


# PRINCIPLES OF MALAYSIAN LAND LAW



Ainul Jaria Maidin, Sharifah Zubaidah Syed Abdul Kader  
Bashiran Begum Haji Mobarak Ali, Nor Asiah Mohamad  
Azlinor Sufian, Ratna Azah Rosli, Fauziah Md. Nor

# **PRINCIPLES OF MALAYSIAN LAND LAW**

**AINUL JARIA MAIDIN  
SHARIFAH ZUBAIDAH SYED ABDUL KADER  
BASHIRAN BEGUM  
FAUZIAH MD NOOR  
NOR ASIAH MOHAMED  
AZLINOR SUFFIAN  
RATNA AZIZ BINTI ROSLI**

## MEMBERS OF THE LEXISNEXIS GROUP WORLDWIDE

|                |   |
|----------------|---|
| MALAYSIA       | Malayan Law Journal Sdn Bhd,†<br>T1-6, Jaya 33, 3 Jalan Semangat, Seksyen 13,<br>46100 Petaling Jaya, Selangor Darual Ehsan |
| ARGENTINA      | LexisNexis Argentina, BUENOS AIRES  |
| AUSTRALIA      | LexisNexis Butterworths, Chatswood,<br>NEW SOUTH WALES  |
| AUSTRIA        | LexisNexis Verlag ARD Orac GmbH & Co KG,<br>VIENNA  |
| CANADA         | LexisNexis Butterworths, Markham, ONTARIO   |
| CHILE          | LexisNexis Chile Ltda, SANTIAGO DE CHILE  |
| CZECH REPUBLIC | Nakladatelství Orac sro, PRAGUE   |
| FRANCE         | Editions du Juris-Classeur SA, PARIS  |
| HONG KONG      | LexisNexis, HONG KONG   |
| HUNGARY        | HVG-Orac, BUDAPEST  |
| INDIA          | LexisNexis, NEW DELHI   |
| IRELAND        | Butterworths (Ireland) Ltd, DUBLIN  |
| ITALY          | Giuffrè Editore, MILAN  |
| NEW ZEALAND    | Butterworths of New Zealand, WELLINGTON   |
| PRC            | LexisNexis Beijing Representative Office, BEIJING   |
| POLAND         | Wydawnictwo Prawnicze LexisNexis, WARSAW  |
| SINGAPORE      | LexisNexis, SINGAPORE   |
| SOUTH AFRICA   | Butterworths SA, DURBAN   |
| SWITZERLAND    | Stämpfli Verlag AG, BERNE   |
| UNITED KINGDOM | LexisNexis Butterworths Tolley,<br>LONDON AND EDINBURGH   |
| USA            | LexisNexis, Dayton, OHIO  |

© LexisNexis  
A Division of Reed Elsevier (Singapore) Pte Ltd  
2008

All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, including photocopying and recording, without the written permission of the copyright holder, application for which should be addressed to the publisher. Such written permission must also be obtained before any part of this publication is stored in a retrieval system of any nature.

The Publisher, authors, contributors and endorsers of this publication each excludes liability for loss suffered by any person resulting in any way from the use of, or reliance on this publication.

†Company No. 76125-H  
ISBN 978-967-962-920-0



Printed in Malaysia by Vivar Printing Sdn Bhd

**Director, Publishing & Editorial, Asia**

DEAN CORKERY  
BEc, LLB (Hons) (Syd)

**General Manager**

PHILLIP KARUPPIAH  
LLB (Hons), BSc (Agribusiness)

**Publishing Manager, Malaysia**

PARAMJEET KAUR  
B.Ed (Hons)

**Legal Editor**

DIANA CHAI  
LLB (Hons) (London)

**Team Leader Editorial Operations, Malaysia**

PREGHALADHAN VIZIA BALAKRISHNAN

**Product Development Manager**

IDA NURBAYATUTY JAMIL NORDIN  
LLB (Hons) (Westminster), Barrister (Lincoln's Inn)  
Non-practising Advocate and Solicitor  
of the High Court of Malaya

**Cover Design**

NG KWANG WEE

**Published in Malaysia by**

MALAYAN LAW JOURNAL SDN BHD

**Indexer**

PUDDINGBURN PUBLISHING SERVICES PTY LTD

## **PREFACE**

All thanks to God the Almighty and Merciful for without His Grace and Blessings, this work could not have been possible.

This book is the work of seven authors who were desirous of writing on their topics of interest in Malaysian land law mainly to address the need of the students of the Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia. The authors are Land Law lecturers and former graduates of the Ahmad Ibrahim Kulliyah of Laws except for Dr Fauziah Md. Nor who graduated from Akademi Islam in University Malaya but very much part of us. All the authors have more than 12 years of experience in teaching and researching Malaysian land law and related areas including property law, and land use planning and development law from both the Civil and Shariah perspectives. The authors are also actively involved in consultancy and capacity building projects for the Government in the related field.

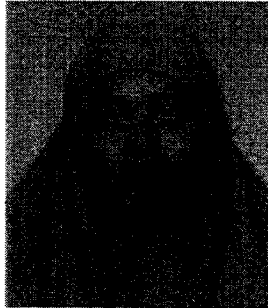
Although there is already several notable land law books in the market written by reputed scholars such as Judith Sihombing, David Wong, Das, Teo Keang Sood and Khaw Lake Tee, and Salleh Buang, this book can be said to be different in many respects. First, it is a product of teamwork between a group of lecturers teaching land law that is apparent and reflected in the different styles of presentation between chapters. Second, this book seeks to strike a balance between being one that is readable by those with little or no legal background and one that is very academic in nature. Third, this book dedicates a chapter discussing the position of land under Islamic law in detail to include various concepts and terminologies, which is very useful.

