

HKIS CPD

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Land Boundary Related Court Cases

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Acknowledgment

- Land Surveyor firms provided court case numbers
 - S C Leung, Ted Chan & Sam Mak
- Information search from Judiciary, LR, DSO, Newspapers, Hong Kong Cases (Butterworths) & HK Law Reports

Legal Reference System

- <http://legalref.judiciary.gov.hk>
- Judgments 1946, 1948, and from 1968 onwards :
- Court of Final Appeal (since 1997)
- Court of Appeal of the High Court
- Court of First Instance of the High Court
- District Court
- Lands Tribunal

Court cases on web

- A tremendous improvement in court case searching
- **Reported & Unreported cases**
- Only those cases the Judge thinks that should be referenced (A new precedent)
- Magistracy - summary offence

Courts in 2004

- Small Claim - \$50,000
- District Court - up to \$ 1 million
- High Court
 - Court of First Instance
 - Court of Appeal
- Court of Final Appeal

Court Order 113 vs Adverse Possession

- Recover land occupied by trespasser -
Court Order 113
- Defend by Adverse Possession
- Defend by Wrong land boundary records

- Clear address
- Non-boundary adverse possession

- Uncertain lot boundaries
- Boundary related adverse possession
- Land & Building

Adverse Possession

- Roman Law - peaceful possession for a very long time.
- Limitation Ordinance [Cap 347]
 - 12 years after 1991 on private lots
 - 60 years on Govt Land
- Proof of **occupation** and **intention**

- 1973 New Territories (Renewable Government Leases) Ordinance
- Lam Island case 1996 Privy Council
 - "the legislation cannot have been intended to prejudice the position of squatters in this way"
- Consolidated Subject Index - Ad Pos ([Butterworths](#) on line)
- No boundary dispute subject index

Boundary related
Adverse Possession
Court cases

1. Kung Wong Sau Hin et al v SzeTo
Chun Keung et al
2. Cheuk Chau Co. v Chau Kwan Nam
et al
3. Tam Mo Yin et al v Attorney General
4. Tang Tim Fat et al v Chan Fok Kei
et al
5. Sung Mei Chi v Stone Target Ltd
6. Wan Kai Wah v Leung Man Fai

Kung Wong Sau Hin v SzeTo Chun Keung

- HC Miscellaneous Proceedings 1614 of 1990
 - Appeal Court 61-63 of 1996
 - Privy Council 30 of 1997
-
- Defendant (Appellant) got a Crown Land **Permit** in 1961 but was wrongly sat in Plaintiff's land in DD 124, and it was cancelled by Govt when problems occurred.

Cheuk Chau Co. v Chau Kwan Nam et al

IN THE SUPREME COURT OF HONG KONG
MISCELLANEOUS PROCEEDING



IN THE MATTER of Order 113 of the
Rules of Supreme Court of Hong Kong
and

IN THE MATTER of Portion of Lot
No.4209 in D.D.124 (formerly known
as Lot No.3965 in D.D.124) in Tan
Kwai Tsuen, Hung Shui Kiu, Yuen Long,
New Territories

BETWEEN

CHEUK CHAU COMPANY LIMITED

Plaintiff

and

1st Defendant



- 1: 4000 DD Sheet ; 0.82 ac
- Land record showed that Lot 3965 extended beyond the fence and to include a strip of land occupied by defendants.
- Defendants with Permit
- 3 generations of occupation

