Unit 1:
Basic Land Law Concepts and Dealings with Interests in Land

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2.4 State Lands Act
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Unit 1:
Basic Land Law Concepts and Dealings with Interests in Land

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Dealing with Interests in Land

2.1 Basic Land Law
  Introduction
  Distinguish real property from personal property, proprietary right from personal right, ownership (the largest form of proprietary interest) from lesser interests, and legal interest from equitable interest.

2.2 Land
  ▪ Infer the legal meaning of land.
  ▪ Ascertain whether an object is a fixture or a fitting, and to whom (buyer or seller, landlord or tenant) it belongs.
  ▪ Identify the legal description of land lot, strata lot and accessory lot, and the documents from which to obtain such information.

2.3 Estates in land
  ▪ Understand tenure and estate, and the various types of freehold and leasehold estates.
  ▪ Identify the different types of properties.

2.4 State Lands Act
  ▪ Explain the implied covenants and conditions in the grant in perpetuity and State lease.
  ▪ Understand when differential premium is payable.
  ▪ Understand the nature of temporary occupation licence (TOL) issued by the State.
  ▪ Describe the State’s reversionary interest in State leases and the power to acquire land compulsorily under Land Acquisition Act.
## Unit 2:
### Dealing with Interests in Land

2.5 Rights in another’s land:
- licence
  - Explain the term “encumbrances” on land title.
  - Explain the nature of a licence.
  - Distinguish a licence from a lease.
  - Explain the nature and characteristics of an easement.
  - Understand how an easement may be acquired and extinguished at common law, and under the Land Titles Act (LTA) and Land Titles (Strata) Act (LTSA).
  - Explain the easements implied under LTA and LTSA.
  - Understand the extent to which covenants affecting adjacent land owners bind their respective successors in title.
  - Ascertain the existence of a restrictive covenant in a land title.
- easement
  - Explain how a restrictive covenant may be discharged at common law and under the Land Titles Act.
- covenant
Real Property

- Real property, real estate, realty, or immovable property is any subset of land that has been legally defined and the improvements to it have been made by human efforts. E.g. Buildings, machinery, etc.
- Immovable
- All things attached to the land
  - Building
  - Airspace
- All rights or interests inherent with the land
  - Right of possession – owned by title holder
  - Right of control – owner controls use of property
  - Right of exclusion – exclude others from using property
  - Right of enjoyment – use the property in any legal manner
  - Right of disposition – sell, rent or transfer ownership at will
- However, property owner’s rights are subjected and restricted to State’s rights to limit land usage and property taxes.
Personal Property

- Personal property is generally considered private property that is movable, as opposed to real property or real estate. In common law systems, personal property may also be called chattels or personalty. In civil law systems, personal property is often called movable property or movables – any property that can be moved from one location to another. This term is in distinction with immovable property or immovables, such as land and buildings. Types:
  - Tangible
    - Generally able to move, touch, feel
    - Eg. Furniture, painting, flower pot, household goods
  - Intangible
    - Cannot move, touch or feel
    - Represents something of value
    - Eg. Intangible assets, Stocks, REITs
Proprietary Right vs. Personal Right

- **Personal rights** can only be enforced by the parties to the agreement or contract. A personal right is not binding on someone else (a third party) who is not a party to the contract. E.g.
  - Bare and contractual licences
- **Proprietary rights** are personal to the parties of the agreement or contract and also capable of binding and affecting third parties, and not only the parties to the contract. That is, they are capable of attaching to the land itself so that anybody who comes into ownership or occupation of the land may be entitled to enjoy the rights the interest gives or be subject to the obligations that it imposes. E.g.
  - Current landowner has leased a room to tenant for 3 years. When a new owner purchases the property, the lease is still in force.
  - An alleyway that is part of a property is subject to public use. When a new owner purchases the property, the easement is still in place – public access is still granted.
Ownership vs. Lessor Interests

3 Forms of Ownership

- **Freeholder**
  - Ownership in perpetuity
  - May lease to tenant

- **Lessor**
  - Role of someone who leases out space or property
  - May be a freeholder, or
  - An “owner” for duration of lease term
  - Eg. HDB Flat “Owner” who rents out his room

- **Lessee**
  - Someone who makes rental payment
  - Based on terms of rental agreement

Just because someone is a lessor does not mean he has full ownership rights. He is still subject to agreements with the true owner.
Examples:

• The owners of a condominium project may be having a 99-year leasehold status while the freehold right of the land is still being held by the developer.