Numerous challenges were faced by all of us in completing this book especially with regard to the task of coordinating seven authors to complete their chapters within the agreed schedule. The task is juggled between writing the chapters whilst at the same time handling teaching duties at the Kulliyah as well as other administrative tasks assigned by the University Management. The authors would like to thank staff members of Malayan Law Journal, especially Puan Ida Nurbayututy, Ms Diana Chai and the team, for bearing with the many delays in sending out the chapters in a piecemeal manner despite there being a targeted dateline! We would also like to record our appreciation to all friends and colleagues that have made this endeavour possible. Our deepest appreciation

goes to our families for their understanding and patience. We take responsibility for any mistakes that may appear in our work and welcome suggestions for further improvements that can be incorporated in the next edition. The book only covers aspects of land law applicable in Peninsular Malaysia and not Sabah and Sarawak. This is intentional as the land law in Sabah and Sarawak is rather different from that applicable in the Peninsular Malaysian states and it will not be justified to merely provide a brief overview in between the lines in this book.

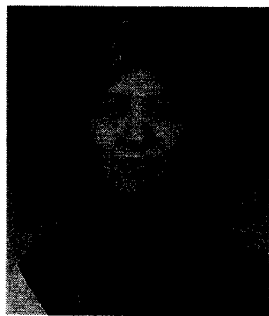
The law is as stated at 31<sup>st</sup> December 2007.

## BIBLIOGRAPHY OF AUTHORS



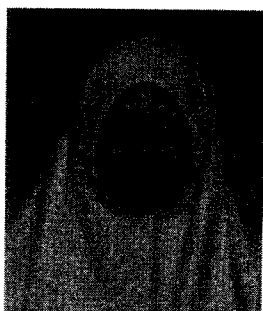
Ainul Jaria Maidin (LLB (Hons) (IIUM), Master in Comparative Laws (IIUM), PhD (Aberystwyth, Wales, UK) is an Assistant Professor and Coordinator for Research for the Faculty. Teaches land law, town and country planning law, legal method, and professional practice. A Senior Consultant with the Bureau of Consultancy and Entrepreneurship a business unit within the University and the secretariat for the Land Tenure and Environmental Management Unit (LATEM). Consultant for the State of Penang Planning Appeal Board engaged to compile and translate case reports. Appointed as consultant by the Federal Department of Town and Country Planning Malaysia to update the Encyclopedia on Town and Country Planning Law and Procedure, Consultant for Project on Studies on establishing Water Commission for Ministry of Public Works and at present is engaged as a consultant in researching and advising the Jabatan Lanskap Negara on Landscaping Laws.

Prior to joining IIUM as a lecturer, she has gained some valuable experience in the legal practice area as a civil litigation, Syariah, property conveyancing and corporate conveyancing lawyer as well as drafting of legal opinions. She has published in national and international journals on her areas of specialization and interest. Contributing author for the Halsbury Laws of Malaysia Series for the Volume on Town and Country Planning and Streets, Drainage and Building Law in Malaysia. Annotated Series of Malaysian Law (Town and Country Planning Act 1976 and Penang and Malacca Titles Act 1963).



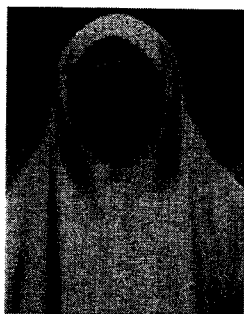
Sharifah Zubaidah Syed Abdul Kader is an Assistant Professor at the Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia. Teaches land law and legal methods, Prior to joining the University she has gained some experience in the area of legal practice especially in conveyancing practice. A Senior Consultant with the Bureau of Consultancy and Entrepreneurship, a

business unit within the University and the secretariat for the Land Tenure and Environmental Management Unit (LATEM). Consultant for the State of Penang Planning Appeal Board engaged to compile and translate case reports. Consultant for Project on Studies on establishing Water Commission for Ministry of Public Works and at present is engaged as a consultant updating the Encyclopedia of Planning Law and Procedure in Malaysia. She has published in national and international journals on her areas of specialization and interest.

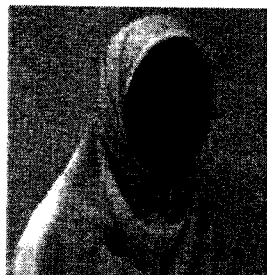


Bashiran Begum Haji Mubarak Ali is an Assistant Professor at the Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia. Teaches land law, and equity and trusts, A Senior Consultant with the Bureau of Consultancy and Entrepreneurship, a business unit within the University and a consultant for the Land Tenure and Environmental Management Unit (LATEM).

She has researched and published in local and international journals in her area of interest. She is also a contributing editor to the Annotated Series of Malaysian Law (Town and Country Planning Act 1976 and Penang and Malacca Titles Act 1963)

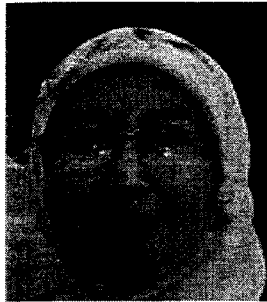


Fauziah Md. Noor, (LLB (Hons) UM, LLM (UK), PhD (UK). An Assistant Professor at the Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia. Teaches land law and equity and trusts, A consultant for the Land Tenure and Environmental Management Unit (LATEM). She has researched and presented papers in her area of interest in conferences at both local and international level.

