

Restrictive covenants

	Common law	Equity
Passing of benefit	Transmission of the benefit: • covenant touches and concerns the land of the covenantee; • covenantee owns the legal estate in the land; • the successor of the covenantee must have a legal estate; • original parties must have intended that the covenant should run with the covenantee's land (s78 LPA 1925). Also note: — s56 LPA 1925; — Contracts (Rights of Third Parties) Act 1999.	Transmission of the benefit: • the covenant must touch and concern the land; • covenantee must have owned land capable of benefiting from the covenant; • the benefit of the covenant must have passed to the successor in title in one of three ways: — annexation to land – express, implied or statutory under s78 LPA 1925; — assignment of the covenant; — building schemes and schemes of development.
Passing of burden	Transmission of the burden: • burden of the covenant does not pass at common law; • examples of exceptions to this are: — a chain of indemnity covenants; — conveyance contains a rentcharge; — under the principle in <i>Halsall v Brizell</i>.	Transmission of the burden: • assignee of burdened land is bound by covenant if: — the covenant is negative in nature; — there is a benefited and burdened land; — the covenant touches and concerns the benefited land; — the burden of the covenant was intended to run with the land (s79 LPA 1925); • restrictive covenant protected in the appropriate way in either unregistered or registered land.