

## DEFINING A CAVEATABLE INTEREST UNDER SECTION 115(3)(A) OF THE LAND TITLES ACT

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This study examines the extent to which “an interest in the proceeds of sale of land” is able to be protected by a caveat, under s 115(3)(a) of the LTA. To this end, the history of the LTA and case law are studied to identify the legislative intent behind s 115(3)(a). Various issues such as the scope of a caveatable interest and lack of definitions in the LTA, among other challenges, are identified and consolidated. This study then proposes the use of the “definite entitlement” test as an extension of the statute for greater clarity.

### I. INTRODUCTION

Finality and certainty to land titles and registrable interests in land are the central aims of the Torrens system in Singapore.<sup>1</sup> Interests in land that are non-registrable may be protected by the system of caveats.<sup>2</sup> It allows a person who has an interest in land to protect their interest by lodging a caveat, which prevents dealings in the property to the extent of the caveator’s interest, under s 115 of the Land Titles Act.<sup>3</sup> *Bona fide* claims of third parties who have interests in registered land are thus protected under this “statutory injunction” mechanism.<sup>4</sup> The Legislature and the Judiciary have been praised for delicately balancing the rights of the caveator against the remedies available to the caveatee, where caveats have earned the reputation of providing “speedy interim protection of claims”<sup>5</sup> to unregistered interests in land.

Despite its benefits, the system of caveats faces a fundamental difficulty. Defining the kinds of interests that can sustain a caveat has proven challenging. Preliminarily, a caveatable interest is of a wider scope than merely an interest in land, as defined in s 115(3) of the LTA. Further, under s 115(3)(a) of the LTA, the extent of a caveatable

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<sup>1</sup> *Gibbs v Messer* [1891] AC 248 at 254. See also Teo Keang Sood, “Remedies of the Caveatee under Section 127 of the Land Titles Act” [1995] Sing JLS 129 at 129.

<sup>2</sup> *Chip Thye Enterprises Pte Ltd v Development Bank of Singapore Ltd* [1994] 2 SLR(R) 68 at [39]; *Abigail (since deceased) v Lapin* [1934] 1 AC 491 at [500]. See also Teo Keang Sood, “The System of Private Caveats in Malaysia and Singapore: Some Reflections” (2013) Sing JLS 428 at 429.

<sup>3</sup> Land Titles Act 1993 (2020 Rev Ed) [LTA].

<sup>4</sup> *Alrich Development Pte Ltd v Rafiq Jumabhoy* [1993] 1 SLR(R) 598 at [37] [*Jumabhoy*].

<sup>5</sup> Teo Keang Sood, “Proprietary Estoppel and the Land Titles Act” (2020) Sing JLS 323 at 328.

interest would also include “any person who has an interest in the proceeds of sale of land”.

“115.—(3) For the purposes of this Part, and without limiting its generality, a reference to a person claiming an interest in land includes a reference to any of the following persons:

(a) any person who has an interest in the proceeds of sale of land, not being an interest arising from a judgment or order for the payment of money ...”

Unfortunately, this provision has been the subject of much confusion. Two differing approaches are the subject of discussion in this study. First, the broader approach, supported by two earlier cases, *Abdul Hamid*<sup>6</sup> and *Novel Ho*<sup>7</sup>, seem to suggest loan agreements are a caveatable interest. Second, the narrower approach, characterised by newer developments such as *Salbiah*<sup>8</sup>, *Nimisha*<sup>9</sup>, and *Kok Zhen Yen*<sup>10</sup> appear to deviate from the plain meaning of the provision in favour of legislative intent.

In view of the uncertain definition of a caveatable interest under s 115(3)(a) of the LTA, this study seeks to investigate the boundaries of what constitutes an interest capable of sustaining a caveat under the same section. It traces the statutory amendments and surveys the five abovementioned cases which shaped the definition of a caveatable interest. In so doing, this study strives to unite the theories in this area of law. Since a caveator is placed the burden of proving that an interest is indeed caveatable during interlocutory proceedings or at trial<sup>11</sup> and that there is a serious question to be tried,<sup>12</sup> this study also bears practical significance.

This study proceeds in three sections. First, it examines the history of a caveatable interest under s 115(3)(a). Next, the broader and narrower views are studied with reference to the five cases. Finally, it concludes by proposing possible amendments for better clarity.

