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STRATA TITLE: A COMPARATIVE STUDY OF STRATA TITLES LEGISLATION AND PRACTICE IN MALAYSIA AND IN NEW SOUTH WALES

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countries including Malaysia and Australia. This has meant that many more people have come to live, by choice or necessity, in high rise apartment buildings, and it has been necessary to devise a safe and effective system of ownership of these apartments similar to the Torrens system which applies to the ownership of land.

Strata Title was devised as a variation of the principles of the Torrens system in New South Wales in 1961. Since then it has operated effectively there and in other Australian jurisdictions and has been adopted by several overseas countries including Malaysia.

However, while there do not appear to be any significant difficulties in the operation of the system of strata title in New South Wales or other Australian states, there are a number of serious problems in the operation of the Malaysian *Strata Titles Act* and associated legislation which have the effect of denying to the Malaysian consumer most of the benefits of the strata title system as it operates in New South Wales.

The purpose of this thesis is to examine the similarities and differences between the Malaysian and New South Wales *Strata Titles* acts, and to ascertain the reasons for the difficulties which are currently being experienced in Malaysia and to make recommendations for change where necessary.

In the first chapter, following consideration of the reasons for the increasing popularity of apartment dwelling, an overview of previous and alternative methods of ownership of high rise apartments is undertaken. The development of strata title legislation in both Malaysia and New South Wales is then examined.

Subsequent chapters examine the aim and scope of strata titles legislation in both Malaysia and New South Wales, procedures for condominium development and conveyancing legislation and practice relating to the purchase of a high rise apartment in each jurisdiction. Land Office procedures are also examined and a comparison made.

Following this, an account is given of recent extensions to the concept of strata title in New South Wales in the development of the ideas of Strata Title leasehold, retirement village schemes and most recently, the new concept of Community Title.

In the Conclusion, some suggestions and recommendations are made for overcoming current difficulties in the operation of strata title in Malaysia.

to study at this University, to Assoc, Prof. Dato' Nik Abdul Rashid for supervising my work, to my late husband Ameen for being patient, and to my sons Omar, Samir and Imran for letting me use the computer occasionally.

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CHAPTER 1

HISTORICAL BACKGROUND

According to the old English proverb "an Englishman's home is his castle", and no doubt the saying is true of everyone's home, whether it be an *istana,* a modest Malay house in the Kampung, an apartment in New York, or my favourite place, a house on the waterfront overlooking Smith's Lake in New South Wales, Australia. Today, many people's "castles" are situated not on the ground but in airspace, that is on one of the upper floors of a multi-storey building the ownership of which is shared with other people.

The concept of dividing ownership of a building between different persons goes far back in history. Freedman points out that our word "condominium" originated in Roman times[1] and that the concept of ownership of different parts of a building by different persons is at least as old as the Romans. However, it is only in the 20th century that serious attention has been given to the nature of property rights in airspace [2].

A look around the older parts of many cities in the world will reveal many buildings of two, three, or four storeys which are or have been inhabited for perhaps hundreds of years in the past. However, few of these inhabitants have had the privilege of ownership of their individual part of the building inhabited, and for those who did, the legal incidents of ownership were exceedingly complex.

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[1] W. Freedman & J.Alter, *The Law of Condominia and Property Owners' Associations,*.Quorum Books New York, 1992, p.1.
[2] according to Freedman, the first true condominium statute was adopted in Belgium in 1924, op.cit.p.2.

However, with the growth of cities due to the Industrial Revolution, and the development of modern building and engineering materials and techniques, millions more people have come to reside in multi-storey blocks of flats or apartments, or "condominia", and it has become necessary to develop sophisticated systems of legal ownership.

Halim Abdullah suggests that a distinction should be drawn between the "condominium" which he defines as a "luxurious dwelling with shared facilities like swimming pools, squash courts, security and a host of other facilities"[3] and "flats" or "apartments with facilities" which he sees as less desirable high-rise dwelling places. Although in Malaysia, it is true that the word "condominium" is normally used to describe a luxurious apartment in the upper price bracket in a development which includes many desirable facilities, this is not necessarily the meaning of the term in other jurisdictions.