- In-situ Surrender & Re-grant (change of use only) Lot 3965 -> Lot 4209

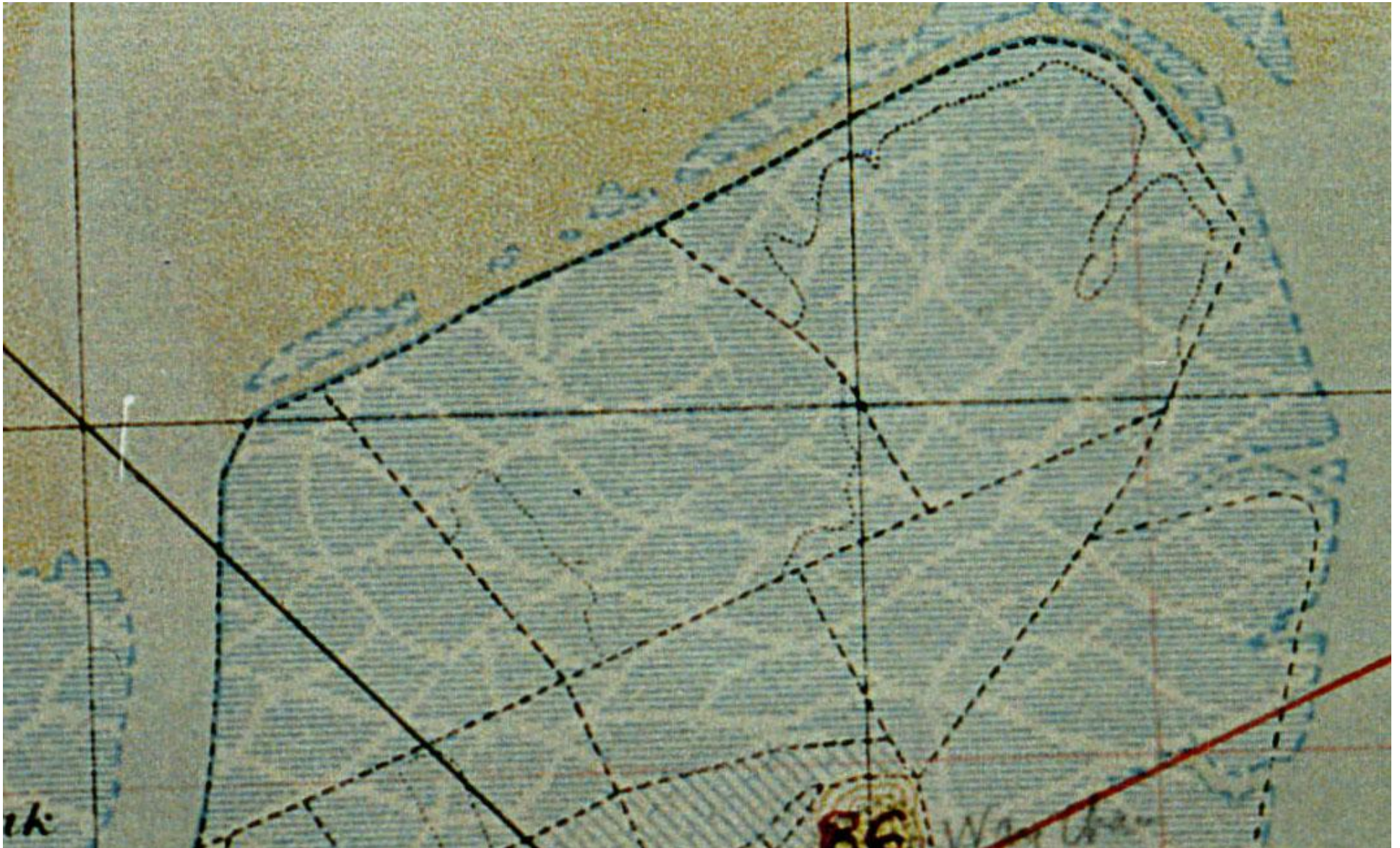
Tam Mo Yin v Attorney General



1929 Air-photo



1930 1:20000 4-color topo





1963 Air-photo

Judgment on Tam Mo Yin case

- Lot 1510
 - 1931 land sale area 126 acres
 - Occupation exceeded 1,344,000 sq ft
- Title claim - held
 - Grantee fulfilled the conditions of sale
 - Lease survey procedure not completed by Govt
- Adverse possession claim - dismissed by 73' break

Tang Tim Fat v Chan Fok Kei

- HCA 7338 in 1989
- Lot 48B DD 128
- Trespass v prescription use on a path
- Surveyor "T" scaled width of road from topo maps 60s - 70s
- Judge : just map symbols
- Judgment : footpath; not vehicle road

Sung Mei Chi v Stone Target Ltd

- 1991 High Court A8583
 - Unreported (Butterworths) HKCU 51, 1995
 - Now on LRF Judiciary
- Classic boundary record problem
- Order 113 v Adverse Possession

