



NUS

National University
of Singapore

FACULTY OF LAW

PART A BAR COURSE 2011

LAND LAW

READING LIST & SYLLABUS

COURSE CONTENT

This course introduces the basic elements of Singapore land law. It begins with the historical background of the law operative in Singapore. The concepts of tenure and estates as modified by local legislation, particularly the State Lands Act, will be considered. The course then focuses on the ways in which land can be held and dealt with. Specific interests in land, such as leases, mortgages, licences, easements, restrictive covenants, and covenants relating to freehold land will be considered. In regard to the Land Titles Act, the concept of indefeasibility and the role and function of caveats will be discussed. Students will also be introduced to the law relating to HDB flats and to the special nature of ownership in strata title properties, including the collective sale of such properties.

EXAMINATION

Candidates will be assessed solely by way of the end of semester examination. All topics in this syllabus will be examinable.

STATUTES

- *Conveyancing and Law of Property Act (CLPA) (Cap 61)
- *Land Titles Act (LTA) (Cap 157)
- State Lands Act (Cap 314)
- Land Titles (Strata) Act (Cap 158)
- Building Maintenance and Strata Management Act (Cap 30C)
- Registration of Deeds Act (RODA) (Cap 269)
- Residential Property Act (Cap 274)
- Singapore Land Authority Act (Cap 301)
- Settled Estates Act (Cap 293)
- Application of English Law Act (Cap 7A)
- Civil Law Act (Cap 43)

* Students should purchase their own copies of these statutes.

Certain materials are red-spotted in the Reserve Section of the Library.

Virtually all the materials listed here are available online using Lawnet (www.lawnet.com.sg), which contains Singapore legislation, Singapore, Malaysian and English cases, and also articles published in certain law reviews. In addition, many of the cases and statutory materials listed here are freely available on the internet via Austlii (www.austlii.edu.au), Bailii (www.bailii.org), Singapore Law (www.singaporelaw.sg), and Singapore Statutes Online (statutes.agc.gov.sg).

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BOOKS

The recommended textbooks

(a) for Singapore law:

Tan SY, *Principles of Singapore Land Law* (3rd ed, 2009)

(b) for English law either:

Gray & Gray, *The Elements of Land Law* (5th ed, 2008); or
Megarry & Wade, *The Law of Real Property* (7th ed, 2008) Harpum (ed)

* Students are expected to read Tan's book and either Gray & Gray or Megarry & Wade under the respective topics where relevant.

For extra reading, the following are recommended:

(a) for Singapore law:

Ricquier WJM, *Land Law* (4th ed, 2010)

Lye LH, *Landlord and Tenant* (Singapore Law Series No 3) (1990)

Tan SY, *Private Ownership of Public Housing in Singapore* (1998)
Teo KS, *Strata Title in Singapore and Malaysia* (3rd ed, 2009)

Tang, "The Legal Representation of the Singaporean Home and the Influence of the Common Law" (2007) 37 HKLJ 81

(b) generally:

Chambers, *An Introduction to Property Law in Australia*

Butt, *Land Law*

Rudden & Lawson, *Introduction to the Law of Property*

Tee (ed), *Land Law: Issues, Debates, Policy*

Baalman, *The Singapore Torrens System*

Stein and Stone, *Torrens Title*

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[A] INTRODUCTION AND BACKGROUND**1. The reception of English land law in Singapore**

The foundation of Singapore's land law is English land law, prior to the English statutory reforms in 1925. This is subject to local statutes, particularly the State Lands Act and the Land Titles Act (which introduced the Torrens system of conveyancing).

Ricquier, "Land Law and Common Law in Singapore" in *The Common Law in Singapore and Malaysia* (AJ Harding ed, 1985) Ch 8

2. "Land" - fixtures

LTA s 4

Holland v Hodgson [1872] LR 7 CP 328

Elitestone Ltd v Morris [1997] 1 WLR 687 (HL)

Kiah v Som (1953) 1 MLJ 82

Pan-United Marine Ltd v Chief Assessor [2008] 3 SLR(R) 569

3. Estates in land and the State Lands Act

Fee simple, estate in perpetuity, life estate, State lease, temporary occupation licence

The estate in perpetuity, State lease and the temporary occupation licence (not an interest in land but a mere temporary right of occupation granted by the State) are creations of statute, created by the State Lands Act.

State Lands Act (Cap 314) and State Lands Rules (Cap 314), R1

Re Section 16(2) Land Titles Act [1992] 2 SLR 419

4. Registered interests, equitable interests and mere equity**5. Future interests**

(a) Remainders (vested and contingent)

(b) Reversions

(c) The rule against perpetuities and the class closing rules (Civil Law Act, ss 32-34). Note the reform of the rule against perpetuities, which differs from English law.