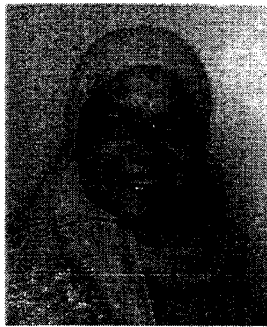


Nor Asiah Mohamad, (LLB (Hons) (IIUM), LLB Shariah, Master in Comparative Laws (IIUM) PhD (IIUM) Assistant Professor, Ahmad Ibrahim Kulliyah of Laws, IIUM. A consultant of the Land Tenure and Management Unit (LATEM), IIUM. She has published and presented various articles in areas relating to land law, equity, islamic environment and ethics. Has keen interest on issues of Islamic perspective on land law and administration.





Dr. Azlinor Suffian, LLB (Hons) (IIUM), Master in Comparative Laws, PhD (IIUM) is currently a staff of the Private Law Department, Ahmad Ibrahim Kulliyah of Law, International Islamic University Malaysia. A consultant of the Land Tenure and Management Unit (LATEM), IIUM. She is teaching Land Law and Civil Procedure. Her areas of interest are land and housing law and civil procedure. She has presented papers at various local and international conferences and published her work on housing law in journals.



Ratna Azah Binti Rosli LL.B (Hons), LL.B (S), MCL IIUM is a senior lecturer in Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia. A consultant of the Land Tenure and Management Unit (LATEM), IIUM She teaches land law, law of contract and compulsory moots. Her Ph.D. research at the Aberystwyth University, Wales UK revolves on regulating the utilisation of underground space in land development.

# Table of Contents

|  | PAGE |
|--|------|
| <i>Preface</i> .....   | v    |
| <i>Bibliography</i> .....  | vii  |
| <i>Table of Cases</i> .....  | xxv  |
| <i>Table of Legislation</i> .....  | lix  |
| <br>   |      |
| <b>CHAPTER 1</b>   |      |
| <b>INTRODUCTION</b>  |      |
| 1.1 INTRODUCTION .....   | 3    |
| 1.2 EARLY LAND TENURE SYSTEM IN MALAY STATES .....                                 | 5    |
| 1.3 INFLUENCE OF ISLAMIC LAW ON MALAY<br>CUSTOMARY LAND TENURE .....               | 8    |
| 1.4 DEVELOPMENT OF LAND LAW IN THE<br>FEDERATED AND UNFEDERATED MALAY STATES ..... | 13   |
| 1.5 THE FEDERATED MALAY STATES .....   | 14   |
| 1.6 THE UNFEDERATED MALAY STATES .....   | 16   |
| 1.7 THE STRAITS SETTLEMENTS .....  | 18   |
| 1.7.1 Early Land Law in Penang .....   | 19   |
| 1.7.2 Reforms to the Land Law in Penang .....                                      | 23   |
| 1.7.3 Early Land Law in Malacca .....  | 24   |
| 1.7.4 Portuguese Colonial Administration<br>(1511-1641) .....                      | 29   |
| 1.7.5 Dutch Colonial Administration<br>(1641-1795) and (1818-1824) .....           | 30   |
| 1.7.6 British Occupation (1795-1818) and<br>(1824-1957) .....                      | 31   |
| 1.7.7 English Land Tenure System in Malacca ....                                   | 35   |
| 1.7.8 Reform to the Land System in Penang<br>and Malacca in 1880's .....           | 36   |
| 1.7.9 Legislation During Japanese Occupation<br>Period .....                       | 38   |
| 1.8 SABAH .....  | 40   |
| 1.9 SARAWAK .....  | 40   |

|        |   |    |
|--------|---|----|
| 1.10   | INTRODUCTION OF TORRENS SYSTEM IN THE PENINSULAR MALAYSIAN STATES .....                     | 40 |
| 1.11   | FEATURES OF THE NATIONAL LAND CODE 1965 (ACT 56) .....                                      | 53 |
| 1.11.1 | Commencement and Application of the National Land Code 1965 in the States of Malaysia. .... | 56 |
| 1.12   | APPLICATION OF ENGLISH EQUITABLE PRINCIPLES INTO THE MALAYSIAN LAND LAW SYSTEM .....        | 57 |

**CHAPTER 2  
GENERAL CONCEPTS OF LAND OWNERSHIP**

|       |   |    |
|-------|---|----|
| 2.1   | GENERAL CONCEPTS OF LAND .....                          | 67 |
| 2.1.1 | Physical and Legal Aspects of Land .....                | 67 |
| 2.1.2 | Essential Legal Concepts Under Malaysian Land Law ..... | 69 |
| 2.2   | MEANING OF LAND .....                                   | 72 |
| 2.2.1 | Definition of Land in s 5 of the NLC .....              | 72 |
| 2.2.2 | Law of Fixtures .....                                   | 73 |
| 2.3   | EXTENT OF OWNERSHIP AND ENJOYMENT OF LAND .....         | 81 |
| 2.3.1 | Natural Rights under Section 44 NLC .....               | 82 |
| 2.4   | CONCLUSION .....  | 98 |