- Plaintiff

- Lot 2081 BRP DD 111

- 4000 sq ft

- Defendant

- Abutting lot owner

- Built a Petrol Station

- Encroached 800 sq ft on Plaintiff's lot

- "On 17 January 1991, the defendant commenced building works for a petrol station on what, I have no doubt, it **believed was its own land**. Unfortunately, part of the petrol station, to the extent of about 800 square feet, was built on 2081 and not, as the defendant probably assumed, on part of 2095."
- "Given the state of the survey demarcation of lots in the New Territories, this mistake by the defendant is not surprising, and, I suppose, **not uncommon**."

IN THE COURT OF APPEAL

1995, No. 56 (Civil)

BETWEEN

SUNG MEI CHI Plaintiff(Respondent)

And

STONE TARGET LTD Defendant(Appellant)

Appellant claimed Adverse Possession
Appeal dismissed

- **COURT OF FIRST INSTANCE**
- ACTION NOS.10622 AND 10623 OF 1994
- WAN KAI WAH v LEUNG MAN FAI
- Judgment delivered in June 2002

- *"a trespasser in wrongful occupation of the land.....in adverse possession of both Section D and Section E since 1959."*
- *Lot 218 DD 185 Shatin*

- SC Leung for Defendant; *"His expertise can hardly be challenged. "*

- Defendant won the case through Ad Pos

Boundary Dispute Court Cases

1. The House of Dior Ltd v David See Chai Lam and the Ka Wah Bank Ltd
2. Lintock Company Ltd v The Attorney General
3. Wu Muk-fung v Vocalion Estates Ltd
4. Man Kam Tong v Man Lin Tai
5. Lam Pak Kau v Yu Yuet Fat
6. Nishimatse, Dragages and AG v Tang Clan of Wing Lung Wai

7. Niceboard Development Ltd v China Light & Power Company Ltd
8. Tang Wai Tak v Wong Hung Sun
9. Shing Wai On and Shing Wai Pong v Wong Yuen Chi and Wong Wai Man
10. Ng Hung Hing and Shum Ying v Cheung Kwong Yin
11. Metrocore Enterprises Ltd v Philip Pang & Co.

Dior v David Lam (Ka Wah Bank)

- Supreme Court No.2564 of 1971
- Lot 535 in DD 187
- Garden lot 190' x 71' (13490sf)
- 1952 land auction

General Conditions:

4. \$6 for each boundary stone

5. finish construction in 24 months

14. “The exact area, boundaries and measurements of each lot shall be determined before the issue of the Crown Lease and the Premium and Crown Rent shall be when adjusted in accordance with the area and the amounts of Premium and Crown Rent at which the lot was sold.”