In fact in New South Wales, with which a comparison is to be made in this thesis, the word "condominium" is not used at all. Any apartment in a strata title high rise building is referred to as a "home unit". In view of the wide variety and price range of high rise apartments being marketed, there does not seem to be any practical purpose in distinguishing between them in terminology. It is not possible to establish any clear point at which an "apartment" becomes a "condominium". The Malaysian Strata Titles Act refers only to "parcels", and therefore in this thesis the word "condominium" or "condominium unit" means the same as "apartment" or

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[3] Halim Abdullah, *Everything the Condominium Developer should have told you, but didn't*, 1992, p.3.

quality of facilities offered.

There are many reasons for people choosing or being obliged, to set up home in a high rise apartment. For some communities, there is so little land available and so great a pressure of population that there is no practical alternative to housing the population in high rise developments. The cities of Hong Kong and Singapore are typical examples of this problem. However, many residents of these high-rise blocks are public housing tenants rather than owners, though owner occupied condominia are common in these cities.

In other countries, people may choose condominium living for different reasons . One may be proximity to the city centre, as areas closer to the Central Business District of a large city are more likely to be developed or redeveloped as high density housing. For other owners, the purchase of an apartment allows them to move into a desirable neighbourhood at a cheaper cost than the purchase of a detached house. Another incentive to the purchase of a condominium apartment as a home may be lower maintenance, for those who are too busy or who do not have the inclination to maintain the garden of a detached house, and still another is the provision of community facilities such as swimming pools, tennis courts, indoor recreation facilities and security services in a condominium block, that the individual owner would not be able to afford by himself.

Municipal Councils and Local Government authorities may be willing to promote the development of condominia and medium density developments rather than low rise, as the former result in a lower cost provision of public utility services such as water, sewerage and elecricity, roads and community facilities.

In addition to purely residential condominium developments, various types of commercial, industrial, mixed use and special use condominia have evolved in some countries. The division of an office or factory block into a number of separate condominium units, enables the small business or factory owner to attain the security of ownership of his own business premises at reasonable cost. Mixed use developments allow urban properties to be developed with shops and offices on the lower floors and residential units on the upper floors.

The condominium concept has also been adapted to special uses as in the provision of retirement villages for the elderly, popular in the United States, Japan and Australia, resort developments, and in the United States, Freedman has identified a variation called a "Dockominia", namely the ownership of condominium units in a marina with the owners having joint riparian rights in respect of a neighbouring waterway [4].

Legal Ownership of Condominia

Over the years in different countries, at different times, a variety of different methods of legal ownership of high rise apartments or condominium units have been tried. In the United Kingdom where the system of land tenure is ancient and registration of title is still a recent innovation, the majority of high rise apartments are sold as long term leases, so that it is the lease of the apartment rather than the property itself which is being conveyed. The rental payable in respect of the lease may be only nominal, but the premium for the lease may be a substantial sum

[4] Freedman, op.cit.p.6.

that it allows the conduct of the lessee to be controlled to some extent in the interests of the lessor and lessees of other apartments. The disadvantages are that generally (but not apparently in the U.K.), leasehold title is less acceptable as security to mortgagees and as the lease draws to an end there is a lack of incentive on behalf of both lessor and lessee to maintain the property.

In the United States, the exact system of ownership varies from state to state, but generally an incorporated "Property Owners' Association" will be set up pursuant to a legal document called a "Declaration" which creates servitudes, easements and covenants running with the land and allows for individual ownership of condominium units with a joint ownership of common areas and facilities. Many features of this type of arrangement are similar to those adopted under strata title legislation in other jurisdictions.

