

LEGAL EDUCATION IN PROPERTY LAW AT NUS: SOME REFLECTIONS

TEO KEANG SOOD*

The paper begins with the recognition that land is scarce in Singapore and looks at how Singapore responds to the situation. The property law course in NUS which has evolved over the years is then considered and is assessed to be what it is today as a result of careful and meticulous planning. The students' experience in the learning of property law has been enhanced and enriched by the Faculty's teaching and research in the subject. Going forward, property law legal education in NUS will continue to develop to meet the future needs of the legal community and Singapore.

I. INTRODUCTION

The distinctive contribution that the National University of Singapore (“NUS”) Faculty of Law has made to property law legal education over the years is that it has provided for a very firm foundation and strong grounding in the subject as will be demonstrated in the areas of teaching and research. As the term “property law” also encompasses other related fields of law, some of which are already dealt with in this collection of essays, such as intellectual property law and equity and trusts, the key focus in this essay (where the reference to “property law” is used) will be on the developments in real property law legal education at NUS.

II. SCARCITY OF LAND AND THE RESPONSE OF PROPERTY LAW

The one thing that features prominently when one looks at the map of Singapore is its physical size. It currently has a total land area of 719 square kilometres,¹ about a third the size of Hong Kong. It is, as they say, a tiny red dot which lies one degree north of the equator at the southern tip of Peninsular Malaysia. Given the scarcity of land in Singapore, it is crucial and vital that this valuable commodity in economic terms be properly managed and utilised in an efficient manner. In this respect, property law is of paramount importance as it has a crucial role to play in Singapore's land use development.

* Professor, Faculty of Law, National University of Singapore.

¹ Singapore Land Authority, “Total Land Area of Singapore”, online: Singapore Land Authority <<https://data.gov.sg/dataset/total-land-area-of-singapore>>.

Since attaining independence in 1965, there is no constitutional protection of property in Singapore. In *Lo Pui Sang v Mamata Kapildev Dave*, the High Court had observed thus:

[T]he omission of a provision in our Constitution that would have ensured a fundamental right to own property was a deliberate omission given the scarcity of land in Singapore and as such, the court must recognise that there is no such fundamental right under our Constitution.²

Property law's response to the scarcity of land issue can be seen in the following instances. The mechanism of the collective sale regime, introduced in 1999 and provided for in the *Land Titles (Strata) Act*,³ is one such instance. With a projected population of 6.5 million in future,⁴ Singapore would need to explore ways to maximise land use. It may be pertinent to note that the collective sale regime which applies to strata developments came about after the Urban Redevelopment Authority started releasing its then Development Guide Plans (now Master Plans) in 1993. Some sites were assigned higher plot ratios, which meant that the land in question could be used more intensively. It defeats national objectives if changes reflected in the Master Plans cannot be translated into better utilisation of scarce prime land resources to meet a growing population just because disagreements have held up or prevented collective sales. One of the aims of the statutory scheme for collective sales is to facilitate the optimal use of prime land to build more quality housing in land-scarce Singapore.⁵ The basic idea is to enable the majority unit owners to sell the development to a purchaser without the consent of the minority unit owners. However, protection is accorded to the latter in that the sale must be approved by the Strata Titles Board or High Court, as the case may be.⁶

Under the *State Land Rules*,⁷ the title ordinarily to be issued for a piece of land shall be a lease for a term not exceeding 99 years.⁸ This would give the Government greater flexibility in planning land use. Upon expiry of the term, the land may be put to use for a public purpose to ensure that the needs of the general public are adequately served. The Singapore Land Authority ("SLA"), which manages state

² [2008] 4 SLR (R) 754 at para 7 (HC). See also the speech by Mr E W Barker, the then Minister for Law and National Development, in *Parliamentary Debates Singapore: Official Report*, vol 25 at cols 1424, 1425 (17 March 1967). Cf Sing, Constitutional Commission, *Report of the Constitutional Commission* (Singapore: Government Printer, 1966), paras 41, 42.

³ Cap 158, 2009 Rev Ed Sing.

⁴ See *Parliamentary Debates Singapore: Official Report*, vol 82 at col 1546 (27 February 2007) (Mr Mah Bow Tan).

⁵ See *Ng Swee Lang v Sassoon Samuel Bernard* [2008] 2 SLR (R) 597 at para 5 (CA) and *Ng Eng Ghee v Mamata Kapildev Dave* [2009] 3 SLR (R) 109 at para 1 (CA). See also *Parliamentary Debates Singapore: Official Report*, vol 69 at cols 601, 631, 632 (31 July 1998) (Associate Professor Ho Peng Kee).

⁶ The collective sale regime is not without controversies. See eg, *Sim Lian (Newton) Pte Ltd v Gan Beng Cheng Raynes* [2007] SGHC 84 at para 101: "It is no secret that collective sales of developments continue to strike raw nerves, especially from those who do not view their property as investments but as homes to be kept regardless of price." See also *Tan Siew Tian v Lee Khek Ern Ken* [2008] 3 SLR (R) 64 at paras 21, 25, 35 (HC).

