

REVISITING THE SEVERANCE OF JOINT TENANCIES IN THE LAND TITLES ACT

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This paper examines the interplay between statutory severance and equity on joint tenancies in the Land Titles Act 1993.¹ It is argued that the severance, effected by way of statute or in equity, must, first and foremost, align with the objective of providing certainty in registered land dealings in the Singapore Torrens system. Further, the severance must not be inconsistent with the intention of Parliament as reflected in the LTA. Notwithstanding the requirement of registration for severance in the LTA, the various modes of severance in equity as laid down in *Williams v Hensman*² are not ousted by the LTA as they still have a role to play in appropriate circumstances in respect of registered land.

I. INTRODUCTION

A. *The LTA Provisions and the Modes of Severance in Equity in Williams v Hensman*

In 1993, the provisions for statutory severance in ss 53(5) and 53(6) of the LTA were enacted to improve on the existing law on severance of a joint tenancy at common law, which is restrictive and available in very limited circumstances, as can be seen below.³ For statutory severance to be effective under the LTA, a joint tenant must take the following three steps: first, an instrument of declaration in the approved form would have to be executed. Second, the instrument would have to be served personally or by registered post on every other joint tenant. Third, the instrument would have to be registered on the land register.

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¹ (2020 Rev Ed) [LTA].

² (1861) 70 ER 862 [*Williams v Hensman*] at 867.

³ See *Singapore Parliamentary Debates, Official Report* (18 January 1993) vol 60 at cols 375–376 <<https://sprs.parl.gov.sg/search/#/report?sittingdate=18-1-1993>> (Professor S Jayakumar, Minister for Law). See further at pp 6–7 *infra*.

As for the three methods of severance in equity set out in *Williams v Hensman*,⁴ these are:

... [I]n the first place, an act of any one of the persons interested operating upon his own share may create a severance as to that share ... Secondly, a joint-tenancy may be severed by mutual agreement. And, in the third place, there may be a severance by any course of dealing sufficient to intimate that the interests of all were mutually treated as constituting a tenancy in common...⁵

As will be seen below, the interaction of statutory severance and equity will have to align with the intention of Parliament as set out in the LTA. There is also the need to ensure that the joint tenant seeking severance, either under the LTA or in equity, is not in a position to be able to backtrack and insist on the right of survivorship.

II. STATUTORY SEVERANCE BY WAY OF UNILATERAL DECLARATION UNDER THE LTA

The effect of ss 53(5) and 53(6) was first considered by the Court of Appeal in *Diaz Priscillia v Diaz Angela*.⁶ The mother and the appellant, one of her two daughters, were joint tenants of a house registered under the LTA. Subsequently, the mother had signed an instrument of declaration under s 53(5), declaring her intention to sever the joint tenancy and hold the property as a tenant in common with the appellant. This was done to benefit the respondent, the other daughter of the mother, upon the latter's death. A copy of the instrument of declaration was served on the appellant but was not registered pursuant to s 53(6). After the mother died, the issue arose whether the mother had effected severance of the joint tenancy by her execution and service of the instrument. The respondent, who was the beneficiary and executor of her mother's estate, lodged a caveat on the property. The appellant applied for the caveat to be removed on the grounds that she was entitled to the entire property on account of her right of survivorship. The High Court found in favour of the respondent, and the appellant appealed.

The Court of Appeal held that the joint tenancy had been severed. The court reasoned that the purpose of ss 53(5) and 53(6) is to enable a joint tenant to have "full

⁴ After the Law of Property Act 1925 (c 20) (UK) [LPA 1925] abolished tenancies in common at law and required all legal estates of co-ownership to be held in joint tenancies, these modes of severance continued to operate in equity only (see Kevin Gray & Susan Francis Gray, *Elements of Land Law*, 5th ed (London: Oxford University Press, 2009) [Gray & Gray, *Elements of Land Law*] at 7.4.67–7.4.68 and Martin Dixon, Janet Bignell KC & Nicholas Hopkins eds, *Megarry & Wade: The Law of Real Property*, 10th ed (London: Sweet & Maxwell Ltd, 2024) at 12-034. The position in Singapore is different as no similar legislation has been enacted and the common law estates of joint tenancies and tenancies in common remained in existence.