• Old three-storey shops may have three ‘owners’ having different rights to the shop: ground floor freehold, upper 2 floors 99-year tenure and 999-year tenure respectively. This means that the ‘real owner’ is the ground floor owner who has leased out the upper floors for different leasehold periods.

• Owner of Shopping Mall leases a retail unit.

• Lessee decides to rent out/ sublet and earn profit rent.

• He is now considered both a lessee to the owner, and lessor to his lessee.
Legal Interest vs. Equitable Interest

- Both are proprietary rights, binding third parties.
- Legal Interest is formal in nature, and recognized by the common law.
- The concept of equity often applies where the application of common law would not have produced a just result.
- A person can be said to have Equitable Interest when he has a right that may not be expressed in a written form (i.e. Title deed).
- An equitable interest is not as strong as a legal interest. Legal interest operates as a property right in the full sense. Equitable interest, however, is not so fully effective. It has the main characteristic of a property right in that it is capable of enduring through successive changes of ownership of the land, so as to benefit and bind parties not involved in its original creation.
- But it will be defeated if a legal estate in the land is passed into the hands of a bona fide purchaser for value who had no notice of the prior equitable interest. This ‘bona fide purchaser’ took priority over the equitable owner.
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Land - Legal Definition

• Refers to the Rights and Interests over it and it includes
• Corporeal hereditaments refer to tangible objects such as houses and buildings. Incorporeal hereditaments refer to intangible objects or rights such as easement on land.
• Corporeal Hereditaments (Tangible objects)
  • buildings,
  • minerals,
  • fixtures and
  • trees
• Incorporeal Hereditaments
  • Easement – right of way
**Unit 2.2.2** Unit 2 Page 8

**Fixture vs. Fitting**

- **Fixture** – something of chattel nature annexed to land/property, which legally becomes part of land. Landlord/Buyer owns the fixtures. Eg. Built-in cabinets, bathtubs.

- **Fitting** – personal property that can be removed from land/property by seller and not conveyed to purchaser, unless separately arranged in the inventory list. Tenant/Seller owns the fittings.
Tests On Fixture/Fitting

1. Degree of attachment/annexation
   - Painting engraved and sealed within the wall can be regarded as a fixture.
   - Painting hung on the wall can easily be removed, and can be regarded as a fitting.

2. Purpose of the attachment/annexation
   - Chairs in cinema, movie screen
   - Equipment essential to the operation of factory
   - Even if it may not be permanently attached, as long as it forms an integral part of the property, it will be a fixture.
Trade Fixture

- Essentially personal property attached to building for business purposes. Eg. Decorative lighting, display counters
  - Tenant can remove trade fixtures before lease expires
  - He has to make good if removal causes damage to real property
  - If not done before termination of lease, it becomes part of real property and is transferred to the landlord (could be a benefit or liability)
Why The Need For Distinction?

The importance of the distinction between a fixture and fitting comes into play when there are disputes in property transactions. Eg.

- Owner sells house. He regards the expensive lighting he installed a fitting that he can bring with him to his next property.
- Buyer assumes that the expensive lighting is a fixture. He expects that the lighting will be there upon move-in. In fact, the lighting could be a factor of consideration when he bought the property.
- Buyer signs the purchase agreement even after checking the inventory of fittings mentioned in the document. To him there is no problem – the lighting is a fixture and has no need to be mentioned in the list of inventories.
- Upon moving in, buyer is shocked that the expensive lighting is replaced with a simple and cheaper one. He feels cheated and confronts the seller.
- The matter is taken to court, and the lighting is then disputed to be either a fixture or fitting, and whether the buyer should be compensated.
- The case could go either ways depending on the process of the sale and the context of the lighting. The buyer could have a strong case if the lighting was his major consideration in the purchase of the property. On the other hand, the seller could win the case if the lighting is considered easily removable without extensive damage to the property, or if he played a part in the installation of the lighting during his ownership of the property.
2.2.3 Define the meaning of land