⁷ Cap 314, R 1, 1994 Rev Ed Sing.

⁸ *Ibid*, r 10. The exception is where the land is not capable of independent development and is required for development with the applicant's adjacent land, in which case the title to be issued may be the same as that of the applicant's land: *ibid*.

land through, *inter alia*, land sales and leases, has the discretion whether to approve or reject an application for a lease top-up.⁹ In making its decision, the SLA considers various factors, including whether the extension would fit in with the Government's long-term intention for the land and whether it would optimise land use.

The importance of land use policy in Singapore was also recently highlighted in the Oxley Road saga involving the residence of the former Prime Minister of Singapore, Mr Lee Kuan Yew. The ministerial committee formed to consider options for the house had stated that it has the responsibility to consider the public interest aspects of any property with heritage and historical significance and this applies to the house of the former premier as well.¹⁰ The *Preservation of Monuments Act*¹¹ allows the Government to preserve the property as a national monument if it fulfils certain criteria.

III. TEACHING

Emeritus Professor Kevin Gray has pertinently highlighted the central role ascribed to the teaching of property law thus:

The teaching of property law has a peculiarly important—perhaps even a central—role in forming the mind-set not just of the law student, but also of the lawyer, and, in some degree, of the thoughtful and responsible citizen. The teaching of property law implants tremendously structural features in the mind of the student, and here can be included rigour of thought and analysis, the capacity for abstract manipulation of complex ideas, and some sense of the workability of entire bodies of statutory machinery. . . It is in property law that consciously or unconsciously the student learns a basic competence in a number of skills which are of immense importance in later life. Indeed, most of the classic dilemmas of private law are here—all human life is here. If we only choose to look.¹²

In light of this observation, which is very much valid even today, it is crucial to examine how property law legal education at NUS has sought to provide a critical and an in-depth insight into the key ideas and application of property law, especially in the Singaporean context.

A. *The Syllabus and the Approach Adopted*

The current property law syllabus adopts a comprehensive approach to the teaching of the subject by seeking to provide an adequate introduction to the key concepts of

⁹ See Ng Jun Sen, "Govt Taking Back 191 Homes in Geylang When Lease Ends" *The Straits Times* (21 June 2017), online: The Straits Times <<http://www.straitstimes.com/singapore/housing/govt-taking-back-191-homes-in-geylang-when-lease-ends>>.

¹⁰ See Nur Asyiqin Mohamad Salleh, "Oxley Road: DPM Teo Says Ministerial Committee Formed as Government Has Responsibility to Consider Public Interest" *The Straits Times* (3 July 2017), online: The Straits Times <<http://www.straitstimes.com/singapore/oxley-road-dpm-teo-says-ministerial-committee-formed-as-government-has-responsibility-to>>.

¹¹ Cap 239, 2011 Rev Ed Sing.

¹² Kevin Gray, "The Teaching of Property Law" in Peter Birks, ed, *Examining the Law Syllabus: The Core* (Oxford: Oxford University Press, 1992) 15.

property law. In particular, it looks not only at the rules pertaining to the acquisition, protection and disposition of property, and the remedies which regulate its recovery and the priority between competing claims (which the syllabi prior to 1990 laid emphasis on) but also considers the elements of the justification for, and the identification of, property.

It is worth noting that the current property law course at NUS is entitled “Principles of Property Law”. It is not just a land law course, although land law concepts provide a good medium through which to introduce students to core notions of definitional clarity, the formal machinery of transactions and the resolution of disputed priority.

In keeping with its title, the property law course attempts an exposition of the key ideas of property law which ranges, initially, across the gamut of real, personal and intellectual property, before homing in on real property as the primary focus for a deeper exploration of these core ideas. In other words, the property law course provides an introduction to the basic principles of the law of property, with a primary emphasis being given to the law of land. From the beginning, students are taught to engage with general and enduring features of the phenomenon of property. Using examples drawn not merely from land law, but also, as mentioned earlier, from the law relating to personal property, intellectual property and fiduciary property, the course poses some of the central questions of property jurisprudence. What *is* property? How do we *think* property? How are property rights *different* from other kinds of legal entitlement? How can property rights be *transferred* and on what grounds can property rights be *compulsorily regulated* or *withdrawn*? How, indeed, does property law intersect with the law of environmental protection?¹³

As seen above, the property law course embraces classic property problems that extend from copyright to property in body parts, from environmental stewardship to property in commercial opportunities. Against this backdrop, the course then explores fundamental elements of the law of real property, such as the doctrines relating to tenures and estates and the distinction between legal and equitable interests. The course proceeds to outline the various interests that can be created over land. Considerable time is spent examining specific interests in or over land, such as leases, licences, easements, restrictive covenants, covenants relating to freehold land and mortgages. The concept of indefeasibility of title and the caveat system under the Singapore Torrens system as embodied in the *Land Titles Act*¹⁴ are likewise subjected to close analysis. In the process, the student is caused to build up a picture of the rich and various means by which property rights are created, protected, manipulated and alienated in a complex modern world.¹⁵

An integrated approach to the teaching of property law, which was first mooted by the Faculty’s then Steering Committee and subsequently put up for discussion in the Faculty’s Curriculum Review Discussion Paper released on 19 November 2012,¹⁶ would not have been ideal. The idea then was to, among others, amalgamate the real

¹³ See *Principles of Property Law*, Syllabus for Academic Year 2016/2017 (Faculty of Law, National University of Singapore) at 1.

