

# DEALINGS

---

① Intro and transfers

② Charges

③ Statutory Lien

# ① Intro and Transfer



## A) Dealings capable of registered vs not capable of being registered

- S213
- Statutory lien
- see weblink on lease vs tenancy

## B) Transfer + procedures

S214  
S214A  
S215  
S216  
S217

Form 14A

S211  
+  
5th Schedule

Foreigner buying  
- S433 B  
- S433 C

## C) Issue of stakeholder

Q: if lawyer had received money from purchaser and then absconded, who bear the loss?

case: **Kuldip Singh** - read sm  
**OCBC v Lee Lee Foh** - read sm  
**TOH Theam Hock** - point 8 + 13

- no conclusive answer, look at the position of the lawyer whether is he stakeholder/agent, look at any clauses inserted in the contract, look at overall circumstances

## D) Private search vs official search

- S 384, S 385, S 386
- Two conflicting cases

**Tirai Kristal**  
(CON)

VS

**Poh Yang Hong**  
(FC)

- ↓
- can only claim damages if information was retrieved by S 385
  - read sm / point 16 - 24

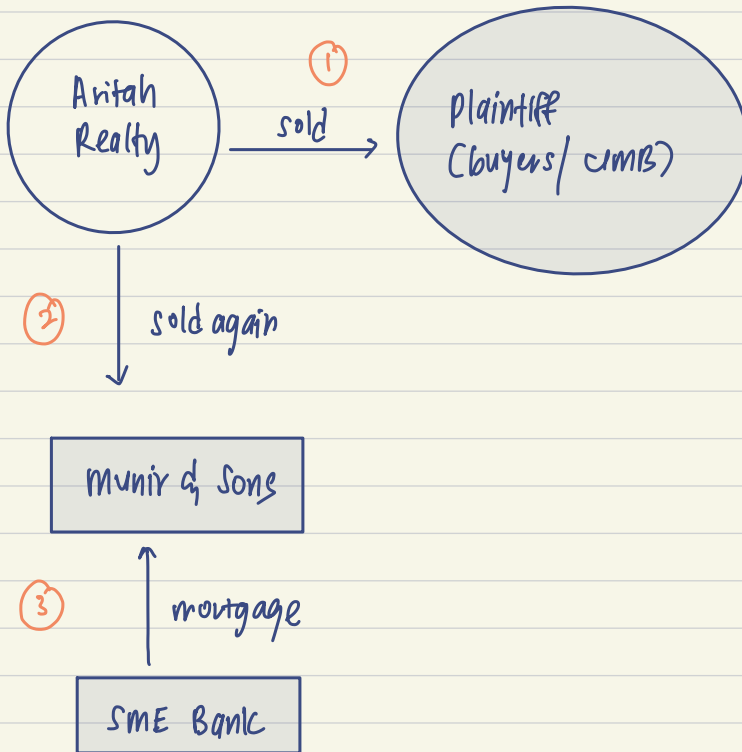
- ↓
- no difference S 384, S 385
  - can claim damages
  - read sm / point 24 - 39

## (E) Position of purchaser pending registration

- position is of a bare trustee - bare trust concept

- take note of the case: **Wan Noor Kamariah (COA)**

→ differing arguments/reasoning between judges



②

## Dealing - CHARGES

①

What is a charge?  
+  
How to register a charge?

②

What if bank forgot/misplace and didn't register the charge?

③

Difference between mortgage vs charge?

④

there's a charge over the land/house - but chargor (owner) doesn't pay the loan - what can the chargee (bank) do?

⑤

- Discharge s278 - 280  
- Possession s270 - 277

## ① What is a charge and how to register a charge

- See study manual
- s241
- s242 → Form 16A / 16B
- s243

## ② What if the bank forgot/misplace the charge

eg. (A) own a piece of land. In order to get fast cash, he charge his land to CIMB Bank to get RM5 million cash. The bank took his land as security for the repayment of the loan. The solicitor for CIMB Bank filled all the required form (Form 16A) and then he went on holiday. He forgot about registering the charge.

Issue ① 5 years later, (A) has no money to pay the monthly loan. CIMB Bank then proceed to sell the land in order to get back whatever money they can. (A) found out that the charge was not registered, can (A) argue CIMB Bank cannot apply order for sale?

Issue ② (A) then proceed to sell his land to (B). (A) argued that since the charge was not registered, there's no restriction on his land, he can do whatever he wants. Can CIMB Bank stop (A) from doing so?

