23. Freehold Covenants

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Ben McFarlane and Sarah Nield

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Author(s): Ben McFarlane, Nicholas Hopkins, and Sarah Nield

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All books in this flagship series contain carefully selected substantial extracts from key cases, legislation, and academic debate, providing able students with a stand-alone resource. This chapter investigates how certain covenants relating to land between freehold owners can overcome the normal privity of contract rule, and can be enforced by and against third parties. Restrictive covenants significantly control land use, and supplement and complement public planning laws. The burden of a negative covenant will not run at common law but may run in equity by virtue of the rule in *Tulk v Moxhay*. The benefit of a restrictive covenant will run if it is: expressly assigned; annexed to the land; or subject to a building scheme. The Lands Chamber of the Upper Tribunal has jurisdiction under s 84 of the Law of Property Act 1925 to modify or extinguish restrictive covenants. Reform recommendations offer a final acknowledgement that both negative and positive covenants affecting land should be a ‘genuine proprietary interests’ rather than ‘a peculiar species of personal contract’.
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