⁵ *Williams v Hensman*, *supra* note 2 at 867. These three methods of severance have been applied in the local decisions of *Tan Chew Hoe Neo v Chee Swee Cheng* (1929) 1 MLJ 643 at 646; *Jack Chia-MPH Ltd v Malayan Credit Ltd* [1983–1984] SLR(R) 420 at [2] and *Sivakolunthu Kumarasamy v Shanmugam Nagaiah* [1987] SLR(R) 702 [Sivakolunthu], the latter discussed below.

⁶ [1997] 3 SLR(R) 759 [Diaz].

dispositive power” and to sever the joint tenancy without obtaining the consent of the other joint tenants.⁷ These provisions are meant to provide a co-owner a simpler way of severing the joint tenancy without having to obtain the consent of the other party, which sometimes may or may not be feasible. For example, the duplicate certificate of title might be in the possession of one of the other joint tenants or another person, such as a mortgagee, who refuses to release it. In such a case, the severing joint tenant would not be able to proceed with the registration of the instrument. This would frustrate the purpose of ss 53(5) and 53(6), which could not be the intention of the legislature.⁸ Accordingly, once the instrument of declaration is served on the other joint tenant(s) under s 53(5), the joint tenancy is severed as between the joint tenants. However, third parties are only bound to treat the joint tenancy as severed upon registration under s 53(6). In the result, *Diaz* held that a severance would occur under the LTA on completion of the first two steps in s 53(5).

To overcome the difficulties in procuring the original duplicate certificate of title in some cases, s 53(8) of the LTA was enacted in 2001 to allow the Registrar of Titles to dispense with production of the certificate of title if he was satisfied that the applicant for registration of an instrument of declaration was unable to produce it despite the applicant’s best efforts to do so.

In light of *Diaz*, it was argued in the later Court of Appeal decision in *Chan Lung Kien v Chan Shwe Ching*⁹ that *Diaz* recognised that the signing and service of an instrument of declaration in the form approved pursuant to s 53(5) was effective to sever in equity¹⁰ a joint tenancy *inter partes* notwithstanding its non-registration. In *Chan Lung Kien*, the property was owned by the husband and his wife as joint tenants. Later, the husband took steps in an attempt to sever the joint tenancy by appearing before a notary public in Melbourne, Australia and executing an instrument of declaration in the form approved pursuant to s 53(5) of the LTA whereby he declared that he wished to sever the joint tenancy and hold the property as a tenant in common with the wife. A notice to this effect also appeared in a local newspaper in Singapore.

While the outcome of *Diaz* was generally accepted as just and well-intentioned given the circumstances of the case, the Court of Appeal in *Chan Lung Kien* held that the decision in *Diaz* could not be supported. To hold that compliance with s 53(5) alone is sufficient to effect severance under the LTA would make the registration requirement in s 53(6) redundant. This would go against the whole rationale of the three-step approach to effect severance provided therein, and where registration is the cornerstone of the LTA.¹¹ While s 53(8) will now make it easier to register an instrument of declaration as production of the duplicate certificate of title may be dispensed with, the Court of Appeal in *Chan Lung Kien* made it clear that that was not the basis of their decision. Instead, “Our construction of ss 53(5) and 53(6) is

⁷ *Ibid* at [24].

⁸ *Ibid*.

⁹ [2018] 2 SLR 84 [*Chan Lung Kien*].

¹⁰ Discussed further at pp 6, 8–10 *infra*. See also, Barry Crown, “Severance of a Joint Tenancy” [1998] Sing JLS 166 [Crown, “Severance of a Joint Tenancy”] at 170.