Section A

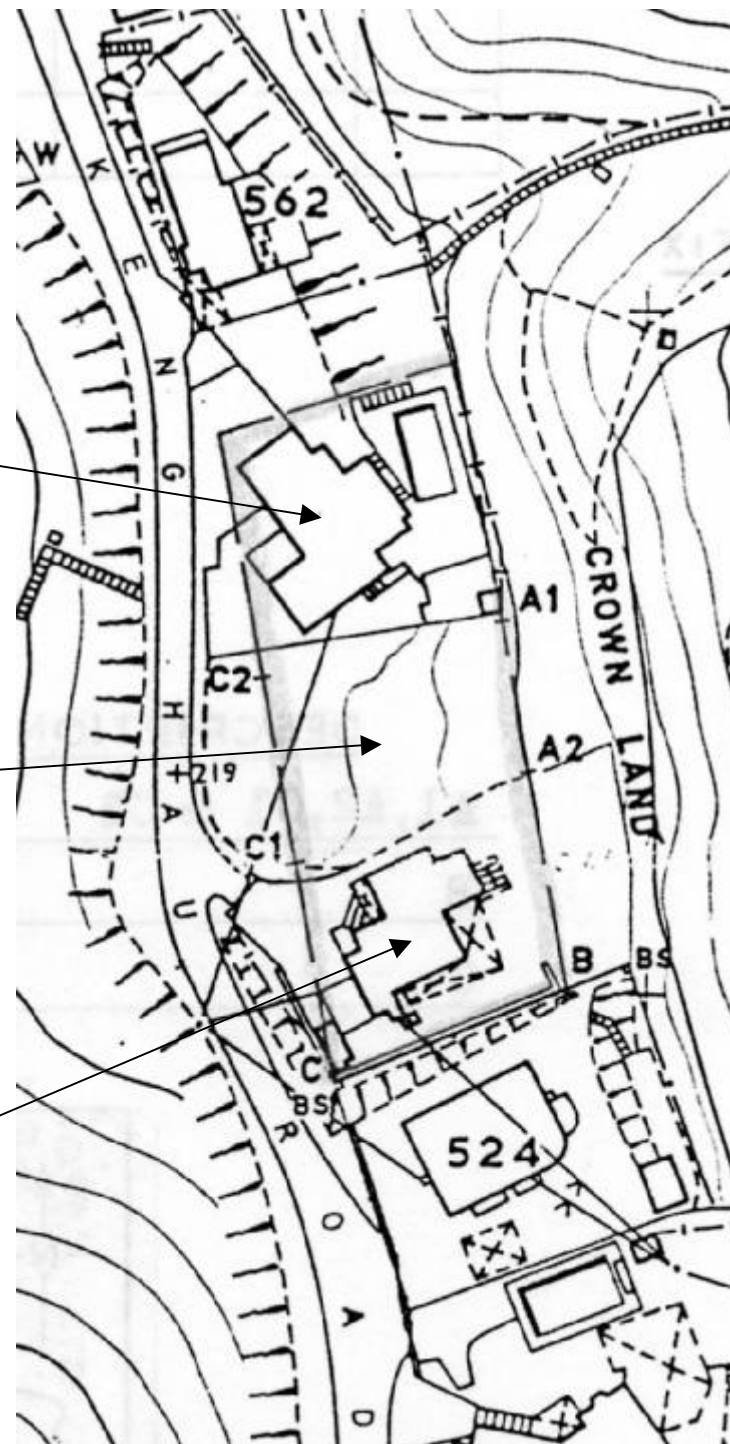
65' x 71' 4615 sf 1956

Section B

62.5' x 71' 4437.5 sf 1957

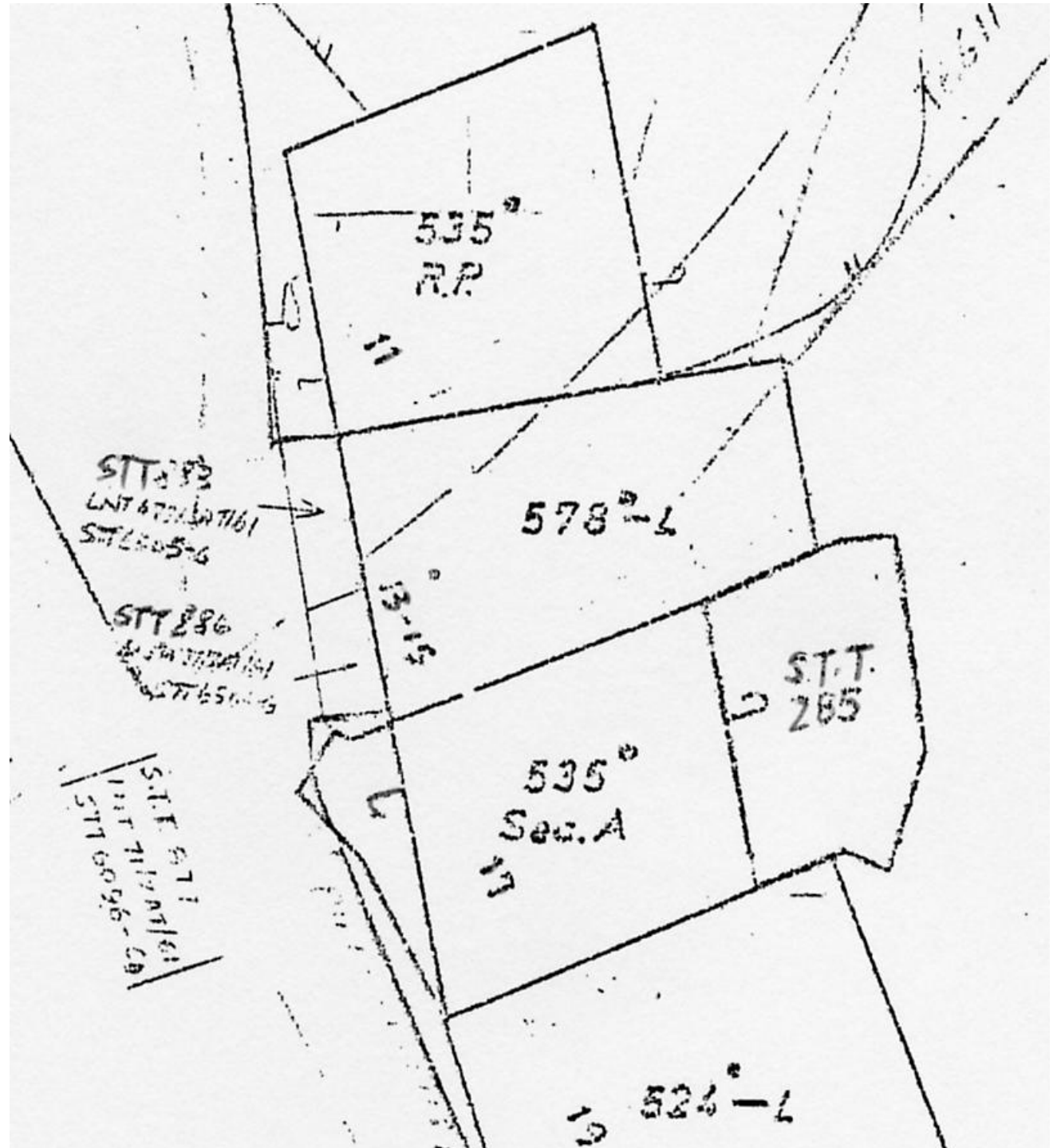
RP

62.5' x 71' 4437.5 sf



- No survey until 1970 when S.B applied for a survey
 - S.B occupied 3940 sf (497.5sf short)
 - A parallelogram instead of a rectangle
-
- Judge Simon Li "Gross inefficiency on the part of the New Territories Administration"

Land Record in 80's



CACV000011/1973

IN THE SUPREME COURT OF HONG KONG
(APPELLATE JURISDICTION)

CIVIL APPEAL NO. 11 OF 1973

(On appeal from O.J. Action No. 2564 of 1971)

Coram: Full Court (Blair-Kerr, S.P.J., McMullin and Pickering, JJ.)