¹⁴ Cap 157, 2004 Rev Ed Sing.

¹⁵ *Supra* note 13.

¹⁶ See NUS Law Curriculum Review Committee, “Curriculum Review Discussion Paper” (19 November 2012) at paras 14, 15, online: National University of Singapore <http://law.nus.edu.sg/about_us/curriculum_review/CRC_Discussion_Paper_2012.pdf>.

property component with the law of personal property¹⁷ so as to move away from the traditional treatment of property. However, to shoehorn both real property and personal property into a one semester course would have resulted in a diminution of the content of both in an amalgamated course. This would be damaging to the understanding achieved by the students. In addition, they would become confused about property law matters as the conceptual clarity of real property tends to become lost with a commixture of real and personal property law in a short semester course. An integrated approach would be ideal to a veteran teacher of property law but not the student who is grappling with the concepts of property law for the first time. Law of personal property should remain an elective for undergraduate students in their senior years where it can be more usefully taught in both breadth and depth. Hence, while the theoretical rationale of the integrated approach is commendable, the practical result can be disappointing for the vast majority of students, if not disastrous.¹⁸ In the result, the integrated approach was rejected and the property law course, as discussed above, was retained in its current form.

The property law syllabus at NUS is not static and is constantly being updated and refined to take account of new developing areas in this field of the law. This ensures that the syllabus is not only current but also takes into consideration new developments in Singapore property law. As mentioned earlier, one area is the interaction between property law and environmental protection law. Another good example is the incorporation of the topic on Singapore strata title law which is now given greater emphasis. Given the scarcity of land in Singapore, strata title or condominium living has gained prominence over the years.¹⁹ The *Building Maintenance and Strata Management Act*²⁰ deals with the management aspects of condominium living while the *Land Titles (Strata) Act*²¹ deals with development-related matters, such as subdivision and the issuance of strata titles. Several factors have contributed to the popularity of strata title living. First, condominium apartments are generally more affordable compared to non-strata landed properties. Second, the ability to provide a common investment pool for amenities and services that would be out of reach for individual homeowners make strata title living attractive. Finally, such communal living provides for the ability to delegate the responsibility of caring for what in a private home is a personal burden, such as grounds, garden, external and structural

¹⁷ See *Law of Property (Law 202)*, Coursepack (School of Law, Singapore Management University, 2017). See also William Swadling, "Teaching Property Law: An Integrated Approach" in Peter Birks, *supra* note 12 at 22.

¹⁸ See Principles of Property Law Teachers, "Principles of Property Law Teachers' Response to Curriculum Review Discussion Paper" (10 January 2013) [unpublished].

¹⁹ As at 6 June 1987, there were 1,271 management corporations managing more than 54,000 strata lots in residential or commercial complexes and residential-cum-commercial complexes: see "Appendix V: Official Report" in Sing, Select Committee, *Report of the Select Committee on the Land Titles (Strata) (Amendment) Bill (Bill No 10/86)* (Singapore: Government Printer, 1987) at D62, presented to Parliament on 25 June 1987. Over a period of 30 years since then, the number of management corporations has nearly tripled and for strata lots, the number has increased nearly seven-fold. As at 11 September 2017, there were 3,400 management corporations managing more than 340,000 strata lots in various strata developments in Singapore: see Ministry of National Development, Parliamentary Speeches, "Building Maintenance and Strata Management (Amendment) Bill 2017 2nd Reading Speech by 2M Desmond Lee" (11 September 2017), online: Ministry of National Development <<https://www.mnd.gov.sg/newsroom/news-page/building-maintenance-and-strata-management-amendment-bill-2017-2nd-reading-speech-by-2m-desmond-lee>>.

²⁰ Cap 30C, 2008 Rev Ed Sing.

²¹ *Supra* note 3.

parts of a dwelling. However, the popularity of strata title living has also brought with it a host of complex legal issues, be it management-related or otherwise, which are increasingly litigated in the courts and which can no longer be ignored in the property law course.

To provide a comparative perspective to property law legal education in NUS, references are also made to relevant materials from other jurisdictions, especially Australia, New Zealand, Malaysia and the United Kingdom (“UK”). This would comprise essentially case law, statutory provisions and publications in the relevant areas of property law.

The property law course also seeks to provide students with some idea of how real property law issues are dealt with in practice. Thus, in some years, legal practitioners and experts in some of the areas in real property law have been invited to give guest lectures to students and to relate their experiences in dealing with property law issues. For example, a Senior Counsel was invited to talk about collective sales which he had handled in practice or argued in court. At other times, senior officials from the Land Titles Registry were invited to make presentation on practical matters pertaining to the process of land registration. This serves to draw linkages between what students have learnt in the property law course and what goes on in practice.