¹¹ *Chan Lung Kien*, *supra* note 9 at [64].

based on a plain reading of the language of the sections in their context and with a view to implementing the Parliamentary intention they represent.”¹²

On the facts of *Chan Lung Kien*, there was no severance of the joint tenancy under the LTA as the instrument of declaration was not registered. Also, the manner in which the husband purported to serve the instrument did not fully comply with the requirements in s 53(5), which requires service “personally or by registered post”. Among others, the Court of Appeal noted that “the modes of service adopted, which were posting the instrument via a certificate of posting and placing a newspaper advertisement in Singapore, did not satisfy the statutory requirement ... [as the LTA does not provide] for the specified mode of service to be dispensed with or substituted”.¹³ Even if the husband did not know the whereabouts of the wife, and hence could not effect personal service, he could have effected service by registered post. In *Chan Lung Kien*, severance only came about later by operation of law when the wife was made a bankrupt.

The Court of Appeal in *Chan Lung Kien* has greatly clarified the law on severance under the LTA, which is to be welcomed. It is respectfully submitted that where a joint tenant decides to effect severance by way of an instrument of declaration provided for in the LTA, then the statutory steps provided therein must be complied with, with no exception made.¹⁴ It has been suggested,¹⁵ after *Chan Lung Kien* was decided, that the principle in *In re Rose; Rose v Inland Revenue Commissioners*¹⁶ may be applicable to justify the decision in *Diaz*. The principle stands for the proposition that a gift is considered perfected where the donor has completed all acts within his or her power, even if legal formalities are incomplete. The two examples of events beyond the control of the joint tenant mentioned in the suggestion are: (a) the death of the joint tenant, and (b) the negligence of the land registry staff in registering the instrument of declaration.¹⁷ In the case of the first event, while there is no joint tenancy left to sever given the operation of the right of survivorship, the query arises whether the mere execution and service of the instrument of declaration, coupled with the attempt at registration by the joint tenant before death, suffice to effect statutory severance in the LTA?¹⁸ As for the latter event, the joint tenant concerned may seek compensation against the assurance fund provided for under the LTA for the negligence of the Land Registry where loss or damage is sustained.¹⁹ But the fact remains that, until registration is effected, statutory severance cannot be said to have taken place under s 53 of the LTA based on the two events noted earlier. Further, application of the principle in *Re Rose*, rooted

¹² *Ibid* at [65]. See also, *infra* note 55 and the accompanying main text.

¹³ *Ibid* at [68].

¹⁴ Cf Alvin WL See, “Severance by Unilateral Declaration: Lessons From Singapore” (2019) Conveyancer and Property Lawyer 138 [See].

¹⁵ *Ibid* at 145–146.

¹⁶ [1952] Ch 499 [*Re Rose*] at 515.

¹⁷ See, *supra* note 14.

¹⁸ See further the discussion at pp 8–10 *infra*.

¹⁹ LTA, ss 151(1) and 155(1). For a case where the Court of Appeal commented that the landowner should be entitled to make a claim against the assurance fund under the LTA to recover whatever loss she has suffered as a result of the mistake made by the registry staff, see *United Overseas Bank Ltd v Bebe bte Mohammad* [2006] 4 SLR(R) 884 at [98].

in equity, will give rise to uncertainty in land dealings and render the requirement of registration in s 53(6) of the LTA otiose, going against the intention of Parliament in the process. It is also arguable that LTA, s 3(1) would make inapplicable “other laws” (such as equity), which are inconsistent with the provisions of the LTA in their application to registered land.²⁰

The decision in *Chan Lung Kien*, which is consistent and principled in approach, provides the much-needed certainty on the approach to be taken in the application of the required three steps to effect severance under ss 53(5) and 53(6). This is welcome relief, especially given the unsatisfactory decision in *Diaz*. The registration requirement should also no longer represent an obstacle (or an excuse, as the case may be, in some cases) to effecting statutory severance under the LTA in light of s 53(8).