## II. HISTORICAL DEVELOPMENTS IN CAVEATABLE INTERESTS

### A. Prior to the LTA

The Land Titles Ordinance 1956 introduced the system of registered land in Singapore.<sup>13</sup> After several revisions<sup>14</sup> as detailed in *Fones Christina*,<sup>15</sup> the LTA we

<sup>6</sup> *Abdul Hamid Bin Mohamed Ismail and Others v Shaik Raheem s/o Abdul Shaik Shaik Dawood and Another Action* [2005] SGDC 28 [*Abdul Hamid*].

<sup>7</sup> *Ho Seek Yueng Novel and another v J & V Development Pte Ltd* [2006] 2 SLR(R) 742 [*Novel Ho*].

<sup>8</sup> *Salbiah bte Adnan v Micro Credit Pte Ltd* [2015] 1 SLR 601 [*Salbiah*].

<sup>9</sup> *Nimisha Pandey v Divya Bothra* [2023] SGHC 125 [*Nimisha*].

<sup>10</sup> *Kok Zhen Yen and another v Beth Candice Wu* [2023] SGHC 126 [*Kok Zhen Yen*].

<sup>11</sup> Seow Zhixiang, “Rationalising the Singapore Torrens System” (2008) Sing JLS 165 at 187.

<sup>12</sup> *Kok Zhen Yen*, *supra* note 10 at [29].

<sup>13</sup> Land Titles Ordinance 1956 (No 21 of 1956) [LTO]; Alvin WL See, “The Torrens System in Singapore: 75 Years from Conception to Commencement” (2022) Am J Leg Hist 62 at 67.

<sup>14</sup> After the 1970 Revised Statutes of the Republic of Singapore, the LTO became the LTA 1970. It was revised and enacted again in 1985, and later repealed by the LTA 1993. Subsequent revised editions to the act retained the name LTA 1993.

<sup>15</sup> *Fones Christina v Cheong Eng Khoon Roland* [2005] 4 SLR(R) 803 at [2] [*Fones Christina*].

know today is the LTA 1993 as applied in 2024. For s 115(3)(a) of the LTA specifically, its precursor is s 93(3) of the LTO.<sup>16</sup> The LTO, drafted by John Baalman, has its roots from the Real Property Act 1900, New South Wales.<sup>17</sup> However, the equivalent section, s 74B(1), makes no mention of an interest in the proceeds of sale of land.<sup>18</sup> Like New South Wales, interests in the proceeds of sale of land is not a caveatable interest in Victoria. Section 89(1) of Victoria's Transfer of Land Act 1958 has no provisions regarding an interest in the proceeds of sale of land.<sup>19</sup> Cases in Australia have similarly applied the same rule. Both the Supreme Courts of New South Wales and Victoria have separately held that a right to proceeds from the sale of property is not a caveatable interest, regardless of whether the right is contractual or equitable.<sup>20</sup>

Since the equivalent statutes in Australia do not categorise interests in the sale proceeds of land as caveatable, the LTO was the genesis of such caveatable interests. Why then did Baalman make such a significant addition? In ascertaining the LTO's legislative intent, reference to Baalman's *The Singapore Torrens System*<sup>21</sup> is useful.<sup>22</sup> Having been judicially recognised as authoritative,<sup>23</sup> Baalman's commentary is regarded as "material capable of assisting in the ascertainment of the meaning" of statutes.<sup>24</sup> Further, the plain wording of the provision does not reveal any particular legislative intentions.

### B. The Legislative Intent Behind Section 93(3) of the LTO

Two reasons for enacting this provision can be found in *The Singapore Torrens System*.<sup>25</sup> First, Baalman states that a "new interest in land can be created only by legislation" through the Parliament. Second, Baalman argues that various rules (such as the equitable doctrine of conversion) render existing interests unprotected, which

<sup>16</sup> The section reads: "For the Purposes of this Part, and without limiting its generality, an interest in the proceeds of sale of land shall be deemed an interest in land."

<sup>17</sup> Real Property Act 1900 (No 25) (New South Wales); *ACS Computer Pte Ltd v Rubina Watch Co (Pte) Ltd and another* [1997] 1 SLR(R) 1006 at [18] [*ACS Computer*].

<sup>18</sup> The relevant section, s 74B(1), reads: "A person who claims a legal or equitable estate or interest in land that is the subject of a primary application, or in any part of any such land, may ... lodge with the Registrar-General a caveat prohibiting the bringing of that land or part under the provisions of this Act."