B. Taking Stock of Singapore’s Policy and Values in Land Matters

With the introduction of the Torrens registration system in Singapore some 60 years ago following the enactment of the *Land Titles Ordinance 1956*,²² there are some areas of significant and fundamental differences in Singapore and English land laws which should be noted. While English real property case law generally applies in Singapore given the historical background and notwithstanding the adoption of the Singapore Torrens system,²³ these points of departure provide for a proper and crucial understanding of Singapore land law in its own right and in a broader sense, also contribute to Singapore’s property law legal education and development.

As an illustration, one such fundamental point of departure can be seen in the important Court of Appeal case of *Xpress Print Pte Ltd v Monocrafts Pte Ltd*,²⁴ a decision of Singapore’s highest court. The first respondents’ excavation works carried out on their own land to construct a building thereon had caused damage to the appellants’ building which stood on the latter’s adjoining land. The damage had been caused by the inadequacy of the retaining wall erected by the first respondents’ contractors. The appellants commenced action against the respondents for damages and loss suffered as a result of, *inter alia*, wrongful interference of support on the latter’s part. The trial judge dismissed the claim and the appellants appealed.²⁵

In the English case of *Dalton v Angus*,²⁶ the House of Lords had laid down the proposition of law that a right of support from adjoining land exists only in respect

²² No 21 of 1956.

²³ See *Land Titles Act*, *supra* note 14, s 3(1). See also the *Application of English Law Act* (Cap 7A, 1994 Rev Ed Sing), s 3.

²⁴ [2000] 2 SLR (R) 614 (CA) [*Xpress Print*].

²⁵ Before the trial, the contractors were wound up and the appellants obtained default judgment against them. In the result, the suit proceeded against the first respondents only.

²⁶ (1881) 6 App Cas 740 (HL).

of what is naturally on the land and not in respect of buildings or things constructed thereon. In other words, if the land is in a natural state, a right of support existed as an incident of the land itself, while a natural right of support did not exist *vis-a-vis* things artificially imposed on the land since such things did not themselves exist naturally. In respect of the latter, an easement of support could be acquired by prescription under which the person claiming the easement had to show uninterrupted use of the easement for a period of 20 years.²⁷

Then Chief Justice Yong Pung How, who delivered the judgment of the Court of Appeal in *Xpress Print*, found it strange that:

If my neighbour's land is in its natural state, I may not remove the soil on my land without providing alternative support for his land; but if my neighbour expends money and effort in building a bungalow on his land, then I may excavate with impunity, even though his bungalow may crumble to the ground. Yet, my liberty to ignore the support required by his house is not perpetual, but lasts only for 20 years, at which time any indolence in pursuing my right to remove my soil is transformed into a positive right of support in respect of his dwelling.²⁸

The Court of Appeal took the view that the rule in *Dalton v Angus* cannot be justified in Singapore on principle and that it should not be allowed to continue. The proposition that a landowner may excavate his land with impunity, sending his neighbour's building and everything in it crashing to the ground, is one inimical to a society which respects each citizen's property rights. Yong CJ was of the opinion that the true legal justification for the right of support is the legal principle that one should use one's own property in such a manner as not to injure that of another. This principle will operate to give a landowner a right of support in respect of his buildings by neighbouring lands from the time such buildings are erected. The principle is more appropriate in Singapore's context in view of the land use pattern, whereby all land available for commercial, industrial or residential purposes is used to a high intensity. The damage that might be caused if landowners were lackadaisical in their excavation works could be astronomical, not to mention the cost in human lives or injury to property. Accordingly, there is no justification for the 20-year gestation period for a right of support in respect of a building once the primacy of this principle forbidding landowners to use their property to the injury of others is accepted.²⁹

Yong CJ also noted³⁰ that historically, the English courts designated 20 years of open and peaceable enjoyment of certain rights, such as rights of passage, or a right to light, water or air, as sufficient to raise a presumption that the particular right in question was in fact the subject of an express grant. The development of that rule, however, was primarily in relation to such rights which are of a wholly different character from the right of support and which raise different policy considerations. In relation to the former rights, the question is whether a person is entitled to a particular liberty or the benefit of a natural resource, having openly enjoyed that liberty or

²⁷ This was also the law in Singapore since the decision of the then Straits Settlements Court of Appeal in *Lee Quee Siew v Lim Hock Siew* (1896) 3 SSLR 80.

²⁸ *Supra* note 24 at para 34.

²⁹ *Ibid* at para 49.

³⁰ *Ibid*.

benefit for a substantial period of time; whereas in relation to the right of support, the concern is damage to life, limb or property.

