

**N.R.C.D. 175**  
**CONVEYANCING ACT, 1973**

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## N.R.C.D. 175

CONVEYANCING ACT, 1973<sup>1</sup>

**AN ACT to amend, simplify and consolidate the law relating to conveyancing and to provide for related matters.**

*Modes of Transfer of Interests in Land***1. Mode of transfer**

(1) A transfer of an interest in land shall be by a writing signed by the person making the transfer or by the agent of that person duly authorised in writing, unless relieved against the need for a writing by section 3.

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1. The Act was issued as the Conveyancing Decree, 1973 (N.R.C.D. 175), made on the 1st day of May, 1973, and published in the *Gazette* on 4th May, 1973. The Memorandum to the Decree which was published with the Decree is at the end, after the Fourth Schedule.

(2) A transfer of an interest in land made in a manner other than as provided in sections 1 to 10 shall not confer an interest on the transferee.

## 2. Contracts for transfer

A contract for the transfer of an interest in land is not enforceable unless

- (a) it is evidenced in a writing signed by the person against whom the contract is to be proved or by a person who was authorised to sign on behalf of that person, or
- (b) it is relieved against the need for a writing by section 3.

## 3. Transactions permitted without writing

(1) Sections 1 and 2 do not apply to a transfer or contract for the transfer of an interest in land which takes effect

- (a) by operation of law;
- (b) by operation of the rules of equity relating to the creation or operation of resulting, implied or constructive trusts;
- (c) by order of the Court;
- (d) by will or on intestacy;
- (e) by prescription;
- (f) by a lease taking effect in possession for a term not exceeding three years, whether or not the lessee is given power to extend the term;
- (g) by a licence or profit other than a concession required to be in writing by section 3 of the Concessions Act, 1939;<sup>2</sup> or
- (h) by oral grant under customary law.

(2) Sections 1 and 2 are subject to the rules of equity including the rules relating to unconscionability, fraud, duress and part-performance.

## 4. Records of customary transfers

(1) An oral grant of an interest in land under customary law shall be recorded in the form set out in the First Schedule, or as near to that form as circumstances permit,

- (a) incorporating the essential features of the transaction sought to be effected,
- (b) signed by the person making the transfer or by the agent of that person lawfully authorised for that purpose, and
- (c) certified by a registrar having jurisdiction within a part of the area to which the transaction relates.

(2) An adequate plan of the land to which the transfer relates shall, if available, be incorporated in the record referred to in subsection (1).

(3) The registrar shall without delay and without charge prepare three copies of the record referred to in subsection (1).

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2. Cap. 136 of the 1951 Edition of the Laws of the Gold Coast.

(4) The registrar shall deliver to the transferor and the transferee copies of the record certified by the registrar, and shall dispose of the third copy as provided in the Regulations made under subsection (1) of section 6.

(5) The registrar shall refer a doubt concerning issues under this section to a District Magistrate for determination.

#### **5. Effect of record of customary transfer**

A record of a transfer of an interest in land certified by the registrar under section 4 is, as between the parties, prima facie evidence of the matters stated in the record of transfer.

#### **6. Administration of recording scheme**

(1) The Chief Justice, after consultation with the Lands Commission may, by legislative instrument, make Regulations

- (a) providing generally for the administration of the scheme for recording customary transfers,
- (b) prescribing the fee for the supply of copies, and
- (c) permitting the public to inspect at reasonable times the records of the transfers.

(2) The Chief Justice may, by notice published in the *Gazette*, appoint a person to be registrar of customary land transfers for the purposes of this Act, and shall, in the notice, specify the area within which the registrar shall exercise the functions of the registration.

(3) Until the notice under subsection (2) is published, the registrar of a District Court

- (a) shall be a registrar of customary land transfers for the purposes of sections 1 to 10, and
- (b) shall perform the functions in relation to the area of jurisdiction of the District Court to which the registrar is assigned.

(4) The Chief Justice shall appoint an official surveyor for each District Court and any other staff as the business of the District Court requires to provide for the administration of the scheme for recording customary transfer.

(5) Where a transfer relates to land falling within the area of jurisdiction of more than one registrar, the registrar for the area in which the transaction is recorded shall send a copy of the record to the registrars of each of the other areas to which the record relates.

#### **7. Failure to record, and unlawful recording**

(1) An oral grant made under customary law is not valid unless it is recorded under section 4.

(2) The District Court shall authorise the registrar to execute a record of transfer where the transferor without lawful excuse refuses at the request of the transferee to execute a record of a transfer to which section 4 applies.

(3) A transferor who executes a record of a transfer under section 4 without reasonable cause to believe that the transferor has the right to do so, commits an offence and is liable on summary conviction to a fine not exceeding two hundred and fifty penalty units or to a term of imprisonment not exceeding twelve months or to both the fine and the imprisonment.

#### **8. Evidence of original writing**

The rules of evidence which provide for the proof of the contents of an original writing by other evidence when the original writing is not available shall apply in the case of a writing required for the purposes of a transfer.

#### **9. Implication of intention from writing**

The fact that a transfer of an interest in land was made in writing or evidenced in writing shall not by itself give rise to an implication concerning the intention of the parties as to the system of law which they intended to govern the transfer, but it is permissible to make a reasonable inference from the contents of that writing.

#### **10. Definition of transfer**

For the purposes of sections 1 to 9, a transfer of an interest in land includes every sale, lease, gift or any other creation or disposition of an interest in land.

#### **11. Application of sections 1 to 10**

Sections 1 to 10 shall not affect a transfer of an interest in land made before the commencement of this Act.

### *Effect of Conveyances*

#### **12. Parties to a conveyance**

(1) In a conveyance of an interest in land, the expressions used to denote the parties to the conveyance include their heirs, successors, personal representatives and assigns, except in so far as contrary intention is expressed in the conveyance or appears by necessary implication.

(2) The persons expressed to be parties to a conveyance shall, until the contrary is proved, be presumed to be of full age and capacity at the date of the conveyance.

#### **13. Subject-matter of conveyance**

(1) A word used in a conveyance indicating the intention of the transferor to create or dispose of an interest in land is sufficient for that purpose.

(2) A conveyance shall pass the interests and rights in the land which the transferor has power to convey, unless a contrary intention is expressed in the conveyance, or appears by necessary implication.

(3) A conveyance shall not be construed to convey a title or right which the transferor does not have the power to convey.

**14. Interest taken by transferee**

(1) A conveyance of an interest in land may operate to pass the possession or right to possession of the interest without actual entry, but subject to all prior rights to the land.

(2) A conveyance of an interest in land to a corporation solely by its corporate designation without words of limitation shall pass to the corporation the whole interest which the transfer had power to convey, unless a contrary intention appears in the conveyance.

(3) A conveyance of an interest in land to two or more persons, except a conveyance in trust, creates an interest in common and not in joint tenancy,

- (a) unless it is expressed in the conveyance that the transferees shall take jointly, or as joint tenants, or to them and the survivor of them, or
- (b) unless it manifestly appears from the tenor of the instrument that it was intended to create an interest in joint tenancy.

**15. Persons taking who are not parties**

A person may take an interest in land, or the benefit of a condition, right of entry, covenant or an agreement over or respecting land, although that person is not named as a party to the conveyance.

**16. Effect of extinguishment of reversion**

Where a reversion expectant on a lease of land is surrendered or merged, the immediately following reversion shall, as against the lessee, be deemed the reversion for the purpose of preserving the same incidents and obligations as would have affected the original reversion had there not been a surrender or merger of the reversion.

**17. Voidable conveyance**

(1) Subject to subsection (2), a conveyance of an interest in land made with intent to defraud creditors is voidable at the instance of a person prejudiced by that conveyance.

(2) Subsection (1) shall not affect the law of insolvency for the time being in force, and shall not extend to a conveyance of an interest in land where the transferee took the interest in good faith and for valuable consideration.

(3) A disposition of an interest in land without a consideration made with intent to defraud a subsequent purchaser is voidable at the instance of that purchaser.

(4) A disposition under subsection (3) shall not be considered as having been made with intent to defraud by reason only that a subsequent conveyance for valuable consideration was made.