(d) The rule against excessive accumulations (Civil Law Act, s 31)

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[B] METHODS OF DEALING WITH LAND

In this section, we shall deal briefly with the various ways of transferring real property, viz. by gift, trust, will, and sale. Our main focus, however, is on the sale of land. We shall be discussing generally, the formalities required for a valid contract for the sale and purchase of land, the doctrine of part performance and the position of the parties under a valid contract for sale.

1. Capacity to hold land

Infants and other legally incapacitated persons; companies; partnerships; unincorporated associations; foreigners.

Companies Act (Cap 50) ss 23(2), 367
Partnership Act (Cap 391) ss 20 & 22
Residential Property Act (Cap 274)

2. The transfer of real property

Transfers by gift, will, trust, sale

3. Contracts for the sale of land*(a) Formal requirements*

(i) S 6 Civil Law Act (Cap 43)

SM Integrated Transware Pte Ltd v Schenker Singapore Pte Ltd [2005] 2 SLR 651
Joseph Mathew v Singh Chiranjeev [2010] 1 SLR 338

(ii) Prescribed forms of contract

Housing Developers (Control and Licensing) Act (Cap 130)
Sale of Commercial Properties Act (Cap 281)

(b) The doctrine of part performance

Steadman v Steadman [1976] AC 536
Joseph Mathew v Singh Chiranjeev [2010] 1 SLR 338 (above)

(c) The effect of a contract for sale

The purchaser's interest

Lysaght v Edwards (1876) 2 Ch D 499
Christina Lee v Eunice Lee [1993] 3 SLR 8

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Lim Kim Som v Sheriffa Taibah [1994] 1 SLR 393

Chi Liung Holdings Sdn Bhd v Attorney General [1994] 2 SLR 354

Cheng-Wong Mei Ling Theresa v Oei Hong Leong [2006] 2 SLR 637

A Phang, "Frustration of Contracts for the Sale of Land in Singapore" (1995) 44 ICLQ 443

J Sethupathy, "When Equity and the Common Law Conflict, Equity does not always prevail" (1995) 7 SAclJ 212 (Lawnet)

Vendor's lien

Re Caveat: Lim Saw Hak [1996] 2 SLR 196

(d) *Remedies for breach of contract*

Specific performance, damages

Supreme Court of Judicature Act (Cap 322) s 18, First Sch

4. The conveyancing process

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[C] CO-OWNERSHIP

Joint tenancy and tenancy in common; severance.

Where two or more persons have present rights of ownership over the same piece of land, their ownership can take one of two forms: joint tenancy (where the co-owners are, as regards the outside world, a single entity) or tenancy in common (where the co-owners own separate but as yet, undivided shares in the property). The most distinctive characteristics of ownership as joint tenants are the right of survivorship (on the death of one joint tenant, his or her interest passes to the other tenant/s), and the 'four unities' (of possession, interest, title and time - only unity of possession is necessary for a tenancy in common).

In considering cases of co-ownership, it is necessary to distinguish between the position at common law and that which obtains in equity.

Malayan Credit Ltd v Jack Chia (MPH) Ltd [1986] 1 MLJ 445

Lau Siew Kim v Yeo Guan Chye Terence [2008] 2 SLR 108

A joint tenancy may be converted into a tenancy in common by severance. Again, it is necessary to distinguish between severance at law and severance in equity.

Burgess v Rawnsley [1975] Ch 429 (CA)

Sivakolunthu Kumarasamy v Shanmugam Nagaiah [1988] 1 MLJ 341 (Lawnet)

Diaz v Diaz [1998] 1 SLR 361 (CA)

LTA s 53; Civil Law Act, s 30

Crown, "Severance of Joint Tenancy of Land by Partial Alienation" [2001] 117 LQR 477

Crown, "Developments in the Law of Co-ownership" [2003] SJLS 116 (Lawnet)

Termination of co-ownership

- Sale in lieu of partition

Khoo Seoke Haing v Cheah Khay Pin (1885) 4 Kyshe Rep 74 (red spot) (Lawnet)

Abu Bakar v Jawahir [1993] 2 SLR 738

Abdul Razak Valibhoy v Abdul Rahim Valibhoy [1995] 2 SLR 555

Neo Hui Ling v Ang Ah Sew [2010] SGHC 328

Wong Kim Wan (alias Wong Loretta) v Leong Ong Meng Jerome Matthew and another [2010] SGHC 318

Supreme Court of Judicature Act (Cap 322), s 18(2), 1st Sch, para 2

- Collective sale (Land Titles (Strata) Act, Part VA)

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[D] TRANSFERS OF INTERESTS IN LAND

In this section, we shall deal briefly with the ways of transferring interests in land, viz. by registration and in equity.

Under the general law and as provided by section 53 of the Conveyancing and Law of Property Act, legal interests in land had to be transferred by deed in the English language. The deed could be registered under the Registration of Deeds Act. Registration under the RODA was not required for validity, but it conferred priority over other deeds relating to the same interest that were not registered or which were registered later. Equitable interests are created by less formal means, and existing equitable interests can be assigned by writing.