<sup>19</sup> Transfer of Land Act 1958 (No 6399) (Victoria). It reads: "(1) Any person claiming any estate or interest in land under any unregistered instrument or dealing or by devolution in law or otherwise or his agent may lodge with the Registrar a caveat in an appropriate approved form forbidding the registration of any person as transferee or proprietor of and of any instrument affecting such estate or interest either absolutely or conditionally and may, at any time, by lodging with the Registrar an instrument in an appropriate approved form, withdraw the caveat as to the whole or any part of the land."

<sup>20</sup> *Dykstra v Dykstra* (1991) 22 NSWLR 556 at 599, heard in the Supreme Court of New South Wales, held that a contractual right to payment of a sum of money from the proceeds of sale of property is not a caveatable interest. The Supreme Court of Victoria held that an equitable right to sale proceeds is not a caveatable interest, in *Eppe v Wilson* [1972] VR 440 at 444.

<sup>21</sup> John Baalman, *The Singapore Torrens System; being a commentary on the Land Titles Ordinance 1956 of the State of Singapore* (Singapore: Govt Printer, 1961) [*The Singapore Torrens System*].

<sup>22</sup> Seow, *supra* note 11 at 165.

<sup>23</sup> *United Overseas Bank Ltd v Chia Kin Tuck* [2006] 3 SLR(R) 322 at [21].

<sup>24</sup> *ACS Computer*, *supra* note 17 at [20].

<sup>25</sup> *The Singapore Torrens System*, *supra* note 21 at 195–196.

is not desirable. As a result, the general phrasing of the provision was intended to broaden the scope of statutory protection offered.<sup>26</sup>

The first reason is more of a matter of procedure than substance. Lord Brougham once observed that “great detriment would arise and much confusion of rights if parties were allowed to invent new modes of holding and enjoying real property”.<sup>27</sup> The authority to recognise new rights lies with the Legislature, rendering it a necessity for any change to property rights to come through an act of Parliament.

Second, the substantive reason for introducing such a provision is to protect interests that would otherwise go unprotected. The function of s 93(3) is to offer protection in such contexts, to address any perceived inadequacies under the common law. Two examples are illustrative of how caveats complement the existing law.

One, at common law, a person “entitled to land which has undergone the transformation effected by the equitable doctrine of conversion, would *prima facie* cease to have a caveatable interest”.<sup>28</sup> In the paradigmatic example of a trust for sale of land, trustees have a duty to bring about a sale and hold the proceeds of sale on trust. The equitable doctrine of conversion applies and the beneficiary’s interest in the property becomes an interest in its proceeds,<sup>29</sup> which is the entire object of this “trust for sale”.<sup>30</sup> Equity looks on that as done what ought to be done – beneficial interests would be in the sale proceeds and not the land.<sup>31</sup> A caveat would then adequately complement the beneficiary’s interest in the proceeds of sale.

Two, another scenario where a person might gain an interest in proceeds of sale of land is by operation of statute. Under s 3(3) of the Residential Property Act 1976,<sup>32</sup> no estate or interest passes to a foreign person who inherits a residential property in Singapore by will or intestacy. Instead, s 3(4) requires the property be sold and the proceeds be distributed to the foreign person. A foreign person may lodge a caveat to protect their interest in the sale proceeds.

Despite these intentions that Baalman conveyed in *The Singapore Torrens System*, it is unfortunate that much of the richness in meaning has been lost with the passage of time. Today, in ascertaining the meaning of s 115(3)(a) of the LTA, little reference is made to the legislative history and Baalman’s intention. This may be a contributing factor to the ambiguity in the provision.

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<sup>26</sup> *Salbiah*, *supra* note 8 at [33].

<sup>27</sup> *Keppel v Bailey* (1834) 39 ER 1042 at 1049.

<sup>28</sup> *The Singapore Torrens System*, *supra* note 21 at 196.

<sup>29</sup> *Chee Yin Meh v Ong Kian Guan and others* [2023] SGHC(A) 33 at [31]; see also *Foo Jee Seng and others v Foo Jhee Tuang and another* [2012] 1 SLR 211 at [16] and [17].

<sup>30</sup> *Irani Finance Ltd v Singh* [1971] Ch 59 at [80].

<sup>31</sup> Edward H Burn & John Cartwright, *Cheshire and Burn’s Modern Law of Real Property*, 18th ed (Oxford: Oxford University Press, 2011) at 104–105.