Further, given that land ownership in Singapore is governed by different regimes (namely, Torrens and deeds, depending on whether the land is registered or unregistered), imposing a duty of care would create an anomalous situation. In relation to unregistered land, the duty to take reasonable care would be superseded by a strict duty of support upon the passage of 20 years. This means that the strict duty would also apply to buildings on registered land which were built more than 20 years before the land was brought under the *Land Titles Act*. On the other hand, in relation to registered land, or buildings built less than 20 years before the land was brought under the *Land Titles Act*, no easement of support would arise, and the duty to take reasonable care would continue in perpetuity.³¹

In the result, the appeal was allowed as the first respondents were under a duty to support the appellants' property, including any buildings on it, and that they breached that duty by causing their soil to be removed without sufficient alternative means of support. The Court of Appeal in *Xpress Print* is to be lauded for departing from the rule in *Dalton v Angus* given the realities of living in an urban city. The position adopted in *Xpress Print* is also commendable given the different land ownership regimes in Singapore. There will be uniformity of approach for both unregistered and registered land on the matter. For once, the anomalous situation in which the easement of support for buildings acquired by the 20-years user which applied in the case of unregistered land but not for registered land, will cease to exist. The decision in *Xpress Print* provides for a fresh perspective in the legal education of Singapore's property law as the recognition of the differences in Singapore and English land laws will provide for the development of an autochthonous Singapore land law regime in the relevant areas where the circumstances warrant it.

It is trite that the main difference in Singapore and English land laws lies in the areas where the Torrens system of registration (as embodied in the *Land Titles Act*) applies, such as in the various interests that can be created in respect of land, namely, leases, mortgages and easements, to name a few. To acquire the status of a legal interest, registration, which is a cornerstone of the Torrens system, must be effected. Another concept which is central to the Torrens system of registration is that of indefeasibility which provides for a registered title or interest to be immune from attack by adverse claims subject to recognised statutory exceptions. The courts have also played their part in reiterating, from time to time, the differences in Singapore and English land laws. As succinctly observed by V K Rajah J (as he then was) in *United Overseas Bank Ltd v Chia Kin Tuck*:

One final observation needs to be highlighted: It struck me somewhat to my chagrin that a significant number of counsel who appear in court inexplicably fail or neglect to familiarise themselves with the relevant provisions of the [*Land Titles Act*] notwithstanding that the legal controversy involves registered land. Copious and unnecessary references are usually made to English authorities. This is most unfortunate. Valuable time and significant legal costs would be saved if counsel diligently attempt to understand the intent and purport of the applicable provisions of the [*Land Titles Act*]. Counsel should appreciate that in matters involving

³¹ *Ibid* at para 42.

registered land, English case law and authorities are often only of penumbral assistance, if any. Given that the [*Land Titles Act*] was inspired by and modelled upon the Australian Torrens System, counsel will find it far more profitable to refer to John Baalman's several treatises as well as to other relevant legal material from Australia and New Zealand, rather than rely on English authorities.³²

IV. RESEARCH

A. Scholarly Writings

Legal education in the field of property law is further enhanced by the various scholarly writings of Faculty on the subject over the years. Whether in the form of a textbook or a law review article, these writings provide for a better appreciation and understanding of property law in the relevant areas. Examples of major publications on real property law include Tan Sook Yee, Tang Hang Wu and Kevin Low's *Tan Sook Yee's Principles of Singapore Land Law*,³³ Lye Lin Heng's *Landlord and Tenant*,³⁴ William Ricquier's *Land Law*,³⁵ and Teo Keang Sood's *Strata Title in Singapore and Malaysia*.³⁶ Law students and legal practitioners can draw on the writings for a critical analysis of a particular case or statutory provision as well as on novel points of law and come to a better informed view of a particular area of property law. Many of these writings are prescribed readings in the property law course at NUS.

One area of real property law that has witnessed a major development is the indefeasibility of title provided in the *Land Titles Act*. Land law students and practitioners in this field alike would be familiar with the landmark Singapore Court of Appeal case of *United Overseas Bank Ltd v Bebe bte Mohammad*.³⁷ The Court of Appeal had expressed the view that constructive trust has no application in the express statutory exception to indefeasibility in section 46(2)(c) of the *Land Titles Act* and that:

As regards all other unspecified personal equities, we are of the view that having regard to the policy objectives of the [*Land Titles Act*] to reduce uncertainty and to give finality in land dealings, our courts should be slow to engraft onto the [*Land Titles Act*] personal equities that are not referable directly or indirectly to the exceptions in s 46(2) of the [*Land Titles Act*]. These exceptions are, as we have shown, capable of encompassing most of the *in personam* actions at common law or in equity that a court exercising *in personam* jurisdiction may grant.³⁸

In doing so, the Court of Appeal had criticised its earlier decision in *Ho Kon Kim v Lim Gek Kim Betsy*³⁹ which applied the constructive trust notwithstanding that such

³² [2006] 3 SLR (R) 322 at para 21 (HC).

³³ Tan Sook Yee, Tang Hang Wu & Kevin FK Low, eds, *Tan Sook Yee's Principles of Singapore Land Law*, 3d ed (Singapore: LexisNexis, 2009).

³⁴ Lye Lin Heng, *Landlord and Tenant* (Singapore: Butterworths, 1990).

³⁵ WJM Ricquier, *Land Law*, 4th ed (Singapore: LexisNexis, 2010).

³⁶ Teo Keang Sood, *Strata Title in Singapore and Malaysia*, 5th ed (Malaysia: LexisNexis, 2015).

³⁷ [2006] 4 SLR (R) 884 (CA) [*Bebe*].