- The Boundaries and Survey Map Act (Cap 25) provides for demarcation of land in Singapore.
- Singapore is divided into 64 districts comprising 30 Town Subdivisions (TS) survey districts and 34 Mukim (MK – Means Rural) survey districts.
- Each district is divided into plots, same road does not need to belong to same district.
- SLA uses Lot Base System as inventory of all lots numbers. Records history of lot creation, amalgamation and subdivision of lots.
  - Land Lot Number (landed) TS7 Lot 246X
  - Strata Lot Number (strata titled) TS7 Lot U246X
  - Accessory Lot Number TS7 Lot A246X

*An accessory lot is a strata lot which is made appurtenant to another strata lot. In other words, added to the strata lot. E.g. a carpark lot that comes with a strata lot.*
Integrated Land Information System (INLIS)

- Allows anyone to obtain property information conveniently via internet
- Types of information available on INLIS:
  - Vertical Control Point & Horizontal Control Point –
  - Encroachment Boundary Plan –
  - Property Title Information/Property Ownership Information/Property Title Information - Estate and Land Description/Property Title Information - Encumbrances Information/Property Title Information with Cadastral Map/Historical Information/Caveat Index Information/Land Information - Lot Particulars and Land Information - Lot History
  - Road Line Plan
  - Certified Plan, Strata Certified Plan, Registrar of Title Plan. Provides following information:
    - Cadastral Map
    - Image of HDB Leases, Image of HDB Instruments, Image of Private Property Instruments, Image of Index to Land Books, Image of Index to Caveat Books & Image of Private Property Deeds
Accessing information on Tenure and Estate in land

1. Log on to www.inlis.gov.sg
2. Select Property Title Information
3. Key in the necessary information in the column at the right hand corner and begin your search.
Sample report from INLIS.

SINGAPORE LAND AUTHORITY
Online Land Information System

Lot Number : MK11-1009X
Property Address : 77 KIM YEAM AVENUE
                  SINGAPORE 234372

Lot Area : 257.2 SqM
Final Plan : CP 31214
Approved On : 14/03/2000

State Title Tenure : LEASEHOLD ESTATE
Lease Duration : 99 Years
Commencement Date : 11/12/1996
State Title Expiry Date : 10/12/2095
State Title No : LEASE 33077
State Title Date : 16/08/1998

Title Document Number : CT VOL 351 FOL 124
Title Document Status : LIVE
Share Capital in : Whole
2.3.1 Land Tenure

The mode of holding or occupying land. Under the Feudal system, all land belongs to the State. The State is empowered to grant land to individuals and corporations by issuing different titles.
2.3.2. Estates

- Right to control and use land
- Also states the length of time for which land is held.
- Types of Estates:
  1. Freehold Estate
  2. Leasehold Estate
  3. Concurrent estates
  4. Equitable estates
1. Freehold Estate

- Rights of conveyable exclusive possession and use, having immobility and indeterminate duration.
  - Owner holds land forever, subject to State’s rights
  - Fee Simple Absolute — most rights, least limitations,
  - Grant in Fee Simple (GFS) – Absolute freehold estate without obligation to pay rent except statutory charges, i.e. Property tax
  - Estate in Perpetuity or Statutory Land Grant (SLG)
- Subject to implied terms under the State Lands Act.
- Abbreviations used : GT (Grant) is also known as IND (Indenture), GFS (Grant in Fee Simple)
2. Leasehold Estate

- Definite duration and comes to an end at specified date
- Usually 99 years, 999 years, 9999 years or shorter terms like 30 or 60 years
- Common conditions:
  - Property Tax
  - Keep land and building in good state of repairs
  - Not to use premises for unauthorized purposes
3. Concurrent estates

- Owned or possessed by two or more individuals simultaneously.
  - Joint Tenancy
  - Tenancy in Common
4. Equitable estates

• Neither ownership nor possession
• Future interests — interests in real or personal property, a gift or trust, or other things in which the privilege of possession or of enjoyment is in the future and not the present
  • reversion
  • remainder
• Incorporeal interests — those that cannot be possessed physically, since they consist of rights of a particular user, or the right to enforce an agreement concerning use:
  • easement
  • easement in gross
  • easement appurtenant
  • ingress
• Lien
  • general
  • specific
  • egress
  • profits
  • covenants running with the land
  • equitable servitudes
  • licenses
2.4. State Lands Act