III. APPLICATION OF THE VARIOUS MODES OF SEVERANCE IN EQUITY UNDER THE LTA

Statutory severance under the LTA provides an additional means of severing a joint tenancy on top of other recognised methods of severance under existing law.²¹ This is also made clear in the opening sentence of s 53(5), which provides that statutory severance under the LTA is “[w]ithout prejudice to any rule or principle of law relating to severance of a joint tenancy”. The issue is the extent to which they can continue to apply in light of the statutory mode of severance in the LTA.

Earlier, the Court of Appeal in *Sivakolunthu*²² noted that a unilateral declaration was only effective for severance in England because of s 36(2) of the LPA 1925, which provided for severance by written notice.²³ However, it was the common law prevailing before 1925 that applied in Singapore.

In *Sivakolunthu*, the court granted a decree *nisi* on the wife’s petition for divorce and made a settlement order for the sale of the property and equal division of the sale proceeds. Before the settlement order was implemented, the husband died. The Court of Appeal in *Sivakolunthu* ruled that the settlement order severed the joint tenancy in the property even before the order had been carried out. In light of this, the appellant in *Chan Lung Kien* contended that the pronouncement on severance by a unilateral declaration in *Sivakolunthu* was only *obiter* and hence not persuasive on the matter, as the holding that the settlement order effected severance was sufficient to dispose of the case. It was also contended that *Sivakolunthu* misinterpreted some English authorities. The appellant argued for a departure from *Sivakolunthu* and,

²⁰ See also John Baalman, *The Singapore Torrens System: Being a Commentary on the Land Titles Ordinance, 1956 of the State of Singapore* (Singapore: Government Printer, 1961) [Baalman, *The Singapore Torrens System*] at pp 6 (the last two paragraphs) and 7 (the first and third paragraphs).

²¹ *Singapore Parliamentary Debates, Official Report* (30 August 1993) vol 61 at col 476 <<https://sprs.parl.gov.sg/search/#/report?sittingdate=30-8-1993>> (Professor S Jayakumar, Minister for Law) [*Singapore Parliamentary Debates, Official Report* (30 August 1993)].

²² *Sivakolunthu*, *supra* note 5 at [14].

²³ Citing the English Court of Appeal cases in *Harris v Goddard* [1983] 1 WLR 1203 [*Harris*] and the majority decision of Sir John Pennycuik and Lord Justice Browne in *Burgess v Rawnsley* [1975] Ch 429 [*Burgess*].

in its place, for the proposition that at common law, a unilateral declaration that is clear, unequivocal, communicated to the other joint tenant, and made public is effective to sever a joint tenancy in equity. For this proposition, the appellant relied on two English High Court cases, namely, *Hawkesley v May*²⁴ and *In re Draper's Conveyance Nihan v Porter and another*,²⁵ which, in the opinion of the appellant, did not rely on s 36(2) of the LPA 1925.

The Court of Appeal in *Chan Lung Kien*, in reaffirming *Sivakolunthu* as establishing the law in Singapore on modes of severance at common law, was of the view that, although *Sivakolunthu* may have misread these English High Court cases as illustrating severance under s 36(2) of the LPA 1925, there was, nevertheless, a preponderance of English decided cases which held that unilateral declarations of severance were ineffective before s 36(2) was enacted.²⁶ In *Partejche v Powlet*,²⁷ it was held that a declaration of one of the parties that the joint tenancy should be severed was not sufficient unless it amounted to an actual agreement or an alienation of the property.²⁸ In *In re Wilks Child v Bulmer*,²⁹ a mere application to court for payment of money was held to be nothing more than a declaration that the joint tenant wished a severance. It had no effect on the joint tenancy as it was not an actual alienation or disposition or a contract to sever between joint owners, for the joint tenant could have withdrawn his application at any time before an order was made. In *Nielson-Jones v Fedden and others*,³⁰ the court refused to follow *Hawkesley* and *Draper's Conveyance* as it would mean that s 36(2) of the LPA 1925 would be rendered otiose because there would already be “in existence an even simpler method of severing a joint tenancy”.³¹

