

CAVEATABLE INTEREST IN MALAYSIA

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PREFACE

The provision for lodging caveat is for the purpose of enabling parties to protect interests ^{in land} which, owing to a defect in the instrument or want of form or otherwise, they cannot protect by the ordinary process of registration.

Caveat may be entered by the Registrar and by application of third parties. However, this project paper will stress more on caveat entered by application of third parties.

Until now, there are still people who could not care less of others rights and interests ^{in land}. In order to achieve their intention, they will do anything notwithstanding by cheating or whatsoever.

As far as transactions are concerned, the sale and purchase agreement (of land) is the most important because it involves the price which never decrease.

? why explain

The party whose interest in the land has been affected [?] can lodge a caveat to protect his interest. Nevertheless, the entry of the caveat is not so simple as we thought. The person who wishes to lodge the caveat cannot merely claiming that he has interest in the land. He must show that he has an

ground

actual claim in the land; for example by the sale and purchase agreement. *is this all*

Thus, it is the aim and object of this research paper to try an attempt to show how does a caveatable interest arises .

In doing so, this paper will outline briefly on the various types of caveats and ways in which a caveatable interest can be created and it's restriction.

In preparing this paper, I have made extensive use of library materials of Perpustakaan Tun Abd. Razak, ITM , Shah Alam. I also conducted an interview with Encik Zahrul bin Mohd. Yusoff, an officer of the Pejabat Tanah Pontian, Pontian, Johor.

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CHAPTER I

1. Introduction

The Malaysian National Land Code 1965, modelled with modifications on the well-known Torrens system named after its originator in Australia. It is a comprehensive system based on registration and each transaction is effective upon registration. The primary object of the Torrens system is to provide for the registration of certain kinds of dealings in land and to give the resulting registered interests such statutory force as to protect their holders against adverse claim or interests which are not recorded on the register.

The basic principle is the exclusiveness of the register in favour of registered interest. However, the Torrens system does not deny a place to interests which cannot be registered. The protection of non-registrable interest on the register is given by short of registration. This is called as the caveat system. Caveat is lodged or entered on the register of non-registrable interests for their protection.

Only ^{the} person claiming an interest in land is entitled to lodge a caveat. The provision of caveat is stipulated in Chapter 9 of the National Land Code 1965.

It provides for entries of caveat on the register document of title for the protection of various interests in land. There are four classes of caveats namely:-

- a) Registrar's caveat
- b) Private caveat
- c) Lien-holders caveat
- d) Trust caveat

The significance of caveat is to protect and prevent any improper dealings from any unscrupulous act, especially during economic recession. Thus, caveat is meant to protect the interest of a certain categories of persons in land. However, before the persons enjoy this protection, they must show that they have an actual claim i.e. interest in the land. It is at this stage the question of caveatable interest arises.

The Code does not define the word 'caveatable interest'. It only lays down as to who has the right to lodge a caveat. (Section 323 (1)). The protection enjoyed by these persons is not of a permanent nature. It is only a temporary protection. This is because, if someone else thinks that the entry of caveat by such persons is unjustifiable, he may apply for its removal.