**18. Unconscionability**

The Court may set aside or modify an agreement to convey or a conveyance of an interest in land on the ground of unconscionability where it is satisfied, after considering the circumstances, including the bargaining conduct of the parties, their relative bargaining positions, the value to each party of the agreement reached, and evidence as to the commercial setting, purpose and effect to their agreement, that the transaction is unconscionable.

**19. Conveyance to persons jointly, or to the transferor**

(1) An interest in land may be conveyed by a person to be held jointly by that person with another person in the same manner as it may be conveyed by that person to another person.

(2) A person may in one capacity convey an interest in land to be held in another capacity by that person.

(3) Two or more persons may convey a property vested in them to any one or more of themselves in the same manner as they could have conveyed that property to a third party.

(4) Despite subsection (3), the Court may set aside a conveyance in order to prevent the commission or continuance of a breach of a fiduciary duty.

**20. Agreement with persons jointly**

(1) An agreement made with two or more persons jointly to pay money or to make a conveyance, or to do any other act, to them or for their benefit, implies an obligation to do the act to or for the benefit of the survivor or survivors of them, and to or for the benefit of any other person to whom the right or obligation devolves, and shall be construed as being also made with each of them.

(2) Subsection (1) applies only so far as a contrary intention is not expressed in the agreement, and has effect subject to the agreement.

(3) An agreement under subsection (1), whether express or implied, entered into by a person with that person together with one or more other persons, shall be construed and is capable of being enforced in the same manner as if it had been entered into with the other person or persons alone.

**21. Apportionment of conditions on severance**

(1) Where the reversionary interest in a land comprised in a lease is severed, or where the term granted by a lease is avoided or ceases in respect of part of the land comprised in the lease, a condition contained in the lease shall be apportioned and shall continue to apply to the severed parts of the reversionary interest as severed.

(2) A condition referred to in subsection (1) applies to the term in respect of which each severed part is reversionary, or the term in the part of the land as to which the term has not been surrendered, or has not been avoided or has not otherwise ceased, in the same manner as if the land comprised in each severed part, or the land as to which the term remains subsisting, had alone originally been comprised in the lease.

*Covenants***22. Implied covenants by transferor**

(1) In a conveyance for valuable consideration there shall be implied the covenants for right to convey, quiet enjoyment, freedom from encumbrances and further assurance, in the terms set out in Part One of the Second Schedule.

(2) In a conveyance by way of assignment or sublease of leasehold property for valuable consideration there shall be implied the further covenants relating to validity and past observance of the head lease, in the terms set out in Part Two of the Second Schedule.

(3) In a conveyance by way of sublease of leasehold property for valuable consideration there shall be implied the further covenants relating to future observance of the head lease and production of title deeds and delivery of copies, in the terms set out in Part Three of the Second Schedule.

(4) In a conveyance there shall be implied a covenant by a person who conveys as trustee or under an order of the Court that that person has not personally encumbered the subject-matter of the conveyance, in the terms set out in Part Four of the Second Schedule, which covenant shall be deemed to extend to that person's own acts only.

(5) The covenants referred to in this section shall be deemed to be made by the person or by each person who conveys, as far as regards the subject-matter or share of subject-matter expressed to be conveyed by that person, with the person or each of the persons to whom the conveyance is made, or, where it is made to joint tenants, to each of those persons jointly.

(6) Where a conveyance states that by direction of a person another person conveys, then for the purposes of this section the person giving the direction conveys the subject matter, and the relevant covenants shall be implied accordingly.

(7) A covenant implied under this section may be varied or extended by the conveyance and, as so varied or extended, shall operate in the same manner and with the same consequences as if the variations or extensions were implied under this section.

(8) A variation or extension under subsection (7) which wholly removes the personal liability of the covenantor is void.

### **23. Implied covenants by transferee**

(1) In a conveyance by way of lease for valuable consideration there shall be implied the covenants relating to payment of rent, repair to adjoining premises, alterations and additions, injury to walls, assignment and subletting, illegal or immoral user, nuisance or annoyance, and yielding up the premises, in the terms set out in Part One of the Third Schedule.

(2) In a conveyance by way of sublease for valuable consideration there shall be implied the further covenants relating to future observance of the head lease and permitting repair under the head lease, in the terms set out in Part Two of the Third Schedule.

(3) In a conveyance by way of assignment for valuable consideration of the land comprised in a lease, there shall be implied the covenants relating to payment of rent, future observance of the head lease, and indemnity, in the terms set out in Part Three of the Third Schedule; and where a rent has been apportioned in respect of a land, with the consent of the lessor, the covenants in this subsection shall be implied in the conveyance of that land in the same manner as if the apportioned rent were the original rent reserved, and the lease related solely to that land.



(4) The covenants referred to in this section shall be deemed to be made by each transferee, as far as regards, the subject-matter or share of subject-matter expressed to be conveyed to the transferee with each transferor, if more than one.

(5) A covenant implied under this section may be varied or extended by the conveyance and, as so varied or extended, shall operate in the same manner and with the same consequences as if the variations or extensions were implied under this section.

#### **24. Benefit of implied covenant**

The benefit of a covenant implied under section 22 or 23 shall be attached to the interest of the implied covenantee, and is capable of being enforced by every person in whom that interest or a part of that interest is vested.

#### **25. Benefit of covenants relating to land**

(1) A covenant relating to an interest in land of the covenantee

(a) shall be deemed to be made with the covenantee and the successors in title of the covenantee and the persons deriving title under the covenantee or them, and

(b) is enforceable by the successors referred to in paragraph (a) to the same extent as by the covenantee.

(2) For the purposes of subsection (1), in connection with covenants restrictive of the user of land, “**successors in title**” include the owners and occupiers for the time being of the land of the covenantee intended to be benefited.

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

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

#### **26. Burden of covenants relating to land**

(1) A covenant relating to an interest in land of a covenantor or land capable of being bound by the covenantor

(a) shall, unless a contrary intention is expressed, be deemed to be made by the covenantor on behalf of the covenantor, the successors in title of the covenantor and the persons deriving title under the covenantor or them; and

(b) is enforceable against the successors referred to in paragraph (a) to the same extent as against the covenantor.

(2) This section extends to a covenant to do an act relating to the land, although the subject-matter may not be in existence when the covenant is made.

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

**27. Benefit of covenants to run with reversion**

(1) Rent reserved by a lease, and the benefit of a covenant or provision in the covenant having reference to the subject-matter of the covenant and required to be observed or performed on the part of the lessee, and a condition of re-entry and other conditions in the covenant, shall be attached to the reversionary interest in the land, or in a part of the land, immediately expectant on the term granted by the lease, despite severance of that reversionary interest.

(2) A rent, covenant, right of re-entry or provision contained in the covenant referred to in subsection (1) may be recovered, received, enforced and taken advantage of by the person entitled, subject to the term, to the income of the whole or a part, as the case may require, of the land leased.

(3) When a person referred to in subsection (2) becomes entitled by conveyance or otherwise, the rent, covenant, right of re-entry or provision may be recovered, received, enforced or taken advantage of by that person although that person becomes so entitled after the condition of re-entry or forfeiture has become enforceable.

(4) Subsection (3) shall not render enforceable a condition of re-entry or any other condition waived or released before that person becomes entitled as provided in this Act.

(5) This section has effect without prejudice to a liability affecting a covenantor or the estate of the covenantor on the death of the covenantor.

**28. Burden of covenants to run with reversion**

(1) The obligation under a condition or of a covenant entered into by a lessor with reference to the subject-matter of the lease

- (a) shall, to the extent that the lessor has power to bind the reversionary interest immediately expectant on the term granted by the lease, be attached to that reversionary interest, or a part of that reversionary interest, despite severance of that reversionary interest, and
- (b) may be taken advantage of or enforced by the person in whom the term is vested, and to the extent that the lessor has power to bind the person entitled to that reversionary interest that obligation may be taken advantage of and enforced against a person so entitled.

(2) Subsection (1) has effect without prejudice to a liability affecting a covenantor or the estate or the covenantor on the death of the covenantor.