<sup>32</sup> Residential Property Act 1976 (2020 Rev Ed) [RPA]; *Salbiah*, *supra* note 8 at [33]. See also Alvin WL See, “Identifying an Interest in Land Sufficient to Support a Caveat: *Salbiah Bte Adnan v Micro Credit Pte Ltd* [2014] SGHC 249”, Singapore Law Blog (15 January 2015) at 3.

### C. The LTA and Its Amendments

After the LTO came the LTA 1985 which adopted s 93(3) in full. Section 104(3) of the LTA 1985 made no mention of an interest arising from a judgment or order for the payment of money. Only in 2001 did the Parliament introduce the exclusionary phrase – “an interest arising from a judgment or order for the payment of money”.<sup>33</sup> Ever since, s 115(3)(a) of the LTA has kept its form. No reasons are found in the Hansard for the amendment.

Given the ambiguity of the 2001 amendment, *Abdul Hamid* suggested that the Parliament must have meant that “section 115(3)(a) would include interests other than proprietary interests or what we traditionally understand as interests in land”<sup>34</sup> subject to the delimiting words. This suggests judgment creditors are protected by an enforcement order instead of a caveat,<sup>35</sup> but other interests in the sale proceeds of land remain caveatable.

Regrettably, the meaning of “an interest in the proceeds of sale of land” has remained unclear throughout its legislative history. Unfortunately, “the task of determining whether a certain interest is a caveatable one is left mainly to the courts”<sup>36</sup> as opposed to definition by statute, leaving property rights holders under s 115(3)(a) in want of certainty.

### III. DEVELOPMENTS IN CASE LAW INTERPRETING SECTION 115(3)(A) OF THE LTA

Cases on this matter unfortunately provide little resolution. Early Singapore cases discussing caveats include *Bestland*<sup>37</sup> and *Jumabhoy*. Specifically for s 115(3)(a) of the LTA, cases seemed to develop two views with different breadth. The broader interpretation finds support from *Abdul Hamid* and *Novel Ho*, while the narrow view is advocated in *Salbiah*, *Nimisha* and *Kok Zhen Yen*.

#### A. Broader View

The broader view refers to the rule that *any* interest in the proceeds of the sale of land, including interests which are monetary or from a loan agreement, can be protected by a caveat, excluding those arising from a judgment or order for the payment of money. Two reasons for the broader view include: (a) the plain wording of s 115(3)(a); and (b) the argument that an interest under s 115(3)(a) must be of wider scope than the same in s 4.

<sup>33</sup> Under s 25 of the Land Titles (Amendment) Act 2001 (No 25 of 2001).

<sup>34</sup> *Abdul Hamid*, *supra* note 6 at [20].

<sup>35</sup> *Ibid*. See also O 22 r 2 of the Rules of Court 2021. An enforcement order made with respect to immovable property would be registered with the Land Titles Registry. There is no need for the judgment creditor to lodge a caveat since an enforcement order provides sufficient means to protect their interest.

<sup>36</sup> *Nimisha*, *supra* note 9 at [45].

<sup>37</sup> *Bestland Development Pte Ltd (in liquidation) v Mani Udomkunnatum and another* [1996] 2 SLR(R) 300 [*Bestland*].

The first reason, supported by *Novel Ho*, follows the plain reading of s 115(3)(a). In *Novel Ho*, the owner of the defendant company advanced a loan to the claimants. The defendant later lodged caveats against 12 properties, based on an oral sale and purchase agreement. The issue was whether the loan extended by the defendant gave rise to a caveatable interest. The court held that the defendant's interest in the sale proceeds is "clearly an interest in land that is caveatable under the LTA", as "expressly provided for" under s 115(3)(a).<sup>38</sup>

*Novel Ho* did not examine the legislative intent of the provision or *The Singapore Torrens System*. The court might not have seen the need to do so, given that it reasoned based on the plain reading of the provision, which was seemingly clear. Generally, the use of extrinsic material would only be "to confirm that the meaning of the provision is the ordinary meaning conveyed by the text of the provision".<sup>39</sup> Reference to Baalman's work would be to introduce extrinsic materials to the court. In the context of caveats to provide "speedy justice", such references may delay proceedings.

