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Severance by unilateral declaration: lessons from Singapore

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Chan Lung Kien v Chan Shwe Ching [2018] SGCA 24 (CA (Sing))

***138** Introduction

Can severance of a joint tenancy be effected by unilateral declaration of an intention to sever by one joint tenant? In Singapore, this question has been presented before the apex court on three occasions. On each occasion the question received a different answer. In the earliest case, *Sivakolunthu Kumarasamy v Shanmugam Nagaiah*, the Court of Appeal answered in the negative on the basis that the common law does not recognise such a method of severance.¹ In response to this perceived shortcoming and the need for a simpler method of effecting severance, in 1993, Parliament introduced a statutory procedure for severing a joint tenancy by way of unilateral declaration. Pursuant to the Land Titles Act (LTA) s.53,² a joint tenant may sever the joint tenancy by completing the prescribed instrument of declaration and serving it on the other joint tenant(s), and upon registration of the said instrument the declaring joint tenant will acquire an equal share in the property. This development was soon followed by the landmark decision in *Diaz Priscillia v Diaz Angela* where the Court of Appeal interpreted section 53 broadly to the effect that registration is not a prerequisite to severance, and an instrument of declaration that is duly served on the other joint tenant(s) will result in a valid severance, albeit effective only between the co-owners.³ This remained the law for the next two decades until the Court of Appeal in *Chan Lung Kien v Chan Shwe Ching* expressed its disagreement with *Diaz*.⁴ In *Chan*, the court held that any unilateral declaration of severance must comply strictly with the statutory procedures and registration is a pre-requisite to a valid statutory severance.

In this article, it is argued that the latest decision, although decided by a full bench, is unlikely to be the final word on the matter as the court was not presented with a truly difficult case where insisting on strict compliance with the statutory procedure would lead to an undesirable outcome. More importantly, the decision brings to the fore the question of how, following an unregistered severance, should the co-owners' rights be characterised. This in turn raises broader issues relating to the place of trusts within the Torrens system of land titles registration, particularly ***139** the enforceability of beneficial interests against third parties. Related issues that arise for consideration include if and in what exceptional circumstances should severance by unilateral declaration be allowed in equity notwithstanding the lack of registration, as well as how the different methods of severance interact with one another. While much of the discussion focuses on

the interpretation of Singapore's Torrens legislation, the issues raised are sufficiently general to be relevant to the wider common law audience, particularly in jurisdictions where this area of the law is considered ripe for legislative reform.

Two landmark cases compared

It is convenient to begin with an in-depth review of the contradictory decisions in *Diaz* and *Chan*. In *Diaz*, a mother and her elder daughter were the registered joint tenants of a house. About five years after the purchase of the house, the mother attempted to sever the joint tenancy by making a declaration of severance in the approved form and serving it on her elder daughter. The mother then made a will leaving all her assets to her younger daughter. After the mother died, the younger daughter claimed a beneficial half share in the house by virtue of the mother's will whereas the elder daughter claimed to be solely entitled to the house by virtue of the rule of survivorship. When the elder daughter procured the registration of the house in her sole name, the younger daughter responded by lodging a caveat in fear that the former might sell the house. This prompted the elder daughter's application for removal of the caveat. The dispute centred on the validity of the mother's severance as the declaration was, for some unknown reason, not registered. If the severance was invalid, the mother would have no distinct share in the house to be willed to the younger daughter, in which case the caveat would have been wrongfully lodged.

It is helpful to set out the relevant parts of the LTA s.53:

(5) "Without prejudice to any rule or principle of law relating to severance of a joint tenancy, any joint tenant may sever a joint tenancy of an estate or interest in registered land by an instrument of declaration in the approved form and by serving a copy of the instrument of declaration personally or by registered post on the other joint tenants.

(6) Upon the registration of the instrument of declaration which has been duly served as required by subsection (5), the respective registered estates and interests in the registered land shall be held by the declarant as tenant-in-common with the remaining joint tenants, and the declarant shall be deemed to hold a share that is equal in proportion to each of the remaining joint tenants as if each and every one of them had held the registered land as tenants-in-common in equal shares prior to the severance."