Another alternative is the co-ownership through tenancy in common where apartment holders own the apartment building and the land upon which it stands as joint owners, or tenants in common. Each co-owner then enters into a separate agreement, or receives a lease, which may be for a short or long term of years to enable him to occupy "his" individual apartment. There are several disadvantages in this type of arrangement: Finance may be difficult to obtain as the security offered can only be part-ownership of a building; owners are jointly responsible for rates and taxes relating to the property as a whole rather than just their individual apartments; and co-operation between owners may be difficult when there are many owners involved or some of them fall out with others. Additionally, the supplemental agreement or lease containing covenants controlling the behaviour of occupiers could be frustrated if an owner sells his

agreement.

In New South Wales, before the advent of strata title, the most popular method of ownership of apartments in multi-storey residential buildings was through "Company Title". Under this method, purchasers bought shares in an incorporated private company and the company owned the apartment building and the land on which it stood. Again, each share-holder received a lease or an exclusive right to occupy a particular apartment, and relations between apartment holders were regulated by the Memorandum and Articles of the Company, which was itself subject to regulation under the *Companies Act*. The disadvantages of Company Title were again that financing was difficult to obtain, since the security offered was shares in the company rather than real estate. The owner of such an apartment was also unable to avail himself of the usual legal remedies of a landowner to protect "his" property and had to rely on the company to take actiion to enforce rights on his behalf.

Furthermore, it was not uncommon for a majority of shareholders to join together to pass resolutions which adversely affected the rights of other shareholders. The then *Companies Code* required that the memorandum or articles of a proprietary company must include a restriction on the right to transfer shares[5]. It was not unusual for that right to be exercised in such a way as to give existing directors the right to refuse the transfer of shares (and thus the right to occupy the property) to a purchaser of whom they did not approve, and/or to restrict a shareholder's right to lease out his apartment. Much expensive litigation resulted

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[5] S34(1). The equivalent provision of the current *Corporations Law* is S116(a).

powers of directors[7]. A further disadvantage was the cost and complexity of complying with regulations which were intended to regulate trading companies under Companies legislation rather than regulating land ownership. It is interesting to note, however, that recently in Malaysia a call has been made for strata title to be abolished in exchange for shares in an incorporated company[8]. A Supreme Court judge, Tan Sri Harun Hashim has suggested this course of action as a way of overcoming current difficulties in Malaysia of collecting assessments and quit rent from multiple proprietors, but a study of the New South Wales experience should reveal that the difficulties created by Company title are far greater than those experienced under properly set up and managed strata title schemes.

The Development of Strata Title

A good system of title to land will have the following attributes: - it will be reliable, safe, cheap and simple and will be suitable for the needs of the society which operates it. These objectives were met by the founder of the Torrens system of title registration , Sir Robert Torrens when he developed the system named after him in South Australia in 1857. Under the Torrens system, for each parcel of real property, or lot, there is only one document of title, called the Register Document of Title in Malaysia, and the Certificate of Title in N.S.W., which contains all the essential legal information about the title - the name of the registered proprietor(s), a description of the property, and a notification of any encumbrances. Any person

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[6] *Crumpton v Morrine Hall Pty.Limited* (1965) NSWR 240.
[7] *Magill v Santina Pty.Limited* (1983) 1 NSWLR 517.
[8] see "Shares for Strata Titles" in *The Leader*, 15.10.1993, p.12.

which are not noted on the title deed[9], and so can safely rely on that deed, which is guaranteed correct by the state. Conveyancing under the Torrens system is much simpler than previous systems because it is not necessary to conduct any investigation of prior title, and is therefore also much cheaper.

The Torrens system achieved remarkable success, not only on its Australian home ground[10], but also it was adopted in many overseas jurisdictions. It is therefore not surprising that when Strata Title was developed as an extension of the Torrens system, that it was also adopted in jurisdictions outside Australia.