The second reason, supported by *Abdul Hamid*,<sup>40</sup> suggests that limiting the definition of a caveatable interest only to that in s 4 would render s 115(3)(a) otiose. In *Abdul Hamid*, the court addressed whether two caveats lodged against the sale proceeds of a Housing and Development Board ("HDB") flat constituted caveatable interests. Both caveators, Shaik Raheem and Trans-Assets Credit Pte Ltd, had loaned money to the claimants, who failed to repay. The court found that both caveats were valid under s 115(3)(a), as the loans were extended on the condition that a default would entitle the lenders to an interest in the sale proceeds. The caveat by Trans-Assets was also upheld due to the express consent and assignment of rights from the claimants.

Section 4 provides a definition of an interest in land but is prefaced with the words "unless the context otherwise requires". Section 115(3) must be interpreted as belonging to a different context, from the opening words "[f]or the purposes of this Part". By including this preamble, the Legislature clearly intended a broader interpretation of s 115 compared to s 4. *Abdul Hamid* further reasons that the amendment in 2001 indicated evidence of such an intention – that Parliament had in mind some classes of monetary interests to benefit from the protection of a caveat, but not that arising from a judgment or order for the payment of money. Upholding the view that Parliament does not legislate in vain nor legislate tautologically,<sup>41</sup> the broader view argues that the plain meaning of s 115(3)(a) should be preferred.

### B. Narrow View

Seemingly contrary to the plain meaning of the provision, the narrow view suggests that not all proceeds of the sale of land qualify as interests protectable by caveats. Instead, the rule appears to be that only a definite entitlement to sale proceeds

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<sup>38</sup> *Novel Ho*, *supra* note 7 at [39].

<sup>39</sup> Interpretation Act 1965 (2020 Rev Ed), s 9A(2)(a) [IA].

<sup>40</sup> *Abdul Hamid*, *supra* note 6 at [19].

<sup>41</sup> *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 at [38].

renders that interest protectable by a caveat.<sup>42</sup> The term “definite entitlement” arose in *Salbiah*, although this study extends that language to suggest the existence of a “definite entitlement test”. The concept of “entitlement” is also observed in *Nimisha* and “definite entitlement” was also referred to in *Kok Zhen Yen* in referencing *Salbiah*. As such, the facts and holdings of each of the three cases are examined below.

First, in *Salbiah*, the court held a duty of sale is one such “definite entitlement”.<sup>43</sup> The claimant sought to remove a caveat lodged by the defendant on her matrimonial home, which she was awarded after divorce proceedings. The defendant had lent money to the claimant’s former husband, who failed to repay the second loan, allegedly agreeing to repay it from the sale proceeds of the property. The court found that the defendant’s claim did not constitute a caveatable interest in the land, because the claim was not a “definite entitlement” to be repaid.

*Salbiah* suggests that other “definite entitlement” scenarios include, among others, a beneficiary’s interest in a trust for sale, and the interest of a foreign person who inherits a property under the will of a deceased owner or through the law on intestate succession. In the situation of a definite entitlement, there must be “no doubt that the property has to be sold”.<sup>44</sup> The court also acknowledged that there was an express assignment of future sale proceeds to the caveator in *Abdul Hamid*, which appears to fall within the “definite entitlement” test.

The right to sale proceeds appears to be purely contractual in nature, which *Salbiah* observes about *Novel Ho*.<sup>45</sup> A contractual right cannot be converted into one that is proprietary through the caveat mechanism. A caveat can only protect pre-existing proprietary interests,<sup>46</sup> of which unsecured debts are not. A caveat cannot convert an unsecured debt into a secured one under s 115(3)(a), which would make caveats operate as a form of quasi-security.<sup>47</sup>

Second, in *Nimisha*, the claimant, a former property owner, transferred the property to the defendant in 2016 without full payment, expecting it to be paid later due to their close relationship. Partial payments were made in 2018, 2021, and 2022, but the full purchase price remained unpaid. When the defendant, through her attorney, sold the property to a third party in 2023, the claimant lodged a caveat as an unpaid vendor, concerned that the sale proceeds might be moved out of jurisdiction due to the defendant’s family’s circumstances, including her father’s bankruptcy.

An unpaid vendor’s lien is an interest in land which entitles the caveator to payment. *Nimisha* found satisfactory evidence to show a caveatable interest in the property.<sup>48</sup> Citing the High Court case of *Lim Saw Hak*,<sup>49</sup> a vendor’s lien is available in respect of the purchase price or other monetary obligation.<sup>50</sup> *Nimisha* can

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<sup>42</sup> *Salbiah*, *supra* note 8 at [49].

<sup>43</sup> *Ibid* at [34].