In 1956 the Land Titles Ordinance was enacted which introduced into Singapore the Australian Torrens system of registration of title. Under this legislation (now the Land Titles Act, Cap 157), interests in land which has been brought under the Act can be transferred only by registration. The deed and the legal interest are replaced by registration and the registered interest. However, equitable interests exist alongside this system of registration of title and they are given limited protection under the parallel system of caveats.

Since 1960 the two systems - the common law deed system and that under the Land Titles Act - have been operating side by side. However, with the enactment of the Land Titles (Amendment) Act 2001, virtually all land in Singapore has been brought under the Land Titles Act.

Registration of title

Land Titles Act (LTA)

For extra reading:

Baalman, *The Singapore Torrens System* (1961)

Stein & Stone, *Torrens Title* (1991) Chs 1 & 3

CM Rose, "Crystals and Mud in Property Law" in *Perspectives on Property Law* (2nd ed, 1995) 320-334 (red spot)

Cooke, "E-Conveyancing in England: Enthusiasms and Reluctance" in *Torrens in the 21st Century* (ed Grinlinton, 2003), pp. 277-84

The common law system of conveyancing, together with its system of registration under the RODA, was found to be defective in many respects. One of the main criticisms was that the checking of title still remained long and laborious, making it a costly process. Each and every deed had to be carefully scrutinised, down to a "good root" of title, and the

same process had to be repeated for each and every successive transaction. It was to obviate these difficulties that Sir Robert Torrens initiated a new system of conveyancing in South Australia. This system soon spread to the rest of Australia and many parts of the world, including Singapore.

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The Torrens system (as it is commonly called) simplifies conveyancing in that there is only one document of title (the "Certificate of Title") upon which is endorsed each and every transaction affecting that particular piece of property. Registration for every dealing is essential for its validity, and furthermore, makes the particular transaction "indefeasible". Transactions which are not registrable may be protected by means of a caveat.

(a) *Introduction and general overview of the system*

Methods of bringing land under the LTA; the register and registration; types of interests that can be registered; indefeasible and qualified titles.

(b) *Equitable interests*

LTA ss 3, 4, 115

Golden Village Multiplex Pte Ltd v Marina Centre Holdings Pte Ltd [2002] 1 SLR 333

Meagher, "Equity and the Torrens System Register" in *Torrens in the 21st Century* (ed Grinlinton, 2003), p 51

(c) *The effect of registration*

(i) validity - LTA s 45

(ii) indefeasibility - LTA ss 36, 46, 157

1. *Persons entitled to indefeasibility*

LTA s 46

Tay Jui Chuan v Koh Joo Ann [2010] SGCA 29

2. *Limits to indefeasibility*

(i) overriding interests - LTA ss 46(1), 159, 160

(ii) fraud and forgery - LTA ss 46(2)(a), 47, 154(1)(d), 160

UOF Ltd v Yew Siew Kien [1993] 3 SLR 207

UOF Ltd v Victor Sakayamary [1997] 3 SLR 211

Waimiha Sawmilling Co v Waione Timber Co Ltd [1926] AC 101

Assets Co v Mere Roihi [1905] AC 176

Loke Yew v Port Swettenham Rubber Co Ltd [1913] AC 491

Bahr v Nicolay (1988) 62 ALJR 268

Ho Kon Kim v Lim Gek Kim Betsy [2001] 4 SLR 340 (noted Crown, "Equity Trumps the Torrens System" [2002] SJLS 409) (Lawnet))

United Overseas Bank Ltd v Bebe bte Mohammad [2006] 4 SLR 884 (noted Teo, "Application of Personal Equities in the Singapore Torrens System" (2007) 81 Australian Law Journal 444

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(iii) personal equity

Frazer v Walker [1967] 1 AC 569

Oh Hiam v Tham Kong [1980] 2 MLJ 159

Mercantile Mutual Life Insurance Co Ltd v Gosper (1991) 25 NSWLR 32 (Red Spot)

Ho Kon Kim v Lim Gek Kim Betsy [2001] 4 SLR 340 (above)

United Overseas Bank Ltd v Bebe bte Mohammad [2006] 4 SLR 884

Malayan Banking Berhad v Sivakolunthu Thirunavukarasu [2008] 1 SLR 149

Loo Chay Sit v Estate of Loo Chay Loo, deceased [2010] 1 SLR 286

Crown, "Back to Basics: Indefeasibility of Title under the Torrens System" [2007] SJLS 117 (Lawnnet)

Crown, "A Hard Look at *Bahr v Nicolay*" in *Lives in the Law: Essays in Honour of Tan Sook Yee, E.P. Ellinger & Koh Kheng Lian* (2007)