The Beginnings of Strata Title Legislation

The first strata title type legislation was the *Transfer of Land (Stratum Estates) Act* 1960 of Victoria. This provided for the subdivision of a building into "stratum estates" and for a service company to be formed to hold all the common parts of the building and the land upon which it was erected. The service company entered into service agreements relating to maintenance, insurance and payment of outgoings with each proprietor, and service agreements could be registered with the Registrar of Titles. The purchaser of each apartment received shares in the service company attached to his stratum estate[11].

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[9] Apart from some few exceptions. In N.S.W. these are short term leases, mining leases, rates and taxes which are a charge on the land, notices of resumption, volunteers and rights *in personam*.
[10] All Australian states have current strata titles legislation. For a full list of all legislation, see Sackville & Neave *Property Law: Cases & Materials*, 1988, p.519.
[11] For a full account of this legislation see Sackville & Neave, *op.cit.* p.518.

improved upon the earlier Victorian act. Instead of the service company, provision was made for a body corporate to come into existence automatically upon registration of the strata plan and it was endowed with certain powers without the need for the making of separate service agreements with individual proprietors. The common property was held by the proprietors as tenants in common in shares proportionate to their unit entitlement, and the certificate of title issued by the Registrar-General specified the share entitlement to the common property of each lot. This share passed automatically on transfer of the property without needing to be mentioned specifically in any sales agreement.

The 1961 N.S.W. act also made provision for cross easements of support and services. It also provided for by-laws to control the use and administration of the lots and common property and established most of the features now recognised as necessary components of a strata scheme.

In 1973 this act was repealed and replaced by the *Strata Titles Act* 1973 which was much more complex and detailed but similar in most essential features to the earlier act. Some differences from the previous act were that title to the common property was now to be vested in the body corporate holding it on behalf of all the proprietors as tenants in common[12], the by-laws were strengthened and in place of detailed provisions for cross easements, the act simply prohibited a proprietor or occupier from interfering with services such as pipes or wires, or from doing anything to interfere with the shelter and support of other proprietors. The range of

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[12] This avoids the necessity of altering the certificate of title to each lot in the event that any part of the common property is leased or transferred, or if additional common property is acquired. See Sackville & Neave, *op.cit.*, p.520.

was made for a Council to be elected to carry out day to day management. The idea of a Strata Titles Commissioner and Strata Titles Board to hear and determine disputes arising out of the operation of the strata scheme was also introduced by this act. In short, the N.S.W. act assumed its modern form.

To sum up, therefore, Strata Title, as provided for in the above act, allows the principles of the Torrens system to be applied to the horizontal division of airspace, although it can also be used for vertical subdivision of land and buildings , as it is also used exclusively for ground level villa and townhouse subdivisions in New South Wales.

Strata Title allows a purchaser of an apartment in a high rise building (or other strata development) to obtain ownership in fee simple of his or her parcel of airspace, with a separate document of title evidencing that ownership, and the right to freely transfer, lease, or mortgage that apartment as the owner sees fit.

Strata Titles in Malaysia

Strata Title was first introduced into Malaysia by way of certain sections of the *National Land Code* 1965 which dealt with "subsidiary" titles[13]. This was a response to the rapid growth of urbanisation which was taking place at that time and the need to resettle urban squatters, as well as a demand from the public for the right to own their own flats and apartments[14]. As in other jurisdictions, previous

[13] Sabah and Sarawak have their own strata titles legislation, *viz. Sabah Land (Subsidiary Title)* Enactment 1972 & *Sarwak Strata Titles Ordinance* 1974.
[14] Teo Keang Sood, *Strata Titles in Malaysia*, 1987, p.1.

through leases and tenancies in common, but these were found to be subject to the same types of disadvantages as had been experienced elsewhere[15].

In time, it became clear that there were some major shortcomings in the *National Land Code* provisions, and in fact few subdivisions were successfully carried out under the Code[16]. Some of the outstanding problems were as follows:-

1. There was no obligation on a developer to apply for subdivision of a building even though he might have sold apartments in it to third party purchasers. These purchasers could thus find themselves in the position of having paid in full for their apartment, but with no prospect of obtaining legal ownership of it.

