

立法會 CB(1)2170/03-04(02)號文件
LC Paper No. CB(1)2170/03-04(02)

By fax and by hand
(fax: 2596-0281)

14th June 2004

Mr. Kim Salkeld
Land Registrar
28/F Queensway Government Offices
66 Queensway
Hong Kong

Dear Mr. Salkeld,

Land Titles Bill - Bill Committee State

Thank you for your letters dated 28th May and 31st May 2004 addressed to the Chairman.

I enclose herewith the Hong Kong Bar Association's observation on the 'amended' Bill for your consideration.

Yours sincerely,

Jennie Wang
Administrator

Encl.

HONG KONG BAR ASSOCIATION
COMMENTS ON LAND TITLES BILL

1. We believe that the Government should give further consideration to the law relating to the acquisition of rights by prescription in the case of registered land.

2. Under the existing law, it is arguable (but as far as we are aware, never decided) that a “presumed lost grant” (meaning a grant which has been presumed lost), like any other instrument affecting land is registrable under the Land Registration Ordinance and hence “presumed lost grants” which by definition would never have been registered, will never be binding on subsequent purchasers for value.

3. Section 24(1)(c)(i) only provides that easement granted by registered instruments will survive as overriding interests. Whilst it is understandable that the status quo for unregistered land is to be preserved, it is difficult to see the logic for applying the same regime to the new system of registered conveyancing. In any event, it would be undesirable for the uncertainties over the effect of the operation of the Land Registration Ordinance on the operation of the doctrine of prescription to be carried over into the system of registered conveyancing. Hence we believe that the Government should consider

making specific provisions to address how the doctrine of prescription is to operate in relation to registered land (assuming that prescription is possible in relation to leaseholds in Hong Kong.).

4. In relation to the concern about the protection of the quasi easement in clause 24(1)(d), we do not consider that there is any real problem in the drafting save for one small matter which will be set out later.

5. In this respect, we note that clause 24(1)(c) has already covered all rights of way, and covenants which run with the land. Drafted this way all kinds of rights of way would not require protection by registration. Yet the right of way is the most common form of easements or quasi easements which would come into existence upon disposal of part of the land. Likewise in case of sale of undivided units in building, most of the “easements” to be enjoyed by co-owners over the land of other co-owners would be dealt with in the DMC as covenants running with land and there is little need for any special provisions in the Land Titles Ordinance.

6. On the current drafting we would only suggest that 24(1)(d) should be amended to read :

“(d) any easements or rights (whether existing before, on or after the commencement of this section which are implied by law on the disposition or transmission of the land and which are not expressly granted or reserved in any instruments”.

The reason for the addition of the words “or rights” is that it is debatable as to whether the rights created in favour of the grantee (or transferee) of part of the land under the doctrine of *Wheeldon v Burrows* is strictly speaking an easement. It has been described as a quasi-easement. The basis for this right is the doctrine of not to derogate from the grant. Hence in order to avoid any argument, it would be better that this paragraph be expanded to cover the “rights” which would be created by law upon disposition of the land.

7. The Bar is still studying the amended draft generally, and will revert to you again if upon review of the draft generally, we feel that there is something to add.

Dated this 14th day of June 2004

Hong Kong Bar Association