

Tan Sook Yee's Principles of Singapore Land Law BY TANG HANG WU AND KELVIN F.K. LOW, eds. [Singapore, Malaysia and Hong Kong: LexisNexis, 3rd ed, 2009. cxiv + 867 pp. Hardcover: S\$290.00]

The new edition of this text has been highly anticipated. In his Foreword, the Chief Justice of Singapore Chan Sek Keong notes that eight years after the second edition, this third edition is called for because of what the editors have described as “the breathtaking pace of the development of Singapore land jurisprudence”. In her Preface, Professor Tan Sook Yee also agrees that it was very clear that a third edition was becoming long overdue.

This edition is so anticipated because of the authoritative status the text has attained over the years. Since it was first published in 1994, this text has been cited on numerous occasions as the authoritative statement on Singapore land law. A review of the first edition by Mr. T.P.B. Menon noted that it filled a need long felt by students of property law ever since the first law faculty in Singapore was established in 1957 (T.P.B. Menon, “Principles of Singapore Land Law” (1995) Sing. J.L.S. 278 at 280). A review of the second edition by Mr. Leslie Chew, S.C. (as he then was) in the Law Gazette noted that the first edition represented a milestone in the history of legal texts, and that the second edition was a text that no law student or legal practitioner should be without (Leslie Chew, “Principles of Singapore Land Law (2nd Ed)” *Law Gazette* MITA (P) 02201/2001 (December 2001) online: Law Gazette <<http://www.lawgazette.com.sg>>). It is no wonder that Associate Professors Tang Hang Wu and Kelvin F.K. Low both expressed some measure of “initial trepidation” when invited to serve as co-editors. However, as one eases through the text, it quickly becomes clear that both of them have achieved great success in furthering the legacy left by Professor Tan.

Any reviewer of this third edition is inevitably drawn to its analysis of the landmark Singapore Court of Appeal case of *United Overseas Bank Ltd. v. Bebe bte Mohammad* [2006] 4 S.L.R.(R.) 884 (C.A.) [*Bebe*]. Delivering the judgment of the Court, Chan Sek Keong C.J. resolved the difficulties surrounding sections 46 and 160 of the *Land Titles Act* (Cap. 147, 2004 Rev. Ed. Sing.) [*LTA*]. In what is now one of the most oft-quoted paragraphs in all Singapore law, Chan Sek Keong C.J. held at para. 91 that:

[H]aving regard to the policy objectives of the LTA to reduce uncertainty and to give finality in land dealings, our courts should be slow to engraft onto the LTA personal equities that are not referable directly or indirectly to the exceptions in s 46(2) of the LTA.

The text rightly notes that the judgment in *Bebe* has already given rise to a proliferation of academic discussion; see Barry C. Crown, “Back to Basics: Indefeasibility of Title under the Torrens System” (2007) 1 Sing. J.L.S. 117; Tang Hang Wu, “Beyond the Torrens Mirror: A Framework of the *In Personam* Exception to Indefeasibility” (2008) 32 Melbourne U.L. Rev. 672; Kelvin F.K. Low, “The Story of ‘Personal Equities’ in Singapore: Thus Far and Beyond” (2009) Sing. J.L.S. 161 and Kelvin F.K. Low “The Nature of Torrens Indefeasibility: Understanding the Limits of ‘Personal Equities’” (2009) 33 Melbourne U.L. Rev. 205. The text also

notes that this judgment has been reviewed not only in Singapore, but also in Australia and Scotland. What is so remarkable about the third edition is that it has managed to represent the diversity of views on this judgment both accurately and fairly.

In particular, the text deals with the nature of the *in personam* exception [at 14.101–14.114], which lies at the heart of the controversy surrounding the judgment in *Bebe*. As a preliminary observation, the text makes clear the inadequacy of the labels “*in personam* exception” and “personal equities exception”. It argues that both causes of action are—strictly—not *exceptions*, as indefeasibility “does not necessarily preclude *personal* actions brought against the registered proprietor based on his or her conduct” [at 14.103].