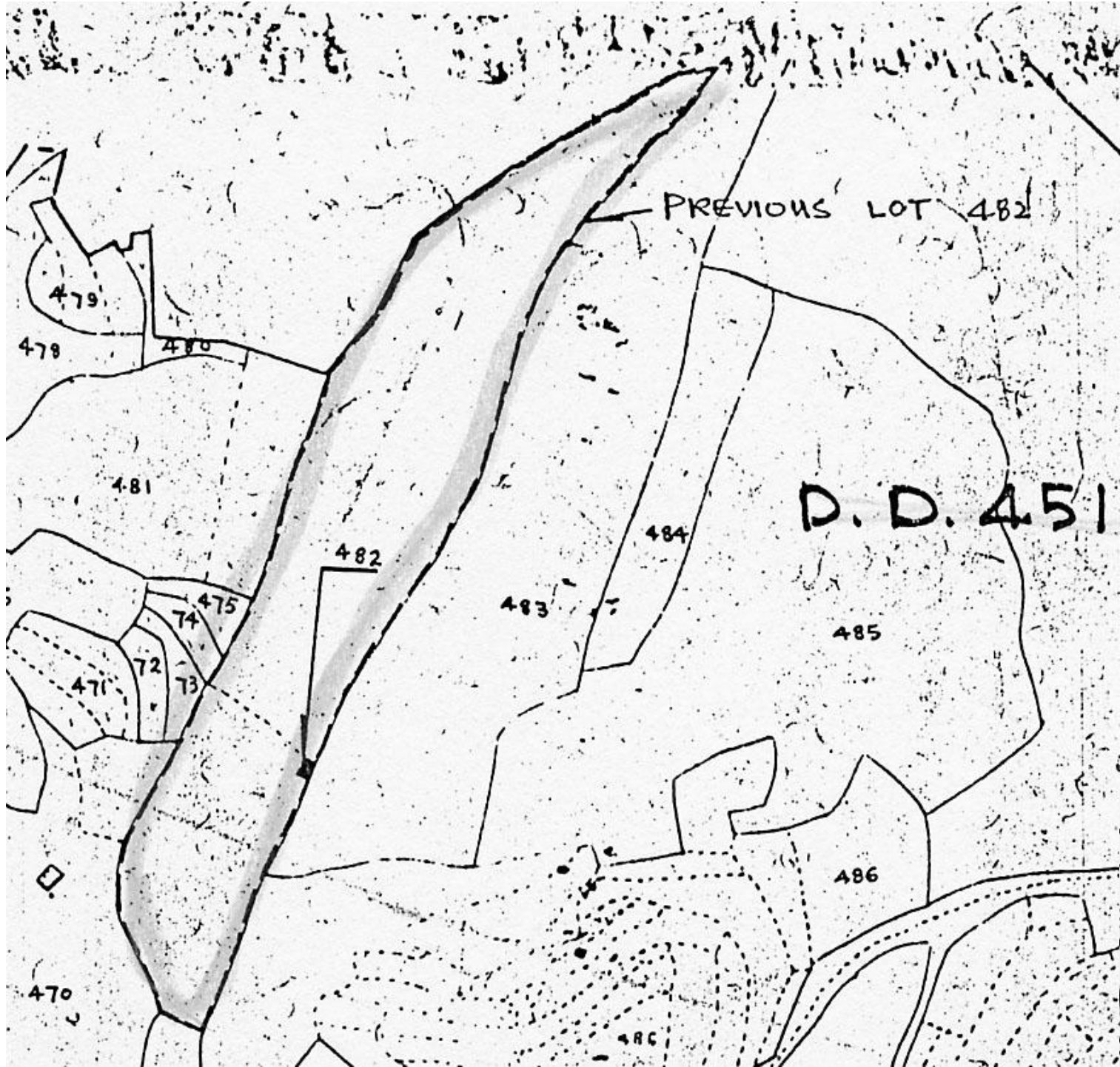
Date of Judgment: 1 June, 1973.

I find the 1st defendant's arguments relating to the shape of the lot difficult to understand.....thereby suggesting that the present owners of Section A had **encroached** on the plaintiffs' land.

there should be an order for possession in favour of the plaintiffs in respect of the 497.5 sq. ft.