2. Lack of legal title resulted in difficulties in financing for purchasers who could only obtain an assignment of the vendor's rights under the contract with the developer, and complex and uncertain legal arrangements with lending bodies and developers. For example, where a purchaser required a loan from a lending institution to finance his purchase, this could only be effected by assignment of his equitable interest to the bank with subsequent reassignment on repayment of the loan.

3. Some unscrupulous developers used units already sold as security for further loans or did not use money received from purchasers to discharge their own indebtedness in respect of charges on the main title. The cases of *Kuching Plaza*

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[15] *ibid*. p.8, n.7.
[16] Wong Kim Fatt, "Strata Titles in West Malaysia" in Ahmad Ibrahim & Judith Sihombing (eds.) *The Centenary of the Torrens System in Malaysia*, 1989, p.121 at p.122.

Supreme Finance Bhd[18] illustrate the problems of an innocent purchaser in this position[19]. They ran the risk of finding that the unit they had purchased and paid for was included in the property auctioned off by the developer's chargee when it foreclosed against the defaulting developer.

4. Provisions relating to subdivided building were located in various parts of the Code rather than being grouped together for easy reference.

5. Provisions were not adequate to deal with innovations and technological change in the building industry[20].

In 1985 the provisions relating to the subdivision of buildings under the National Land Code were repealed and replaced by the *Strata Titles* Act 1985. The new Act added new provisions and concepts borrowed from the N.S.W. *Strata Titles* Act and the Singapore *Land Titles (Strata)* Act[21] to the principles originally contained in the *National Land Code* of 1965. The Act was amended in 1990 to overcome some apparent defects in the 1985 legislation. New provisions were added relating, *inter alia,* to accessory parcels, time limits for compulsory application for subdivision, encroachments, and provisional blocks.

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[17] (1991) 3 MLJ 163
[18] (1992) 1AMR 42:81
[19] These cases are discussed in detail in Salleh Buang's article "Buying Property without Title: how safe is your investment?" in *Malaysian Law News,* April 1993 p.17.
[20] Khaw Lake Tee,"Land Law" in *Survey of Malaysian Law*, 1985, p.298.
[21] Cap.277 1970.

resolved in relation to the operation of the Act in Malaysia. Steve Sya Lieng Siew has identified these as follows[22] -

1. Delay in the issuance of strata titles;
2. Developers subjecting the main title to further encumbrances before issuance of strata titles;
3. Buildings or facilities not being built according to expectations or specifications;
4. Management problems, particularly the issue of enforceability of by-laws

These will be discussed in detail below.

Strata Titles in N.S.W

The N.S.W. *Conveyancing (Strata Titles)* act of 1961 was a resounding success. At the time of its repeal in 1973, some 8,500 strata plans had been registered containing more than 100,000 strata lots. These included commercial as well as residential developments.

The 1973 *Strata Titles* act which replaced it has continued to be the successful foundation of many thousands of strata schemes which have since been registered in New South Wales[23].

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[22] "Subdivided Buildings: Practical Legal Problems" in *Malaysian Law News*, February and March 1993 at p.36 and p.5 respectively.

[23] According to L.Robinson *Strata Title Units in N.S.W.*, 1989, p.1, as at January 1989, there were 26,000 strata plans registered in N.S.W., containing more than 250,000 individual lots. By way of contrast, as at 30 June 1986, 81 strata registers and 3 subsidiary registers (in Sarawak &

However, this act has been amended several times since, in an attempt to streamline its operation and to introduce further improvements and it was the subject of a detailed review by the N.S.W. Government's Strata Titles Act Review Committee during 1992, with a view to identifying its present limitations and recommending the appropriate legislative changes. The Committee's report was submitted to the N.S.W. Minister for Housing in May 1993. Many areas of the operation of the act were considered prior to the report including the need for a more precise definition of "common property", the qualifications and possible liability of office bearers of a body corporate, insurance issues and the need to prescribe a formula for the allocation of unit entitlements[24].