Issue ① - CIMB Bank cannot apply OFS

Issue ② - technically speaking, (A) can do whatever he wants

① charge not registered - give rise to equitable charge

② equitable charge is equitable principles  
→ S3/S6 CLA  
→ recognised in Malaysia courts

③ NLC does not prohibit creation of equitable charge, but for chargee (CIMB Bank eg) to enforce his right, he MUST register his charge under NLC

④ case :

Mahadevan

Malayan Banking v Zehani

Oriental Bank v Chup Seng Restaurant

Tan See Hock

Standard Chartered v Yap Sing Yoke

\* just understand these cases

⑤ Summary :

- chargee (CIMB Bank eg) acquires equitable charge

- but chargee CANNOT

- apply order for sale
- claim indefensibility

- chargee MAY

- enter a private caveat

## Case: Oriental Bank v Chup Seng Restaurant

Now, coming back to the crucial issue in the present application, in my judgment, the plaintiffs cannot enforce their right as an equitable chargee to obtain an order for sale **under s. 256 National Land Code** for the following reasons. It must, first and foremost, be recognized that the National Land Code adheres strictly to the principle of registration and recognizes only parties who are registered under the Code. **Section 242** states that every charge to secure the repayment of debt, or the repayment of any sum other than a debt, shall be effected by an instrument in Form 16A or in case of acquiring the payment of annuity or other periodic sum it shall be in Form 16B. Secondly, **s. 243** clearly stipulates that every charge created shall take effect upon registration so as to render the land or lease liable as security. This statutory requirement is enforced **under s. 218(2)** which stipulates that the transfer under the Code of any charge shall be effected by an instrument in Form 14B. Thirdly, the effect of a transfer of a charge by a chargee shall pass to and vest in the transferee upon the registration of the transfer (**s. 219(1)**) and by subsection 2 the provisions, express or implied, of any transferred lease or charge shall, so long as it continues vested in the transferee, be enforceable by or against him as if he were a party thereto. Thus, from the above sections of the Code it is abundantly clear to all and sundry that the Code recognizes only registered chargees. Hence, before the plaintiffs could invoke their right under **s. 256 National Land**

Code, they must first be registered chargees by registering either a fresh charge in Form 16A or transferring the said charge in Form 14B from the former chargee, the Citibank N.A. into their name. Thus, whilst the Federal Court in *Mahadevan*, on one hand, held that **the National Land Code** does not prohibit the creation of equitable charge, the Code being a complete and comprehensive Code of law governing land, on the other hand, clearly requires the charge to be registered in its prescribed form before a chargee can enforce his right of foreclosure under the Code.

For the above reasons, I am satisfied the defendants have shown the existence of cause to the contrary within the meaning of **s. 256(3) National Land Code**. Accordingly, the plaintiffs' application is disallowed with costs.

\* Back to the scenario of (P) and CIMB Bank, what can CIMB Bank do?

→ advise CIMB Bank to enter a private caveat while at the same time, register his charge.

③ Distinction between mortgage vs loan

- see SM pg 59



④ charge over the land, charger doesn't pay loan, what can the chargee do?

eg. ① own a piece of land. He charged the land to Maybank to get cash for his business. Maybank registered the charge. After 6 mths, ② ran into financial problem and start defaulting on loan. What can Maybank do?

- Maybank may have remedy of possession / remedy of sale - S253  
(not applicable for Land office title - S270-277)

↓  
Lelong  
House /  
Auction

Bank (chargee) will want to sell the house/land to reclaim any loss in money - S253

Owner (charger) will want to stop the sale so he still own the house/land by arguing 'existence of cause to contrary' - S256(3) - S263(C)

Selangor Auction Property  
3 d · 🌐

Puchong landed properties

Up for grab!

🏠 Nick 0104208347 free registration

Property Address	Auction Price	Auction Date
Taman Putra Impiana, Selangor No. 21, Jalan Putra Impiana 12, Taman Putra Impiana, 47100 Puchong, Selangor [-37%] 2.5 Storey Terrace House,	RM583,200	24 Oct 2023 (Tue)
Taman Mutiara Indah, Selangor No. 38A, Jalan Mutiara 2/12A, Taman Mutiara Indah, 47100 Puchong, Selangor 2 Storey Terrace House, Erid Lot, Renovated [9 min to AEON BIG Puchon...	RM850,000	25 Oct 2023 (Wed)
Bandar Puchong Jaya, Selangor No. 9, Jalan Tiong 6, Bandar Puchong Jaya, 47100 Puchong, Selangor	RM530,000	2 Nov 2023 (Thu)
D'Alpinia, Selangor No. 95, Jalan D'Alpinia 7, Taman D'Alpinia, 47120 Puchong, Selangor 2 Storey Terrace House	RM800,000	21 Nov 2023 (Tue)