Lintock Co Ltd v AG

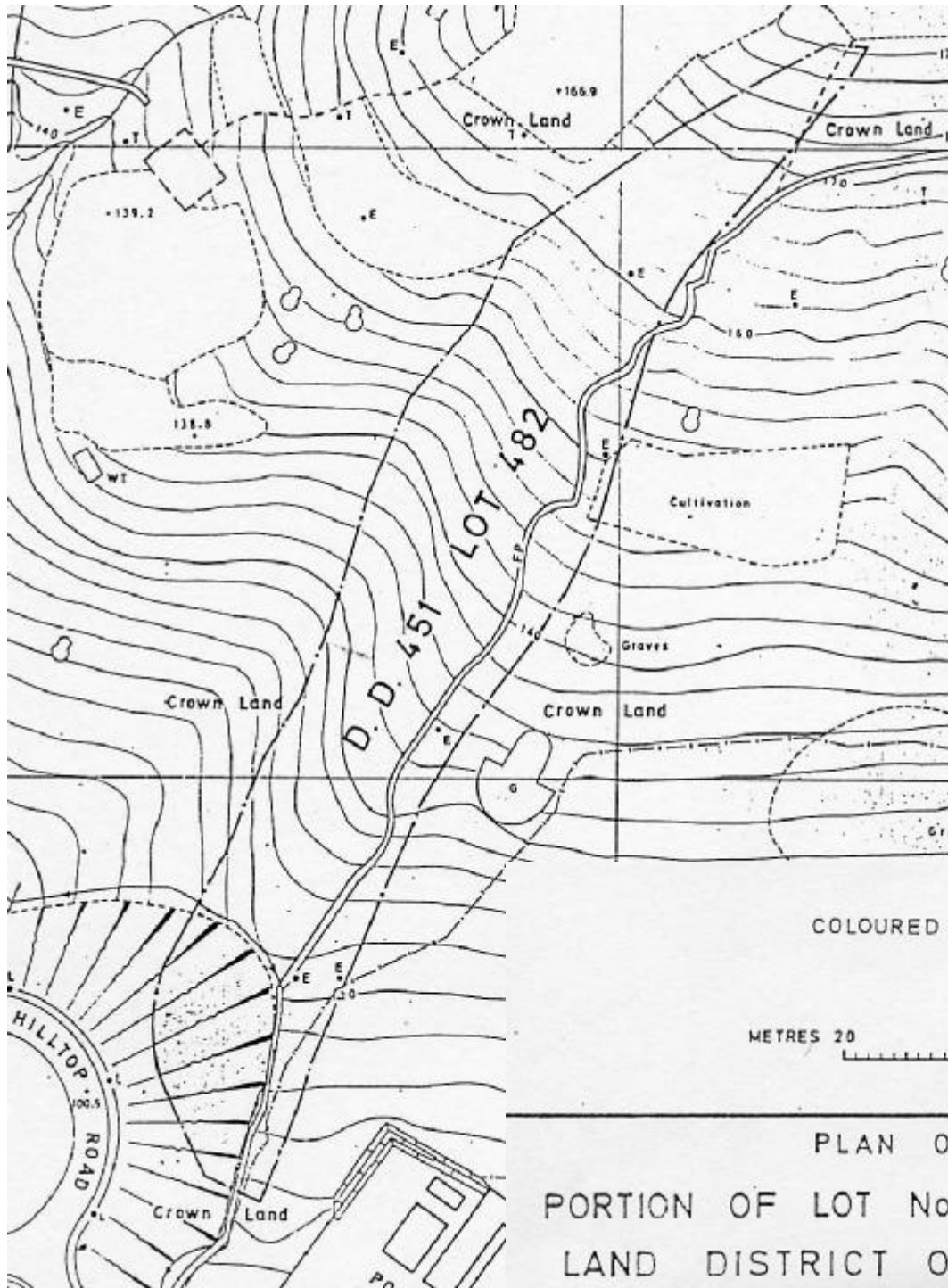
- Mr Kwok Ping Sun transacted the land to Lintock Company Limited to take up the case with the HK Govt. (HCA 8520 of 1982)
- Area on DD 1.27 ac
- Area in Schedule 0.127 ac
- Use 2nd class house
- Rent 50 cents



DD
Sheet

1:1980





Site Plan

For resumption
negotiation on the
southern slope

COLOURED PINK AREA 630.3 SQUARE METRES

SCALE 1:1 000

METRES 20 0 20 40 60 80 100 METRES

PLAN OF
PORTION OF LOT No. 482 IN D.D. 451
LAND DISTRICT OF TSUEN WAN

File Ref.	LND 730/NLT/79
Survey Sheet No.	7-SW-11B
Layout Plan No.	—
Engineering Drg. No.	—
PLAN No.	TW 1107c

- Unreported appeal case
- Lintock v AG in 1997
- Appellant relied on "a survey plan prepared by Land Surveyor/Tsuen Wan in March 1983 showing the area encroached onto the lot by a cut slope amounting to 630.3 sq m" [Leung, C., 1999, SM Range]
- The plan had been presented before Judge Hunter; appeal dismissed.
- Comment: Is the Govt responsible to provide a secure land property market?