Except for some difficulties concerning the issue of enforcement of by-laws, the matters which have been mentioned above as problems in Malaysian strata titles schemes are not problems in the operation of strata titles legislation in N.S.W. Why, then, do these differences exist when the legislation is so similar in principle and the Malaysian act was in fact modelled largely on the N.S.W. one?

To ascertain the reasons, it may be instructive to compare the content and provisions of the two acts, and also to look at some practical aspects of their administration and operation, such as the procedures followed in the respective Land Office and Land Titles Office, and also to look at conveyancing procedures which are followed in each jurisdiction. These tasks will be attempted in the following chapters.

Sabah) had been opened in Malaysia, accounting for 2,229 strata/subsidiary titles, according to Teo, *op.cit.* p.7.

[24] NSW Government, Strata Titles Review Act Committee, Discussion Paper, August 1992, p.68

CHAPTER 2

A COMPARISON OF THE STRATA TITLES ACT (1985) MALAYSIA WITH THE STRATA TITLES ACT (1973) NEW SOUTH WALES

Aim and Scope of the Legislation

As previously noted, the Malaysian *Strata Titles* act of 1985 was largely based on the first N.S.W. Strata Titles act in 1961. The aim of that act was to permit the horizontal division of airspace with the view that owners of apartments in multi-storey buildings would be given the advantages of the Torrens system and have a separate document of title to their own apartment, which could be freely transferred, charged or leased without reference to other proprietors in the building.

Both the Malaysian act and the N.S.W. act give effect to this principle. However, the Malaysian act envisages that in every case of strata title, a multi-storey building will be subdivided, whilst the N.S.W. act is broader in concept, and refers in the preamble to the act, to "the subdivision of land into cubic spaces and the disposition of titles thereto" In practice in N.S.W., almost all medium density developments which would be called "link houses" in Malaysia, are also developed under strata title, whether they are single storey or two storey dwellings.

the N.S.W. act is to be read and construed with the *Real Property* Act (1900)[2].

The N.S.W act is considerably longer with 160 sections than the Malaysian act, which has 85 sections, and the N.S.W. act is considerably more complex.

<u>The Interpretation Sections</u>

There are many similarities in definitions in the interpretation sections, S4 and S5 respectively. Very similar definitions have been given of terms such as "common property", "council", "initial period", "original proprietor" and "strata roll". Some other definitions are quite similar but have a slightly different meaning. For example, "floor" in the Malaysian act refers to "the area occupied by a parcel", whilst in N.S.W., it means "the area occupied on a horizontal plane by the base of (a) cubic space".

The most confusing aspect of the terminology used in the acts is the fact that in Malaysia, a "parcel" refers to one of the individual units in the building, and a "lot", while not defined in the section, means the land upon which the subdivided building is erected. In both N.S.W. and in the Singapore act[3], which provided the other model for the Malaysian legislation, the terms are used with the opposite meaning. A "lot" means the individual unit in the building, and a "parcel" is "the land comprising the lots and common property the subject of a strata scheme", as

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[1] S5
[2] S6
[3] *Land Titles (Strata) Act* (Cap.277,1970).

legislators seen fit to use the same definitions.

There is a difference between the Malaysian and N.S.W. acts in the conception of exactly what is included within the boundaries of a parcel or lot. S13(3) of the Malaysian act states that:

> "...the common boundary of any parcel of a building with any other parcel, or with any part of the building which is not included in any of the parcels, shall, except in so far as it may have been otherwise provided in the relevant storey plans, be taken to be the centre of the floor, wall or ceiling as the case may be".