Approaching the issue as one of statutory interpretation, the Court of Appeal was confronted with a choice between reading the two subsections either conjunctively or disjunctively. If read conjunctively, the registration requirement in subs.(6) will have to be fulfilled before the severance becomes operative. In contrast, if read disjunctively, the declaration of severance will be valid pursuant to subs.(5) so long as the approved form is used and served on the other joint ***140** tenant(s). This finds support from a literal reading of subs.(5). Subsection (6) merely states what the position would be *if* the severance is also registered. Since the purpose of this new statutory procedure is to make unilateral severance easier, as the relevant parliamentary discussion revealed, the Court of Appeal expressed preference for a disjunctive reading of the two subsections.⁵ In particular, it alluded to the fact that registration of the instrument of severance would require production of the duplicate certificate of title and this is not always possible, for example where it is withheld by the other joint tenant or by a mortgagee. To insist on registration in such a situation would frustrate Parliament's intention to simplify the process of severance. Although there was nothing to suggest that the mother encountered difficulty in producing the duplicate certificate of title for the registration of the declaration of severance, the court nonetheless held that the mother's severance was effective and thus the younger daughter inherited a beneficial half share of the house. Importantly, the court explained that since the declaration of severance was not registered, it was operative only between the co-owners themselves but not against the world. We will return later to examine the effect of this seemingly limited form of severance.

The same issue was revisited in *Chan* but it arose from a very different set of facts. The house in question was jointly owned by a married couple. The dispute was between two judgment creditors who obtained separate summary judgments against the wife for committing fraud against them. Both judgment creditors sought a writ of seizure and sale in respect of the wife's interest in the house. In the lower court, it was held that absent severance the wife had no distinct interest

of her own that can be subject to execution by way of writ of seizure and sale.⁶ This holding was not challenged on appeal. As it transpired, the husband had attempted to sever the joint tenancy by way of unilateral declaration before the second judgment creditor had registered his writ of seizure and sale. If the severance was effective, then the wife would have a distinct interest to which the writ could attach. However, while the husband made a declaration of severance in the approved form, he did not serve it on the wife personally or by registered post, presumably because her whereabouts was unknown. Instead, the husband published a notice of severance in a local newspaper addressed to his wife. The declaration was also not registered.

The Court of Appeal held that the husband's attempt to sever the joint tenancy was ineffective as he did not even comply fully with the procedure set out in s.53(5). In particular, he should have sent the declaration to his wife by a pre-paid registered post. Even if it is returned undelivered, the declaration will be deemed to have been duly served two days after postage.⁷ While this would have been sufficient to resolve the issue, the court went on to express disagreement with its earlier decision in *Diaz*. The court preferred a conjunctive reading of subss.(5) and (6) for two reasons. First, the potential difficulty in registering the declaration of *141 severance, as alluded to in *Diaz*, has been subsequently addressed by Parliament by the addition of s.53(8). In short, the Registrar is allowed to dispense with production of the duplicate certificate of title upon satisfaction that the declarant is unable to produce it despite his best efforts. Secondly, and more importantly, registration was said to be a vital aspect of the Torrens system:

"The purpose of the Land-register is to display the ownership of, and all dealings with, registered land so that an inspection of the Land-register will notify all persons of the same. Generally speaking, an interest which is not shown on the Land-register will not be recognised. The Land-register will only serve its purpose if relevant instruments are presented for registration."⁸

As a matter of statutory interpretation, the court was most likely correct in preferring a conjunctive reading of the two subsections. Since most (if not all) of the dealings recognised by the LTA are valid only upon registration, it would be fair to assume that consistency was in the mind of the drafters when they penned s.53(5) and (6).⁹ However, as the discussion below will show, the court has arguably overstated the importance of registration in so far as it suggests that no unregistered dealing will be recognised.

Before proceeding to analyse the issue in greater depth, it also merits mention that *Chan* was decided by a formidable bench consisting of all five judges of the Court of Appeal.¹⁰ Thus, even if it may be argued that the court's disagreement with *Diaz* was technically obiter, the continued relevance of *Diaz* has now been put to great doubt. Nonetheless, pending a truly determinative case, many of the issues raised in both cases deserve a closer look in the hope of finding some middle ground between them.