1 comment

OFS  
- S253

- S254  
Form 16D/16E

Registry title  
- S256

Land office title

- 260
- S261
- S262
- S263
- S264
- S265

- 083 ROC

- S257, Form 16H

- S258, S259

\* Difference in procedure  
at sale

Chargor (owner) may object the sale if there is existence cause to the contrary S256(3)

Chargor (owner) may object the sale if there is existence CTC S263(1)

# Explain the Process of Order for Sale

## Notice

### Order for Sale by Court

#### Types of Titles:

1. Registry Title
2. Qualified Title Corresponding to Registry Title
3. Subsidiary Title

#### Processes:

1. Application for Order for Sale under Order 83 ROC 2012 + Notice of Application + Affidavit
  - a. Filed in the Court Registry
  - b. Hearing in Court within 4 weeks from filing date
2. Registrar of the Court to serve Order to chargor and chargee and publicly advertise the sale
3. Order 16H – Public Auction
4. Preparation for Sale
  - a. Setting of auction date by Court + Appointment of auctioneer
  - b. Chargee prepares conditions of sale
  - c. Chargee deposits Court IDT within 7 days from date of sale
  - d. Valuation Report
  - e. Reserved Price
5. Reserve Price
  - a. Deposit 10%
  - b. Pay 90% within 3 months
  - c. Failure to pay within 3 months will result in forfeiture of deposit under section 267A
6. Success – Upon full payment, deposited IDT and Form 16F will be given to purchaser
7. Fail – subsequent date

#### Relevant Sections:

ss 256 – 259 NLC

O 83 ROC 2012

Arahan Amalan Pendaftar MT Malaya Bil 1/2014

### Order for Sale by Land Administrator

#### Types of Titles:

1. Land Office Title
2. Qualified Title Corresponding to Land Office Title
3. Subsidiary Title

#### Processes:

1. Service of Default Notice
  - a. Filled in the Land Office
  - b. Copy of F16D
2. F16G – Application for Order for Sale
3. Land Administrator (LA) to hold enquiry
4. F16H - Order for Sale by LA
5. Procedure prior to sale
  - a. Copy of Notice to both parties
  - b. Public Notice
  - c. Deposit to LA IDT within 7 days
6. Notice of postponement of Order for Sale – F16P + Fees
7. Application by chargee and chargor to postpone Order for Sale – F16O (7 days before auction)
8. Conduct of Auction
  - a. LA directs the sale to take place, may be assisted by licenced auctioneer
  - b. Chargee entitled to bid at sale
  - c. Bid at or above reserve price
9. Success – Upon full payment of purchase price, Form 16I and deposited IDT given to purchaser
10. Fail – 2 times, 3<sup>rd</sup> go to HC.

#### Relevant Sections: ss 260 - 265

## Dealing - charges, main examinable areas

- make notes on these areas

eg. (Z) own a piece of land and charge it to maybank

- ① Can (Z) object OFS, s256(3) because chargee used wrong Form, s254?  
- use Form 16D instead of Form 16E
- ② Can (Z) object OFS, s256(3) because chargee doesn't comply w s254?
- ③ Can (Z) object OFS, s256(3) because chargee doesn't comply w 083 ROC?
- ④ Can (Z) object OFS, s256(3) because chargee doesn't comply w s257?  
- s257(1)(a), s257(1)(g)
- ⑤ Assuming (Z) won lottery, can he tender payment to redeem his land before conclusion of the sale by public auction?
- ⑥ Can (Z) sell his land to his friend (A) because (A) offer him high price. So once he got the money, (Z) will pay maybank. Can he?
- ⑦ Can maybank privately sell to (A) because (A) offer to buy from maybank at a higher price?

## Cases for these issues

- ① Can ② object OFS, s256(3) because chargee used wrong Form, s254?  
- use Form 16D instead of Form 16E
- ② Can ② object OFS, s256(3) because chargee doesn't comply w s254?
- ③ Can ② object OFS, s256(3) because chargee doesn't comply w O83 ROC?

- ① Wrong form used (16D/16E)  
- does it amount to CTC  
s256(3)



Jacob v OCBC

- read sm

- ② If principal and interest both payable on demand, which form (16E/16D) should chargee use?



Jacob v OCBC

- read sm

It seems that controversy always arises as to whether Form 16E or 16D should be used in this type of cases, I do not agree that if one is demanding principal and interest one would have to use Form 16D but if principal only is demanded then Form 16E must be used. Surely Form 16E can also be used to include interest. I see no reason why the words "AND INTEREST" cannot be added to the heading of Form 16E with the appropriate amount of interest inserted showing separately and clearly the principal sum plus the interest to make up a particular amount which is demanded. By virtue of s. 62 of the Interpretation Act (No 23 of 1967) it would seem that amending Form 16E would not invalidate the claim as the deviation is to make the intention clear rather than to mislead.