**29. Restriction on re-entry and forfeiture**

(1) A right of re-entry or forfeiture under a provision in a lease for a breach of a covenant, condition or an agreement in the lease is not enforceable, by action or otherwise, until

- (a) the lessor serves on the lessee a notice,
  - (i) specifying the particular breach complained of,
  - (ii) requiring the lessee to remedy the breach, if the breach is capable of remedy,

- (iii) requiring the lessee to make reasonable compensation in money for the breach, except where the breach consists of a non-payment of rent,
- (b) the lessee has knowledge of the fact that the notice has been served, and
- (c) the lessee fails, within a reasonable time after the service of the notice under paragraph (a), to remedy the breach, if it is capable of remedy,

and except where the breach consists of a non-payment of rent, to make reasonable compensation in money, to the satisfaction of the lessor, for the breach.

(2) Where a notice is sent by registered post addressed to a person at the last known postal address in the Republic of that person then, for the purposes of subsection (1), that person shall be deemed, unless the contrary is proved, to have had knowledge of the fact that the notice had been served as from the time at which the letter would have been delivered in the ordinary course of post.

(3) This section applies despite a provision to the contrary in the lease.

### **30. Relief against re-entry and forfeiture**

(1) Where a lessor is proceeding by action or otherwise to enforce a right of re-entry or forfeiture under a provision in a lease, or for non-payment of rent, the lessee of the property and also a sublease of the property comprised in the lease or a part of the lease may, in the lessor's action or in an action brought by that person for that purpose, apply to the Court for relief.

(2) Subject to subsection (1) of section 29, where a lessee applies to the Court for relief, the Court may grant or refuse the relief having regard to the proceedings and conduct of the parties and to the other circumstances.

(3) A relief granted under subsection (2) may be on the terms as to costs, expenses, damages, compensation, penalty or otherwise, including the granting of an injunction to restrain a similar breach in the future, that the Court in the circumstances of each case thinks fit.

(4) Where a subleasee applies to the Court for relief, the Court may make an order vesting, for the whole term of the lease or a lesser term, the property comprised in the lease or a part of the lease in that subleasee on the conditions as to execution of a deed or any other document, payment of rent, costs, expenses, damages, compensation, giving security or otherwise that the Court in the circumstances of each case may think fit, but the subleasee is not entitled to require a lease to be granted to the subleasee for a longer term than the subleasee had under the original sublease.

### **31. Covenants to repair**

(1) Damages or compensation for a breach of a covenant or an agreement to keep or put premises in repair during the currency of a lease, or to leave or put premises in repairs at the termination of a lease, whether the covenant or agreement is expressed or implied, and whether general or specific, shall not exceed the amount by which the value of the reversion, whether immediate or not, in the premises is diminished owing to that breach.

(2) Damages or compensation shall not be recovered for a breach of that covenant or agreement to leave or put the premises in repair at the termination of a lease, if it is shown that the premises, in whatever state of repair they might be, would at or shortly after the termination of the tenancy have been pulled down, or the structural alterations made in the premises would render valueless the repairs covered by the covenant or agreement.

### **32. Waiver of covenant in a lease**

Where a lessor or the person deriving title under the lessor waives the benefit of a covenant or condition in a lease, the waiver shall extend only to a breach of the covenant or condition to which the waiver specifically relates and shall not operate as a general waiver of the benefit of that covenant or condition, unless a contrary intention appears.

### **33. Effect of licence granted to lessee**

(1) A licence granted to a lessee shall, unless a contrary intention is expressed, extend only

- (a) to a matter specifically authorised to be done or to be omitted to be done, or
- (b) to the specific breach of a provision expressly referred to,

and shall not bar any proceedings for a subsequent breach of the lease.

(2) Despite that licence

- (a) the rights under covenants and power of re-entry contained in the lease remain in force and are available as against a subsequent breach of covenant, condition or any other matter not specifically authorised or waived, in the same manner as if a licence had not been granted; and
- (b) the condition or right of entry remains in force as if the licence had not been granted, except in respect of the particular matter authorised to be done.

### **34. No payment to be exacted for consent to assign**

(1) The payment of money for or in respect of a licence or consent to assign, sublet or part with the possession of, or dispose of, a land or property leased shall not be required, unless the lease contains an express provision requiring that payment.

(2) The prohibition imposed by subsection (1) shall not preclude the right to require the payment of a reasonable sum in respect of legal expenses incurred in relation to the licence or consent.

### *Miscellaneous*

### **35. Production and safe custody of documents**

(1) A person in possession of documents of title is not entitled to retain them on conveying the whole interest in the subject-matters of the conveyance, but shall deliver them at the time of the convenience to the transferee.

(2) Where a person lawfully retains possession of documents and gives to another a written undertaking for production, delivery of copies or safe custody of those documents, then for the period of the possession or control of the documents that person and any other person so having possession or control from time to time are under an obligation, except for good cause shown,

- (a) to produce the documents or any of them
  - (i) at a reasonable time for inspection or comparison with abstracts or copies by the person entitled to request production or by any other person authorised in writing by that person;
  - (ii) in the proceedings of a Court or commission of inquiry, or on an occasion on which production may reasonably be required, for proving or supporting the title or claim of the person entitled to request production, or for any other purpose relative to that title or claim;
- (b) to deliver to the person to request them true copies or extracts, attested or unattested, of or from the documents or any of them;
- (c) to keep the documents safe, whole, uncanceled and undefaced.

(3) A written undertaking for production or delivery of copies shall be performed at the written request of the person to whom the undertaking is given, or of a person, other than a lessee at a rent, having or claiming an interest or a right through or under that person, or otherwise becoming through or under that person interested in or affected by the terms of a document to which that undertaking relates.

(4) The costs and expenses of or incidental to the specific performance of an obligation imposed under subsection (2) by a written undertaking for production or delivery of copies shall be paid by the person requesting performance, except where the person requesting performance apart from the undertaking would be entitled to possession of the documents.

(5) A written undertaking for production or delivery of copies shall not confer a right to damages for loss or destruction of, or injury to, the documents to which it relates, from whatever cause arising.

(6) A person claiming to be entitled to the benefit of a written undertaking for production or delivery of copies may apply to the Court for an order directing production of the documents to which it relates, or delivery of copies or extracts, to that person or some other person on behalf of that person.

(7) For the purposes of subsection (6), the Court

- (a) may make the order and give directions respecting the time, place, terms and manner of production or delivery, and
- (b) may make an order as to costs or any other matter connected with the application.

(8) A person claiming to be entitled to the benefit of a written undertaking for safe custody of documents may apply to the Court to assess damages for a loss or destruction of, or injury to, any of those documents, and the Court

- (a) may direct an inquiry into the amount of damages, and order payment of the damages by the person liable, and

- (b) may make any other order as to costs or any other matter connected with the application.

(9) A written undertaking for production, delivery of copies or safe custody of documents shall satisfy a liability to give a covenant for production, delivery of copies or extracts, or safe custody of documents.

(10) This section applies only so far as a contrary intention is not expressed in the written undertaking.

(11) The rights conferred by the undertaking under this section are in addition to any other rights relative to the production, or inspection, or the obtaining of copies of documents, as are not satisfied by the giving of the undertaking, and have effect subject to the terms of the undertaking and to a provision in the undertaking.

### **36. Statutory commencement of title**

(1) The period of commencement of title whether documentary or otherwise which a purchaser of land may require is thirty years.

(2) An intending assignee of a term of years may require the instrument creating the term, however old.

(3) The intending purchaser of a reversion may require the instrument under which the reversionary interest arises, however old.

(4) A purchaser shall not be deemed to be or ever to have been affected with notice of a matter or thing of which the purchaser might have had notice if the purchaser had investigated the title or made inquiries in regard to matters prior to the period of commencement of title ascertained in accordance with subsection (1), (2) or (3), unless the purchaser actually makes that investigation or those inquiries.

(5) Under a contract to grant or assign,

- (a) a term exceeding three years, whether derived or to be derived out of freehold or leasehold land, the intended lessee or assignee is entitled to call for the title to the freehold;
- (b) a term of three years or less, whether derived or to be derived out of freehold or leasehold land, the intended lessee or assignee is not entitled to call for the title to the freehold.