Severance behind the scenes

What is the effect of a declaration of severance that is not registered? In *Diaz*, the Court of Appeal explained that the severance:

"affects only the co-owners themselves qua co-owners and third parties are entitled to treat the joint tenancy as subsisting and conduct any dealings they may have in relation to the land on that basis."¹¹

This limitation was originally suggested by the High Court by way of an illustration:

"For example, if in the present case the [elder daughter] had sold [the house] after the mother's demise and the purchaser had caveated his interest under the sale and purchase agreement prior to the [younger daughter] registering the

Instrument, the purchaser's interest in [the house] would have priority over the [younger daughter's]. In such a situation, the [younger daughter's] remedy would be a personal one against the [elder daughter] for a share in the proceeds of sale and possibly damages. *142 " ¹²

This limited form of severance has often been described as a novel one, albeit with a negative connotation. Barry Crown, notably, expressed difficulty in locating the proper place of such a severance within the framework of Singapore land law. ¹³ In particular, he alluded to the ambiguous nature of the younger daughter's right. If her right was enforceable only against the elder daughter but not against the world, this would suggest that her right was purely personal despite the purported severance. If this is correct, then it would be difficult to see how the younger daughter had an interest in land that would allow her to lodge a caveat. Acknowledging this difficulty, the Court of Appeal in Chan observed that it would be contradictory to restrict the younger daughter's claim while recognising that she had a caveatable interest. ¹⁴ More importantly, as alluded to earlier, the court found the idea of an unregistered severance to be fundamentally inconsistent with the Torrens system.

In truth, these concerns can be resolved once the broad framework of the Torrens system is properly understood. Referring to the illustration that the High Court gave in *Diaz*, there is in fact no inconsistency in recognising that the younger daughter had a genuine beneficial half share in the house while subordinating her interest to that of the purchaser. Prior to registration of the transfer, the third party would acquire an equitable title in the house by virtue of the rule in *Lysaght v Edwards*. ¹⁵ Since the interests of both the younger daughter and the purchaser are unregistered, the competition between them is resolved by reference to the priority rules under the Torrens system: the first to lodge a caveat prevails. ¹⁶ The purchaser's interest prevails simply because it was protected by an earlier caveat. If the transfer is subsequently registered, then this would be a straightforward case of the purchaser acquiring indefeasible title "free from all encumbrances, liens, estates and interests". ¹⁷ Following this analysis, the Court of Appeal in *Diaz* was not wrong in allowing the younger daughter's caveat to remain. Her beneficial half share in the house, being a genuine property right, was clearly caveatable.

The error in framing the issue owes in no small part to the unorthodox statement in *Diaz* that the severance does not affect "the world" or "third parties". Not only do these phrases not resonate with any existing Torrens terminology, they are also inaccurate. In the first place, the Singapore Torrens system is "predominantly a purchaser's system" which aims to facilitate land transactions by removing associated risks faced by purchasers. ¹⁸ Since a volunteer (donee) who provides no value is not exposed to the same risks, the degree of protection afforded to such a person is also correspondingly less. Thus, even if a volunteer becomes a registered proprietor, his or her title is only as good as that of his or her predecessor. ¹⁹ Suppose the elder daughter gratuitously transfers her registered title in the house to a third *143 party. Since the elder daughter held a beneficial half share on trust for the younger daughter, ²⁰ the third party will hold the same on trust for the younger daughter. ²¹

Once it is recognised that Torrens indefeasibility is not absolute, and that in certain situations a prior unregistered interest will bind a subsequent registered interest, then it is fair to say that whilst important, the role of registration has been overstated in Chan. Certainly, the LTA states that "[n]o instrument until registered ... is effectual to pass any estate or interest in land under the provisions of this Act", ²² and procedures have been expressly laid down for the registration of transfers, ²³ leases exceeding seven years ²⁴ and mortgages. ²⁵ But it has also been judicially accepted that the Torrens system could accommodate equitable versions of such dealings without the need for registration. Where a contract of sale is specifically enforceable, the purchaser acquires equitable title in the land by way of a constructive trust. ²⁶ Similarly, equitable leases ²⁷ and mortgages ²⁸ can be created by agreement alone without the need for registration. The system of caveats, which exists for the protection of these unregistered interests, is testament to the fact that they are not inherently

inconsistent with the Torrens system. In fact, the modified facts of Diaz can be understood as a cautionary tale on the peril of not promptly lodging a caveat to protect an unregistered interest.