**CHAPTER 3  
RIGHTS AND POWERS OF THE STATE AUTHORITY**

|     |   |     |
|-----|---|-----|
| 3.1 | INTRODUCTION .....  | 103 |
| 3.2 | THE POSITION OF LAND UNDER THE FEDERAL CONSTITUTION .....         | 103 |
| 3.3 | INSTITUTIONAL FRAMEWORK FOR LAND ADMINISTRATION IN MALAYSIA ..... | 106 |
| 3.4 | STATE LAND .....  | 107 |
| 3.5 | MEANING OF STATE AUTHORITY .....                                  | 108 |
| 3.6 | STRUCTURE OF STATE LAND ADMINISTRATION ....                       | 109 |
| 3.7 | CLASSIFICATION OF LAND .....                                      | 110 |

|      |   |     |
|------|---|-----|
| 3.8  | CATEGORY OF LAND USE .....                          | 111 |
| 3.9  | POWERS OF DISPOSAL AND RIGHTS<br>IN REVERSION ..... | 111 |
| 3.10 | ADVERSE POSSESSION .....                            | 113 |
| 3.11 | TEMPORARY OCCUPATION LICENCE .....                  | 117 |
| 3.12 | ALIENATION .....                                    | 122 |
| 3.13 | RESERVATION OF LAND .....                           | 125 |
| 3.14 | FORFEITURE .....                                    | 126 |
| 3.15 | LAND ADMINISTRATOR'S RIGHT OF WAY .....             | 132 |
| 3.16 | CONCLUSION .....                                    | 142 |

**CHAPTER 4  
DEALINGS AND REGISTRATION  
OF DEALINGS**

|      |  |     |
|------|--|-----|
| 4.1  | DEFINITION OF DEALINGS .....   | 145 |
| 4.2  | PERSONS AND BODIES CAPABLE OF<br>BEING EFFECTED UNDER DEALINGS ..... | 146 |
| 4.3  | PROPER INSTRUMENT OF DEALINGS .....                                  | 147 |
| 4.4  | EXECUTION OF INSTRUMENT OF DEALINGS .....                            | 149 |
| 4.5  | ATTESTATION OF INSTRUMENTS OF DEALINGS .....                         | 150 |
| 4.6  | REGISTRATION OF INSTRUMENT OF DEALINGS ....                          | 151 |
| 4.7  | PROCEDURES ON REGISTRATION OF DEALINGS ...                           | 152 |
| 4.8  | DUTIES OF THE REGISTRAR<br>AND ITS LIMITATIONS .....                 | 154 |
| 4.9  | MANNER AND EFFECT OF REGISTRATION .....                              | 155 |
| 4.10 | REGISTRAR'S POWER TO CORRECT ERRORS .....                            | 156 |
| 4.11 | REMEDIES FOR PROPRIETOR .....  | 156 |
| 4.12 | REGISTRATION OF WAQF LAND .....                                      | 157 |
| 4.13 | CONCLUSION .....   | 159 |

**CHAPTER 5  
INDEFEASIBILITY OF TITLE AND INTERESTS**

|     |   |     |
|-----|---|-----|
| 5.1 | MEANING OF INDEFEASIBILITY OF TITLE ..... | 163 |
| 5.2 | TYPES OF INDEFEASIBILITY .....            | 164 |

|     |  |     |
|-----|--|-----|
| 5.3 | EXCEPTIONS TO INDEFEASIBILITY OF TITLE .....   | 166 |
| 5.4 | WHAT HAPPENS WHEN A TITLE OR INTEREST IS DECLARED DEFEASIBLE UNDER SECTION 340(2)? ..... | 176 |
| 5.5 | THE 'BONA FIDE PURCHASER' PROTECTION IN THE PROVISIO TO SECTION 340(3) .....             | 177 |
| 5.6 | CONCLUSION .....   | 179 |

**CHAPTER 6  
TRANSFERS**

|     |   |     |
|-----|---|-----|
| 6.1 | GENERAL INTRODUCTION .....  | 183 |
| 6.2 | ONLY A REGISTERED PROPRIETOR HAS POWER TO TRANSFER THE LAND .....                               | 184 |
| 6.3 | SUBJECT MATTER OF TRANSFER .....  | 184 |
| 6.4 | RESTRICTION ON EXERCISE OF POWER.....   | 186 |
| 6.5 | EFFECT OF TRANSFER OF LAND IN GENERAL .....   | 187 |
| 6.6 | EFFECT OF TRANSFER OF LAND SUBJECT TO A CHARGE, LEASE OR TENANCY EXEMPT FROM REGISTRATION ..... | 188 |
| 6.7 | TRANSFERS WITHOUT MONETARY CONSIDERATION .....  | 189 |
| 6.8 | TRANSFER BY OPERATION OF LAW .....  | 189 |
| 6.9 | CONCLUSION .....  | 195 |

**CHAPTER 7  
EASEMENT**

|     |                                       |     |
|-----|---------------------------------------|-----|
| 7.1 | INTRODUCTION .....                    | 199 |
| 7.2 | WHAT IS EASEMENT? .....               | 199 |
| 7.3 | EASEMENT UNDER THE NLC .....          | 200 |
| 7.4 | EASEMENT AND NATURAL RIGHTS .....     | 202 |
| 7.5 | CREATION OF AN EASEMENT .....         | 203 |
| 7.6 | APPLICATION OF EASEMENT .....         | 205 |
| 7.7 | TERMINATION OF EASEMENT .....         | 206 |
| 7.8 | REMEDIES FOR BREACH OF EASEMENT ..... | 206 |