³⁸ *Ibid* at para 91 [emphasis in original].

³⁹ [2001] 3 SLR (R) 220 (CA) [*Betsy Lim*].

a trust was not expressly provided for in section 46(2)(c). *Betsy Lim* had followed the position adopted by the Privy Council that the doctrine of indefeasibility of title does not prevent a court from granting relief on a claim *in personam* founded in law or in equity against the registered proprietor by reason of his own unconscionable conduct.⁴⁰ *Bebe* had frowned upon the continued application of personal equities beyond those already enacted in the *Land Titles Act*. It observed that “[g]eneral statements such as those in *Frazer v Walker* and *Oh Hiam* should be read and understood in the context of the Torrens statutes in which they were made. They do not necessarily apply to the [*Land Titles Act*].”⁴¹

Was the Court of Appeal in *Bebe* correct in its views as articulated above? Writings⁴² by Faculty have criticised the decision in *Bebe*. Students and practitioners alike would know from a reading of the articles that *Bebe* might not have been right after all for the following reasons.

While it is correct for *Bebe* to say that the policy objectives of the *Land Titles Act* are to reduce uncertainty and to give finality in land dealings, the recognition of constructive trust as an exception to indefeasibility does not necessarily go against these policy objectives in the Singapore Torrens system. As rightfully pointed out by the Privy Council in *Oh Hiam*,⁴³ the court in exercising its jurisdiction *in personam* on grounds of conscience does not do violence to the policy objectives of the Torrens system which is “to provide simplicity and certitude in transfers of land”.⁴⁴ This must be correct in deserving circumstances as the registered proprietor should not be permitted to hide behind his registered title on account of indefeasibility. Further, the application of constructive trust in such deserving circumstances will reflect the true state of affairs of the title in question, thus ensuring certainty and finality in land transactions.

Bebe’s criticism of *Betsy Lim* that there was actual fraud therein was, it is respectfully submitted, unwarranted. In *Betsy Lim*, it was found as a fact that RHB Bank merely had notice of Madam Ho’s equitable interest in the land at the time of the mortgage. It is established law that mere notice and knowledge of an unregistered interest cannot amount to actual fraud.⁴⁵ In addition, the fraud complained of must be that which resulted in registration of the mortgage. The timing and sequence of events in *Betsy Lim* just do not coincide to make RHB Bank’s mortgage defeasible

⁴⁰ See *Frazer v Walker* [1967] 1 AC 569 at 585 (PC), a case from New Zealand. See also the Australian High Court case of *Bahr v Nicolay (No 2)* (1988) 164 CLR 604 at 638 (HCA) and the Malaysian case of *Oh Hiam v Tham Kong* [1980] 2 MLJ 159 at 165 (PC) [*Oh Hiam*] where the Privy Council had observed that the doctrine of indefeasibility “while operating effectively and indeed necessarily for its effectiveness as between independent rival claimants to a property, in no way interfered with the ability of the court, exercising its jurisdiction *in personam* to insist upon proper conduct in accordance with the conscience which all men should obey.”

⁴¹ *Supra* note 37 at para 78.

⁴² See eg. Barry C Crown, “Equity Trumps the Torrens System: *Ho Kon Kim v Lim Gek Kim Betsy*” [2002] Sing JLS 409; Teo Keang Sood, “Application of Personal Equities in the Singapore Torrens System” (2007) 81 Austl LJ 44; Tang Hang Wu, “Beyond the Torrens Mirror: A Framework of the *In Personam* Exception to Indefeasibility” (2008) 32 Melbourne UL Rev 672 at 684-687; Barry C Crown, “Whither Torrens Title in Singapore?” (2010) 22 Sing Ac LJ 9 at 32, 34; Teo Keang Sood, “The Trust Statutory Exception to Indefeasibility in the Singapore Torrens System” [2017] Sing JLS 151.

⁴³ *Supra* note 40.

⁴⁴ *Ibid* at 164.

⁴⁵ *Land Titles Act*, *supra* note 14, s 47(2). See also the New Zealand Privy Council case of *Waimiha Sawmilling Company, Limited (in liquidation) v Waione Timber Company, Limited* [1926] 1 AC 101 (PC).

on the ground of actual fraud. A finding of fraud is a serious one to make. And a high standard of proof more onerous than in an ordinary civil case is required to prove fraud.⁴⁶

Another criticism of *Bebe* which may be noted is that it incorrectly interpreted section 47(3) of the *Land Titles Act*. It had observed that:

Section 47(3) goes further in providing that the protection afforded by s 46(1) commences at the date of the contract or other instrument evidencing such dealing, subject only to the proprietor's title being defeasible by overriding interests in s 46(1) itself and the exceptions in ss 46(2)(a)–46(2)(e). By implication, and logic, any such event, act or omission prescribed by ss 46(1) and 46(2) as capable of defeating the title of the registered proprietor *must exist before or at the time the instrument is registered*, as once registered the proprietor's title becomes indefeasible.

...

