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).
READING LIST & SYLLABUS

BOOKS

The recommended textbooks

(a) for Singapore law:


(b) for English law either:

Gray & Gray, *The Elements of Land Law* (5th ed, 2008); or

* 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:


(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*
Bauman, *The Singapore Torrens System*
Stein and Stone, *Torrens Title*
[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).


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
READING LIST & SYLLABUS

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
[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


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:


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


(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


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
(iii) personal equity

Frazier v Walker [1967] 1 AC 569
Oh Hiam v Tham Kong [1980] 2 MLJ 159
Mercantile Mutual Life Insurance Co Ltd v Gospers (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

Low, “The Story of ‘Personal Equities’ in Singapore: Thus Far and Beyond” [2009] Sing JLS 161 (Lawnet)
Seow, “Rationalising the Singapore Torrens System” [2008] SJLS 165 (Lawnet)

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
Eng Bee Properties Pte Ltd v Lee Foong Tatt [1993] 3 SLR 837
Lim Kaling v Hangchi Valerie [2002] 3 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)
Ong Chay Tong & Sons (Pte) Ltd v Ong Hoo Eng [2009] 1 SLR 305
READING LIST & SYLLABUS

(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
5. Priorities

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)


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
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

Singapore Academy of Law Annual Review (Lawnet)

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
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


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


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] Q8 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)


(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)
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
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
Citcorp 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
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
Beckkett Pte Ltd v Deutsche Bank AG [2009] 3 SLR 452 at [27] and [28]


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
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


(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
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.
READING LIST & SYLLABUS

(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 (Lawnet)

(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


   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)
READING LIST & SYLLABUS

(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)

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*Cheong Yoke Kuen v Cheong Kwok Kiong* [1999] 1 SLR(R) 1126 (Lawnet); *Sitiawah Bee Bte Kader v Rosiyah Bte Abdullah* [2000] 1 SLR 612 (Lawnet); *Tan Chui Lian v Neo Liew Eng* [2007] 1 SLR 265