Tang, "Beyond the Torrens Mirror: A Framework of the *in personam* Exception to Indefeasibility" (2008) 32 MULR 672 (Austlii)

Low, "The Nature of Torrens Indefeasibility: Understanding the Limits of "Personal Equities"" (2009) 33 MULR 205

Low, "The Story of 'Personal Equities' in Singapore: Thus Far and Beyond" [2009] Sing JLS 161 (Lawnnet)

Seow, "Rationalising the Singapore Torrens System" [2008] SJLS 165 (Lawnnet)

Crown, "Whither Torrens Title in Singapore" (2010) 22 SAclJ (Lawnnet)

3. *The Assurance Fund, remedies and rectification*

LTA s 151

Crown, "Whither Torrens Title in Singapore" (above)

4. *Caveats*

(i) What interest may be protected by a caveat?

LTA ss 4, 115

The Asiatic Enterprises (Pte) Ltd v UOB Ltd [2000] 1 SLR 300

Virginia Developments Pte Ltd v Behem Investment Pte Ltd [1988] 2 MLJ 273

United Malayan Banking Corporation v Goodhope Realty [1989] 2 MLJ 93 Societe

Generale v Good Property Land Development Pte Ltd [1989] 2 MLJ 24

Eng Bee Properties Pte Ltd v Lee Foong Tatt [1993] 3 SLR 837

Lim Kaling v Hangchi Valerie [2003] 2 SLR 377

Eu Yee Kai Alexander Junior v Hanson Ingrid Christina [2004] 4 SLR 586

Ho Seek Yueng Novel v J & V Development Pte Ltd [2006] 2 SLR 742 (noted

Tang Hang Wu, "A Right of Pre-emption as a Caveatable Interest" (2007) 81 Aust LJ 718)

Ong Chay Tong & Sons (Pte) Ltd v Ong Hoo Eng [2009] 1 SLR 305

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(ii) Functions of a caveat

Butler v Fairclough (1917) 23 CLR 78 (Red Spot)

Eng Mee Yong v Letchumanan [1979] 2 MLJ 212

United Overseas Finance v Mutu Jeras [1989] 3 MLJ 20 (above)

(iii) Lodging a caveat

LTA ss 116, 117

(iv) Form of caveat

LTA s 115(1)

Alrich Development Pte Ltd v Jumabhoy [1993] 2 SLR 446

(v) Terms of a caveat

LTA s 115(2)

Cathay Theatres Pte Ltd v LKM Investments Holdings [1998] 1 SLR 917

(vi) Effect of lodging a caveat

LTA ss 4, 117, 119, 120, 127

United Overseas Finance v Mutu Jeras [1989] 3 MLJ 20

(vii) Lifespan of caveat and remedies of caveatee

LTA ss 121, 122, 126, 127

Tan Yow Kon v Tan Swat Ping [2006] 3 SLR 881

Leong Tze Hian v Teoh Ai Choo [1987] 2 MLJ 275

Teo, "Remedies of the Caveatee under Section 127 of the Land Titles Act" [1995]
SJLS 129 (Lawnet)

(viii) Liability for wrongful caveat

LTA s 128

Tan Soo Leng v Wee Saktu & Kumar [1993] 3 SLR 569

Eng Bee Properties Pte Ltd v Lee Foong Tatt [1993] 3 SLR 837 (above)

Ho Soo Fong v Standard Chartered Bank [2007] 2 SLR 181

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LTA ss 46-49, 80

1. Between registered interests

LTA ss 46-48

(refer to: Limits to indefeasibility, fraud - above)

2. Between unregistered interests

LTA s 49

City Developments Ltd v Goh Yoke Hian [1990] 3 MLJ 8

Societe Generale v Good Property Land Development Pte Ltd [1989] 2 MLJ 24

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[E] INTERESTS IN LAND**I. LEASES**

A lease is an interest in land giving the tenant/lessee exclusive possession for a fixed period of a certain duration, usually in consideration of a payment termed 'rent'. It must be distinguished from other rights of occupation such as the licence, easement and profit à prendre.

Lye LH, *Landlord and Tenant* (Singapore Law Series No.3) 1990 (Lye) (for extra reading)

Bridge, "Leases – Contract, Property and Status" in Tee (ed), *Land Law: Issues, Debates, Policy* (2002), 98-131 (red spot) (for extra reading)

a) Characteristics of leases: distinction between licence and lease

Street v Mountford [1985] AC 809

Facchini v Bryson [1952] 1 TLR 1386

Ashburn Anstalt v Arnold [1989] Ch 1

Aslan v Murphy [1989] 3 All ER 130

Goh Gin Chye v Peck Teck Kian Realty Pte Ltd [1987] 2 MLJ 118

b) Types of lease

Fixed lease, periodic tenancy, tenancies at will and sufferance, tenancy by estoppel