(6) Under a contract to sell and assign,

- (a) a term exceeding three years derived out of a leasehold interest in land, the intended assignee has the right to call for the title to the leasehold reversion;
- (b) a term of three years or less, derived out of a leasehold interest in land, the intended assignee does not have the right to call for the title to the leasehold reversion.

(7) Where by reason of subsection (4), paragraph (b) of subsection (5) or paragraph (b) of subsection (6) an intending lessee or assignee is not entitled to call for the title to the freehold or to a leasehold reversion that lessee or assignee shall not be deemed to be affected with notice of a matter or thing of which, if that lessee or assignee had contracted that the title should be furnished, the lessee or assignee might have had notice.

(8) Where a lease is made under a power contained in a will, enactment or any other instrument, a preliminary contract for or relating to the lease shall not, for the purpose of the deduction of title down to an intended assignee, form part of the title, or evidence of the title, to the lease.

(9) This section applies

- (a) to contracts for exchange in the same manner as it applies to contracts for sale, and
- (b) only so far as a contrary intention is not expressed in the contract.

### 37. Other statutory conditions of sale

(1) A purchaser of an interest in land shall not

- (a) require the production, or an abstract or a copy, of any deed, will or any other document, dated or made before the time prescribed by section 36, or stipulated, for the commencement of the title, even though it creates a power subsequently exercised by an instrument abstracted in the abstract given to the purchaser; or
- (b) require an information or make a requisition, an objection or inquiry, with respect to that deed, will or document, or the title prior to that time, although the deed, will or other document, or that prior title, is recited, agreed to be produced, or noticed;

and the purchaser shall assume, unless the contrary appears, that the recitals contained in the abstracted instruments, of a deed, will or any other document, forming part of that prior title, are correct and give the material contents of the deed, will or other document so recited, and that a document so recited was duly executed by the necessary parties.

(2) Subsection (1) shall not deprive a purchaser of the right to require the production or an abstract or a copy of

- (a) a power of attorney under which an abstracted document is executed;
- (b) a document creating or disposing of an interest, a power or an obligation which is not shown to have ceased or expired, and subject to which a part of the property is disposed of by an abstracted document;
- (c) a document creating a limitation or trust by reference to which a part of the property is disposed of by an abstracted document.

(3) Where an interest in a land which is sold is held by a lease which is not a sub-lease, the purchaser shall assume, unless the contrary appears,

- (a) that the lease was duly granted, and

- (b) that the covenants and provisions of the lease have been duly performed and observed up to the date of the actual completion of the purchase, on production of the receipt for the last payment due for rent under the lease before the date of actual completion of the purchase.

(4) Where an interest in a land which is sold is held by a sublease, the purchaser shall assume, unless the contrary appears,

- (a) that the sublease and every superior lease was duly granted,
- (b) that the covenants and provisions of the sublease have been duly performed and observed up to the date of actual completion of the purchase, on production of the receipt for the last payment due for rent under the sublease before the date of actual completion of the purchase, and
- (c) that the rent due under every superior lease, and the covenants and provisions of every superior lease, have been paid and duly performed and observed up to that date.

(5) Recitals, statements, and descriptions of fact, matters and parties contained in a deed, an instrument or a statutory declaration, twenty years old at the date of the contract, are, except so far as they may be proved to be inaccurate, sufficient evidence of the truth of those facts, matters and descriptions.

(6) The inability of a vendor to give a purchaser a covenant or any other undertaking to produce and deliver copies of documents of title shall not be an objection to title if the purchaser will, on the completion of the contract, have an equitable right to the production of those documents.

(7) The undertakings and covenants to produce and for safe custody of documents as the purchaser can and does require shall be given at the expense of the purchaser, and the vendor shall bear the expense of perusal and execution on behalf of and by the vendor and on behalf of and by necessary parties other than the purchaser.

(8) A vendor is entitled to retain documents of title where

- (a) the vendor retains a part of the land to which the documents relate, or
- (b) the document consists of a trust instrument or any other instrument creating a trust which is still subsisting, or an instrument relating to the appointment or discharge of a trustee of a subsisting trust.

(9) This section applies

- (a) to contracts for exchange in the same manner as it applies to contracts for sale, and
- (b) subject to a contrary intention expressed in the contract.

(10) This section shall not be construed as binding on a purchaser to complete the purchase in a case where, on a contract made independently of this section, and containing provisions similar to the provisions of this section, or any of them, specific performance of the contract would not be enforced against the purchaser by the Court.



**38. Supplemental instruments**

(1) An instrument expressed to be supplemental to a previous instrument shall be read and have effect as far as may be as if it contained a full recital of the previous instrument.

(2) Subsection (1) does not give a right to an abstract or production of the previous instrument, and a purchaser may accept the same evidence that the previous instrument does not affect the title as if it had merely been mentioned in the supplement instrument.

**39. Giving of notices**

Unless otherwise provided in a conveyance, a notice required to be given under the conveyance shall be in writing, and

- (a) a notice to the transferee is sufficiently served if left addressed to the transferee on the premises conveyed or sent to the transferee by registered post or left at the last known address in the Republic of the transferee or in the case of a company to its registered office in the Republic, and
- (b) a notice to the transferor is sufficiently served if delivered to the transferor personally or sent to the transferor by registered post or left at the last known address in the Republic of the transferor or in the case of a company to its registered office in the Republic.

**40. Execution of conveyances**

(1) A conveyance shall be executed in the presence of and attested by at least one witness.

(2) Where an individual executes a conveyance, that individual shall sign or place the mark of the individual on it, and sealing shall not be necessary.

(3) Where a company to which the Companies Act, 1963 (Act 179) applies executes a conveyance, that conveyance shall be executed in accordance with the Companies Act, 1963.

(4) A conveyance is in favour of a purchaser, duly executed by a corporation aggregate, other than a company referred to in subsection (3), if its seal is affixed to the conveyance in the presence of and attested by its secretary or any other permanent officer or the deputy of the secretary, and a member of the board of directors or other governing body of the corporation or otherwise in accordance with the terms of the instrument or enactment establishing or regulating that corporation.

(5) The transferee under a conveyance is entitled to have that conveyance delivered to the transferee by the transferor as soon as practicable after execution of the conveyance by the transferor and the person whose consent or concurrence is required.

**41. Receipt in conveyance sufficient**

(1) A receipt for consideration money or securities in the body of a conveyance is a sufficient discharge for them to the person paying or delivering them, without a further receipt for them being endorsed on the conveyance.

(2) A receipt for consideration money or any other consideration in the body of a conveyance or endorsed on the conveyance is sufficient evidence in favour of a subsequent purchaser not having notice that the money or other consideration which is acknowledged to have been received was not in fact paid or given, wholly or in part, of the payment or giving of the whole of the money or other consideration.

#### **42. Rules for conveyancers**

(1) A conveyance may be described, at its commencement or otherwise, as a conveyance, an assignment, a lease, a sublease, a trust instrument, an appointment or otherwise according to the nature of the transaction intended to be effected.

(2) A conveyance shall be expressed in clear terms and modern language, and in particular the words "lease", "conveys to", "interest", "land", "all" and "at" may be used in preference to the words "demise", "grants and conveys unto", "estate", "piece or parcel of land", "all and singular" and "situate lying and being at" respectively.

(3) In a conveyance, so far as practicable,

- (a) months shall be written in words without abbreviation and years shall be written in figures;
- (b) the names of the parties to the conveyance shall be written in full without abbreviation followed by their full residential and postal address or, in the case of a body corporate, its registered office or principal place of business;
- (c) where any other conveyance is recited, its registered number shall be stated;
- (d) sums of money shall be written fully in words without abbreviation, followed by the same amount expressed in figures within brackets.

(4) A conveyance shall be made on durable paper.

(5) Failure to observe a provision of this section shall not invalidate a conveyance or provision of a conveyance.

(6) Where a date or sum of money is expressed both in words and in figures, and there is a discrepancy between the words and the figures, the words shall prevail over the figures unless a contrary intention appears in the conveyance.

#### **43. Model precedents**

Instruments in the form of the model precedents contained in the Fourth Schedule, or in similar form or using expressions to a similar effect, are sufficient, in regard to form and expression.