TABLE OF CONTENTS

---

7.9 EQUITABLE EASEMENT ..... 207  
7.10 CONCLUSION ..... 210

**CHAPTER 8  
LEASES AND TENANCIES**

8.1 INTRODUCTION ..... 213  
8.2 CHARACTERISTICS OF A LEASE ..... 214  
8.3 DIFFERENCES BETWEEN  
A LEASE AND A LICENCE ..... 215  
8.4 POWER TO GRANT A LEASE OR TENANCY  
UNDER THE NATIONAL LAND CODE 1965 ..... 216  
8.5 TENANCY EXEMPT FROM REGISTRATION ..... 218  
8.6 EXPRESS AND IMPLIED PROVISIONS ..... 219  
8.7 DETERMINATION OF LEASES ..... 221  
8.8 EFFECT OF UNREGISTERED LEASE ..... 223  
8.9 TENANCY COUPLED WITH EQUITY ..... 224  
8.10 TENANCY BY ESTOPPEL ..... 226  
8.11 CONCLUSION ..... 227

**CHAPTER 9  
SECURITY DEALINGS**

9.1 INTRODUCTION ..... 233  
9.2 TORRENS LAND CHARGE ..... 234  
9.3 DIFFERENCES BETWEEN TORRENS CHARGE  
AND MORTGAGE ..... 235  
9.4 CREATION OF CHARGE ..... 236  
9.5 SUBJECT MATTER OF CHARGE ..... 237  
9.6 EXPRESS AND IMPLIED CONDITIONS IMPOSED  
ON CHARGE ..... 240  
9.7 RESTRICTION ON POWERS OF CHARGING ..... 241  
9.8 PREREQUISITE OR REQUIREMENTS TO CREATE  
A TORRENS CHARGE ..... 242  
9.8.1 Position of Charge Created Using  
the Wrong Form ..... 243

TABLE OF CONTENTS

---

|      |   |     |
|------|---|-----|
|      | 9.8.2 Registration of Charge .....  | 245 |
|      | 9.8.3 Position of Unregistered Charge .....   | 248 |
|      | 9.8.4 Custody of Issue Document of Title .....  | 254 |
| 9.9  | SUBSEQUENT DEALINGS<br>WITH CHARGED PROPERTY .....  | 255 |
|      | 9.9.1 Priority of Charges .....   | 256 |
|      | 9.9.2 Consolidation of Charges .....  | 257 |
|      | 9.9.3 Tacking of Charges .....  | 258 |
|      | 9.9.4 Postponement of charges .....   | 258 |
| 9.10 | REMEDIES FOR REGISTERED CHARGEES .....  | 259 |
|      | 9.10.1 Sale by Public Auction .....   | 260 |
|      | 9.10.2 Procedure for Obtaining Order for Sale ...   | 261 |
|      | 9.10.3 Notice of demand .....   | 261 |
|      | 9.10.4 Duration of Notice of Demand .....   | 263 |
|      | 9.10.5 Application for Order for Sale<br>of Charged Property .....                                      | 267 |
|      | 9.10.5.1 Procedure for Applying<br>to Court for Order for Sale ....                                     | 268 |
|      | 9.10.5.2 Matters to be Dealt in an<br>Order for Sale Made<br>by Court .....                             | 270 |
|      | 9.10.5.3 Procedure Prior<br>to Sale by Court .....  | 273 |
|      | 9.10.5.4 Procedure at Sale by Court ...   | 275 |
|      | 9.10.5.5 Procedure for Making<br>Application for Order<br>for Sale at Land Office .....                 | 277 |
|      | 9.10.6 Sale Procedure in Land Office .....  | 281 |
|      | 9.10.7 Distribution of Purchase Money .....   | 283 |
|      | 9.10.8 Protection of Purchasers<br>at Public Auction .....  | 284 |
|      | 9.10.9 Effects of Sale .....  | 285 |
|      | 9.10.10 Cause to the Contrary .....   | 287 |
|      | 9.10.11 Right of Chargor to Tender Payment<br>to Chargee at any time before<br>conclusion of sale ..... | 291 |
|      | 9.10.12 Conclusion of Sale .....  | 293 |
|      | 9.10.13 Sale of Charged Property by Way<br>of Private Treaty .....                                      | 294 |
| 9.11 | REMEDIES OF CHARGEES BY TAKING POSSESSION<br>OF CHARGED LAND .....                                      | 297 |

TABLE OF CONTENTS

|        |  |     |
|--------|--|-----|
| 9.11.1 | Right to possession .....  | 298 |
| 9.11.2 | Procedure for taking possession .....  | 298 |
| 9.11.3 | Duration of right to possession .....  | 299 |
| 9.11.4 | Effects of taking possession .....   | 299 |
| 9.11.5 | Power of Chargee in Possession to Grant<br>Leases and Accept Surrenders .....    | 300 |
| 9.11.6 | Notices by Chargees to Receive Rents .....                                       | 300 |
| 9.11.7 | Application of rents and profits<br>by chargees in possession .....              | 300 |
| 9.12   | PROTECTION OF RIGHTS OF CHARGOR .....  | 301 |
| 9.13   | DISCHARGE OF CHARGE .....  | 302 |
| 9.13.1 | Discharge by Payment to Registrar<br>in Cases of Death, Absence or Disability .. | 303 |
| 9.13.2 | Memorialisation on Discharge<br>by Payment .....                                 | 304 |
| 9.14   | STATUTORY LIENS .....  | 304 |
| 9.14.1 | Introduction .....   | 304 |
| 9.14.2 | Meaning of Lien .....  | 305 |
| 9.14.3 | Essential Characteristics<br>or Elements of a Lien .....                         | 307 |
| 9.14.4 | Deposit of Issue Document of Title<br>or Duplicate Lease .....                   | 307 |
| 9.14.5 | Intention to Create Lien .....   | 310 |
| 9.14.6 | Lodging or Entry of Lien-Holders Caveat .  | 316 |
| 9.14.7 | Differences Between<br>Torrens Lien & Charge .....                               | 318 |
| 9.14.8 | Remedy for Lien-Holder .....   | 319 |
| 9.15   | JUAL JANJI .....   | 321 |
| 9.15.1 | Introduction .....   | 321 |
| 9.15.2 | Characteristics of Jual Janji Transaction ...                                    | 322 |
| 9.15.3 | Judicial Views on Nature of <i>Jual Janji</i><br>Transactions .....              | 325 |
| 9.15.4 | Status of <i>Jual Janji</i> Transactions .....                                   | 337 |