Returning to severance specifically, it is interesting to note that prior to Diaz the idea that severance can occur behind the scenes has never been regarded as a novel idea. Or at least the idea has not been openly disputed. The courts in Singapore²⁹ have repeatedly recognised the three methods of severance specified in [Williams v Hensman](#):

"A joint-tenancy may be severed in three ways: in 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." ³⁰

That these continue to be applicable in Singapore is confirmed by the prefacing words in s.53(5).³¹ In Diaz, the Court of Appeal attempted to fit the three traditional methods of severance within the general framework of registered land: "The first ***144** mode, namely disposal of the joint tenant's interest does require registration, but the other two modes, namely mutual agreement and a course of dealings do not require registration".³² Relating to the first mode, although the court was obviously referring to an outright registered transfer, it has been accepted that the mere conclusion of a specifically enforceable contract of sale will also amount to an act operating upon one's own share.³³ The latter does not involve any registration (yet). But even ignoring the court's narrow description of the first method, it is clear, as the court rightly recognised, that the two other methods do not involve registration. This was not disputed by the Court of Appeal in Chan. Similarly, a joint tenancy may be severed in equity by the operation of a presumption of resulting trust where the joint tenants have contributed unequally to the purchase price.³⁴ Even though a trust is not registrable, courts have never been hesitant in saying that the resulting trust leads to the creation of a tenancy in common in equity, under which each owner has a genuine beneficial share in the property. The point is simply that severance in equity has never been regarded as an abnormality even within the Torrens system.

Recognising an exception?

In Chan, the Court of Appeal paid considerable attention to whether the common law (or equity) of England recognises unilateral declaration as a mode of severance. If it does, then it would be possible to rationalise Diaz as based on a common law method of severance which operates in parallel with severance under statute. After a thorough examination of its earlier decision in Sivakolunthu and the relevant English authorities, it concluded that under English law severance by unilateral declaration, specifically by statutory notice, was not recognised until the enactment of the [Law of Property Act 1925 s.36\(2\)](#).³⁵ As the English legislation has not been transplanted into Singapore law, the position in Singapore is essentially the same as pre-1925 English case law.³⁶ The court also rejected the suggestion that unilateral declaration can be regarded as an act of operating upon one's own share as the declaration does not destroy any of the four unities.³⁷

One might ask why the court should feel constrained by old English law especially in light of recent efforts by Singapore courts to develop an equity jurisprudence of its own.³⁸ Although the court did not explicitly say so, the likely reason is that to recognise severance by mere written notice would subvert the procedural requirements for severance laid down in s.53(5) and (6). In other words, since the issue has been legislatively addressed, it would be inappropriate for the ***145** common law to intervene. However, as alluded to earlier, it is not uncommon for courts to intervene in equity even if statutory registration requirement has not been complied with.

Perhaps, owing to the specific facts of Chan, the court was simply not presented with a sufficiently strong case for recognising an exception. Placed side by side, it is easy to observe why the court's sympathy was evoked in Diaz but not

in Chan. In Chan, the court recognised that Diaz was a "difficult case"³⁹ and the decision was "well-intentioned".⁴⁰ Although the court did not elaborate, this is most certainly because, notwithstanding the mother's failure to register her declaration of severance, she had clearly intended her two daughters to each have a half share in the house after she died. In the face of the elder daughter's attempt to claim the entire interest in the house to the exclusion of the younger daughter, it is perfectly understandable that the court in that case was inclined to find severance so as to give effect to the mother's intention. The situation in Chan was very different. Not only did the husband fail to properly serve his declaration of severance on his wife, the validity of the severance would not have affected anyone except the attempt of the second judgment creditor to enforce the judgment debt. The litmus test is how the Court of Appeal would have decided had it been presented with the same facts as those in Diaz today.