In *Sivakolunthu*, the Court of Appeal also considered Lord Denning's view in *Burgess* that s 36(2) of the LPA 1925 was merely declaratory of the law as to severance by notice in writing which was effective in equity to sever a joint tenancy.³² Lord Justice Browne and Sir John Pennycuick took a different view in regard to the effect of the provision.³³ In the result, they held that the second mode of severance by mutual agreement applied in the case, while Lord Denning was of the view that a course of dealing need not consist of mutual conduct but could include unilateral conduct that communicated a clear intention to the other joint tenant. *Sivakolunthu* preferred the majority view in *Burgess* as better representing the position at common law. The majority view in *Burgess* as to the effect of s 36(2) was also aligned with that of the subsequent Court of Appeal case in *Harris*, where it was observed that severance by a unilateral notice was not possible before the provision was enacted and that before 1925, severance by unilateral action was only possible when one

²⁴ [1956] 1 QB 304 [*Hawkesley*].

²⁵ [1969] 1 Ch 486 [*Draper's Conveyance*].

²⁶ *Chan Lung Kien*, *supra* note 9 at [30]–[41].

²⁷ (1740) 4 West T Hard 788 [*Partejche*].

²⁸ *Ibid* at 789–790.

²⁹ (1891) 3 Ch 59 [*Wilks*].

³⁰ [1974] 3 WLR 583 [*Nielson-Jones*].

³¹ *Ibid* at 596D.

³² *Sivakolunthu*, *supra* note 5 at [15]. See also *Burgess*, *supra* note 23 at 440.

³³ *Burgess*, *supra* note 23 at 443–444 (Lord Justice Browne) and 447 (Sir John Pennycuick).

joint tenant disposed of his interest to a third party.³⁴ Having considered all the relevant cases, the Court of Appeal in *Chan Lung Kien* was of the view that there was “more than sufficient material from which it may be concluded that in England, if it were not for s 36(2) of the LPA 1925, a unilateral written notice would not suffice to sever a joint tenancy in equity.”³⁵

Thus, from the discussion above, a major objection to the mode of severance by unilateral declaration is that the joint tenant who is severing can backtrack and go back to insisting on his or her right of survivorship. In *Wilks*, Justice Stirling held that for an act to amount to severance, “it must be such as to preclude [the joint tenant] from claiming by survivorship any interest in the subject-matter of the joint tenancy.”³⁶ The joint tenant in *Wilks* could have withdrawn his application to the court for payment of money at any time before an order was made thereon. Similarly, in *Nielson-Jones*, Justice Walton was of the view that the authorities were against severance by means of a unilateral declaration,³⁷ as such a mode of severance had no effect on any of the four unities (*ie*, of title, interest, possession and time) which are essential features of a joint tenancy.³⁸ Accordingly, to argue that a unilateral declaration came within an act of a joint tenant operating on his or her own share and hence effecting severance was insufficient. For this first mode of severance laid down in *Williams v Hensman*³⁹ to be effective, the declaration in question must be final or irrevocable in character such that the joint tenant concerned cannot go back to insisting on the right of survivorship.⁴⁰ Thus, in *Partejche*, it was held that a declaration was effective to amount to severance if it amounted to an actual binding agreement or an alienation of the property.⁴¹ In *Harris*, Lord Justice Lawton also observed to the same effect that severance by unilateral action was only possible when one joint tenant disposed of his interest to a third party.⁴² Again in *Nielson-Jones*, Justice Walton held that, “The first method of severance of which the Vice-Chancellor [in *Williams v Hensman*] was talking was actual alienation, or something equivalent thereto.”⁴³

Where there is a failure to sever statutorily under the LTA, it is tempting to argue that the execution of the instrument of declaration may, alternatively, be seen as an act operating on one’s own share, thus coming within the first mode of severance in equity laid down in *Williams v Hensman*.⁴⁴ The Court of Appeal in *Chan Lung Kien* has rejected such an approach and reasoned thus:

³⁴ *Harris*, *supra* note 23 at 1209B.