(i) Fixed term lease

Lace v Chantler [1944] KB 368

Prudential Assurance Co Ltd v London Residuary Body [1992] 2 AC 386

(ii) Periodic lease

Mellows v Low [1923] 1 KB 522

Adler v Blackman [1953] 1 QB 146

Ko Teck Kin v Watkinson (1961) 1 MLJ 73 (Lawnet)

Prudential Assurance Co Ltd v London Residuary Body [1992] 2 AC 386 (above)

(iii) Tenancy at Will**(iv) Tenancy at Sufferance****(v) Tenancy by Estoppel**

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c) Formalities for creating leases

The distinction between legal and equitable leases

LTA ss 46(1), 86 and 87

Civil Law Act s 6(d)

SM Integrated Transware Pte Ltd v Schenker Singapore Pte Ltd [2005] 2 SLR 651
(N.B. doctrine of part performance)

Walsh v Lonsdale (1882) 21 Ch D 9

Golden Village Multiplex Pte Ltd v Marina Centra Pte Ltd [2002] 1 SLR 333

Tan and Low, "Equity and Trusts", *Annual Review of Singapore Cases* (2002)
Singapore Academy of Law Annual Review (Lawnnet)

d) Dealings with leases

Assignments, sub-leases

e) Rights and duties of landlord and tenant

- Non-derogation from grant

Wong v Beaumont Property Trust Ltd [1965] 1 QB 173

Cold Storage Singapore Pte Ltd v MC of Chancery Court [1989] 3 MLJ 400

- Express and implied covenants.

CLPA s 17

LTA ss 86(2) & (3), 93

f) Remedies for breach of covenant

Distress, forfeiture, injunction, damages (N.B. the distinction between breach of covenant to pay rent and breach of other covenants)

Distress Act, Cap 84, ss 4,5,7-10,12

CLPA ss 18 & 18A

LTA ss 86(2), 93

Rugby School (Governors) v Tannahill [1935] 1 KB 87

Scala House and Property Co Ltd v Forbes [1974] QB 575 (NB: s 18(8) CLPA)

Expert Clothing Service & Sales Ltd v Hillgate House Ltd [1986] Ch 340

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Set-off

Batshita International (Pte) Ltd v Lim Eng Hock Peter [1997] 1 SLR 241

g) Determination of leases

(i) Expiry of term; notice; surrender; merger

LTA s 91

Fong Holdings Pte Ltd v Computer Library (S) Ltd [1992] 1 SLR 332

(ii) Holding Over

Civil Law Act s 28(4)

Lee Wah Bank Ltd v Afro-Asia Shipping Co Pte Ltd [1992] 2 SLR 93

(iii) Forfeiture

Billson v Residential Apartments Ltd [1992] 1 AC 494

(iv) Frustration

National Carriers Ltd v Panalpina (Northern) Ltd [1981] AC 675

(v) Repudiation

Tan Soo Leng David v Lim Thian Chai Charles [1998] 2 SLR 923

Abdullah, "Repudiation of Leases" [1998] SJLS 438 (Lawnet)

h) Covenants and successors in title

(i) Privity of Estate

CLPA ss 10, 11

LTA s 86 (2)

Spencer's Case (1583) 5 Co Rep 10a; 77 ER 72

Boyer v Warbey [1953] 1 QB 234

City of London v Fell [1994] 1 AC 458, at 464-6; [1993] 3 WLR 1164, at 1168-9

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(ii) Covenants touching and concerning land

Hua Chiao Commercial Bank v Chiaphua Industries Ltd [1985] 1 All ER 1110
Kumar v Dunning [1989] QB 193

P & A Swift Investments v Combined English Stores Group plc [1989] AC 632

II. LICENCES & PROPRIETARY ESTOPPEL

Proprietary estoppel is now the "growth area" for land law. In recent times, it did appear that the licence was emerging as a new interest in land, but these aspirations were considerably dampened by the case of Ashburn Anstalt.

NB. LTA s 95(2)

A. LICENCES

The licence had until recently been a "growth area" for land law, with the main questions being whether or not it is revocable and whether or not it was a property right capable of binding third parties. With the exception of some minor issues, these questions are now largely regarded as resolved.

NB. LTA s 95(2)

(a) *Introduction*

Thomas v Sorrell 124 ER 1098, 1109

National Provincial Bank Ltd v Ainsworth [1965] AC 1175, 1237-8, 1247-8

(b) *Types of licences*

(i) Bare licence

(ii) Licence coupled with a grant

(iii) Contractual licence

Revocability

Winter Gardens Theatre (London) Ltd v Millenium Productions Ltd [1946] 1 All ER 678; [1948] AC 173

Tan Hin Leong v Lee Teck Im [2000] 3 SLR 85; affd [2001] 2 SLR 27 (CA)

Effect on third parties

Binions v Evans [1972] Ch 359

Ashburn Anstalt v Arnold [1989] Ch 1 (above)

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Contract (Rights of Third Parties) Act (Cap 53B)

Bright, "The Third Party's Conscience in Land Law" [2000] Conv 398 (red spot)

LTA s 95(2), (3)

B. Proprietary Estoppel

Proprietary estoppel is a doctrine which remains in a state of flux. The main issues surrounding the doctrine are concerned with the remedial aspect of the doctrine, such as whether a reliance or an expectation model of response is preferable, the extent of the courts' discretion as to the remedial response and the effect of an uncrystallised "equity" on third parties.