- All lands granted or leased by the State (whether Estate in Perpetuity or leasehold) are subjected to conditions and Restrictive Covenants to the effect that the State reserves certain rights to the land.
2.4.1. Implied Covenants and Conditions

- State’s Reservation of Rights in Mineral Oil in Grants and Leases
- Implied conditions as to claims of Right Of Way
- Implied Covenants in Statutory Grant
- Implied Conditions in Grants and Leases
- Assignee Bound by Covenants in Statutory Land Grants or State Leases
- Land Granted for Religious Purposes, ETC, When Resumable
- Surrender of Title
Lifting of State Covenants

• State lands are sold at a price based on the proposed USE and INTENSITY at the time of sale. The USE and INTENSITY are stipulated as conditions in the State Title; and such conditions are also known as STATE COVENANTS which include state’s right to zone and re-zone land or change the usage of land.

• As such, subsequent to the land sale by the State and if planning approval is obtained for the land for a proposed development where the approved USE and/or INTENSITY exceed that state in the State Title (or for the State lease to be topped up to the full lease of 99 years), an application to the SLA for the LIFTING OF STATE COVENANTS or title restrictions must be submitted before proceeding with the development works.
2.4.2. Development Charge (DC)

• Development Charge is a form of tax levied on building projects which have permission from competent authority to carry out works that will result in enhancement or betterment of the building’s value which has been prescribed in the Mastery Plan. E.g.
  • Change to higher use
  • Change in zoning to a higher use zone
  • Increase in intensity of development
  • Combination of the above that results in higher value.
**Basis of DC**

- Amount of DC is computed based on the Fixed Rate Table on enhancement or betterment in value as a result of the grant of the planning permission.
- Fixed Rate Table may be revised every 6 months.
- The equation for DC computation is:

  \[ \text{Developmental Charge} = \text{Development Ceiling} - \text{Development Baseline} - \text{Any Development Charge Exemption} \]

  *Development Ceiling* – The value of the **proposed** development which received planning permission from URA.

  *Development Baseline* – The value of the **approved** development based on the approved use and intensity of the site.

  *Development Charge Exemption* – As listed in the Planning Act. The most common exemption refers to the difference between the Safeguarded Historical Baseline of the site and the Development Baseline.
Computation of DC

DC may be calculated by Fixed Rate DC, or case-by-case valuation.

Fixed Rate DC

It is important that you determine if development was approved under the 1993 Gross Floor Area (GFA) definition. The GFA of developments approved prior to 1989 will need to be re-computed under the 1993 GFA definition.
DC Exemption

**DC Exemption:**

Most commonly, Safeguarded Historical Baseline (SHB) – Developmental Baseline

- To determine the **SHB**, extract the historical **land use** and **intensity** of the site from the 1958, 1980 and 2003 Master Plans. The **SHB Value** is then calculated by multiplying the gross floor area (GFA) by the development charge rate based on the September 2003 fixed rate table.
Example 1

Assume site area = 4,000 sqm,

<table>
<thead>
<tr>
<th>Master Plan Year</th>
<th>Land Use</th>
<th>Intensity (Gross Plot Ratio)</th>
<th>GFA (Site Area x GPR)</th>
<th>Sept 2003 Rate</th>
<th>SHB Value</th>
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</thead>
<tbody>
<tr>
<td>1958</td>
<td>Industry</td>
<td>2.5</td>
<td>10,000sqm</td>
<td>$500/sqm</td>
<td>$5 mil</td>
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<tr>
<td>1980</td>
<td>Industry</td>
<td>2.5</td>
<td>10,000sqm</td>
<td>$500/sqm</td>
<td>$5 mil</td>
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<td>2003</td>
<td>Business 1</td>
<td>3.5</td>
<td>14,000sqm</td>
<td>$500/sqm</td>
<td>$7 mil</td>
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</tbody>
</table>

1) Choose higher SHB value between 1958 and 1980
2) Choose lower SHB value between (1) and 2003

In this case, the SHB is the 1958/1980 Master Plan with a GFA of 10,000 sqm.