On this basis, the decision in *Betsy*. . . in imposing a constructive trust by reason of a promise made *after* the contract was entered into and after registration of the mortgage, was inconsistent with ss 46(1) and 47(3) of the [*Land Titles Act*].⁴⁷

In the first place, section 47(3) does not refer to section 46(1) but only section 47. If *Bebe*'s interpretation of section 47(3) is correct, it would give a "permanent" protection to a prospective purchaser from the date of the contract henceforth as he or she can commit no wrong thereafter. With all due respect, this surely cannot be correct. The better view is that a prospective purchaser who is not guilty of fraud at the time of the contract has all the protection accorded to him or her by section 47(3) in respect of the matters mentioned in section 47(1) and (2). In other words, he is excused from inquiring into the matters set out in section 47(1) or be affected thereby. But if, for some reason or other, there is dishonesty or unconscionable conduct on his or her part at any point after the contract which results in registration, such as where the prospective purchaser discovers before presenting the instrument of transfer for registration that the vendor's signature was forged and, nevertheless, goes ahead to obtain registration, then his or her registered title or interest can still be defeated under section 46(2) as registration in the circumstances cannot confer indefeasibility.

It is clear from the above discussion that scholarly writings by Faculty, such as those on *Bebe*, can add to the quality of legal education in property law. They will enrich the students' experience in the learning of property law. Such writings also encourage them to have a critical mind and not to accept decisions made at face value.

B. Citations by Courts and in Local/International Publications

The impact of Faculty's scholarly writings on legal education in property law over the years can also be seen from the perspective of citations by the courts and in

⁴⁶ *Yogambikai Nagarajah v Indian Overseas Bank* [1996] 2 SLR (R) 774 at para 44 (CA). See also *Tang Yoke Kheng v Lek Benedict* [2005] 3 SLR (R) 263 at para 14 (CA) and *Chua Kwee Chen v Koh Choon Chin* [2006] 3 SLR(R) 469 at para 39 (HC).

⁴⁷ *Supra* note 37 at paras 93, 94 [emphasis in original].

local/international publications. Such citations validate the quality and impact of the publications of Faculty which, in turn, acknowledge the high standards of legal education in property law at NUS.

These citations of Faculty's publications assist the local and foreign courts in arriving at their decisions in the respective areas of property law,⁴⁸ be it as authoritative texts or for comparative purposes. In the case of citations in international publications, the latter have come from jurisdictions with generally similar property laws or where the property laws are similar in some relevant aspects. Examples of these jurisdictions are Australia, the UK, Malaysia, New Zealand and South Africa.⁴⁹

Needless to say, Faculty's writings on property law have similarly cited and made references to relevant foreign court decisions and publications. This provides for a useful comparative perspective in property law legal education at NUS.

C. Tribunals' Judgments — Drafting of Grounds of Decision

Some Faculty who teach property law in NUS are also panel members of tribunals established under the respective statutes. Examples are the Strata Titles Boards and the Disciplinary Tribunals of the Council for Estate Agencies.

Faculty who are members of such tribunals have occasionally taken on the task of drafting the grounds of decisions which deal with issues on strata title and real estate

⁴⁸ See eg, Singapore cases: *Fu Loong Lithographer Pte Ltd v Mok Wai Hoe* [2014] 3 SLR 456 at paras 47, 64 (CA); *Lim Li Meng Dominic v Ching Pui Sim Sally* [2015] 5 SLR 989 at para 61 (CA); *MCST No 473 v De Beers Jewellery Pte Ltd* [2002] 2 SLR 1 at 9 (CA); *AG v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 at para 110 (CA); *Fu Loong Lithographer Pte Ltd v Mok Wing Chong* [2017] SGHC 97 at paras 94, 96, 105, 217-219 (HC); *Sit Kwong Lam v MCST Plan No 2645* [2017] SGHC 57 at paras 46, 53, 80, 95, 133, 137; *AG v Aljunied-Hougang-Punggol East Town Council* [2015] 4 SLR 474 at para 79 (HC); *Tunas Pte Ltd v MSCT Plan No 562* [2015] 5 SLR 756 at paras 69, 70 (HC); *Diora-Ace Ltd v MCST Plan No 3661* [2015] 3 SLR 643 at paras 15, 18, 19, 25 (HC); *Beckett Pte Ltd v Deutsche Bank AG* [2009] 3 SLR (R) 452 at para 29 (CA); *Bebe*, supra note 37, at para 9; *NP v Comptroller of Income Tax* [2007] 4 SLR 599 at paras 9, 10 (HC); *Tan Soo Leng David v Lim Thian Chai Charles* [1998] 1 SLR (R) 880 at para 22 (HC); *Choo Kok Lin v MCST No 2405* [2005] 4 SLR 175 at paras 19, 28 (HC); Malaysian cases: *Low Huat Cheng v Rozdenil bin Toni* [2016] 5 MLJ 141 at paras 39, 59 (FC); *S & M Jewellery Trading Sdn Bhd v Fui Lian-Kwong Hing Sdn Bhd* [2015] 5 MLJ 717 at para 29 (FC); *Kamarulzaman bin Omar v Yakub bin Husin* [2014] 2 MLJ 768 at paras 15, 33, 36 (FC); *Tan Ying Hong v Tan Sian San* [2010] 2 MLJ 1 at paras 39, 40 (FC); *Meenachi Holding & Trading (M) Sdn Bhd v Serba Kemas Sdn Bhd* [2016] 1 MLJ 656 at para 68 (CA); and English cases: *Stack v Dowden* [2007] 2 AC 432 at para 60 (HL); *Rosemary Scott v Southern Pacific Mortgages Ltd* [2014] UKSC 52 at para 35.