(a) Requirements

(i) General approach

Taylor Fashions Ltd v Victoria Trustees Co Ltd [1982] QB 133

Hong Leong Singapore Finance Ltd v United Overseas Bank Ltd [2007] 1 SLR 292

Chiam Heng Luan v Chiam Heng Hsien [2007] 4 SLR 305

Thorner v Major [2009] 1 WLR 776 (HL)

Sloan, "Proprietary Estoppel: Recent Developments in England and Wales" [2010] 22 SAclJ 110 (Lawnet)

(i) Nature of representation

AG of HK v Humphreys Estate [1987] AC 114

Gillett v Holt [2001] Ch 210

Cobbe v Yeoman's Row Management Ltd [2008] 1 WLR 1752

Thorner v Major (above)

(iii) Burden of proof

Greasley v Cooke [1980] 1 WLR 1306

(b) Remedies

(i) Scope of discretion

Crabb v Arun District Council [1976] Ch 179

Pascoe v Turner [1979] 1 WLR 431

Khew Ah Bah v Hong Ah Mye [1971] 2 MLJ 86

Sledmore v Dalby (1996) 72 P & CR 196 (red spot)

Jennings v Rice [2003] 1 P & CR 8 (red spot)

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Hong Leong Singapore Finance Ltd v United Overseas Bank Ltd [2007] 1 SLR 292 (supra)

Chiam Heng Luan v Chiam Heng Hsien [2007] 4 SLR 305

Gardner, "The remedial discretion in proprietary estoppel – again" (2006) 122 LQR 492

(ii) General approach: Expectation vs Reliance

Nolan, "Following in their Footsteps: Equitable Estoppel in Australia and the United States" (2000) 11 KCLJ 202 (red spot)

Goh Swee Fang v Tiah Juah Kim [1994] 3 SLR 881

LS Investment Pte Ltd v Majlis Ugama Islam Singapura [1998] 3 SLR 754

(iii) Effect of post-judgment conduct

Williams v Staite [1979] Ch 291

(c) Effect on third parties

Smith, "How Proprietary is Proprietary Estoppel?" in Rose (ed), *Essays in the Law of Contract in Honour of Guenter Treitel* (1996), 235-250 (red spot)

Re Sharpe [1980] 1 WLR 219

ER Ives Investment Ltd v High [1967] 2 QB 379

III. MORTGAGES

A. Kinds of mortgages and their creation

(a) Under General Law

A mortgage can be legal or equitable.

S 53(1) CLPA

(b) Under the LTA

A mortgage under the LTA is not a mortgage in the strict sense of the word. It takes the form of a security rather than a transfer of title.

LTA s 68

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B. Nature of the Mortgagor's interest and his rights

(i) The Equity of Redemption

The courts protect the mortgagor's right to redeem.

Samuel v Jarrah Timber and Wood Paving Corp Ltd [1904] AC 323

Fairclough v Swan Brewery [1912] AC 565

Knightsbridge Estates Ltd v Byrne [1939] Ch 441

Kreglinger v New Patagonia Meat and Cold Storage Co Ltd [1914] AC 25

Multiservice Bookbinding Ltd v Marden [1979] Ch 84

Fiscal Consultants Pte Ltd v Asia Commercial Finance Ltd [1981] 2 MLJ 64

Citicorp Investment Bank (Singapore) Ltd v Wee Ah Kee [1997] 2 SLR 759

Esso Petroleum Ltd v Harper's Garage (Stourport) Ltd [1968] AC 269

Thompson, "Do We Really Need Clogs", *Conveyancer and Property Lawyer* 2001, Nov/Dec 502-515

(ii) Action for redemption

Ss 19-22, 30 CLPA

Palk v Mortgage Services Funding PLC [1993] Ch 330

C. Rights of the mortgagee

Under the LTA, although a registered mortgage takes effect only as a security, the mortgagee has a right to foreclose under s 76 LTA and a right to enter into possession under s 75.

As provided in s 69 LTA, the rights set out in Part IV of the CLPA also apply to mortgages registered under the LTA.

The exercise of the mortgagee's rights is within his own discretion and he is not answerable to the mortgagor as to when he exercises his rights.