The text goes on to survey a wide range of views in case law and academic literature on the scope and nature of the *in personam* exception. What is described as the “narrow view” is that this exception ought to be interpreted restrictively since it has the potential to undermine the principle of indefeasibility. The text notes that this approach has been supported by Mr. Lynden Griggs and Associate Professor Barry C. Crown, and has recently found judicial favour with the Singapore Court of Appeal in *Bebe* [at 14.105].

In contrast, the text also sets out the “wide view” as seeing no contradiction between indefeasibility and allowing some claims to be brought against the registered proprietor [at 14.106]. This view is favoured by Associate Professor Low, who criticises the narrow approach, and supports his reasoning with cases and academic literature across a range of Commonwealth jurisdictions [at 14.107–14.109].

Finally, the text recognises that yet another plausible view is a “middle ground” between the wide and narrow approaches to indefeasibility, a view that is supported by Associate Professor Tang. Interestingly, in the same breath the text recognises that this view has come under some criticism, citing again the work of Associate Professor Low [at 14.111]. The juxtaposition of views within this analysis is simply masterful.

It is fitting that the text concludes with the observation that even though the authors have adopted slightly different approaches to resolving the controversies surrounding the *in personam* exception, they are agreed on several matters. These include moving away from analysing the *in personam* exception using the language of unconscionability; abandoning reliance on the much-criticised case of *Mercantile Mutual Life Assurance v. Gosper* (1991) 25 N.S.W.L.R. 32; accepting that the registered proprietor’s title may be subject to attack if it can be shown that the contract pursuant to which he or she became registered proprietor could be set aside due to any vitiating factor and recognising that at least “tripartite undue influence claims” should clearly be allowed in respect of Torrens land.

It becomes clear to any reader that this text is not simply a *restatement* of the law; it has evolved into a mature academic work for all who are looking to analyse and reflect on contentious issues in the land law of Singapore and other Commonwealth jurisdictions. In his review of this edition, Mr. Lynden Griggs even recommended that the consideration of this section on the *in personam* exception “should be mandatory for all students, academics and practitioners engaged in this area” (Lynden Griggs, “Book Review: Tan Sook Yee’s Principles of Singapore Land Law” (2010) 18 Austl. Prop. L.J. 107 [Griggs] at 109).

Turning from land registration to caveats, the text elucidates the recent contentious issues within. Addressing first the issue of what could be protected by a caveat, the text examines whether a right of first refusal or pre-emption is a *caveatable* interest [at 15.31–15.34]. The text observes that whilst, in most Australian states, such a right is almost certainly not caveatable, the Singapore position in the High Court decision of *Ho Seek Yueng Novel v. J & V Development Pte. Ltd.* [2006] 2 S.L.R.(R.) 742 (H.C.) [*Ho Seek Yueng*] is that a right of pre-emption *is* a caveatable interest [at 15.31]. The text explains the significance of this decision, in that Andrew Phang J. (as he then was) went beyond the position in *Pritchard v. Briggs* [1980] Ch. 338 (C.A.) when suggesting that a right of pre-emption was a caveatable interest *at the time of its creation* [at 15.32]. Following other Commonwealth decisions, the text notes that this is the latest illustration of the difficulties courts face “in attempting to define the boundary between a personal interest and an equitable proprietary interest” [at 15.33]. After an analysis of policy concerns, the text finally notes that this decision was approved by the Singapore Court of Appeal in *Ong Chay Tong & Sons (Pte.) Ltd. v. Ong Hoo Eng* [2009] 1 S.L.R.(R.) 305 (C.A.) at para. 79, where Chao Hick Tin J.A. held that a right of pre-emption ought to be recognised, without more, as an interest in land *for the purpose of* lodging a caveat under section 115 of the *LTA* [at 15.34].