³⁵ *Chan Lung Kien*, *supra* note 9 at [41].

³⁶ *Wilks*, *supra* note 29 at 62.

³⁷ *Nielson-Jones*, *supra* note 30 at 593.

³⁸ *Ibid* at 588C–H and 590F.

³⁹ *Williams v Hensman*, *supra* note 2.

⁴⁰ See Gray & Gray, *Elements of Land Law*, *supra* note 4 at 7.4.73.

⁴¹ *Partejche*, *supra* note 27. See also *Wilks*, *supra* note 29 (and the accompanying text), where Justice Stirling held that the declaration must amount to an actual alienation or disposition or a contract to sever between joint owners.

⁴² *Harris*, *supra* note 23 at 1209B.

⁴³ *Nielson-Jones*, *supra* note 30 at 594.

⁴⁴ This argument was not raised in the recent case of *Koh You Quan (executor of the estate of Ang Geok Kheng, deceased) v Koh Hock Meng* [2026] 3 SLR 170 at [46] and [52], where the High Court held

Assuming for now that *Diaz* was correctly decided, we acknowledge the difficulty of characterising the right held by the co-owners upon a severance between themselves only ... In our view, however, it is not possible to rationalise *Diaz* on the basis suggested by Crown (2003)⁴⁵ so as to sever the joint tenancy in equity. His contention that service of an instrument under s 53(5) amounts to an act operating on one's own share actually fits *Diaz* into the first mode of severance mentioned in *Williams v Hensman* ... This is unacceptable. In the first place, why should service of an instrument under s 53(5) amount to an act operating on one's own share? Under established law, a unilateral declaration, even if communicated or unequivocal or clear, does not operate on a joint tenant's share at common law as *Sivakolunthu* ... has established. Going back to first principles, the act of serving the instrument does not destroy any of the four unities. Secondly, it was not the purpose of the legislation to expand on the first mode of severance: the intention, as clear from the Parliamentary debates, was to provide a completely new mode of severance and Parliament's intention must be respected.⁴⁶

Hence, to be effective, the declaration in question must be final or irrevocable in character, such as to amount to an actual binding agreement or an alienation of the property, or something equivalent thereto, so that the joint tenant concerned cannot backtrack and go back to insisting on the right of survivorship.⁴⁷ The Court of Appeal in *Chan Lung Kien*, as noted above, did not agree with the view that, to overcome the difficulty of characterising the co-owner's right as a personal right and a caveatable interest⁴⁸ at the same time, *Diaz* could be interpreted as a case where service of an instrument of declaration under s 53(5) of the LTA severed the joint tenancy in equity by an act of a joint tenant operating on her own share (*ie*, the first mode of severance in *Williams v Hensman*). Thus, upon severance, each co-owner held a proprietary half-share in equity rather than a personal equity that was binding between themselves only.⁴⁹ The Court of Appeal in *Chan Lung Kien* cautioned that to adopt this view is to transform "*Diaz* from a case rationalised by an interpretation of s 53 to a case rationalised by a (proposed) common law doctrine of severance by unilateral declaration", such that any unilateral declaration that is clear, unequivocal, communicated and public can effect a severance in equity,⁵⁰ which should not

that statutory severance under the LTA was not made out given the contradictory nature of the evidence before it.

⁴⁵ See *infra* note 49.

⁴⁶ *Chan Lung Kien*, *supra* note 9 at [62].

⁴⁷ See also, Gray & Gray, *Elements of Land Law*, *supra* note 4 at 7.4.73.

⁴⁸ Which may be protected by the lodgement of a caveat over the land concerned. See the definition of "interest" in LTA, s 4(1), read with s 115(1) (the latter allowing a claim to an interest in land, as contrasted with a mere personal right, to be caveated).