#### **44. Damages and penalty for fraudulent concealment**

(1) A person disposing of property or an interest in property for valuable consideration to a purchaser, or the agent of that person, who with intent to defraud conceals from the purchaser an instrument or encumbrance material to the titles, or falsifies that instrument, is liable to an action for damages by the purchaser or the person deriving title under the purchaser for a loss sustained by reason of the concealment or falsification of the instrument or the encumbrance.

(2) In estimating damages, where the property or an interest in the property is recovered from the purchaser or the persons deriving title under the purchaser, the Court shall take into account the expenditure made by the purchaser or those persons in the improvement of the land.

(3) Without prejudice to subsections (1) and (2), a person disposing of property or an interest in property for valuable consideration to a purchaser, or the agent of that person, who with intent to defraud conceals from the purchaser an instrument or an encumbrance material to the title, or falsifies that instrument, commits an offence and is liable on summary conviction to a fine not exceeding five hundred penalty units or to a term of imprisonment not exceeding two years, or to both the fine and the imprisonment.

#### 45. Interpretation

(1) In this Act, unless the context otherwise requires,

“**assignment**” means the transfer of the residue of a term or interest created by a lease;

“**Court**” means a court of competent jurisdiction;

“**conveyance**” includes a document in writing by which an interest in land is transferred, an oral grant under customary law duly recorded in accordance with this Act, a lease, disclaimer, release and any other assurance of property or of an interest in property by an instrument, except a will;

“**encumbrance**” includes a legal or equitable mortgage, a trust for securing money, a lien, and a charge of a capital or annual sum;

“**land**” includes land covered by water, a house, building or structure, and an interest or a right in, to, or over land or water;

“**lease**” includes a sublease or any other tenancy;

“**purchaser**” includes a purchaser in good faith for valuable consideration and a lessee or any other person who for valuable consideration acquires an interest in property; and where the context so requires “**purchaser**” includes an intending purchaser;

“**rent**” includes a periodical payment in money or money’s worth, reserved or issued out of or charged on land.

(2) Without prejudice to subsection (1), in sections 29 and 30,

“**lease**” includes an original or a derivative sublease, and an agreement for a lease where the lessee has become entitled to have the lease granted;

“**lessee**” and “**lessor**” include an original or a derivative sublessee and sublessor, and those deriving title under the lessee or lessor;

“**sublease**” includes an agreement for a sublease where the sublessee has become entitled to have the sublease granted;

“**sublessee**” includes a person deriving title under a sublessee.

(3) In a conveyance, a contract, a will, an order and any other instrument, unless the context otherwise requires,

“month” means a calendar month;

“person” includes a corporation,

and the singular includes the plural and the plural includes the singular, and the masculine includes the feminine and the feminine includes the masculine.

47. Commencement

Spent.<sup>3</sup>

SCHEDULES

FIRST SCHEDULE

[Section 4]

Record of Customary Transfer

1. Nature of transaction (delete inapplicable words):

- (a) sale
- (b) gift
- (c) lease
- (d) assignment
- (e) pledge
- (f) abusa
- (g) abunu (abehem)
- (h) sowing tenure
- (i) other (specify)

2. Names and addresses of transferors:

- (a) .....
- (b) .....
- (c) .....
- (d) .....
- (e) .....
- (f) .....
- (g) .....
- (h) .....

3. Names and addresses of transferees:

- (a) .....
- (b) .....
- (c) .....

3. The section provided for the 1st day of January, 1974 as the date for the coming into force of the Decree.

FIRST SCHEDULE—continued

- 4. Names of persons whose consent is required and who have given consent:
  - (a) .....
  - (b) .....
  - (c) .....
- 5. Consideration given for the transfer:
  - (a) money (*state amount*) .....
  - (b) drink or goods (*specify*) .....
  - (c) other (*specify*) .....
- 6. Extent of the land to which transfer relates (*the land should be clearly described so that it can be readily identified*):
 

.....

.....

.....

.....

.....

.....
- 7. Duration of the interest given to the transferee:
  - (a) permanent
  - (b) for a limited time (*specify period*) .....
- 8. Any other important matters relating to the transaction:
  - (a) .....
  - (b) .....
  - (c) .....
  - (d) .....
  - (e) .....
- 9. Date from which the transfer is to have effect:
 

.....

*The signature/mark of (transferor)*

After I had read and explained the contents of the above record to the transferor, the transferor informed me that transferor understood it clearly and that it incorporated the essential features of the transaction. The transferor signed/marked it in my presence.

(Signed) .....

*Registrar*

Date .....

FIRST SCHEDULE—continued

Certificate

I, ..... Registrar of Customary Land Transfers for the ..... Registration District in the ..... Region, hereby certify that the above record of a transfer of an interest in land under customary law incorporates the essential features of the transactions sought to be effected.

.....  
Registrar

Dated at ..... this ..... day of ....., 20 .....

SECOND SCHEDULE

[Section 22]

Implied Covenants by Transferor

PART ONE

Covenants Implied in a Conveyance for Valuable Consideration

**Right to convey**

That despite anything done, omitted or knowingly suffered by the covenantor or anyone through whom the covenantor derives title otherwise than by the purchaser for value, the covenantor has, with the concurrency of every other person conveying by the covenantor's direction, full power to convey the subject-matter expressed to be conveyed, in the manner in which it is expressed to be conveyed.

**Quiet enjoyment**

That despite anything done, omitted to be done or knowingly suffered by the covenantor or anyone through whom the covenantor derives title otherwise than by purchase for value, the subject-matter expressed to be conveyed shall remain to and be quietly entered on, received, held, occupied and enjoyed by the covenantee and a person deriving title under the covenant, and the benefit of the covenant shall be received and taken accordingly, without interruption or disturbance by the covenantor or a person conveying by the covenantor's direction, or a person through whom the covenantor derives title otherwise than by purchase for value, or a person rightfully claiming, who is not a person claiming in respect of an interest to which the conveyance is expressly made subject by, through, under or in trust for any of the persons mentioned in this covenant.

**Freedom from encumbrances**

That the subject-matter expressed to be conveyed is freed and discharged from or otherwise sufficiently indemnified by the covenantor against the interests, encumbrances, claims and demands, other than those to which the conveyance is expressly made subject that have been or shall at any time be made, caused or suffered by the covenantor or a person conveying by the covenantor's direction, or a person through whom the covenantor derives title otherwise than by purchase for value, or a person rightfully claiming by, through, under or in trust for any of the persons mentioned in the covenant.

SECOND SCHEDULE—*continued***Further assurance**

That the covenantor and a person conveying by the covenantor's direction and a person through whom the covenantor derives title otherwise than by purchase for value, and a person rightfully claiming, who is not a person claiming in respect of an interest to which the conveyance is expressly made subject by, through, under or in trust for any of the persons mentioned in this covenant, will, on the request and at the cost of a covenantee or of a person deriving title under the covenantee, execute and do the lawful assurances and things for further or more perfectly assuring the subject-matter of conveyance to the covenantee and those deriving title under the covenantee in the manner in which it is expressed to be conveyed, that the covenantee or those deriving title under the covenantee or any of them may reasonably require.

## PART TWO

*Further Covenants Implied in an Assignment or Sublease for Valuable Consideration***Validity of head lease**

That despite anything done, omitted to be done or knowingly suffered by the covenantor or anyone through whom the covenantor derives title otherwise than by purchase for value, the head lease is at the time of conveyance a good, valid and effectual lease of the property conveyed, and is in full force, unforfeited and unsurrendered, and has not become void or voidable.

**Past observance of head lease**

That despite anything done, omitted to be done or knowingly suffered by the covenantor or anyone through whom the covenantor derives title otherwise than by purchase for value

- (a) the rent payable under the head lease by the lessee and the person deriving title under the lessee has been paid up to the time of conveyance;
- (b) the covenants, conditions and agreements contained in the head lease and to be observed and performed by the lessee and the persons deriving title under the lessee have been observed and performed up to the time of conveyance.

## PART THREE

*Further Covenants Implied in a Sublease for Valuable Consideration***Future observance of head lease**

During the term of the sublease and a renewal of the sublease to pay the rent reserved by the head lease and to perform, so far as the covenantee is not liable for the performance under the covenants on the covenantee's part implied or otherwise contained in this sublease, of the lessee's covenants contained in the head lease.