<sup>44</sup> *Ibid*.

<sup>45</sup> *Ibid* at [39].

<sup>46</sup> *The Asiatic Enterprises (Pte) Ltd v United Overseas Bank Ltd* [1999] 3 SLR(R) 976 at [27] [*Asiatic*]; *Jumabhoy*, *supra* note 4 at [42]–[44].

<sup>47</sup> *Salbiah*, *supra* note 8 at [41].

<sup>48</sup> *Ibid* at [45].

<sup>49</sup> *Re Caveat No CV/21366D lodged by Lim Saw Hak and another* [1996] 1 SLR(R) 70 [*Lim Saw Hak*].

<sup>50</sup> *Ibid* at [15].



be reconciled with *Salbiah* because it was the lien (in *Nimisha*) that constitutes the caveatable interest and not the contractual right to the purchase price (in *Salbiah*).<sup>51</sup>

Third, in *Kok Zhen Yen*, the claimants wanted to sell their property but were blocked by caveats lodged by the defendant, who claimed she was owed repayment for loan instalments she had made. The claimants denied any agreement to repay, arguing the payments were for a personal loan. The caveat was not allowed to remain because the court found that there was no agreement for the defendant to be paid from the sale proceeds of the property, and even an agreement to be paid from the sale proceeds would not be an interest that is protectable by caveat.

An interest in the sale proceeds of land is a purely monetary interest in *Kok Zhen Yen*.<sup>52</sup> A loan agreement only grants a mere contractual right that is not related to land. Allowing sale proceeds of land from a loan agreement to be caveatable would convert the very nature of such agreements to function as a form of quasi-security, which is not the intent of the caveat mechanism.<sup>53</sup> Returning to the “definite entitlement” test, a contract rights-holder is not one who is “definitely entitled” to the sale proceeds of land.

#### IV. ISSUES CONSOLIDATED AND THE WAY FORWARD

To summarise, this study discusses four challenges. First, the main challenge of s 115(3)(a) of the LTA surrounds the divergence between the plain meaning of the provision and its true legislative intent. Current law appears to prefer the “definite entitlement” test, where a caveat under s 115(3)(a) would be allowed to stand for a caveator who has a definite entitlement to the sale proceeds of land. The caveator’s interest must have a proprietary character and not a contractual one. For completeness, s 115(3)(a) also does not allow the caveat where statutorily prohibited, such as an interest arising from a judgment or order for the payment of money, or with excessive interest rates in a moneylending scenario.<sup>54</sup>

A second challenge in this area of law includes the lack of definitions of “proceeds”, “sale” and “proceeds of sale” in the LTA. One solution is for courts to adopt the definition of “proceeds of sale” from s 58(11) of the Housing and Development Act 1959.<sup>55</sup> Although Parliament passed and amended the HDA with policy reasons

<sup>51</sup> *Bestland*, *supra* note 37 at [15], which states that “[s]uch a lien is an interest in land and is clearly capable of supporting a caveat under s 104(1) of the repealed Act.” See also *Ex parte Lord* [1985] 2 Qd R 198 at 202.

<sup>52</sup> *Kok Zhen Yen*, *supra* note 10 at [38]; *Salbiah*, *supra* note 8 at [41].

<sup>53</sup> *Kok Zhen Yen*, *supra* note 10 at [38].

<sup>54</sup> *Kua Hui Li v Prosper Credit Pte Ltd* [2014] 3 SLR 1007 also faced the issue of attempting to caveat the sale proceeds of a property in a moneylending scenario. However, the caveat was allowed to be removed on the grounds of excessive interest rates on the loan under the Moneylenders Act 2008 (2020 Rev Ed). The decision has been commented to be rather fact-specific in *MWA Capital Pte Ltd v Ivy Lee Realty Pte Ltd (in liquidation)* [2017] SGHC 216 at [64].

<sup>55</sup> Housing and Development Act 1959 (2020 Rev Ed) [HDA]. Section 58(11) of the HDA reads: “In this section – ... “proceeds of sale”, in relation to any property, means the proceeds from any transaction involving the sale, transfer, conveyance, assignment, mortgage, charge or the disposal in any manner of the property or an estate or interest in the property; ...”



in mind,<sup>56</sup> a working definition in the middle of litigation may be preferred over having no definition. On the same issue, “any person” is also undefined. The difference between an “interest” in s 4 and that in s 115 is also unclear.<sup>57</sup> Current law suggests that s 115 is broader than an interest in s 4, but narrower than all purely monetary interests in sale proceeds (such as those of purely contractual/non-proprietary origin).

