

# **TITLES IN MID-AIR IN WEST MALAYSIA**

**by**

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## INTRODUCTION

"Formerly houses were built so that each house occupied a separate site, but in modern times a practice has grown up of putting separate houses one above the other. They are built in separate flats or storeys, but for all legal and ordinary purposes they are separate houses. Each is separately let and separately occupied, and has no connection with those above or below, except in so far as it may derive support from those below instead of from the ground, as in the case of ordinary houses."<sup>1</sup>

During the period of time which has elapsed since these words were uttered, the practice to which the Master of the Rolls alluded, has developed to an enormous extent; and now in West Malaysia especially in Kuala Lumpur and in Selangor, millions of dollars are spent every year in the erection of huge buildings the floors of which are separately let and separately occupied.

It is elementary knowledge that land in its legal signification has an infinite extent upwards so that, by a conveyance of land, (inter alia) all buildings erected thereon likewise pass cuius est solum eius est usque ad

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<sup>1</sup>Yorkshire Insurance Co. v. Clayton (8 Q.B.D.) 421, per Jessel, M.R. at p. 423.

coelum. But the maxim is not a presumption of law applicable in all cases and under all circumstances;<sup>2</sup> and it appears to be well established by authority that "a man may have an inheritance in an upper chamber, though the lower buildings and soil be in another."<sup>3</sup>

Initially the various office suites and flats housed in the high buildings were constantly the subject matter of separate lease. But the advantages of freehold over leasehold tenure are so manifest that the question whether these office suites and flats could be made the subject of separate conveyance became of practical interest and importance. Therefore, it is not surprising that lately there has been a steadily growing interest in the question of ownership of flats in West Malaysia.

The subject of the paper is Titles in Mid-Air (or more commonly called Strata Titles) in West Malaysia. Strata Titles are the result of the subdivision of land (though strictly speaking, it is not land as such but the building or buildings which has or have been erected on the land) in strata. Originally, people were not concerned with ownership rights over flats because there were few multi-

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<sup>2</sup> Broom's Legal Maxims, 6th Edn., p. 373.

<sup>3</sup> Co. Litt. 48, b.

storeyed buildings and as far as possible they preferred to reside or carry on their trade or business in single or double-storeyed buildings. However, the unprecedented increase of development, particularly in respect of high rise buildings coupled with the increasing urban population has resulted in an increasing demand for ownership rights over flats, not only for dwelling purposes but also for trade and commercial purposes. It is this increasing demand for ownership rights over flats which is the cause of the growing interest in the concept of Titles in Mid-Air or Strata Titles, and this in turn has led the writer into choosing this particular subject for this paper.

In chapter one, the writer will deal with the period prior to the introduction of Strata Titles, namely, the period before the coming into force of the National Land Code, 1966.<sup>4</sup> During this period there were a number of devices employed by developers of high rise buildings to confer on the flat-dwellers the nearest practical equivalent to ownership. The devices were comparatively less advantageous than Strata Titles.

In chapter two, the writer will trace the historical development of Strata Titles, starting with the concepts of

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<sup>4</sup>Act No. 56 of 1965.

"Stratum Estates" and "Service Company" in the Victoria Transfer of Land (Stratum Estates) Act, 1960,<sup>5</sup> and ending with the introduction of "Subsidiary Titles" and "Management Corporation" into West Malaysia by the National Land Code, 1965.<sup>6</sup> At the same time the writer will explain the concept of Strata Titles which is based upon the principle that subdivision of land may be horizontal as well as vertical. The writer will conclude the chapter with a list of all the advantages of Strata Titles.

Chapter three deals wholly with the procedure for application for Strata Titles as laid down in the National Land Code, 1965.<sup>7</sup> In chapter four the writer will deal with the problems faced by the public and the government authorities concerned in the implementation of Strata Titles in West Malaysia. Altogether there are seven problems which have manifested themselves so far. Firstly, the writer feels that the existing provisions of the National Land Code, 1965,<sup>8</sup> relating to Strata Titles are inadequate and that the Code need to be amended before we can hope for a brighter future for Strata Titles in West Malaysia.

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<sup>5</sup>Act No. 6646.

<sup>6</sup>Act No. 56 of 1965.

<sup>7</sup>Ibid.

<sup>8</sup>Ibid.



Secondly, the government machinery for the implementation of Strata Titles is not complete. This applies in Kuala Lumpur and Selangor. Thirdly, there is delay in the issue of Strata Titles by the Land Office. Fourthly, there is delay in the preparation of the required certified plan by the Survey Department. The fifth problem stems from the ignorance of some developers as to the system of Strata Titles prevailing in West Malaysia. Another problem is that lawyers and developers take a "wait and see" attitude towards the implementation of Strata Titles in West Malaysia. Finally, there are lawyers, developers and members of the public who are sceptical as to the workability of Strata Titles in West Malaysia.

Chapter five, which is also the last chapter, contains a number of amendments which the writer strongly feels should be incorporated into the National Land Code, 1965,<sup>9</sup> if the system of Strata Titles is to be implemented successively here.

The scope of the paper is restricted only to the above matters because owing to the length of this paper and to the inability to spend more time on research, this paper is not intended to be a comprehensive study of the system of Strata Titles in West Malaysia. The writer has selected Ipoh, Kuala Lumpur and the State of Selangor to be the areas

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<sup>9</sup>Ibid.



of study because Ipoh was the pioneer in this field with three successful applications while Kuala Lumpur is next in line with one pending application, and because there has been no applications so far in the State of Selangor although there are many high rise buildings. However, the writer is of the opinion that the fact that the study is confined to the three named areas would not affect the general application of the writer's findings to the other parts of West Malaysia where the conditions are similar.

Since this is a relatively new area of the law, the writer found difficulty in trying to obtain the necessary and relevant information because there are no books or articles written on the subject except those which have been written by Australian writers. The writer has thus relied heavily on interviews with lawyers, developers, officials of the Land Office, officials of the local authorities and officials of the Survey Department. The writer has also drawn assistance from the relevant land legislation of Australia, particularly New South Wales, and the land legislation of Singapore, for the purpose of formulating reforms to the present law relating to Strata Titles in West Malaysia.