**Production of title deeds and delivery of copies**

To produce the head lease and to deliver copies of the head lease, which covenant shall be deemed to be a written undertaking in accordance with section 35 (2) of the Conveyancing Act, 1973.<sup>4</sup>

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4. N.R.C.D. 175.

SECOND SCHEDULE—*continued*

## PART FOUR

*Implied Covenant by Person Conveying as Trustee or Under an Order of the Court*

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

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## THIRD SCHEDULE

[Section 23]

*Implied Covenants by Transferee*

## PART ONE

*Covenants Implied in a Lease for Valuable Consideration***Payment of rent**

To pay the reserved rent at the times and in the manner specified in the lease.

**Repairs to adjoining premises**

To permit the covenantee and the agents of the covenantee with the necessary workmen and appliances at reasonable times after having given written notice to the covenantor to enter on the premises leased to execute repairs or alterations on the adjoining premises now or at any other time belonging to the covenantee who shall make good the damage occasioned to the covenantor by that entry.

**Alterations and additions**

Not without the previous written consent of the covenantee to erect a new building on the premises leased or make an alteration or addition to the premises leased.

**Damage to walls**

Not without the previous written consent of the covenantee to cut or damage any of the walls or timbers of the premises leased or permit that cutting or damage to be done.

**Assignment and subletting**

Not without the previous written consent of the covenantee to assign, sublet or part with the possession of the premises leased or a part of those premises, which consent shall not to be unreasonably withheld in the case of a respectable and reasonable person.

**Illegal or immoral user**

Not to use or permit the premises leased or a part of those premises to be used for an illegal or immoral purpose.



THIRD SCHEDULE—*continued***Nuisance or annoyance**

Not to do or permit anything to be done in or on the premises leased or a part of those premises which may be or become a nuisance or annoyance or cause damage to the covenantor, the covenantor's tenants or the occupiers of adjacent or neighbouring premises.

**Yielding up the premises**

At the determination of the term of the lease to yield up to the covenantor the premises leased and the additions to those premises and the fittings and covenantor's fixtures in the premises in good and tenantable repair.

## PART TWO

*Further Covenants Implied in a Sublease for Valuable Consideration***Future observance of head lease**

During the term of the sublease and a renewal of the sublease to perform and observe the covenants on the lessee's part contained in the head lease, in so far as they are applicable to the premises subleased except only the covenant for payment of the rent reserved by the head lease and a covenant for the performance of which the covenantor is liable under the covenants on the covenantor's part implied or otherwise contained in this sublease, and to keep the covenantor indemnified against the claims, damages, costs and expenses related to the head lease, in so far as they relate to the premises subleased.

**Permitting repairs under head lease**

To permit the covenantor and the covenantor's agents with the necessary workmen and appliances at reasonable times after giving written notice to the covenantor to enter on the premises subleased for a purpose which in the opinion of the covenantor is necessary to enable the covenantor to comply with the covenants on the lessee's part contained in the head lease so far as those covenants are not to be performed by the covenantor.

## PART THREE

*Covenants Implied in an Assignment for Valuable Consideration of the Land Comprised in a Lease*

That the assignee or the persons deriving title under the assignee will at all times from the date of the assignment or other date stated in the assignment,

*Payment of rent*

- (a) duly pay the rent becoming due under the lease creating the term or interest for which the land is conveyed;

*Future observance of head lease*

- (b) observe the perform the covenants, agreements and conditions contained in the lease creating the term or interest for which the land is conveyed and on the part of the lessees to be observed and performed;

*Indemnity*

- (c) indemnify the assignor and the assignor's property against any proceedings, costs, claims and expenses on account of an omission to pay the rent or a breach of any of the covenants, agreements and conditions.

FOURTH SCHEDULE

[Section 43]

Model Precedents

1—Precedent or Conveyance on Sale of Freehold

THIS CONVEYANCE is made on the first day of January, 1975 between the vendor KAMEIADU of House 1/23, P. O. Box 18250, Kumasi in the Ashanti Region and the purchaser JOHN MENSAH of 10, Hill Road, Jasikan in the Volta Region.

1. By a conveyance made the first day of June, 1965 between Albert Ankrah of Accra and the vendor (registered number 6543/65) the property known as Plot 600, Castle Street, Accra (in this conveyance called "the property") was conveyed to the vendor forever.
2. The vendor as owner/trustee conveys the property to the purchaser forever in consideration of ten thousand cedis (¢10,000) paid by the purchaser to the vendor.
3. The vendor acknowledges the receipt from the purchaser of ten thousand cedis (¢10,000) the purchase price of the property.

The property consists of a house and land bounded (*description of boundaries*) and is indicated by the colour red on the attached plan which shows the relevant measurements.

.....  
Signed by KAMEIADU

in the presence of:

.....  
Signed by JOHN MENSAH

in the presence of:

2—Precedent of Conveyance of Property as a Gift

THIS CONVEYANCE is made on the first day of January, 1975, between the donor JOHN QUARTEY of 5, Black Star Square, Accra in the Greater Accra Region of Ghana and the donee MABEL PETERSON of 10, St. George's Square, Winneba in the Central Region.

1. By a conveyance made the first day of August, 1970 between Albert Ankrah of Accra and the donor (registered number 6543/70) the property known as 10, Sahara Street, Accra (in this conveyance called "the property") was conveyed to the donor forever.
2. The donor as owner conveys the property to the donee forever as a gift.
3. The property consists of a house and land bounded (*description of boundaries*) and is indicated by the colour red on the attached plan which shows the relevant measurements.

.....  
Signed by JOHN QUARTEY

in the presence of:

FOURTH SCHEDULE—*continued*3—*Precedent of a Lease*

THIS LEASE is made on the first day of January, 1975 between the lessor YAKUBU DAGOMBA of House A/6543, P.O. Box 18250, Tamale in the Northern Region of Ghana and the lessee AKOSUA OKAI of 5, Market Road, Accra in the Greater Accra Region.

1. The lessor leases to the lessee the property known as Flat 2, Roman Road, Accra (in this lease called "the property") for a term of twenty years from the first day of February, 1975.
2. The lessee shall pay to the lessor a yearly rent of five hundred cedis (¢500) payable half-yearly in advance on 1st February and 1st August every year.
3. The property consists of (*here describe the property by reference to an attached plan*).
4. The lessee shall have the following rights:  
(*Here set out the rights to be enjoyed by the lessee either concurrently with or to the exclusion of the lessor, e.g. rights of way, etc.*).
5. The lessor shall have the following rights to the exclusion of the lessee:  
(*Here set out any express covenants, and any variation, extension or exclusion of the implied statutory covenants, that may be required.*)
6. The lessor covenants with the lessee as follows:  
(*Here set out any express covenants, and any permissible variation or extension of implied statutory covenants, that may be required.*)
7. (*Here set out any further provisions required, e.g. right of re-entry for breach, option to renew*)

.....  
Signed by YAKUBU DAGOMBA

in the presence of:

THE MARK OF AKOSUA OKAI:

After I had read and explained the contents of the above conveyance to Akosua Okai she informed me that she understood the document clearly and she signed the conveyance by making her mark in my presence.

.....  
*Witness*

4—*Precedent of a Sublease*

THIS SUBLEASE is made on the first day of January, 1975 between the lessor KOJO MENSAH of Palm Grove, P.O. Box 18250, Elmina in the Central region of Ghana and the lessee KWASIAMOAH of 18, Fifth Avenue, P.O. Box 18250, Sunyani in the Brong-Ahafo Region.

1. By a head lease made the first day of June, 1965 between Albert Ankrah of Accra and the lessor (registered number 6543/65) the property at Church Street, Elmina (in this sublease called "the property") was leased to the lessor for a term of fifty years from the first day of January, 1966.
2. The lessor sublets the property to the lessee for a term of twenty years from the first day of January, 1975.
3. The lessee shall pay to the lessor a yearly rent of two hundred cedis (¢200) payable quarterly in advance on 1st January, 1st April, 1st July, and 1st October every year.
4. The lessor acknowledges the receipt from the lessee of fifty cedis (¢50) being rent paid by the lessee up to and including 31st March, 1975.