A third challenge is whether the LTA is mandatory or facilitative. Section 3(1) of the LTA states that all laws “so far as they are inconsistent with [the LTA] ... are repealed”. However, the LTA is facilitative on matters which are not inconsistent with the LTA. A closed list of caveatable interests was not codified as seen in how the LTA did not “set out a list of caveatable interests”.<sup>58</sup> Therefore, the view that “the task of determining whether a certain interest is a caveatable one is left mainly to the courts” must be correct.<sup>59</sup> Parliament can be said to have conceived the statutory mechanism of the caveat but also left the scope of the right for the Judiciary to decide in its discretion.

Finally, the interaction of a caveatable interest and parties’ consent to have that interest be caveatable has not been adequately addressed by statute or the courts. For example, *Abdul Hamid* relied on the parties’ consent for a caveat to be lodged to show that the caveat should be maintained.<sup>60</sup> However, the agreement to the lodgement of a caveat may be irrelevant in cases where the interest was not one that was caveatable, such as in *Salbiah*.<sup>61</sup> Rightly as in *Salbiah*, non-caveatable interests should not be clothed with proprietary character merely by parties’ consent. The legislative intention and purpose of the LTA should prevail, which is more principled to the operation of the statute.

To conclude, in Table 1 below, the scenarios that have been decided thus far and whether they have been described as caveatable or non-caveatable are consolidated. Since *Abdul Hamid* has an assignment of sale proceeds, a purely contractual scenario is slightly unclear. Additionally, financial institutions whose interest are purely monetary seem to be exempt from s 58 of the HDA, rendering their interest caveatable. Nonetheless, whether the interest of financial institutions in the sale proceeds of a HDB flat would be protectable by caveat is unclear. Finally, the unpaid vendor’s lien is caveatable following *Nimisha*. However, whether the interest is encompassed under s 115(3)(a) or s 4 is unclear as well.

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<sup>56</sup> *Singapore Parliamentary Debates, Official Report* (19 July 2010) vol 87 at cols 723–726 <[https://sprs.parl.gov.sg/search/#/topic?reportid=011\\_20100719\\_S0004\\_T0004](https://sprs.parl.gov.sg/search/#/topic?reportid=011_20100719_S0004_T0004)> (Mah Bow Tan, Minister for National Development). The then Minister for National Development stated that the changes in the Moneylenders Bill saw an increase in the number of moneylenders licences, and an increasing number of HDB flat owners borrowing from such moneylenders and agreeing to assign the sales proceeds from their flats as repayment. Subsequently, moneylenders lodge caveats against the flats to claim an interest in the sales proceeds. The concern of Parliament was that the caveats lodged undermine the intention of home ownership policy and may result in potential homelessness due to the repayment of loans from the sales proceeds of flats.

<sup>57</sup> *Nimisha*, *supra* note 9 at [45] suggests that “any person” refers to “the owner of a piece of land”.

<sup>58</sup> *Nimisha*, *supra* note 9 at [45].

<sup>59</sup> *Ibid.*

<sup>60</sup> *Abdul Hamid*, *supra* note 6 at [24]. An earlier Court of Appeal case of *Asiatic*, *supra* note 46 had also dealt with a similar clause consenting for a caveat to be lodged, in the context of a charge.

<sup>61</sup> *Salbiah*, *supra* note 8 at [17].

**Table 1.** Consolidating past scenarios and their capability to support a caveat

Scenarios	Case: caveatable/non-caveatable
Purely contractual (moneylender)	<i>Abdul Hamid</i> : caveatable (with assignment) <i>Novel Ho</i> : caveatable under s 115(3) <i>Salbiah</i> : non-caveatable Section 58 of the HDA: non-caveatable
Purely contractual (financial institutions)	May be caveatable, since s 58 HDA not applicable
Unpaid vendor’s lien	<i>Nimisha</i> : caveatable, unclear whether under s 115(3)(a) or s 4
Trust for sale	Baalman’s commentary, <i>Salbiah</i> , <i>Kok Zhen Yen</i> : caveatable under s 115(3)(a)
Foreign person subject to RPA	<i>Salbiah</i> : caveatable under s 115(3)(a)