Of course, it would arguably be too uncertain if an exception is to be recognised based on the notion of sympathy alone to be applied on a case by case basis. This would defy the emerging trend of Singapore courts departing from English developments which introduce uncertainty.⁴¹ A possible solution is to borrow from the rule in *Re Rose* and ask if the declaring joint tenant has done everything within his or her power to fulfil the requirements of s.53(5) and (6).⁴² There are two alternative rationales, the choice of which will inform the scope of the exception. First, the rule gives effect to the wishes of the declaring joint tenant.⁴³ The logic is that denying severance would be overly harsh if he or she fell short in complying with the statutory requirements only due to the happening of events that are beyond his or her control, for example the declaration is not registered owing to his or her untimely death or due to the negligence of the land-registry staff. In light of the registration requirement imposed by s.53(6), the declaring joint tenant must at least have complied with s.53(5) by executing the required form and serving it on the other joint tenant(s), and attempted to procure its registration. On this approach, though, it will have to be conceded that severance ought not to have been found in Diaz as it did not appear that the mother had taken any step to register her declaration of severance. Secondly, the rule operates where the declaring joint tenant has expressed a clear intention to make a gift to another person such that it *146 would be unconscionable for him or her to recall the gift.⁴⁴ This is to apply the rule in *Re Rose* in a manner that is somewhat closer to its conventional form. Although no such finding was made in Diaz, it is not improbable that the mother had informed her younger daughter of the intended gift by way of will, and that she had taken steps to give effect to the gift by declaring a severance. It could be said that, in these circumstances, it would be unconscionable for the mother to recall the gift, and the law ought to find a severance in equity to give effect to the gift. While the two approaches may be inconsistent in scope, nothing prevents the court from applying one or the other depending on which is satisfied on the particular facts.

Beneficial shares in what proportion?

The relationship between the different methods of severance is rarely examined in the cases. This is likely because the method is often unimportant so long as severance is effected. But this would only be true if the parties are content for the dispute to be resolved on the basis that a severance (if any) would lead to the creation of a tenancy in common in equal shares. However, where the parties' respective contributions to the purchase price are unequal, the dispute is likely argued on the basis of the presumption of resulting trust.⁴⁵

This issue did not directly arise in Diaz but an observant property lawyer would have noticed how it could have. In that case, the elder daughter conceded that the mother had paid the whole of the purchase price for the house. While a presumption of resulting trust would have arisen in the mother's favour, a counter-presumption of advancement would have given the elder daughter the full beneficial interest in the house. The mother's intention for the younger daughter to have a beneficial half share, which was evinced five years after the purchase, is likely insufficient to rebut the presumption of advancement.⁴⁶ If this analysis is correct, then the mother would have nothing beneficially to will away to her younger daughter. In the first place, since the beneficial ownership is held solely by the elder daughter, there would have been

no issue of severance. The court's finding that the mother's unilateral severance has led to the creation of a tenancy in common in equal shares would be untenable.

Consider a different set of facts. Suppose A and B, who are friends, jointly purchased a registered land. A paid 60% of the purchase price while B contributed 40%. A then attempts to sever the joint tenancy under statute. The severance form was served on B pursuant to s.53(5) but was not registered only because A has been killed in a tragic accident. Assuming that severance has been effected, what would be the respective beneficial shares of A and B? Had the severance been registered, s.53(6) expressly provides that this would result in A and B becoming registered tenants in common each having a half share. If the unilateral declaration operating in equity serves only to mimic a registered severance, then the same *147 result ought to follow. But how this is to be reconciled with the resulting trust analysis which determines the respective shares of A and B on the basis of the proportion of their respective contributions to the purchase price? On the given facts, A's next-of-kin would certainly prefer to argue a presumption of resulting trust as this would entitle them to a 60% share in the property. But could B argue that, as a result of A's unilateral declaration of severance, the property is held on equal shares?