FOURTH SCHEDULE—continued

5. The property consists of (*here describe the property by reference to an attached plan*).

6-10. (*Here set out lessee's rights, lessor's rights, lessee's covenants, lessor's covenants and any further provisions, as in clauses 4 to 8 of the model precedent of a lease.*)

.....  
Signed by KOJO MENSAH

in the presence of:

.....  
Signed by KWASI AMOAH

in the presence of:

5—*Precedent of an Assignment*

THIS ASSIGNMENT is made on the first day of January, 1975 between the vendor QUICK PROFITS LIMITED a company incorporated under the laws of Ghana whose registered office is at 5 Cornmill Road, Takoradi in the Western Region of Ghana and the purchaser KOFI DARKO of 12, Castle Road, Elmina in the Central Region.

1. By a lease (in this assignment called "the lease") made the first day of June, 1969 between Tim Guard of Accra in the Greater Accra Region and the vendor (registered number 5643/69) the property known as the Castle, Elmina (in this assignment called "the property") was leased to the vendor for a term of fifty years from the first day of June, 1969.

2. The vendor assigns to the purchaser the vendor's leasehold interest in the property in consideration of ten thousand cedis (¢10,000) paid by the purchaser to the vendor.

3. The vendor acknowledges the receipt from the purchaser of ten thousand cedis (¢10,000) the purchase price of the property.

4. The property consists of a building and land bounded (*description of boundaries*) and is indicated by the colour red on the attached plan which shows) the relevant measurements.

5. The property is subject to a yearly rent of five hundred cedis (¢500) made payable by the lease and to the covenants and restrictions contained in the lease.

THE COMMON SEAL of QUICK PROFITS LIMITED was affixed to this assignment in the presence of:

.....  
*Director*

.....  
*Secretary*

.....  
Signed by KOFI DARKO

in the presence of:

FOURTH SCHEDULE—*continued*6—*Explanation of Implied Covenants*

1. In the precedent of conveyance on sale of freehold, being for valuable consideration, there are implied the vendor's covenants for right to convey, quiet enjoyment, freedom from encumbrances and further assurance, by virtue of section 22 (1).
2. In the case of conveyance of property as a gift, covenants not are implied.
3. In the precedent of a lease, being of valuable consideration, there are implied,
  - (a) the lessor's covenants for right to convey, quiet enjoyment, freedom from encumbrances and further assurance, by virtue of section 22 (1);
  - (b) the lessee's covenants relating to payment of rent, repair to adjoining premises, alterations and additions, damage to walls, assignment and subletting, illegal or immoral user, nuisance or annoyance, and yielding up the premises, by virtue of section 23 (1).
4. In the precedent of a sublease, being for valuable consideration, there are implied,
  - (a) the lessor's covenants relating to right to convey, quiet enjoyment, freedom from encumbrances, further assurance, validity of the head lease, past observance of the head lease, future observance of the head lease and production of title deeds, and delivery of copies, by virtue of sections 22 (1), 22 (2) and 22 (3);
  - (b) the lessee's covenants relating to payment of rent, repair to adjoining premises, alterations and additions, damage to walls, assignment and subletting, illegal or immoral user, nuisance or annoyance, yielding up the premises, future observance of the head lease, and permitting repair under the head lease, by virtue of sections 23 (1) and 23 (2).
5. In the precedent of an assignment, being for valuable consideration, there are implied,
  - (a) the vendor's covenants relating to right to convey, quiet enjoyment, freedom from encumbrances, further assurance, validity of the head lease, and past observance of the head lease, by virtue of sections 22 (1) and 22 (2);
  - (b) the purchaser's covenants relating to payment of rent, future observance of the head lease, and indemnity, by virtue of section 23 (3).

## CONVEYANCING ACT, 1973

## MEMORANDUM

For transactions relating to land such as buying, selling and leasing, a need exists to develop methods and machinery which are reliable, simple, cheap, speedy and suited to the present-day needs of our country. One much needed step in this direction is to bring up to date the law relating to conveyancing, and to simplify conveyancing forms. Such a step will free conveyancing practice in Ghana from dependence on English law and from the need to look for this law in many different enactments. There is also a need to discourage fraudulent conveyances by imposing a general requirement of writing.

The Act, which follows the recommendations of the Law Reform Commission, brings together in modern form the scattered law relating to conveyancing, with many simplifications and improvements. It also deals with the problem of transfers of interests in land in accordance with customary law. Such transfers do not, at present, have to be in writing, although the practice of customary transfers in writing is now very widespread.

In response to the national need for methods of transfer that are reliable, simple, cheap, speedy and suited to the circumstances of our country, provision is made for an imaginative development of the registries of our court system to handle the recording of customary transfers of interests in land. The intention is to require a recording in the Register of a District

MEMORANDUM—*continued*

Court<sup>5</sup> of transfers of interests in land, and to make such a recording a condition for validity in the same way as the traditional “guaha” was essential. In this way a permanent record will be progressively submitted for the indispensable but evanescent memory of witnesses to the “guaha” transaction. Provision is also made for the appointment of surveyors to ensure reasonable identification of the lands which form the subject-matter of recorded transactions.

Section 1 provides that a transfer of an interest in land shall be of no effect unless it is in writing signed by the transferor or his agent, or unless it falls within the class of exceptions specified in section 3. Section 2 contains similar provisions in respect of contracts for transfers.

The evil to which the requirement of writing is directed is the making of fraudulent conveyances. Hence certain classes of transfer which by their nature are not likely to be fraudulent—such as those taking effect by operation of law or equity, by order of the court, or upon the—death of any person—are excluded from the requirements of sections 1 and 2 by section 3 of the Act.

Section 3 (1) (*h*) excludes oral grants under customary law from the requirement of writing. It is important that comprehensive records of such transfers be kept, and therefore sections 4 and 5 make provision for such recording, a significant step in developing permanent records of transfers of interests in land while preserving the customary mode of transfer. The transfer is to be recorded in the form contained in the First Schedule, signed by the transferor or his agent and certified by the appropriate registrar.

Section 4 (3) provides for the preparation by the registrar of copies of the transaction. The Magistrate<sup>6</sup> settles any doubts concerning matters to be recorded and the registrar delivers and preserves the appropriate copies.

Section 5 provides that the certified record shall be *prima facie* evidence of the matters stated therein.

Section 6 (1) provides that the Chief Justice may make Regulations for the administration of the recording scheme. This should give the system adequate flexibility. Subsections (2) and (3) provide for the appointment of registrars, official surveyors and other personnel necessary for the administration of the recording scheme.

Section 7 helps to ensure the recording of customary transfers. Subsection (1) provides that they shall be of no effect unless recorded, thus providing a significant incentive to record. Subsection (2) makes it mandatory that the District Court<sup>7</sup> authorise execution of a record where the transferor without lawful excuse refuses to execute the record. This will enable transferees to obtain a valid transfer despite any unwillingness of the transferor to act in accordance with the law. Subsection (3) is designed to discourage dishonest conveyances of property by making such action a criminal offence.

Section 8 is to remind the courts of the operation of the so-called best evidence rule. Once a writing is made, this Part is satisfied. So if a writing is thereafter lost or destroyed, other evidence of its contents will be admissible.

Section 9 is designed to insulate the requirement for a writing from any impact on the choice of law rules.

Section 10 defines the transactions dealing with the land covered by this Part.

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5. The District Court became a Community Tribunal, and is now again a District Court by virtue of section 5 of the Courts (Amendment) Act, 2002 (Act 620).

6. Formerly the chairman of the Community Tribunal.

7. Formerly the Community Tribunal.

MEMORANDUM—*continued*

Section 11 provides that Part I shall not have retroactive effect.

Part II describes the effect of conveyances and is designed to simplify the law. Thus section 12 specifies that the parties to a conveyance include their heirs, successors, personal representatives and assigns. Of course, the parties may vary this definition by agreement. Section 12 (2) creates the presumption that the parties are of full age and capacity to avoid having to prove it in every case.