⁴⁹ See eg, Kevin Gray & Susan Francis Gray, *Elements of Land Law*, 5th ed (New York: Oxford University Press, 2009) at 236, 949; Peter Butt, *Land Law*, 6th ed (Pyrmont, New South Wales: Thomson Reuters, 2010) at 22, 753, 819, 853, 874, 875; NZ, Law Commission, *Review of the Land Transfer Act 1952* (Issues Paper 10) (Wellington: Law Commission, 2008) at 38 (para 2.67, n 112); Ainul Jaria Maidin et al, *Principles of Malaysian Land Law* (Malaysia: LexisNexis, 2008) at 155, 215, 225, 318, 338, 389, 390, 415, 432; Cornelius G van der Merwe, "The Democratization of Proceedings at General Meetings in Strata Title or Condominium Schemes" (2012) 9:3 US-China L Rev 147 at 152, 153, 154, 157, 164, 165; Pamela O'Connor, "Deferred and Immediate Indefeasibility: Bijural Ambiguity in Registered Land Title Systems" (2009) 13 Ed L Rev 194 at 216, 218; SMJ Wong, "Potential Pitfalls in the Commonhold Community Statement and the Corporate Mechanisms of the Commonhold Association" (2006) 70 Conveyancer and Property Lawyer 14 at 22; Cathy Sherry, "Termination of Strata Schemes in New South Wales - Proposals for Reform" (2006) 13:3 Austl Prop LJ 227 at 233-235.

agency law. They do so either as a panel member or as chairperson of the constituted tribunal. Some of the matters dealt with involved novel points of law in these areas.

A case in point is *Sardool Singh s/o Baljit Singh v Lam Kong Choong*⁵⁰ where the novel issue in strata title law which arose for the consideration of the Strata Titles Board was whether an extraordinary general meeting (“EOGM”) convened by the management council merely by a letter, without a proper requisition, was defective. This would very much depend on whether there is any inconsistency between section 27(2) and (3) of the *Building Maintenance and Strata Management Act*. Section 27(2) expressly allows for such a meeting to be convened by the management council without the need for a requisition. On the other hand, section 27(3) of the Act and paragraph 14 of the First Schedule thereto provide for an EOGM to be convened by requisition and for the requirements in the First Schedule to apply to such a meeting. The Board ruled that there was no inconsistency and helpfully explained as follows:

Under s 27(2), the management council is empowered to convene an EOGM. Section 27(3) does not, in any way, take away or qualify the powers of the management council to convene an EOGM under s 27(2). Section 27(3) merely makes it clear that for any meeting of a management corporation, the First Schedule to the [*Building Maintenance and Strata Management Act*] shall apply. So if an EOGM is to be convened by way of requisition, paragraph 14 of the First Schedule shall apply. There is nothing in the language of s 27(3) or paragraph 14 of the First Schedule which mandates that an EOGM must be convened only by way of a requisition. To do so would render s 27(2) otiose which is surely not the intention of Parliament. In fact, s 27(2) plays a useful role as it empowers the management council to call for an EOGM whenever it is necessary to do so.⁵¹

Novel points of law have also been raised and considered in other tribunal decisions.⁵² Given the novelty of the points decided on, this will fill the gaps in the law in these areas where no appeal is made against the tribunal decisions. The exposition of the law in these decisions will, in turn, add value to property law legal education in NUS.

V. CONCLUSION

As can be seen above, property law legal education in NUS has moved away from the traditional treatment of the subject by merely looking at the rules relating to the acquisition, protection and disposition of property and the remedies available. The property law course has taken on a whole new dimension as discussed above. It

⁵⁰ [2008] SGSTB 5.

⁵¹ *Ibid* at para 30.

⁵² See eg, *MCST Plan No 367 v Lee Siew Yuen* [2013] SGSTB 5 as to the meaning of “common property” under the *Building Maintenance and Strata Management Act*, *supra* note 20. For decisions of the Disciplinary Tribunal of the Council for Estate Agencies, see DC No 20150012, DC No 20150013 and DC No 20150015 which dealt for the first time with the liability of a registered estate agency and salespersons under the *Estate Agents Act* (Cap 95A, 2011 Rev Ed Sing) in the marketing of foreign properties.

would require students to be critical of the subject and to be able to think independently. Wherever possible, an autochthonous Singapore land law regime should be developed to cater to local policy and values. It would not be an exaggeration to say that property law legal education in NUS today is forward-looking, sound and enriching. It is what it is today as a result of careful and meticulous planning over the years. Going forward, property law legal education in NUS will continue to meet and accommodate the demands of the legal community in particular and Singapore in general.