SHB Value = 10,000 sqm \times DC Rate (date of permission granted)

Say, $8 million
Developmental Baseline = Say, $6.5 million
DC Exemption = $8 million - $6.5 million = $1.5 million
Developmental Ceiling = Say, $9 million
Development Charge = $9M - $6.5M - $1.5M = $1M
(Simply Developmental Ceiling – SHB Value if SHB is higher than baseline)
Example 2

Site Information
Site Area: 4,000 sqm
Existing development on site: 4-storey residential block
Proposed development: 20-storey condo @ GPR 2.8
Proposed GFA: 11,200 sq m of residential GFA
Date of Provisional Permission: 2 Jan 2009
(Material date)

Other Information
Master Plan 1958: Residential @ GPR 2.6
Master Plan 1980: Residential @ GPR 2.7
Approved GFA = 4,400 sq m (flats development)
Geographical Sector: 48
DC Rates applicable for determining:
(a) Safeguarded Baseline - 1 Sep 03 DC Rates
(b) Development Charge Payable - 1 Sep 08 DC Rates
Use Group: B2 (i.e. Non-landed residential)
**Example 2 Cont’d**

**Step 1 – Determining SHB**
DC Rates applicable: Sep 2003

i) Value derived from Master Plan 1958 provision:
GFA = 2.6 x 4,000sqm = 10,400sqm
Value = $2,300/sqm x 10,400sqm = $23,920,000

ii) Value derived from Master Plan 1980 provision:
GFA = 2.7 x 4,000sqm = 10,800sqm
Value = $2,300/sqm x 10,800sqm = $24,840,000

iii) Highest of (i) & (ii) = $24,840,000

iv) Value derived from Master Plan 2003 provision:
GFA = 2.8 x 4,000sqm = 11,200sqm
Value = $2,300/sqm x 11,200sqm = $25,760,000

v) Safeguarded Historical Baseline:
Lowest of (iii) & (iv) = $24,840,000
> Convert to GFA = 10,800sqm

**Step 2 – Determining DC Payable**
DC Rates applicable: Sep 2008

i) Developmental Ceiling:
$8,400/sqm x 11,200sqm = $94,080,000

ii) Developmental Baseline:
$8,400/sqm x 4,400sqm = $36,960,000

iii) DC Exemption:
$8,400/sqm x (10,800sqm – 4,400sqm) = $53,760,000

iv) DC Payable:
$94,080,000 - $36,960,000 - $53,760,000 = $3,360,000
Purposes of Development Within Use Groups (W.E.F. 1st MAR 2013)

<table>
<thead>
<tr>
<th>Use Group</th>
<th>Purposes for which development is permitted or to be authorised</th>
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<tbody>
<tr>
<td>A</td>
<td>Shop, office, association office, cinema, place of entertainment, clinic, medical suite, restaurant, petrol station, auto-service centre, commercial garage, market, sports and recreation building</td>
</tr>
<tr>
<td>B1</td>
<td>Residential (landed dwelling-house)</td>
</tr>
<tr>
<td>B2</td>
<td>Residential (non-landed residential building)</td>
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<tr>
<td>C</td>
<td>Hospital and health centre, hotel room and hotel-related uses</td>
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<tr>
<td>D</td>
<td>Industrial, warehousing, science park, business park, transport depot, airport, dock, port uses, utility installation, telecommunication infrastructure, Mass Rapid Transit Station, Light Rail Transit Station</td>
</tr>
<tr>
<td>E</td>
<td>Place of worship, community building, educational and institutional uses, government building</td>
</tr>
<tr>
<td>F</td>
<td>Open space, nature reserve</td>
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<tr>
<td>G</td>
<td>Agriculture</td>
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<tr>
<td>H</td>
<td>Drain, road, railway, cemetery, Mass Rapid Transit Route, Light Rail Transit Route</td>
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## Sample DC Rate Table (March 2013)

### Development Charge Sector Map & Rates

#### TABLE OF DEVELOPMENT CHARGE RATES PER SQUARE METRE - MARCH 2013

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<th>Geographical Sectors</th>
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<th>B1</th>
<th>B2</th>
<th>C</th>
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2.5.3. Differential Premium (DP)