Section 13 describes the subject-matter of conveyances. Any appropriate word indicating the intention of the transferor to create or dispose of an interest in land is sufficient. All rights and interests which the transferor has are passed to the transferee unless otherwise indicated. A conveyance does not pass any greater interest than the transferor has power to convey.

By virtue of section 14 (1), entry is not necessary to pass possession or a right thereto. Section 14 (2) specifies that conveyances to corporations are to the corporations in their public capacity and pass the whole interest of the transferor unless indicated otherwise.

Subsection (3) reverses the presumption in favour of a joint tenancy found in English law and heretofore in Ghana *Fynn v Gardiner* (1953) 14 W.A.C.A. 260. The purpose of the change is to bring the presumption into conformity with the probable intentions of parties to such transactions in Ghana (see K. Bentsi-Enchill, *Ghana Land Law*, (1964) pp. 242-247).

Section 15 provides that a person may take a benefit under a conveyance although he is not named as a party to the conveyance.

Section 16 makes clear that after a reversion expectant on a lease is surrendered or merged, the interest which confers the next vested right is the reversion. This preserves the same incidents and obligations as would have affected the original reversion.

Section 17 seeks to protect creditors, purchasers in good faith and subsequent transferees from fraud. Thus under section 17 (1) conveyances with intent to defraud creditors are voidable by persons affected. But this subsection does not extend to conveyance to transferees in good faith for valuable consideration and does not affect the law of insolvency. Under section 17 (3), a subsequent purchaser may avoid dispositions made with intent to defraud him. However, the mere fact of a subsequent conveyance does not in itself prove the requisite intent to defraud.

Section 18 gives the court power to set aside or modify an agreement or conveyance for unconscionability. It also indicates some of the more important factors to be considered in determining unconscionability, but requires the court to consider all the circumstances.

Section 19 (1) and (2) provide for conveyances by a person to himself and another and to himself in a different capacity. Subsection (3) provides that two or more persons may convey to any one or more of themselves as they might convey to a third party. Subsection (4) gives the court power to set aside a conveyance to prevent the commission or continuance of a breach of a fiduciary duty. This subsection is intended to prevent a fiduciary from conveying to himself in another capacity to deprive another of his interests.

Section 20 (1) provides that the benefit of an agreement made with persons jointly shall be available to the survivors of them, and to their successors. Section 20 (2) allows the parties to vary the effect of section 20 (1). Under section 20 (3) such agreements and those entered into by a person with himself and another or others shall be construed and be capable of enforcement as if the covenant or agreement had been entered with the other person alone.

Section 21 (1) apportions every condition in a lease to the several parts of the reversionary estate, where the reversionary interest is served or where the term is avoided or ceases in regard to part of the land. Thus, the conditions in the lease go with appropriate portion that is severed. Section 21 (2) merely sets out the scope of such conditions to be as if each part had been comprised in the lease originally.

MEMORANDUM—*continued*

Section 22 (1) sets out the four usual covenants to be implied where the transferor is selling for valuable consideration. Section 22 (2) specifies that in addition to the above covenants, in conveyances by way of assignment or sublease there shall be implied further covenants relating to validity and past observance of the headlease. Further covenants are implied by the remaining provisions of this section. Section 22 (7) allows the parties to vary the covenants in the conveyance. The covenants implied by section 22 are set out in the Second Schedule.

Section 23 is the analogue of section 22 in so far as it provides for implied covenants by the receiving party. Thus section 23 (1) sets out the implied covenants in a lease, section 23 (2) the further covenants in a sublease, and section 23 (3) the covenants in an outright assignment. Section 23 (4) specifies that the implied covenants by the receiving party shall be made by each transferee with each transferor as far as regards the subject-matter expressed to be conveyed. Section 23 (5) gives the parties the power to vary or extend the covenants in the conveyance. The covenants dealt with by section 23 are set out in detail in the Third Schedule.

Section 24 specifies that the benefits of implied covenants go with the interest of the implied covenantee. They thus become part of that covenantee's interest.

Section 25 deals with the benefits of covenants relating to land.

Section 26 deals with the burden of covenants relating to land.

Section 27 specifies which benefits of covenants run with reversions and section 28 sets out the burden of covenants which run with the reversion, these are the logical extensions of sections 25 and 26 in so far as they relate to reversions and, like those sections, are designed to simplify and shorten the conveyancing document.

Sections 29 and 30 deal with questions of re-entry and forfeiture. Section 29 sets out the process by which a right of re-entry or forfeiture. Sections 30 (2) and 30 (3)<sup>8</sup> give the court latitude to consider various relevant matters and wide power to provide adequate relief. This section reflects the view that the court must have discretion to deal with such cases as it sees fit. Where relief is granted the effect is to restore the lease as if it had never been forfeited, so that an underlessee cannot refuse to pay rent for the period elapsing between the forfeiture and the granting of relief.

Section 31 (1) sets limits on damages or compensation for breach of a covenant or agreement regarding repair. Damages shall not exceed the amount by which the reversion is diminished. A tenant's liability to repair depends upon the nature of the tenancy in the absence of express covenant or agreement. Section 31 (2) recognises that it is unfair to require damages where changed circumstances will shortly render alterations valueless.

Section 32 enacts the general rule that waiver shall extend only to breaches of a covenant to which the waiver specifically relates and does not operate as a general waiver, unless a contrary intention appears.

Section 33 limits the situations in which licences are extended. It restricts them to the specific act or omission and they are not extended to subsequent ones, unless a contrary intention is expressed. Likewise, all rights and conditions of re-entry remain in force as against subsequent breaches of the covenant as if the licence had not been granted.

Section 34 prohibits the unjust practice of demanding money payment for a licence or consent to assign, sublet, etc., where the lease does not contain an express provision requiring such payment.

Section 35 simplifies the law relating to production and control of documents of title.

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8. Now subsections 30 (2), 30 (3) and 30 (4).



MEMORANDUM—*continued*

Section 36 sets the period of commencement of title which a purchaser may require at thirty years. This is the present practice of lawyers in Ghana. The title may be documentary or otherwise; this takes into account modes of showing title under customary law. The section sets out the various cases in which documents of title may be called for, and contains consequential provisions relating to notice. These provisions reflect an attempt to strike a compromise between the need for security of title and the unnecessary trouble and expense of giving the right to call for the title to any lessee. The period of three years has been selected because terms in excess of that period will often be commercial leases and security is necessary to encourage commercial undertakings. Equitable interests will also be protected whether the check was made or not where the right existed. Section 36 (12)<sup>9</sup> gives the parties the right to vary these terms by contract.

Section 37 (1) to (5) relate to inquiries or objections about matters and documents anterior to the root of title. These subsections fill in the details of the policy set out in section 36, with the exception stated in section 37 (2). Section 37 (6) removes the objection to title upon the vendor's inability to produce the documents when an equitable right to production accrues upon completion of the contract. Section 37 (7) allocates the expenses for production. Section 37 (8) relates to the vendor's right to retain documents of title.

Sections 38 to 46 deal with supplemental instruments, notices, the procedure for formal execution of conveyances, receipts and other matters. Section 42 sets out a number of important rules for conveyancers which will assist them to frame conveyances in clear modern English, avoiding such archaic jargon as the phrases "piece or parcel" and "situate, lying and being". Section 43 and the Fourth Schedule provide basic model precedents of a conveyance on sale, a conveyance as a gift, a lease, a sublease and an assignment. From these precedents it will be seen that the contents of a conveyance have been simplified to the bare essentials; no longer will it be necessary to prepare cumbersome and lengthy conveyances in language unintelligible to the parties. In particular, such useful provisions of the Act as sections 12 (parties to a conveyance) and 22 and 23 (covenants implied by law) enable the written contents of a conveyance to be drastically shortened. Conveyancers will now be expected to take full advantage of these improvements, which are long overdue.

Section 44 gives a right to damages for any fraudulent concealment of an instrument or encumbrance material to the title. Sections 45 and 46 contain supplementary provisions. The Act is given a commencement date of 1st January, 1974. This will give conveyancers some time to become acquainted with its provisions and also to enable any objections and criticisms of its provisions to be considered before it comes into operation.

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9. Now paragraph (b) of subsection (9).