**CHAPTER 10  
RESTRAINT ON DEALINGS**

|      |  |     |
|------|--|-----|
| 10.1 | INTRODUCTION .....                                 | 343 |
| 10.2 | NATURE AND TYPES<br>OF RESTRAINT ON DEALINGS ..... | 344 |



TABLE OF CONTENTS

---

|          |  |     |
|----------|--|-----|
| 10.2.1   | Lis Pendens .....  | 344 |
| 10.2.2   | Injunction .....   | 346 |
| 10.2.3   | Caveat.....  | 347 |
| 10.2.3.1 | Functions of Caveat .....  | 351 |
| 10.2.3.2 | Types of Caveats .....   | 352 |
| 10.3     | REGISTRAR'S CAVEAT .....   | 353 |
| 10.3.1   | Nature & Scope of Registrars Caveat .....                                      | 353 |
| 10.3.2   | Function of Registrar .....  | 353 |
| 10.3.3   | Effect of Registrars Caveat .....  | 355 |
| 10.3.4   | Function of Registrars Caveat .....  | 356 |
| 10.3.5   | Persons Who Can Apply<br>for Registrars Caveat .....                           | 358 |
| 10.3.5.1 | Right of Proprietor to Apply<br>for Registrars Caveat<br>to Protect Land ..... | 359 |
| 10.3.6   | Entry of Registrars Caveat<br>to Protect Interests of Federation .....         | 364 |
| 10.3.7   | Procedure for Entry of Registrars Caveat .                                     | 368 |
| 10.3.8   | Nature and Effect of Registrars Caveat ....                                    | 368 |
| 10.3.9   | Removal of Registrars Caveat .....   | 368 |
| 10.3.10  | Removal by Registrar<br>on his own motion .....                                | 369 |
| 10.3.11  | Application by Proprietor<br>of Caveated Land .....                            | 369 |
| 10.3.12  | Removal Pursuant to Court Order .....  | 369 |
| 10.3.13  | Cancellation of Registrars Caveat .....  | 372 |
| 10.4     | PRIVATE CAVEAT .....   | 372 |
| 10.4.1   | Introduction .....   | 372 |
| 10.4.2   | Nature of Private Caveat .....   | 372 |
| 10.4.3   | Effects of Private Caveat .....  | 373 |
| 10.4.4   | Procedures for Entry of Private Caveat ....                                    | 374 |
| 10.4.5   | Function of Registrar<br>in Entering the Private Caveat .....                  | 375 |
| 10.4.6   | Effect of Private Caveat on Instruments<br>of Dealing .....                    | 376 |
| 10.4.7   | Who Can Apply to Enter Private Caveat ...                                      | 379 |
| 10.4.7.1 | Caveatable Interests .....   | 381 |
| 10.4.7.2 | Caveatable Interest<br>of Beneficiary under<br>an Express Trust .....          | 387 |

TABLE OF CONTENTS

---

|           |  |     |
|-----------|--|-----|
| 10.4.7.3  | Right of Registered Proprietor<br>to Caveat Own Land .....                   | 388 |
| 10.4.7.4  | Caveating Specific<br>Portion of Land .....                                  | 390 |
| 10.4.8    | Duration or Life Span<br>of Private Caveat .....                             | 391 |
| 10.4.9    | Removal of Private Caveat .....  | 391 |
| 10.4.10   | Withdrawal of Private<br>Caveat by Caveator .....                            | 392 |
| 10.4.11   | Removal of Private Caveat by Registrar ...                                   | 392 |
| 10.4.11.1 | Procedure For Removal<br>of Private Caveat .....                             | 393 |
| 10.4.12   | Removal of Private Caveats by Court .....                                    | 393 |
| 10.4.12.1 | Rights of Chargee<br>or Interest Holders<br>to Remove Private Caveat .....   | 399 |
| 10.4.12.2 | Rights of Unregistered<br>Interest Holders<br>to Remove Private Caveat ..... | 399 |
| 10.4.12.3 | Extension of Private Caveats .   | 400 |
| 10.4.13   | Compensation for Wrongful Caveat .....                                       | 404 |
| 10.4.14   | Limitation on Repeated Applications .....                                    | 405 |
| 10.5      | LIEN-HOLDER'S CAVEAT .....   | 406 |
| 10.5.1    | Introduction .....   | 406 |
| 10.5.2    | Creation and Effect<br>of Lien-Holders' Caveats .....                        | 406 |
| 10.5.3    | Procedure .....  | 407 |
| 10.5.3.1  | Function of Registrar .....  | 408 |
| 10.5.3.2  | Effect of Lien<br>Holders Caveat .....                                       | 408 |
| 10.5.4    | Failure to Caveat Land .....   | 409 |
| 10.5.5    | Cancellation of Lien-Holders Caveat .....                                    | 410 |
| 10.5.6    | Determination of Lien-Holders' Caveats ....                                  | 411 |
| 10.5.7    | Remedies of Lien-Holders' .....  | 412 |
| 10.6      | TRUST CAVEATS .....  | 412 |
| 10.6.1    | Introduction .....   | 412 |
| 10.6.2    | Nature of Trust Caveat .....   | 412 |
| 10.6.3    | Effect of Trust Caveat .....   | 414 |
| 10.6.4    | Procedure .....  | 414 |
| 10.6.5    | Duration of Trust Caveat .....   | 415 |