Moving forward, the Legislature and Judiciary can work together to clarify the scope of s 115(3)(a) of the LTA. For the Legislature, two broad changes are proposed. First, the addition of an illustration is likely to help clarify the legislative intent of s 115(3)(a) without drastically changing any words in the current provision. A trust for sale and statutory restriction under s 3 of the RPA can be added to s 115(3)(a) for clarity. These scenarios are generally undisputed to be within the scope of s 115(3)(a). This would also strongly suggest that the provision is intended to encompass certain specific scenarios as opposed to a broad and unrestricted interpretation of the current plain meaning. Second, the phrase “proceeds of sale” can be defined in s 4 or s 115 of the LTA by transposing the definition in s 58(11) of the HDA. This avoids the difficulty of defining “caveat” while still providing clarity into other terms in s 115(3)(a). This is likely to balance the court’s wide discretion with appropriate guidance from statute as well.

For the Judiciary, the adoption of the “definite entitlement” test is likely to promote more certainty in the definition of s 115(3)(a). Uniting the wider views in *Abdul Hamid* and *Novel Ho* with the narrower views in *Salbiah*, *Nimisha* and *Kok Zhen Yen* is likely to steer the law in a direction with more certainty.

V. CONCLUSION

Rights concerning land are generally regarded as *prima facie* interests in land, owing to the presumption of the unique value of land.<sup>62</sup> The scarcity and price of land in the geographical and socio-economic context in Singapore<sup>63</sup> provide two very strong reasons that interests in land should be protected with utmost prudence. As a matter of erring on the side of caution, the view to maintain caveats if the court is “unable to decide on the merits of the claim” is very welcome.<sup>64</sup> In the context of an

<sup>62</sup> *Novel Ho*, *supra* note 7 at [62] and [64].  
<sup>63</sup> *RSP Architects Planners & Engineers (formerly known as Raglan Squire & Partners FE) v Management Corporation Strata Title Plan No 1075 and another* [1999] 2 SLR(R) 134 at [43].  
<sup>64</sup> *Sim Kwang Mui Ivy v Goh Peng Khim* [1994] 2 SLR(R) 814 at [24]. See also *PACC Offshore Services Holdings Ltd v Kensteel Engineering Pte Ltd* [2017] SGHC 175 at [34], and *Nimisha*, *supra* note 9 at [36].

ambiguous provision such as s 115(3)(a), settling the legal definition of “proceeds of sale” and whether the interest is truly caveatable would be beneficial for clarity. The scope of a caveatable interest under s 115(3)(a) has remained elusive for many years. This study hopes that the issues are more pronounced for the benefit of future courts and academics seeking to clarify the intended meaning behind the provision.

In deducing the meaning of s 115(3)(a), the interpretation should support the plain meaning *and* the purpose underlying the written law. Weight should be given to extrinsic material such as Baalman’s commentary to keep a purposive interpretation of s 115(3)(a) in mind.<sup>65</sup> Beyond that, reasons rooted in policy such as that described in the Parliament behind s 58 of the HDA may assist in applying the section in a pragmatic way to best serve the wider interests of Singapore.

To conclude, this study investigated the boundaries of a caveatable interest under s 115(3)(a) of the LTA. By examining the legislative history and case law, this study advocates the “definite entitlement” test in interpreting s 115(3)(a) of the LTA. Given the lack of Court of Appeal cases on this matter and the lack of comments on previous case law as at the time of publication, this study strived to consolidate the law as best as possible within the limits.

Given that the nature of caveatable interests seem to have expanded beyond proprietary rights, a study into other potential caveatable interests arising from a contractual nature or from an inchoate equity (in the doctrine of proprietary estoppel) may be worth studying. For example, s 95(2) of the LTA<sup>66</sup> deems that a licensee has an interest in land “for the purposes of section 115” if certain conditions are met. Torrens land does not prohibit a proprietary estoppel claim. Therefore, if proprietary estoppel arises where the licensee can show reliance and detriment on a representation made by the licensor, their interest may amount to more than a mere licence and enjoy the protection of caveats. This example, among many others, shows that the law on caveats still serves many relevant purposes today. Many promising frontiers present themselves as potential avenues to expand the law in this area.

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<sup>65</sup> IA, s 9A(1).

<sup>66</sup> It provides: “The Registrar must not notify any licence in the land-register, but in any case where a licence relating to the use or enjoyment of land is by law binding on assigns of the licensor, the licensee thereunder is deemed to have an interest in the land for the purposes of section 115.”