③ If principal and interest both payable on demand, which form (16E/16D) should chargee use?



Central Malaysian Finance  
v Great Pacific  
Development

In my opinion the question whether the inclusion of interest in Form 16E renders it invalid or not and the question as to which of the forms should be used depend on the terms relating to the interest contained in the agreement of charge. If it is provided that interest is to be paid by a certain time and the chargor has defaulted in the payment, Form 16E cannot be used in respect of such interest because s. 254 of the National Land Code requires that the chargor should first be asked by means of notice in Form 16D to remedy the breach within the appropriate time. If the agreement provides simply that the interest is payable on demand and the principal sum is also payable on demand, in my opinion it is open to the chargee to serve notice in Form 16E, provided that the amount of the principal sum due and the amount of interest due are separately and accurately stated. In such case there is no breach to be remedied. In the present case the terms relating to interest are contained in Clauses 1 and 5 of the agreement annexed to the memorandum of charge. The relevant parts of clauses are reproduced below-

④ If principal and interest both payable on demand, which form (16E/16D) should chargee use?



Mary Michael  
(Mention in orbiter)

I am mindful of the following passage in the judgment of Gill FJ (as he then was) in the case of *Mary Michael V. United Malayan Banking Corporation Bhd* [1970] 1 MLRA 358; [1971] 1 MLJ 172:

Had the chargee in the present case issued a notice in Form 16E, the chargor could perhaps have successfully argued that the form was inapplicable on the ground that the chargee was also including in the notice the amount of the interest due on the charge. It is to be observed that neither in s. 255(1) of the Code nor in the form itself is there any mention of interest, so that if the chargee were to include it in the notice, the question would then arise as to whether this could be done under the provisions of s. 62 of the Interpretation Act, 1967 on the ground that such deviation from the form has no substantial effect and is not calculated to mislead. This, however, is a question which does not fall to be decided in the present case, because the chargee here chose to issue a notice in Form 16D which, as the learned Lord President has pointed out, he was entitled to do.

Should this question come up for decision in the future, speaking for myself, I would say that it is open to a chargee to issue a notice in Form 16E in respect of the principal sum, if that sum is not paid in compliance with the notice and an order for the sale of the land is made on that ground, the Court would have the power to order that any interest due on the principal sum be paid out of the proceeds of sale. Indeed s. 257(1)(c) requires the Court to specify the total amount due to the chargee at the date on which the order for sale is made.

Of course, if the chargor pays the amount of the principal sum stipulated in Form 16E, the chargee will have to issue a further notice for the recovery of interest, in which event only a notice in Form 16D would appear to be appropriate.

When Gill FJ stated that if the chargor pays the amount of the principal sum stipulated in Form 16E, the chargee will have to issue a further notice in Form 16D for the recovery of interest, his mind was directed to the fact of the case before him, i.e. the fact that in that case there was default in the payment of interest. Nothing in the report shows that interest was payable on demand. I do not think that the Judge meant to lay down the rule so as to apply also to a case where interest is payable on demand.

⑤ When does time (limitation - 12 years for enforcing land charge) starts to run?



CIMB v Sivadeni (COA)

- read held part
- currently not followed

⑥ When does time (limitation - 12 years for enforcing land charge) starts to run?



CIMB v Sivadeni (FC)

- read held part

⑦ What does four clear days in 083 mean? When does time (limitation - 12 years) starts to run?



Sivakadatchan v CIMB

- read SM pg 68 and 76
- this case followed
- CIMB v Sivadeni (COA)

⑧ When does time (limitation - 12 years for enforcing land charge) starts to run? - this case deal w LA title



Lim Ban Hooi

- read SM
- this case followed
- CIMB v Sivadeni (COA)

⑨ If it doesn't satisfy the requirement in 083, will it cause CTC S256(3)?



Citibank v Ibrahim Othman

- read SM
- \* must read 083

⑩ Does failure to state amount of repayment under 083 cause CTC, S256(3)?



Bank Pertanian Malaysia

v Zainal Abidin

- read SM

11) Failure to abide by s254,  
does it amount to  
CTC, s256(3)?



