

Syllabus for Hong Kong Land Law

1. Definitions and Formalities

The definitions of 'land' and 'legal estate' in s 2 of the *Conveyancing and Property Ordinance* (Cap 219); the difference between fixtures and fittings; the formalities for the creation, transfer and disposal of legal and equitable interests in land; the formalities for the sale and leasing of land; the effect of a memorandum as evidencing an oral agreement for the sale or lease of land; ss 3(1), 4, 5 and 6 of the *Conveyancing and Property Ordinance*.

2. Priority and Land Registration

Instruments registrable under the *Land Registration Ordinance* (Cap 128); the priority of registered instruments under s 3(1), 5 and 5A of the *Land Registration Ordinance*; the effect of s 3(2) and s 4 of the *Land Registration Ordinance*; the doctrine of notice; resulting and constructive trusts and the priority of unregistrable interests in land; bona fide purchasers without notice actual or constructive.

3. Joint Ownership and the Partitioning of Land

Joint tenancies and tenancies in common; effect of death on joint tenancies and tenancies in common; severance of joint tenancies and s 8 of the *Conveyancing and Property Ordinance*; voluntary partition of land in joint ownership; application for partition under the *Partition Ordinance* (Cap 352); who can apply; the court's powers to order partition or sale or to refuse such an order; principles governing the court's exercise of discretion.

4. Adverse Possession

The limitation periods under the *Limitation Ordinance* (Cap 247); accrual of a right of action; the pre-requisites of adverse possession; the aggregation of periods of adverse possession; the effect of leases granted by squatters; the effect of renewal of Government leases in the New Territories under the *New Territories (Renewable Government Leases) Ordinance* (Cap 152) and the extension of Government leases in the New Territories under the *New Territories Leases (Extension) Ordinance* (Cap 150); the effect of the reversion of Hong Kong Island and Kowloon to the PRC on the titles of squatters. Special considerations where the squatter secures only a leasehold title by adverse possession and the surrender of title by the paper title owner to the Government.

5. Government Leases and Conditions of Grant

The vesting of land in the State, the right of the Chief Executive to dispose of land, the disposal of land by granting Government leases and Conditions of Grant, the nature of the interest under Conditions of Grant. The five different types of Conditions.

The conversion of the equitable interest held under Conditions of Grant into a legal estate; ss 14(1), (2) and (3) of the *Conveyancing and Property Ordinance*; the effect of compliance with conditions precedent to the grant of a Government lease, evidence of compliance, deemed compliance and registration of a certificate of compliance.

The sectioning of land, the subdivision of land by the sale of undivided shares in land and the creation of section and subdivision registers in the Land Registry; the role of deeds poll.

The duration of Government lease terms, rights of renewal and automatic renewal under the *Government Leases Ordinance* (Cap 40) and the *New Territories (Renewable Government Leases) Ordinance*. The effect of the Basic Law on the duration of Government lease terms (Articles 120, 121 and 123 of the Basic Law) and the *Government Leases (Extension) Ordinance*.

User restrictions in Government leases and Conditions of Grant and the construction of such restrictions by the court; the running of the burden of restrictive and positive covenants in Government leases and Conditions of Grant; waiver by Government of restrictions in Government leases and Conditions of Grant; express waiver, implied waiver (acquiescence) by conduct and estoppel.

Block Government leases and Demarcation District Plans; the enforcement of covenants in Block Government leases.

6. Deeds of Mutual Covenant

The subdivision of land into undivided shares; the nature of ownership in a multi-storey building; further subdivision of shares and sub-deeds of mutual covenant; the usual covenants found in deeds of mutual covenant; liability for management fees and the carrying out of structural alterations; duty to keep premises in good repair under the deed of mutual covenant and the *Building Management Ordinance* (Cap 344); common parts and interference with common parts; the demolition of internal walls and knocking holes in external walls; the passing of the benefit and burden of covenants in respect of multi-storey buildings under ss 39, 40 and 41 of the *Conveyancing and Property Ordinance*; the liability of an owner of shares in a multi-storey building for breaches of the deed of mutual covenant committed by predecessors in title.

7. The Small House Policy

The Small House Policy; who is entitled to construct a small house; private treaty grants, free building licenses, certificates of exemption under the *Buildings Ordinance (Application to New Territories) Ordinance* (Cap 121), certificates of compliance and letters of no objection; restrictions on alienation of small houses and consequences of alienation.

8. Chinese Customary Trusts over Land

The nature and purpose of Tsos and Tongs, recognition of them under the *New Territories Ordinance* (Cap 97), the rule against perpetuities applied to tongs and tsos, the entitlement to tong and tso land, the alienability of tong and tso land, the management of tongs and tsos.

9. Introduction to the *Land Titles Ordinance* Cap 585 (not applicable until further notice)

Conversion for new land and existing land, caveats and cautions, registrable interests and overriding interests, the effect of registration, security of title and indemnity.

Recommended Reading List for Hong Kong Land Law

Texts

S.H.Goo and Alice Lee, *Land Law in Hong Kong*, 4th edition, (Student Edition), LexisNexis Hong Kong, 2015

Judith Sihombing and Michael Wilkinson, *A Guide to Hong Kong Conveyancing*, 8th edition, LexisNexis Butterworths, 2018

Sources

The Basic Law

Building Management Ordinance (Cap 344)

Buildings Ordinance (Application to New Territories) Ordinance Cap 121

Buildings Ordinance (Cap 123)

Conveyancing and Property Ordinance Cap 219

Government Leases Ordinance Cap 40

Interpretation and General Clauses Ordinance Cap 1

Land Registration Ordinance Cap 128

Land Titles Ordinance Cap 585

Limitation Ordinance Cap 347

New Territories Ordinance Cap 97

New Territories (Renewable Government Leases) Ordinance Cap 152

New Territories Leases (Extension) Ordinance Cap 150

Partition Ordinance (Cap 352)

Hong Kong cases