China & South Sea Bank Ltd v Tan Soon Gin [1990] AC 536

Teo Siew Har v OCBC [1999] 3 SLR 129

- Right to lease

Both mortgagor and mortgagee while in possession have a power to lease (s 23 CLPA)

- Right to enter into possession: LTA s 75

- Rights to sell and to appoint receiver

CLPA ss 21, 22, 24 -30

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Payne v Cardiff RDC [1932] 1 KB 241, at 251, 253

- Appointment of receiver

Mortgagee's duty when exercising power of sale

Basis of the duty of care – tort or general equitable duty of good faith?

Parker-Tweedale v Dunbar Bank plc (No 1) [1991] Ch 12 (CA)

China & South Sea Bank Ltd v Tan Soon Gin [1990] AC 536

Downsview Nominees Ltd v First City Corp Ltd [1993] AC 295

Content of the duty

Duty of good faith

Tse Kwong Lam v Wong Chit Sen [1983] 1 WLR 1349 (PC)

Duty to obtain true market value

Cuckmere Brick Co Ltd v Mutual Finance Ltd [1971] Ch 949

Lee Nyet Khiong v Lee Nyet Yun Janet [1997] 2 SLR 713

Kian Choon Investments (Pte) Ltd v Societe Generale [1990] 2 MLJ 74

Beckett Pte Ltd v Deutsche Bank AG [2009] 3 SLR 452 at [27] and [28]

Wee, "Duties of A Mortgagee and A Receiver: Where Singapore Should and Should not Follow English Law" (2008) 20 SAclJ 559

Loi, "Mortgagees Exercising Power of Sale: Nonfeasance, Privilege, Trusteeship & Duty of Care" Journal of Business Law (forthcoming)

Duties of the mortgagee in regard to the proceeds of the sale of the mortgaged property

LTA s 74

Chip Thye v Development Bank of Singapore [1994] 3 SLR 613

D. Rights of the parties in an equitable mortgage

E. Priorities of mortgages

Note the provisions for tacking. LTA s 80

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F. The relationship between general law and the provisions of the LTA with regard to mortgages

LTA s 69

Rimmon Watch Pte Ltd v Great Pacific Finance Ltd [1989] 1 MLJ 265
Kian Choon Investments (Pte) Ltd v Societe Generale [1990] 2 MLJ 74
Singapore Finance Ltd v Matterhorn (Pte) Ltd [1989] 3 MLJ 193

IV. EASEMENTS

An easement is the right of a landowner to do something on another's land (positive) or to prevent that other from doing something on his own land (negative). Examples of easements are rights of way and rights to light.

(a) Distinguishing easements from other rights

eg. leases; licences; natural rights; public rights; restrictive covenants; profits

Xpress Print Pte Ltd v Monocrafts Pte Ltd [2000] 3 SLR 545 (CA) (noted Teo, "Right of Support for Buildings Revisited" (2004) 78 Australian Law Journal 20)

Tang, "The Right of Lateral Support of Buildings from the Adjoining Land" (2002) Conv 237-260

(b) Characteristics of easements

Re Ellenborough Park [1956] Ch 131
Hill v Tupper (1863) 2 H & C 121; 159 ER 51
Copeland v Greenhalf [1952] Ch 488
Phipps v Pears [1965] 1 QB 76

(c) Acquisition of easements

Under the LTA, easements can only be created by registration. The only easements that can exist without registration are those expressly provided for by statute. However, where the easements had existed before the land was brought under the LTA, section 46(1) provides that as subsisting easements they will bind the registered title.

1. Express grant

LTA ss 97, 63, 101

2. Implied grant

LTA ss 97, 98, 99
 LTSA ss 16-21

READING LIST & SYLLABUS**3. Express reservation**

LTA s 97(2)

4. In equity

(i) Contract to grant an easement

May v Belleville [1905] 2 Ch 605

(ii) Estoppel

ER Ives Investments Ltd v High [1967] 2 QB 379 (above)

Crabb v Arun District Council [1976] Ch 179 (above)

(d) *Extinguishment of easements*

(i) Express release

LTA s 105

(ii) Cancellation by Registrar

LTA s 106

(iii) Unity of possession and ownership

LTA s 100

LTSA s 29

V. COVENANTS RELATING TO FREEHOLD LAND

Covenants affecting the use of freehold land may be positive (affirmative) or negative (restrictive). These covenants are imposed by landowners who wish, for various reasons, to regulate or control the use of their freehold land. A common example is the preservation of the character of the neighbourhood as a residential area. The primary question here is whether and to what extent such covenants bind successors in title. Problems arise when successive owners wish to enforce or are sued on the covenants. Through the years, the courts have devised a system of rules whereby it may be ascertained whether the plaintiff can sue on a particular covenant (ie. whether the benefit of the covenant has passed to the plaintiff), and whether the defendant can be sued on that covenant (ie. whether the burden has passed to the defendant). These rules vary depending on whether the covenant is positive or negative.