Citibank v Mohamad  
Khalid Farzalur  
- see SM

MOHAMAD KHALID FARZALUR RAHAMAN & ANOR v. CITIBANK BHD & ANOR

[2000] 1 MLRH 223

5 Cases

3 Legislation

Cited by 4

Notes

Case Attributes

Share

PDF

I take the view that when s. 254(1) of the NLC stipulates that the period of breach ought to have been continued for a period of **at least** one month (emphasis provided), then the alternative period that may be specified in the charge by the chargee bank must be a period greater than one month. It makes no sense for Parliament to specifically spell out that the period of breach ought to be for a period of at least one month, and then on the other hand seemingly to allow the chargee bank to arrogate to itself the right to abrogate the intention of Parliament by arbitrarily specifying a period far shorter than the one month specified. In this case, the chargor has been given only seven days. In fact the Court of Appeal very correctly stated in *Chong Kon Yon v. MBF Finance Bhd* [1996] 2 MLRA 359; [1997] 2 MLJ 333; [1997] 1 CLJ 7; [1997] 1 AMR 303; that a court would not follow a construction of a statute that would cause great hardship to the general public where another interpretation was available. In this case, the defendant contends that since the parties had agreed to the seven days, then that agreement should prevail. Whilst there is no doubt that the parties had agreed to the seven days this court must look into the reason why Parliament had specifically stated that the period of default ought to be at least one month.

In my view the further period of time is given solely to enable the chargor a further opportunity to sort out his affairs and to look for an opportunity for a re-finance of the loan. It is logical therefore to conclude that the longer the time that is given to the chargor the better is his opportunity to protect his property from foreclosure. It does not make sense therefore to hold that whilst parties are free to contract to include a period other than the one month as stated in s. 254(1) it ought to mean that the chargee can stipulate a period of time shorter than one month. In construing the section as I have done, I am also giving full effect to art. 13(1) of the Federal Constitution that says that "no person shall be deprived of property save in accordance with law".

12) Unlicensed housing developer,  
lender was arrogant



Kheng Soon Finance  
- see SM

13) Non compliance w 083  
→ varied interest rate  
→ final amount differs  
→ issue on variation



Lum Choon Realty  
v Perwira Habib  
Bank (2003)  
- read held part



(14) Does new method of computing interest amount to CTC? → Multi purpose bank v Mainnoon Abdul Razak - read sm

(15) Imposing penalty interest which is not in loan agreement, does it amount to CTC? → Penina Affin Bank v Wt Low & Ng Realty - read sm

(16) Loan agreement allow variation of interest - then chargee vary it - does it amount to CTC? - is written notice to vary interest a must? → Foo Yoke Foon v Public Bank - read sm

(17) What causes CTC? → Low Lee Lion - read sm

(18) Does s21 LA apply to charge? When does computation of time starts? → Thameez Nisha ↓ (point 52 to 113)  
- computation from date of failure to pay, not from expiry of Form 16D → differ from Ahmad maazop in Sivadeni  
- Limitation s21 (12 years) apply to charge action → differ from Rohana in Sivadeni, agree w Ahmad maazop

## Cases for these issues

- ④ Can Z object DFS, s256(3) because chargee doesn't comply w s257?  
- s257(1)(a), s257(1)(g)
- ⑤ Assuming Z won lottery, can he tender payment to redeem his land before conclusion of the sale by public auction?
- ⑥ Can Z sell his land to his friend A because A offer him high price. So once he got the money, Z will pay Maybank. Can he?
- ⑦ Can Maybank privately sell to A because A offer to buy from Maybank at a higher price?

① Can a charger tender payment to redeem his land/house before conclusion of the sale (public auction)?  
- when is conclusion of sale?



Siland v mfg Frozen

Food

- read sm

- take note this case was decided before

NLC amendment

② Can the court set aside a successful public auction, in favour of sale by private treaty?



Mui Bank v Cheah

Kim Yu

- read sm

③ Can the charger sell by private treaty? Can the chargee sell by private treaty?



Chong Bun Sun

- read WHOLE case!

# Summary on Dealings (CHARGES)

- ① Understand the creation of equitable charge
- ② Understand the different procedure in OFS s286 for registry title and land office title
- ③ The charger (owner) will want to raise objection by saying 'existence of cause to contrary' - s286(3), s263(1)
- ④ Whether there is CTC or not;
  - a) may quote Low Lee Lian
  - b) must satisfy s254
  - c) must satisfy 083 ROC

\* basically, you must let charger know exact amount and cannot add on extra interest (if not in agreement)
- ⑤ Sale must be private auction, satisfy s257(1)(a) and s257(1)(g)
- ⑥ Private treaty sale by charger allowed - he can tender payment at any time before purchaser made full payment - s266
- ⑦ Private treaty sale by chargee NOT allowed