The answer might be that the presumption of resulting trust is displaced by A's unilateral declaration of severance. Specifically, A is presumed to have intended his or her extra 10% share as a gift to B. As the effect of a unilateral declaration of severance, which is to create a tenancy in common in equal shares, is known to A, he or she is not prejudiced. If A had wanted to retain his or her 60% share, the correct procedure would be to ask for a court declaration to that effect. Altering the facts, had it been B who made the unilateral declaration of severance, this would arguably not have the effect of enlarging B's share from 40% (under the resulting trust) to a half share. Aside from the obvious unfairness to A, the simple explanation is that the gift argument does not apply. Therefore, even if B has registered the severance, which results in the creation of a tenancy in common in equal shares at law, equity ought not to follow the law. The beneficial entitlements of A and B should continue to be determined by the presumption of resulting trust.

This problem does not arise where, instead of making a unilateral declaration of severance, A (or B) operates upon his or her own share, for example by entering into an agreement to sell his or her own share in the property to a third party. Since this method of severance does not contradict the presumption of resulting trust on the issue of the parties' beneficial entitlements, A (or B) can be taken to be selling his or her own share as determined by the presumption of resulting trust. The point is that he or she cannot sell more than what he or she beneficially owns. That the methods of severance laid down in [Williams v Hensman](#) need not lead to the creation of a tenancy in common in equal shares is best illustrated in the case of [Malayan Credit Ltd v Jack Chia-MPH Ltd](#).⁴⁷ The joint tenants of a lease occupied an entire floor of a building, but the premises were disproportionately divided between the parties roughly in the proportions of 61% to the plaintiff and 39% to the defendant. The monthly rent, service charge, stamp duty, survey fee and deposit were also paid in unequal proportions. The Singapore Court of Appeal held that a severance was effected by way of the third method in [Williams v Hensman](#), which resulted in the creation of a tenancy in common in equal shares. On appeal, the Privy Council held that the parties owned the premises as tenants in common in equity in unequal shares. The result is obviously consistent with a resulting trust analysis although this was not argued on the facts.

Conclusion

With the modernisation of land law, one of the main challenges is in determining how old principles, if they are to be retained, fit within the new system of land titles registration. In this regard, the competing views on the effect of unregistered severance under Singapore law provide a rare opportunity for examining the *148 intersection between the old and the new. From the prior discussion, a notable observation is the tendency to overemphasise the importance of registration. Once it is recognised that the Torrens system embraces unregistered interests, and that the principle of indefeasibility has never been intended to be absolute, it becomes easy to find answers to the puzzles encountered in the law on severance.