⁴⁹ See Crown, "Severance of a Joint Tenancy", *supra* note 10. See also, Barry Crown, "Developments in the Law of Co-Ownership" [2003] Sing JLS 116 [Crown, "Developments in the Law of Co-Ownership"] at 122 and Tang Hang Wu & Kelvin FK Low, *Tan Sook Yee's Principles of Singapore Land Law*, 3d ed (Singapore: LexisNexis, 2009) [Tang & Low, *Principles of Singapore Land Law*] at 15.69, fn 112. This view is no longer reflected in the latest edition of Tang & Low, *Principles of Singapore Land Law*, 4th ed (2019) (see [9.35] therein).

⁵⁰ *Chan Lung Kien*, *supra* note 9 at [59]. The Court of Appeal had earlier noted (in [58]) Barry Crown's view in Crown, "Developments in the Law of Co-Ownership", *supra* note 49 at 120 that, with the

be allowed as it goes against the intention of Parliament in s 53 of the LTA. For the reasons articulated above, it must be correct that mere service of an instrument of declaration under the LTA, which is not followed by registration, cannot be taken to be an act operating on a joint tenant's own share in equity which effects severance, given that the act is not final or irrevocable in character as there is nothing to stop the joint tenant concerned from backtracking and insisting on the right of survivorship.

Accordingly, equity has no role to play⁵¹ as the statutory mode of severance under the LTA mandates, in light of the decision in *Chan Lung Kien*,⁵² the registration of the instrument of declaration to ensure certainty of the land register in land dealings, which is a primary objective of the Torrens system.⁵³ As the Court of Appeal further explained:

... Accordingly, registration under s 53(6) is, in our view, a vital part of the unilateral declaration mode of severance provided for by the LTA. This is made quite clear by the language of s 53(6) itself because it is only upon the registration of the instrument of declaration that the estates and interests in the land are held by the registered proprietors as tenants in common.⁵⁴ Reading compliance with s 53(5) alone as having the effect of effecting severance *in equity* would strip s 53(6) of meaning and make registration a mere administrative act. This would work against the whole rationale of the LTA.⁵⁵ [emphasis added]

This is unlike a situation where equity will continue to recognise, for example, an equitable transfer, lease or mortgage under the LTA⁵⁶ by application of the equitable maxim that equity looks on that as done which ought to be done,⁵⁷ given that registration for such an estate or interest is *not made mandatory* under the LTA.⁵⁸ As the Court of Appeal in *Golden Village* said in the context of the registration of

enactment of s 53(8) of the LTA, there is “no longer any need to adopt a strained construction of s 53, and the doctrine of severance acting only *inter partes* does not form part of Singapore law today”. Yet notwithstanding this, the Court of Appeal further noted (in [59]) that Crown had maintained the view (at [122]) that the service of an instrument under s 53(5) should effect severance in equity under the first head of *Williams v Hensman* because it is an unequivocal act that declares a clear intention to sever.

⁵¹ Cf Crown, “Developments in the Law of Co-Ownership”, *supra* note 49; Tang & Low, *Principles of Singapore Land Law*, *supra* note 49 and See, *supra* note 14 at 143 and 145–146.

⁵² *Chan Lung Kien*, *supra* note 9 at [48] and [64]. See also LTA, s 3(1) which provides, *inter alia*, that other laws which are inconsistent with the provisions of the LTA in their application to registered land, are repealed.

⁵³ See also generally, Baalman, *The Singapore Torrens System*, *supra* note 20 at 86.

⁵⁴ The respective shares the tenant(s)-in-common and the remaining joint tenants will hold after severance is provided for in LTA, s 53(6), as explained in *Tien Choon Kuan v Tien Chwan Hoa* [2016] SGHC 16 at [9]–[10] and [12].

⁵⁵ *Chan Lung Kien*, *supra* note 9 at [64].