TABLE OF CONTENTS

|        |  |     |
|--------|--|-----|
| 10.7   | PROHIBITORY ORDER .....  | 415 |
| 10.7.1 | Introduction .....   | 415 |
| 10.7.2 | Meaning of Prohibitory Order .....                                       | 416 |
| 10.7.3 | Nature of Prohibitory Order .....  | 416 |
| 10.7.4 | Effect of Prohibitory Orders .....                                       | 418 |
| 10.7.5 | Duration of Prohibitory Order .....                                      | 421 |
| 10.7.6 | Right to Repeated<br>or Further Prohibitory Order .....                  | 424 |
| 10.7.7 | Procedure of Sale of Land<br>or Interest Subject to Prohibitory Order .. | 425 |
| 10.7.8 | Determination of Prohibitory Order .....                                 | 426 |
| 10.7.9 | Rights and Priorities of Holder<br>of Prohibitory Order .....            | 427 |

**CHAPTER 11  
LAND RESERVATION**

|         |  |     |
|---------|--|-----|
| 11.1    | INTRODUCTION .....   | 431 |
| 11.2    | THE CONCEPT OF LAND RESERVATION<br>UNDER THE NATIONAL LAND CODE 1965 ..... | 431 |
| 11.3    | THE MALAY AGRICULTURAL SETTLEMENT .....                                    | 433 |
| 11.4    | THE MALACCA CUSTOMARY TENURE .....   | 435 |
| 11.5    | THE ABORIGINAL LAND .....  | 436 |
| 11.6    | THE CUSTOMARY LAND .....   | 438 |
| 11.7    | THE CUSTOMARY LENGKONGAN LAND .....  | 439 |
| 11.8    | THE MALAY RESERVATION LAND .....   | 440 |
| 11.8.1  | Definition of Malay .....  | 441 |
| 11.8.2  | Federal Constitution<br>and Malay Reservation land .....                   | 444 |
| 11.8.3  | Pre-Merdeka Malay<br>Reservation Tenure .....                              | 445 |
| 11.8.4  | Right to Compensation .....  | 447 |
| 11.8.5  | Declaration of New Areas<br>as Malay Reservation .....                     | 448 |
| 11.8.6  | proprietor's initiative .....  | 450 |
| 11.8.7  | non-malay rights over<br>reservation of land .....                         | 452 |
| 11.8.8  | creation of trusts .....   | 454 |
| 11.8.9  | establishment of a malay company .....                                     | 454 |
| 11.8.10 | malay holding .....  | 455 |

TABLE OF CONTENTS

|         |  |     |
|---------|--|-----|
| 11.8.11 | reference to ruler in council .....                                    | 458 |
| 11.8.12 | power of disposal of malay<br>reservation land .....                   | 461 |
| 11.8.13 | declaration of malay reservation .....                                 | 462 |
| 11.8.14 | alteration and revocation<br>of malay reservation .....                | 463 |
| 11.8.15 | restrictions and prohibitions on dealings..                            | 463 |
| 11.8.16 | attachment in execution.....   | 473 |
| 11.8.17 | restrictions to trust .....  | 473 |
| 11.8.18 | grants of probate<br>and letters of administration .....               | 475 |
| 11.8.19 | consequences of contravention .....                                    | 476 |
| 11.8.20 | major discrepancies in the states'<br>malay reservation enactment..... | 480 |
| 11.9    | CONCLUSION .....   | 484 |

**CHAPTER 12**  
**COMPULSORY ACQUISITION OF LAND**

|        |   |     |
|--------|---|-----|
| 12.1   | INTRODUCTION .....  | 489 |
| 12.2   | RIGHTS OF STATE AUTHORITY<br>TO ACQUIRE PRIVATE LAND .....    | 489 |
| 12.3   | LEGAL FRAMEWORK<br>REGULATING LAND ACQUISITION .....          | 491 |
| 12.4   | SCOPE OF ACQUIRING POWERS .....                               | 494 |
| 12.5   | ADMINISTRATIVE FRAMEWORK<br>FOR LAND ACQUISITION .....        | 500 |
| 12.6   | PROCEDURE OF ACQUIRING LAND .....                             | 505 |
| 12.6.1 | Commencement of Land Acquisition<br>Proceedings .....         | 510 |
| 12.6.2 | Service of Notices .....                                      | 511 |
| 12.6.3 | Enquiry by Land Administrator .....                           | 511 |
| 12.6.4 | Powers of Land Administrator<br>in Conducting Enquiry .....   | 517 |
| 12.6.5 | Award of the Land Administrator .....                         | 517 |
| 12.6.6 | Power of Land Administrator<br>to Enter into Arrangement..... | 518 |
| 12.6.7 | Taking Possession of Acquired Land .....                      | 519 |
| 12.6.8 | Certificate of Urgency .....                                  | 520 |