- A payment (DP) will be charged for LIFTING THE STATE COVENANTS involving change of use and/or increase in intensity of land.
- A few things to note regarding the determination of DP:
  - Based on the published table of DC rates.
  - Material date of DP pegged to date of Provisional Planning Permission (PP) or date of subsequent PP extensions.
  - Where tenure of land is leasehold, DC rates will be adjusted to reflect residual tenure of land. (Table shown below)
  - Where the use intended does not clearly fit into provided use groups table, DP payable will be determined by the Chief Valuer on a case-by-case basis.
  - Upgrading Premium payable for the topping-up of lease tenure will still require assessment by Chief Valuer on case-by-case basis.
### Table Showing Leasehold Values as % of Freehold Value

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<th>Term of Years</th>
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Lifting of State Restriction

Date of PP : Jun 2013
Location : Upper Bukit Timah Road
Land Area : 5,000 m²
Tenure : 99-year lease commencing from Jan 1975
          (60+ years unexpired lease)
Restriction : Industrial GPR 2.4
Proposed : Residential GPR 2.6
Lifting of State Restriction Cont’d

DP Computation
Prevailing DC Table : Mar 2013 DC Table
Sector : 113
Leasehold Value % : 80%

Base Value
Use Group : Group D
DC Rate : $840/m²
Base GFA : 12,000 m² (5,000 m² x 2.4)
Base Amount : $8,064,000 (12,000 m² x $840 x 80%)
Proposed Value

Use Group : Group B1
DC Rate : $3,780/m²
Proposed GFA : 13,000 m² (5,000 m² x 2.6)
Proposed Amount : $39,312,000 (13,000 m² x $3780 x 80%)

Differential Premium: $31,248,000 (Proposed – Base Amt)
Topping up of State Lease

• Situation whereby owner needs to top up when he wants to extend state lease to maximum term.
• E.g.
• Calculation is separate from differential premium. Using the previous example as above, approval has been given for the change of use and intensity of the land and the DP is $31,248,000.
• Owner wants a fresh 99-year lease instead of the current 60 years of lease remaining.
Assessment of Upgrading Premium
Topping-up of existing tenure from 60 years to 99 years based on residential GPR 2.6
Chief Valuer will assess market value of the 99-year lease based on residential use at GPR 2.6
Assuming Valuation is at $75,000,000/- :
Leasehold Table

Value of 99 years as % of Freehold Value: 96%
Value of 60 years as % of Freehold Value: 60%

Premium for 60-year tenure:
$75,000,000 x (60% / 96%) = $46,875,000/-

Upgrading Premium:
$75,000,000 – $46,875,000 = $28,125,000/-

* Premium payable heavily depends on Chief Valuer’s appraisal of market value.
Development Charge vs Differential Premium

• If the site is on private land (Freehold), DC is applicable and payable to URA. If it is on State Land, DP will be imposed by SLA.

• Lessees with State leases that do not specify the use and/or the maximum allowable intensity of the land are liable to pay DC for any enhancement in land value. However, they may apply to SLA to pay DP instead. Once approved, DC is exempted and written permission will be granted by URA.
2.4.4. Temporary Occupation License (TOL) Unit 2 Page 26

- The issue of TOLs by the State is governed by the State Land Rules (Cap 314, R 1) which states that the Collector of Land Revenue may issue licenses or enter into tenancy agreements (TAs) for the occupation of State land for temporary purposes.
- SLA is the government body renting out vacant State lands for a whole range of uses, ranging from worksites, site offices, temporary structures on State foreshore, mini fairs, carnivals, schools, hospitals, places of worship, etc.
TOL General Terms and Conditions

• The Collector of Land Revenue may at any time enter the land for the purpose of inspection or for any other purpose;
• The license or tenancy shall not be transferred or assigned without the consent of the Collector of Land Revenue;
• The license or tenancy shall cease and be determined on the death of the licensee or the tenant;
• The licensee or tenant shall not let or sublet to any other person except with the written consent of the Collector of Land Revenue;
• No structure shall be erected on the land except with the prior written permission of the Collector of Land Revenue; and
• The licensee or tenant shall not cause or allow any sign or advertisement hoarding to be fixed or erected on the land except with the prior written permission of the Collector of Land Revenue.
State Rights

Reversionary Interest in State Leases

- Reversionary interest is a type of future interest in land. Once the lease of the property (eg. HDB) expires, it automatically reverts back to the true owner, which is the State in this case.