Alvin W-L See

Footnotes

- 1 Assistant Professor of Law, School of Law, Singapore Management University. I thank my colleagues, Man Yip and Edward Ti, for their helpful comments on my earlier drafts. As usual, all errors are my own.
- 1 Sivakolunthu Kumarasamy v Shanmugam Nagaiah [1987] S.G.C.A. 21; [1987] S.L.R.(R.) 702 at [14] (Sivakolunthu). See also *Lai Min Tet v Lai Min Kin* [2004] S.G.H.C. 3; [2004] 1 S.L.R.(R.) 499 at [27].
- 2 Land Titles Act Cap.157, 2004 Rev. Ed.
- 3 Diaz Priscillia v Diaz Angela [1997] S.G.C.A. 55; [1997] 3 S.L.R.(R.) 759 (Diaz).
- 4 Chan Lung Kien v Chan Shwe Ching [2018] S.G.C.A. 24; [2018] 2 S.L.R. 84 (Chan).
- 5 Diaz Priscillia v Diaz Angela [1997] S.G.C.A. 55; [1997] 3 S.L.R.(R.) 759 at [25].
- 6 Chan Lung Kien v Chan Shwe Ching [2017] S.G.H.C. 136; [2018] 4 S.L.R. 208.
- 7 LTA s.60A(4)(b). cf. the [Law of Property Act 1925 s.36\(2\)](#), which merely states that a notice in writing must be given to the other joint tenant(s). On what constitutes proper notice and when it is considered served, see M. Percival, "Severance by written notice—a matter of delivery?" [1999] Conv. 60; *S. Bridge, E. Cooke and M. Dixon, Megarry & Wade: The Law of Real Property, 9th edn (London: Sweet & Maxwell, 2012)*, pp.500–501; *K. Gray and S. F. Gray, Elements of Land Law, 5th edn (Oxford: OUP, 2008)*, pp.943–945; *M. Dixon, Modern Land Law, 11th edn (Oxford: Routledge, 2018)*, pp.190–191; *M. Thompson and M. George, Thompson's Modern Land Law, 6th edn (Oxford: OUP, 2017)*, pp.349–350.
- 8 Diaz Priscillia v Diaz Angela [2018] S.G.C.A. 24; [2018] 2 S.L.R. 84 at [64].
- 9 See LTA ss.45 (general), 63 (transfer), 68 (mortgage) and 87 (lease exceeding 7 years).
- 10 Menon CJ, Andrew Phang, Judith Prakash, Tay Yong Kwang and Steven Chong JJA.
- 11 Diaz Priscillia v Diaz Angela [1997] S.G.C.A. 55; [1997] 3 S.L.R.(R.) 759 at [17].
- 12 Diaz Priscillia v Diaz Angela [1996] SGHC 267 at [14] (Rajah JC).
- 13 B. C. Crown, "Severance of a Joint Tenancy" [1998] S.J.L.S. 166, 169. See also *S. Y. Tan, H. W. Tang and K. F. K. Low, Tan Sook Yee's Principles of Singapore Land Law, 3rd edn (Singapore: LexisNexis, 2009)*, p.196.
- 14 Chan Lung Kien v Chan Shwe Ching [2018] S.G.C.A. 24; [2018] 2 S.L.R. 84 at [56].
- 15 [Lysaght v Edwards \(1876\) 2 Ch. D. 449](#).
- 16 LTA s.49(1).
- 17 LTA s.46(1).
- 18 *J. Baalman, The Singapore Torrens system: being a commentary on the Land Titles Ordinance 1956 of the State of Singapore (Singapore: Government Printer, 1961)*, p.86.
- 19 LTA s.46(3).
- 20 LTA s.46(2)(c). This trust exception allows the beneficiary to enforce the trust against the immediate trustee, i.e. not a third party-transferee.
- 21 *J. Baalman, The Singapore Torrens system: being a commentary on the Land Titles Ordinance 1956 of the State of Singapore (Singapore: Government Printer, 1961)*, p.85. For an in-depth discussion of the trust exception, see A. W. L. See, "Recovering Misdirected Trust Assets in the Face of Torrens Indefeasibility" (2019) 13 J. Eq. (forthcoming).
- 22 LTA s.45(1).
- 23 LTA s.63.
- 24 LTA s.87.
- 25 LTA s.68.
- 26 Cheng-Wong Mei Ling Theresa v Oei Hong Leong [2006] S.G.C.A. 12; [2006] 2 S.L.R.(R.) 637.
- 27 Golden Village Multiplex Pte Ltd v Marina Centre Holdings Pte Ltd [2002] S.G.C.A. 6; [2002] 1 S.L.R. (R.) 169.
- 28 Société Générale v Good Property Land Development Pte Ltd [1989] S.G.H.C. 8; [1989] 1 S.L.R.(R.) 76; United Overseas Finance Ltd v Mutu Jeras [1989] S.G.H.C. 41; [1989] 1 S.L.R.(R.) 446.
- 29 Tan Chew Hoe Neo v Chee Swee Cheng [1926] S.S.L.R. 60; Jack Chia-MPH Ltd v Malayan Credit Ltd [1984] S.G.C.A. 8; [1983–1984] S.L.R.(R.) 420; Sivakolunthu Kumarasamy v Shanmugam Nagaiah [1987] S.G.C.A. 21; [1987] S.L.R.(R.) 702.
- 30 [Williams v Hensman 70 E.R. 862; \(1861\) 1 John. & H. 546](#) at 557.