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(1) *Positive covenants*

Halsall v Brizell [1957] Ch 169

Austerberry v Oldham Corporation (1885) 29 Ch D 750

Rhone v Stephens [1994] 2 AC 310

(2) *Restrictive covenants*(i) Running of the burden

Tulk v Moxhay (1848) 2 Ph 744; 41 ER 1143

Formby v Barker [1903] 2 Ch 539

Rogers v Hosegood [1900] 2 Ch 388

(ii) Running of the benefit

Express annexation

LTA ss 138, 139

Rogers v Hosegood [1900] 2 Ch 388 (above)

Renals v Cowlishaw (1879) 11 Ch D 866

Crown, "Passing the Benefit and Burden of Restrictive Covenants Governing Land in Singapore" [1998] SJLS 98 (Lawnnet)

(3) Building Maintenance (Strata Management) Regulations 2005 (Second Schedule)

(4) Termination of a restrictive covenant

- *release* (LTA s 140)

- *effluxion of time* (LTA s 141)

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[F] STRATA TITLE

Building Maintenance and Strata Management Act (Cap 30C)

Land Titles (Strata) Act (Cap 158)

Teo, *Strata Title in Singapore and Malaysia* (3rd ed, 2009) (for extra reading)

(a) Nature of co-ownership of common property

LTSA s 13(1)

Poh Kiong Kok v Management Corporation Strata Title Plan No 581 [1990] 3 MLJ 206

(b) Levying contributions contrary to statute

BMSMA ss 40, 41

MCSTP No 473 v De Beers Jewellery Pte Ltd [2002] 2 SLR 1

(c) Significance and operative date of by-laws

BMSMA s 32

Choo Kok Lin v MCST Plan No 2405 [2005] 4 SLR 175

(d) Capacity to sue and representative action

BMSMA, ss 24(2), 85

MCSTP No 2297 v Seasons Park Ltd [2005] 2 SLR 613

(e) Collective sale

LTSA, ss 84A – 84F, First-Fourth Schs

[Note: No constitutional right to property in Singapore

Hansard, *Report of Constitutional Commission, 1966* (17.3.1967), cols 1423-1426
Land Acquisition Act (Cap 152) (*cf* Malaysian Federal Constitution, Art 13)]

(i) policy objectives of statutory scheme

Ng Eng Ghee v Mamata Kapildev Dave (Horizon Partners Pte Ltd, Intervener) [2009] 3 SLR 109

Chua Choon Cheng v Allgreen Properties Ltd [2009] 3 SLR 724

(ii) requirements for collective sale (s 84A)

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- (iii) position of co-owners
Goh Teh Lee v Lim Li Pheng Maria and others [2010] 3 SLR 364
 - (iv) failure to comply with procedural requirements before Board (s 84A(7C))
Siow Doreen v Lo Pui Sang [2008] 1 SLR 172
 - (v) meaning of transaction in good faith
Dynamic Investments Pte Ltd v Lee Chee Kian Silas [2008] 1 SLR 729
Ng Eng Ghee v Mamata Kapildev Dave [2009] 3 SLR 109 (above)
 - (vi) duties of collective sale committee
Ng Eng Ghee v Mamata Kapildev Dave [2009] 3 SLR 109 (above)
 - (vii) financial loss; insufficient sale proceeds
LTSA s 84A(7)(a),(b), (8)
- Teo, "Collective Sales of Strata Developments - The Singapore Approach" (2000) 8 *Australian Property Law Journal* 157
 Koh, "The Duty of Care in Collective Sales of Strata Developments" (2008) 20 SAcLJ 227 (Lawnet)
 Ter, "A Man's Home is [not] his Castle – En Bloc Collective Sales in Singapore (2008) 20 SAcLJ 49 (Lawnet)
 Teo, "Strata Title and Commonhold: A Look At Selected Aspects of the Singapore and English Legislation" [2008] SJLS 420
 Teo, "Strata Title: Protecting Minority Interests In a Collective Sale" (2009) 83 *Australian Law Journal* 288
 Teo, "Collective Sales in Singapore: Selected Issues" (2010) (Special Issue) SAcLJ 66

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[G] PUBLIC HOUSING IN SINGAPORE – The HDB

Housing and Development Act (Cap 129)

Tan SY, *Private Ownership of Public Housing in Singapore* (1998) (for extra reading)

Ricquier, “Public Housing Law in Singapore” (1987) 8 *Urban Law & Policy* 313 (for extra reading)

Trusts of HDB flats

Housing and Development Act, s 51

Crown, “Trusts of HDB Flats” [1999] SJLS 635 (Lawnnet)

Cheong Yoke Kuen v Cheong Kwok Kiong [1999] 1 SLR(R) 1126 (Lawnnet) Sitiawah

Bee Bte Kader v Rosiyah Bte Abdullah [2000] 1 SLR 612 (Lawnnet)

Tan Chui Lian v Neo Liew Eng [2007] 1 SLR 265