Land Acquisition Act

- As elaborated in Unit 1, land may be acquired by the State and the parties who hold interest in the land would be compensated based on market value.
2.5. Rights In Another’s Land

- A right to, interest in, or legal liability on real property that does not prohibit passing title to the property but that diminishes its value.
- May be financial (e.g., liens) or non-financial (e.g., easements, private restrictions). Alternatively, they may be divided into those that affect title (e.g. lien, legal or equitable charge) or those that affect the use or physical condition of the encumbered property (e.g. restrictions, easements, encroachments)
- Also can be defined as:
  - A right to, an interest in, or legal liability on real property.
  - A burden, obstruction, or impediment on property that affects the title to the property and therefore its value – making it less marketable.
  - A claim against a property by another party that usually impacts the transferability of the property and can restrict its free use until the encumbrance is removed.
2.5.1. Nature of a License

- **Licenses** is a personal privilege to use land granted by the land owner. If there are no licenses or if there is misuse of rights, occupants may be sued for trespassing.

- Can be created in the following ways:
  - Bare license
  - After tenancy expires or before it commences
  - Contractual license
  - Public places entered by license
License vs. Lease

- A **license** exists because of a temporary permission given by the owner who may **revoke the license at any time** without incurring any penalty.

- On the other hand, a **lease** is a proprietary right that exists when occupier is granted exclusive possession of property for a term at a rent and the terms of a lease must be determined and clear. The lessee has **rights to remain in an area for the duration of lease**.
Rights in Another’s Land

- Rights to use Other’s land (not just own land) or restrict usage of other’s land including easement and covenants
Easement

- Non-physical – Also called incorporeal hereditaments
- Right to use other’s land
  - But not to possess land
  - Part of encumbrances under Restrictive Covenants
    - Reflected in CT as part of Restrictive Covenants – Interest/Encumbrances column of CT
    - Encumbrance – Charge, Claim or Liability on real estate
- Right of Way over another’s land
- Right to Light – Servient tenement is not to build anything to obstruct light to dominant tenement (height restrictions)
- Right to View/Scenery
  - E.g. Botanic Garden easement limits the height of surrounding apartments
Basics of Easements

- Enjoyment of the land and not possession of it
- Part of encumbrances
- Right of way
- Right to View/Scenary
Easement – 4 Conditions

• Dominant tenement and Servient Tenement
• Easement must benefit dominant tenement
• Dominant tenement and servient tenement must be owned by different people
• Easement must be capable of forming the subject matter of a Grant
Easement - Creation

- By act of Parliament
- Expressed or Implied reservation
- Necessity (landlocked property)
- Prescription
- Any other easements must be registered, clearly indicating:
  - the nature of the easement and the extent of the land burdened by the easement
  - the dominant tenement
  - the conditions, limitations and restrictions, if any, intended to affect the enjoyment of the easement
Extinguishment of Easement

Easement - Release
• Non usage exceeding 12 years
• Expressed release
• Implied release
• Unification of ownership
Illustration

Only way to reach Dominant property is through Servient tenement’s property
Trespass to Land

- When a person wrongfully enters into another person’s land where no permission is granted to enter is trespassing to land.
- Defenses to Trespass to Land
  - License of the occupier or owner to enter the land
  - Entry by a Sheriff or agent to levy an execution
  - Entry by landlord as plaintiff to levy distress
  - Peaceable entry by someone entitled to possession of premises
  - Lawful exercise of a public right of way
  - Lawful entry for the purpose of stopping a nuisance
Remedies

• To use forcible ejection
• To dispossess the premises
• To re-enter land
• To claim damages
• To apply to court for an injunction to prevent the person from entering
Easements Implied Under the Land Titles Act

- Easement for installations
  - Exclusive possession of soil or space occupied by pipes or other installations shall not prevent right of massage of matter or energy through the pipes and installations being registrable as an easement

- Implied easements for passage of water, electricity, drainage, gas, and sewerage for development
  - By means of any sewers, pipes, wires, cables or ducts being used in connection with the enjoyment of the lot
  - Against the owner of the lot for any sewers, pipes, wires, cables or ducts as appurtenant (belonging) to any other neighboring lot capable of enjoying such easements
  - Entitle owner of dominant tenement to enter on servient tenement at all reasonable times to repair, renew or restore sewers, pipes, wires, cables or ducts when necessary
  - Owner of dominant tenement must make good any damage to owner of servient tenement
Easements Implied Under the Land Titles (Strata) Act