TABLE OF CONTENTS

|        |  |     |
|--------|--|-----|
| 12.7   | ISSUES RELATING TO PROCEDURE .....                               | 520 |
| 12.7.1 | Powers of Land Administrator<br>in Holding an Inquiry .....      | 520 |
| 12.7.2 | Right to Pre-Acquisition Hearing .....                           | 521 |
| 12.8   | ASSESSMENT AND AWARD<br>OF ADEQUATE COMPENSATION .....           | 531 |
| 12.8.1 | Meaning of Adequate Compensation .....                           | 532 |
| 12.8.2 | Material Date for Ascertaining<br>the Market Value .....         | 533 |
| 12.8.3 | Market Value .....   | 533 |
| 12.8.4 | Matters to be Considered in Determining<br>Compensation .....    | 542 |
| 12.8.5 | Matters to be Neglected<br>in Determining Compensation .....     | 543 |
| 12.9   | WHO CAN CHALLENGE ACQUISITION .....                              | 552 |
| 12.10  | METHODS OF CHALLENGING ACQUISITION .....                         | 552 |
| 12.11  | GROUNDINGS FOR CHALLENGING<br>LAND ACQUISITION PROCEEDINGS ..... | 553 |
| 12.12  | CONCLUSION .....   | 569 |

**CHAPTER 13  
STRATA TITLES LAW IN MALAYSIA**

|        |  |     |
|--------|--|-----|
| 13.1   | INTRODUCTION .....   | 573 |
| 13.2   | DEVELOPMENT OF STRATA TITLES<br>LAW IN MALAYSIA .....  | 573 |
| 13.3   | CONCEPT OF SUBDIVISION OF BUILDING OR LAND<br>FOR THE ISSUANCE OF STRATA TITLES .....            | 577 |
| 13.4   | THE APPROVING AUTHORITY .....  | 578 |
| 13.5   | STRATA TITLES RULES .....  | 578 |
| 13.6   | GENERAL REQUIREMENTS FOR APPLICATIONS<br>OF STRATA TITLES .....                                  | 578 |
| 13.7   | APPLICATION FOR STRATA TITLES .....  | 580 |
| 13.8   | THE DUTY OF THE PROPRIETOR<br>OF ALIENATED LAND OR DEVELOPER<br>TO APPLY FOR STRATA TITLES ..... | 582 |
| 13.9   | MANAGEMENT OF BUILDING .....   | 584 |
| 13.9.1 | Commissioner of Building .....   | 584 |

TABLE OF CONTENTS

|        |  |     |
|--------|--|-----|
| 13.9.2 | Joint Management Body (JMB) .....      | 585 |
| 13.9.3 | Joint Management Committee (JMC) ..... | 585 |
| 13.9.4 | Managing Agent .....                   | 585 |
| 13.9.5 | Management Corporation .....           | 586 |
| 13.9.6 | Strata Register .....                  | 589 |
| 13.10  | COMMON PROPERTY .....                  | 590 |
| 13.11  | STRATA TITLES BOARD .....              | 592 |
| 13.12  | STRATA BY-LAWS .....                   | 592 |
| 13.13  | GATED AND GUARDED PROPERTIES .....     | 592 |

**CHAPTER 14**  
**PRINCIPLES OF ISLAMIC LAND OWNERSHIP**

|        |  |     |
|--------|--|-----|
| 14.1   | INTRODUCTION .....   | 601 |
| 14.2   | MAIN CONCEPTS OF ISLAMIC LAND OWNERSHIP ..                 | 602 |
| 14.2.1 | Man as Trustee .....                                       | 603 |
| 14.2.2 | Private Land Ownership in Islam .....                      | 604 |
| 14.2.3 | Conditional Nature<br>of Land Ownership in Islam .....     | 604 |
| 14.3   | CLASSIFICATION OF LANDS IN ISLAM .....                     | 607 |
| 14.4   | <i>IQTA'</i> SYSTEM (INDIVIDUAL<br>OWNERSHIP SYSTEM) ..... | 611 |
| 14.5   | CLASSIFICATION OF <i>IQTA'</i> .....                       | 613 |
| 14.5.1 | <i>Iqta' Tamlik</i> .....                                  | 613 |
| 14.5.2 | <i>Iqta'</i> of 'Amir Land (Cultivated Land) .....         | 615 |
| 14.5.3 | <i>Iqta' Irfaq</i> .....                                   | 615 |
| 14.6   | THE OWNERSHIP OF <i>IQTA'</i> LAND .....                   | 616 |
| 14.7   | LIMITATION OF AREA .....                                   | 617 |
| 14.8   | <i>IHYA' AL-MAWAT</i> (REVIVAL OF DEAD LAND) .....         | 617 |
| 14.9   | DEFINITION OF MAWAT LAND (DEAD LAND) .....                 | 618 |
| 14.10  | THE OWNERSHIP OF MAWAT LAND .....                          | 619 |
| 14.11  | THE NATURE OF <i>IHYA' AL-MAWAT</i> .....                  | 621 |
| 14.12  | HIMA OR COLLECTIVE<br>LAND-OWNERSHIP SYSTEM .....          | 623 |
| 14.13  | ACQUISITION OF ALIENATED LAND<br>BY THE STATE .....        | 625 |

TABLE OF CONTENTS

---

|   |         |
|---|---------|
| 14.14 THE CONCEPT OF <i>WAQF</i> .....  | 627     |
| 14.14.1 Waqf Land Administration in Malaysia .....  | 628     |
| 14.14.2 Construction and Registration of <i>Waqf</i><br>Under the National Land Code 1965 ..... | 628     |
| 14.15 TRANSFER .....  | 629     |
| 14.16 SURRENDER .....   | 629     |
| 14.17 STATUTORY VESTING .....   | 631     |
| 14.18 SUB-DIVISION OF LANDS .....   | 632     |
| 14.19 CONCLUSION .....  | 632     |
| <br><i>Glossary</i> .....   | <br>635 |
| <i>Index</i> .....  | 639     |