⁵⁶ Equitable estates and interests continue to be recognised in the definition of “interest” in the LTA, s 4(1). See also, *Golden Village Multiplex Pte Ltd v Marina Centre Holdings Pte Ltd* [2002] 1 SLR(R) 169 [*Golden Village*] at [23] (“the Torrens system of registration permits and recognises the existence of interests in land other than registered interests, and in particular, equitable interests.”).

⁵⁷ *Ibid* at [12]. See also *Walsh v Lonsdale* (1882) 21 Ch D 9 and *Progressive Mailing House Pty Ltd v Tabali Pty Ltd* (1985) 157 CLR 17 at 27.

⁵⁸ Cf See, *supra* note 14 at 143, where the view taken is that equity should *generally* be available under the Singapore Torrens system notwithstanding s 53(6) of the LTA mandating compliance with registration for severance of joint tenancies as construed by the Court of Appeal in *Chan Lung Kien*.

leases, “s 87(1) of the LTA is by its terms not a mandatory provision [requiring registration].”⁵⁹

Since statutory severance by way of an instrument of declaration under the LTA is complementary to, and does not do away with, the various modes of severance in equity,⁶⁰ the latter can be resorted to so long as they are not inconsistent in their application with the intention of Parliament as reflected in ss 53(5) and 53(6). Thus, instead of going by way of statutory severance as provided in the LTA, there is nothing to stop a joint tenant from successfully severing by way of the first mode of severance in equity by an act operating on his or her own share, which amounts to an alienation or disposal of the property. Even where statutory severance had been resorted to unsuccessfully earlier, the first mode of severance in equity can still be utilised as it is based on an entirely different ground of alienation or disposal of the property, which is final or irrevocable and not based on the execution and service of the instrument of declaration, which is not registered as required under the LTA.

Where the other two modes of severance in equity set out in *Williams v Hensman* are employed, namely, severance by *mutual* agreement⁶¹ and *mutual* conduct,⁶² the objection raised by the Court of Appeal in *Chan Lung Kien* has no application. In these two instances in equity, all joint tenants are involved, and they agreed to the severance of their respective interests, which will bind the parties. This is so even where the statutory severance that was initially attempted has failed.

IV. CONCLUSION

The decision in *Chan Lung Kien* should not be read to mean that ss 53(5) and 53(6) of the LTA provide for an all-or-nothing approach to severance of joint tenancies in respect of registered land. Failure to sever thereunder does open the door, so to speak, to other recognised methods of severance under existing law, at least, insofar as the various modes of severance in equity, discussed above, are concerned. This is, in fact, recognised in the opening sentence in s 53(5), so long as their application is aligned with the intention of Parliament, which is paramount. It is equally clear that the opening sentence of s 53(5) of the LTA does not permit the application of just *any* general equitable principles in the area of severance of joint tenancies save for those that are aligned with the intention of Parliament as is reflected in the LTA.

⁵⁹ *Golden Village*, *supra* note 56 at [23]. See further, LTA, ss 63(1) (transfers); 68(1) (mortgages) and 87(1) (leases) (note the use of the word “may” in the respective provisions).

⁶⁰ Note that LTA, s 53(5) uses the words “any joint tenant *may* [not “shall”] sever a joint tenancy ... by an instrument of declaration”. See also, *Singapore Parliamentary Debates, Official Report* (30 August 1993), *supra* note 21.

⁶¹ See the majority decision of Sir John Pennycuik and Lord Justice Browne in *Burgess*, *supra* note 23 at 443–444 (Lord Justice Browne) and 447 (Sir John Pennycuik). The significance of the agreement, which may be either express or implied, is that it serves as an indication of a common intention to sever (Sir John Pennycuik at 446).

⁶² See also the decision of Lord Denning in *Burgess*, *supra* note 23 at 439 (any “course of dealing in which one party makes clear to the other that he desires that their shares should no longer be held jointly but be held in common”, thus indicating the communication of the desire to sever).