trust estate, to or amongst the persons entitled thereto—
  - (i) without appropriating any part of the estate of the deceased, or the trust estate, to meet any future liability (or, as the case may be, any liability) under any such agreement, and
  - (ii) notwithstanding any potential liability of his to enter into any such agreement; and
- (b) notwithstanding such distribution, he shall not be personally liable in respect of any subsequent claim (or, as the case may be, any claim) under any such agreement.

In this subsection ‘authorised guarantee agreement’ has the same meaning as in the Landlord and Tenant (Covenants) Act 1995.]

(2) This section operates without prejudice to the right of the lessor or grantor, or the persons deriving title under the lessor or grantor, to follow the assets of the deceased or the trust property into the hands of the persons amongst whom the same may have been respectively distributed, and applies notwithstanding anything to the contrary in the will or other instrument, if any, creating the trust.

(3) In this section ‘lease’ includes an underlease and an agreement for a lease or under-lease and any instrument giving any such indemnity as aforesaid or varying the liabilities under the lease; ‘grant’ applies to a grant whether the rent is created by limitation, grant, reservation or otherwise, and includes an agreement for a grant and any instrument giving any such indemnity as aforesaid or varying the liabilities under the grant; ‘lessee’ and ‘grantee’ include persons respectively deriving title under them.

## 27 Protection by means of advertisements

(1) With a view to the conveyance to or distribution among the persons entitled to any real or personal property, the trustees of a settlement[, trustees of land, trustees for sale of personal property] or personal representatives, may give notice by advertisement in the Gazette, and [in a newspaper circulating in the district in which the land is situated] and such other like notices, including notices elsewhere than in England and Wales, as would, in any special case, have been directed by a court of competent jurisdiction in an action for administration, of their intention to make such conveyance or distribution as aforesaid, and requiring any person interested to send to the trustees or personal representatives within the time, not being less than two months, fixed in the notice or, where more than one notice is given, in the last of the notices, particulars of his claim in respect of the property or any part thereof to which the notice relates.