• Easement of support
  • Easement for subjacent and lateral support of common property and any other lot capable of enjoying support
  • Entitles dominant tenement to enter on the servient tenement to replace, renew, or restore any support

• Easement of shelter
  • Every subsidiary proprietor is entitled to have his lot sheltered by all other parts of the subdivided building that are capable of affording shelter
  • Entitles dominant tenement to enter on the servient tenement to replace, renew, or restore any shelter
Easements Implied Under the Land Titles (Strata) Act

• Easements for passage of water, sewerage, drainage and other services
  • In favor of the subsidiary proprietor of the lot, and as appurtenant thereto, easements for the passage or provision of water, sewerage, drainage, gas, electricity, garbage, artificially heated or cooled air and other services (including telephone, radio and television services) through or by means of any pipes, wires, cables or ducts to the extent to which those sewers, pipes, wires, cables or ducts are capable of being used in connection with the enjoyment of the lot
  • As against the subsidiary proprietor of the lot, and to which the lot shall be subject, easements for the passage or provision of water, sewerage, drainage, gas, electricity, garbage, artificially heated or cooled air and other services (including telephone, radio and television services) through or by means of any sewers, pipes, wires, cables or ducts, as appurtenant to the common property and also every other lot capable of enjoying such easements.
  • Simply put: Allowing provision of services to neighbors, while they allow provision of services to you.

• Easement for light over-hanging eaves and other projections
  • In respect of each lot and the common property, there shall be implied in favor of the subsidiary proprietor of the dominant tenement and against the subsidiary proprietor of the servient tenement –
  • Easement for uninterrupted access and use of light to or for any windows, doors or other apertures existing and enjoyed at the date of registration of the relevant strata title plan; and
  • The right to maintain and use over-hanging eaves and other projections existing at the date of registration of the relevant strata title plan
Covenants Bind Respective Successors in Title

• Since covenants run with the land, and are included in the CT as encumbrances, successive owners are bounded by them.

• State imposed covenants can be lifted only after approval and the payment of a differential premium, which would be elaborated under the State Lands Act (Unit 2.5).
Discharge of Restrictive Covenant under LTA

- Section 141(1) of the Land Titles Act provides that, unless extended, a restrictive covenant shall cease to be enforceable against assigns of the servient land at the expiry of 20 years from date of entry on the land register.
Any Questions?
Recap Unit 2: Dealing with Interests in Land

2.1 Basic Land Law
   - Introduction
   - Concepts

   Distinguish real property from personal property, proprietary right from personal right, ownership (the largest form of proprietary interest) from lesser interests, and legal interest from equitable interest.

2.2 Land

   - Infer the legal meaning of land.
   - Ascertain whether an object is a fixture or a fitting, and to whom (buyer or seller, landlord or tenant) it belongs.
   - Identify the legal description of land lot, strata lot and accessory lot, and the documents from which to obtain such information.

2.3 Estates in land

   - Understand tenure and estate, and the various types of freehold and leasehold estates.
   - Identify the different types of properties.

2.4 State Lands Act

   - Explain the implied covenants and conditions in the grant in perpetuity and State lease.
   - Understand when differential premium is payable.
   - Understand the nature of temporary occupation licence (TOL) issued by the State.
   - Describe the State’s reversionary interest in State leases and the power to acquire land compulsorily under Land Acquisition Act.
Recap Unit 2: Dealing with Interests in Land

2.5 Rights in another’s land:
- licence
- easement
- covenant

▲ Explain the term “encumbrances” on land title.
▲ Explain the nature of a licence.
▲ Distinguish a licence from a lease.
▲ Explain the nature and characteristics of an easement.
▲ Understand how an easement may be acquired and extinguished at common law, and under the Land Titles Act (LTA) and Land Titles (Strata) Act (LTSA).
▲ Explain the easements implied under LTA and LTSA.
▲ Understand the extent to which covenants affecting adjacent land owners bind their respective successors in title.
▲ Ascertain the existence of a restrictive covenant in a land title.
▲ Explain how a restrictive covenant may be discharged at common law and under the Land Titles Act.
End of Lesson 6