In that same chapter, the text puts to rest other contentious issues. With regard to the conundrum relating to priorities of caveats, the text argues that the narrow construction by Chan Sek Keong J. (as he then was) of section 49(1) of the *LTA* in *United Overseas Finance Ltd. v. Mutu Jeras* [1989] 1 S.L.R.(R.) 446 (H.C.) is no longer necessary, as the newly-enacted section 122 of the *LTA* now allows extensions to caveats, preserving the priority of the first caveat. With regard to compensation for wrongful caveats, the text also considers the recent Singapore Court of Appeal decision of *Ho Soo Fong v. Standard Chartered Bank* [2007] 2 S.L.R.(R.) 181 (C.A.) at para. 20, which held that the tortious principles of remoteness apply in relation to section 128 of the *LTA*.

Whilst one might expect such a text to skim through the introductory sections, this text provides a comprehensive historical background to the Singapore land law regime, and a clear conceptual introduction to proprietary and personal rights. It is welcome that the editors have updated these sections with the recent developments, for instance, in the law of fixtures. Tracing the law from as early as the decision in *Holland v. Hodgson* (1872) L.R. 7 C.P. 328 (Exchequer Chamber), the text refers to the recent Singapore Court of Appeal decision of *Pan-United Marine Ltd. v. Chief Assessor* [2008] 3 S.L.R.(R.) 569 (C.A.), where the majority and minority disagreed as to whether the “physical dislocation” of a chattel is relevant in determining whether it is a fixture.

The text also surveys leading decisions from around the world, such as *Moncrieff v. Jamieson* [2007] 1 W.L.R. 2620 (H.L.), *Stack v. Dowden* [2007] 2 A.C. 432 (H.L.) [*Stack*], *Abbott v. Abbott* [2008] 1 F.L.R. 1451 (P.C.), *Yeoman’s Row Management Ltd. v. Cobbe* [2008] 1 W.L.R. 1752 (H.L.) and *Thorner v. Major* [2009] 1 W.L.R. 776 (H.L.). In particular, despite the influential House of Lords decision in *Stack*, the text takes the view that the Singapore courts are unlikely to adopt *Stack’s* constructive trust analysis. This is especially because the Singapore Court of Appeal has recently

had the opportunity to consider these issues in *Lau Siew Kim v. Yeo Guan Chye Terence* [2008] 2 S.L.R.(R.) 108 (C.A.).

Finally, this edition is a significant milestone in the collaboration between academia and land regulators. The Singapore Land Authority's Chief Executive Officer, Mr. Vincent Hoong, and Director (Regulatory Division), Mr. Bryan Chew, have both contributed as the guest editors of Chapter 23 on "Planning and Development of Land".

Just months after its publication, this third edition has already been cited in Singapore's Court of Appeal and High Court: see *Shafeeg bin Salim Talib v. Fatimah bte Abud bin Talib* [2010] SGCA 11; *Goh Teh Lee v. Lim Li Pheng Maria* [2010] SGCA 18 and *Cheong Lay Yong v. Muthukumaran s/o Varthan (K. Krishna & Partners)* [2010] SGHC 59. Eminent land law scholar Professor Kevin Gray has also referred to this third edition, remarking that modern Singapore land law has been superbly analysed in Professor Tan Sook Yee's "ground-breaking text on the subject" (Kevin Gray, "Introduction: Land Law" (2010) 22 S.Ac.L.J. 1 at para. 2). As District Judge Leslie Chew wrote in the Law Gazette, "to say the book is of a very high standard is an understatement" (Leslie Chew, "Tan Sook Yee's Principles of Singapore Land Law" *Law Gazette* MICA (P) 067/11/2009 (February 2010) online: Law Gazette <<http://www.lawgazette.com.sg>>). Even beyond Singapore, this third edition has been recommended in Australia by Mr. Lynden Griggs "not only to those directly interested in Singapore land law, but to those with an interest in land law generally" (*Griggs*, cited *supra*, at 111).

It is therefore entirely fitting that LexisNexis have renamed the text *Tan Sook Yee's Principles of Singapore Land Law*. Over the past two decades, Professor Tan has shaped the development of Singapore land law in more ways than one. For the years ahead, in light of their work on this third edition, we can be assured that her successors will continue to do the same.

This is a seminal work of immense value to students, academics and practitioners of property law alike—within Singapore and beyond.

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