- 31 Diaz Priscillia v Diaz Angela [1997] S.G.C.A. 55; [1997] 3 S.L.R.(R.) 759 at [27]; Chan Lung Kien v Chan Shwe Ching [2018] S.G.C.A. 24; [2018] 2 S.L.R. 84 at [19].
- 32 Diaz Priscillia v Diaz Angela [1997] S.G.C.A. 55; [1997] 3 S.L.R.(R.) 759 at [27].
- 33 [Gould v Kemp](#) 39 E.R. 959; (1834) 2 My. & K. 304; [Caldwell v Fellowes](#) (1869–70) L.R. 9 Eq. 410; [Re Hewett](#) [1894] 1 Ch. 362; [Brown v Raindle](#) 30 E.R. 998; (1796) 3 Ves. Jr. 256; [Goddard v Lewis](#) (1909) 101 L.T. 528. See also in Australia: [Wright v Gibbons](#) (1949) 78 C.L.R. 313 at 327; [Freed v Taffel](#) [1984] 2 NSWLR 322 at 325; [Walton v Forsyth](#) (1984) NSW Conv. R 55-214. See generally *B. Edgeworth, Butt's Land Law, 7th edn* (Sydney: Lawbook Co, 2017), p.271; B. C. Crown, "Severance of joint tenancy of land by partial alienation" (2001) 117 L.Q.R. 477, 482.
- 34 [Lau Siew Kim v Yeo Guan Chye Terence](#) [2007] S.G.C.A. 54; [2008] 2 S.L.R.(R.) 108.
- 35 [Chan Lung Kien v Chan Shwe Ching](#) [2018] S.G.C.A. 24; [2018] 2 S.L.R. 84 at [20]–[43].
- 36 [Partriche v Powlet](#) 26 E.R. 430; (1740) 2 Atk. 54; [In re Wilks](#) (1891) 3 Ch. 59.
- 37 [Chan Lung Kien v Chan Shwe Ching](#) [2018] S.G.C.A. 24; [2018] 2 S.L.R. 84 at [62]. cf. B. C. Crown, "Developments in the Law of Co-ownership" [2003] S.J.L.S. 116, 121.
- 38 See generally *M. Yip, "Equity and Trusts—Dreaming and Building a Singapore Equitable Jurisdiction" in Y. H. Goh and P. Tan (eds), The Development of Singapore Law: Twenty Years of the Application of English Law Act* (Singapore: Academy Publishing, 2015), Ch.12.
- 39 [Chan Lung Kien v Chan Shwe Ching](#) [2018] S.G.C.A. 24; [2018] 2 S.L.R. 84 at [55].
- 40 [Chan Lung Kien v Chan Shwe Ching](#) [2018] S.G.C.A. 24; [2018] 2 S.L.R. 84 at [64].
- 41 Most notably, in [Chan Yuen Lan v See Fong Mun](#) [2014] S.G.C.A. 36; [2014] 3 S.L.R. 1048, the Singapore Court of Appeal rejected the House of Lords' decision in [Stack v Dowden](#) [2007] UKHL 17; [2002] 2 A.C. 432, preferring the resulting trust to the common intention constructive trust as the default rule in determining beneficial ownership in shared homes.
- 42 In [Re Rose](#) [1952] Ch. 499; [1952] 1 All E.R. 1217, the English Court of Appeal held that the transfer of shares was effective in equity prior to registration as the transferor "had done all in his power to divest himself of and to transfer to the transferees the whole of his right, title and interest, legal and equitable, in the shares in question" (at 515).
- 43 cf. J. Garton, "The role of the trust mechanism in the rule in *Re Rose*" [2003] Conv. 377–378.
- 44 [Pennington v Waine \(No.1\)](#) [2002] EWCA Civ 227; [2002] 1 W.L.R. 2075 at [66] (Arden LJ).
- 45 [Tan Chew Hoe Neo v Chee Swee Cheng](#) [1926] S.S.L.R. 60. cf. [Goodman v Gallant](#) [1986] Fam. 106; [1986] 2 W.L.R. 236, where the Court of Appeal held that, if the co-owners declare themselves to beneficial joint tenants, a severance would lead to the creation of a tenancy in common in equal shares regardless of the parties' respective contributions.
- 46 This assumes that the presumption of advancement operates immediately. cf. [Lau Siew Kim v Yeo Guan Chye Terence](#) [2007] S.G.C.A. 54; [2008] 2 S.L.R.(R.) 108 at [107]–[108] where the Court of Appeal suggested that if the joint tenants are husband and wife the presumption of advancement operates in the form of the rule of survivorship at the time of either joint tenant's death.
- 47 [Malayan Credit Ltd v Jack Chia-MPH Ltd](#) [1986] A.C. 549; [1986] 2 W.L.R. 590.

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