This matter was considered by the court in the case of *Lee Wah Bank Ltd. v Chi Liung Holdings Sdn. Bhd*[5], where the appellant bank which was the owner of a parcel in a subdivided building wanted to install an Automated Teller Machine through the wall separating their premises from the exterior of the building. The Federal Court held that the appellants could not own the exterior wall as the common boundary was the centre of the wall and therefore they could not install the machine without the consent of the respondents.

In N.S.W., S5 defines a "lot" as follows:

> " 'lot' means one or more cubic spaces forming part of the parcel to which a strata scheme relates, the base of each such cubic space being designated as one lot or part of one lot on the floor plan forming part of the strata plan, a strata plan of subdivision or a strata plan of consolidation to which that strata scheme relates, being in each case cubic space the base of whose vertical boundaries is as delineated on a sheet of that floor plan and which has horizontal boundaries as ascertained under subsection (2), but does

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[4] S6
[5] (1984) 2 MLJ 262

has boundaries described as prescribed and is described in that floor plan as part of a lot";

It is little wonder that a member of the Strata Titles Review Committee complained that many strata unit owners did not understand where the boundaries of their lot were, and were not aware that they owned only the airspace of their premises[6]. It is not surprising also, given the wording of the above definition, that the same Committee also suggested that many problems could be solved if the act could be put into plain English[7].

Under the N.S.W. legislation unit proprietors do not own any part of the wall between their unit and neighbouring units or common property. The boundaries of the lot are the surfaces of the walls, ceiling and floor. This concept has given rise to disputes about whether, for example, the body corporate is reponsible for replacing damaged wall paper of a wall inside a lot, since the wall is common property. Gary Budgen says that there are two points of view about what constitutes the "surface" of a wall - one includes the paint or wall paper on the wall as common property while the other says that the wall begins where the structure of the wall begins i.e.at the surface of the plasterboard or cement which makes up the wall itself[8]. The latter would seem to be the more sensible view since individual unit owners can decorate their walls to their own taste and budget and it would not be fair, in the event of damage, for the body corporate to have to bear the cost of expensive redecorating of a wall in one unit while the unit next door might only need to be repainted. However, the question remains unresolved at the present time.

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[6] "Strata review aims to provide more flexible law" in *The Weekend Australian, 1-2 May 1993.*
[7] ibid.
[8] *Strata Title Management in N.S.W.*,1985 p.8.

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However, while there are some uncertainties in the N.S.W. definition, as discussed above, it would seem to be a more practical approach to the definition of boundaries than that adopted under S13(3) of the Malaysian act. In Malaysia, the proprietor of each apartment shares half of the structure of each ceiling, floor and wall either with a neighbouring proprietor or with the management corporation as trustee of the common property. Teo points out that this has a potential for problems to arise, for example if repairs are required to a door or window, it may be impossible to repair one side without affecting the other[9]. In situations where it is impossible to ascertain whether damage has occurred to only one side of a wall or right across it, it will be difficult to ascertain who must pay which proportion of the repair bills. This problem came before the court in Victoria, under a similar provision of the Victorian *Strata Titles Act* 1967 in a situation in which a defect in the construction of a wall had allowed damp to enter the applicant's apartment. The court found it impossible to ascertain the exact extent of the defect and decided that as the wall was jointly owned by the parties in question, they had a joint responsibiity to repair it[10]. On the other hand, under the definition adopted by the N.S.W. act which avoids this kind of difficulty, it could theoretically be necessary for a proprietor to obtain the body corporate's permission before nailing a picture hook into the wall, though as Teo points out, this problem can easily be overcome by the adoption of a by-law allowing such activities so far as they do not constitute damage to the common property[11].

The Malaysian act includes a definition of an "accessory parcel" as "any parcel shown in a strata plan as an accessory parcel which is used or intended to be

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[9] Teo, *op.cit.* p18.
[10] *Simons v Body Corporate Strata Plan No.5181*, [1980] V.R. 103.
[11] Teo, *op. cit.* n.98, p.19.