Wu Muk-fung v Vocalion Estates Ltd

HCA 902 in 1986

Plaintiff Lot 8B DD 212

Defendant Lot 8A Sai Kung

Brick wall built by defendant

Plaintiff Surveyor "L" DD best accuracy 1.5
m; his plot accuracy 1 m

Defendant Surveyor Sam Mak

DD accuracy 3 - 5 m

Judgment for Defendant

Man Kam Tong v Man Lin Tai

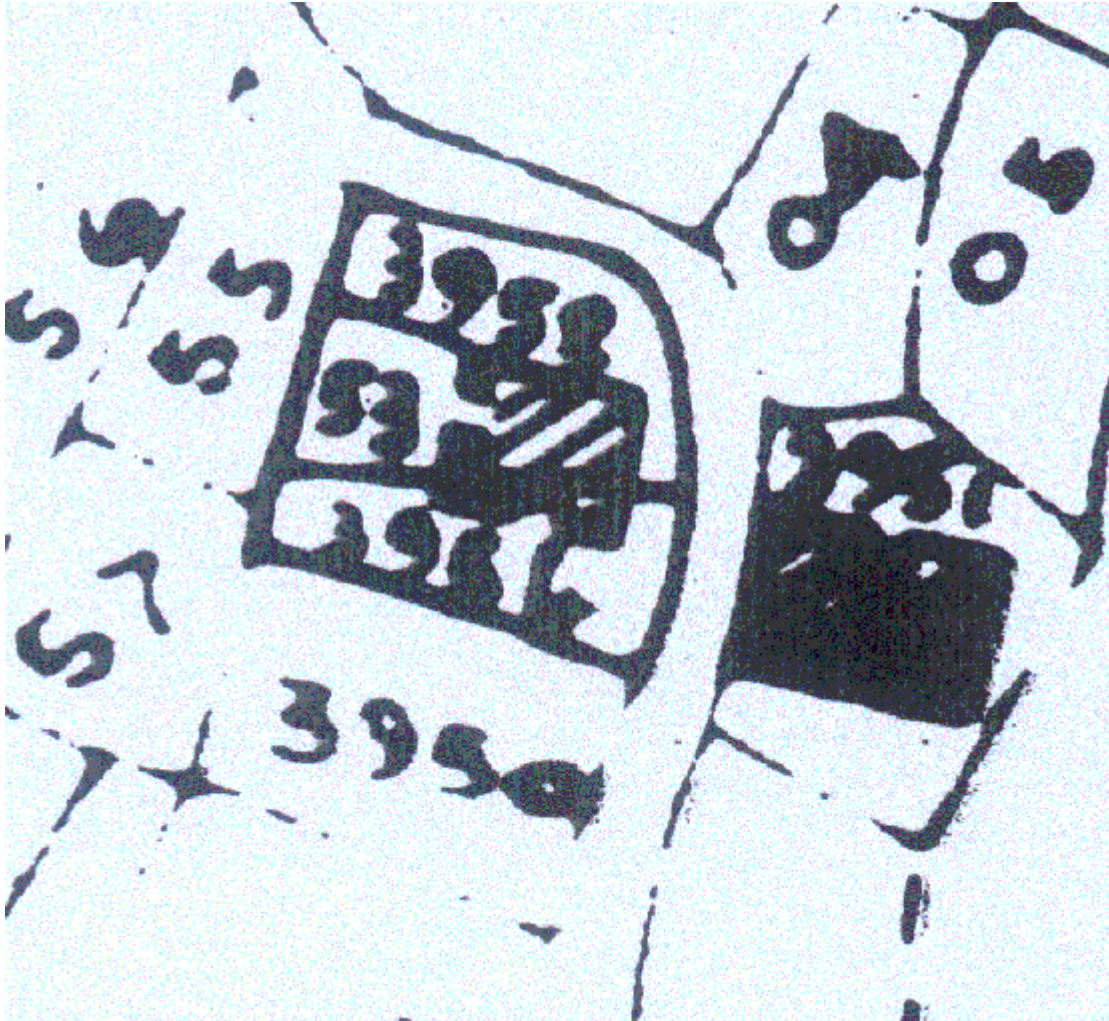
HCA 5478 in 1981

Plaintiff Lot 3954

Defendant Pok Wai House Lot 114, 144

Defendant's lots not found on land records

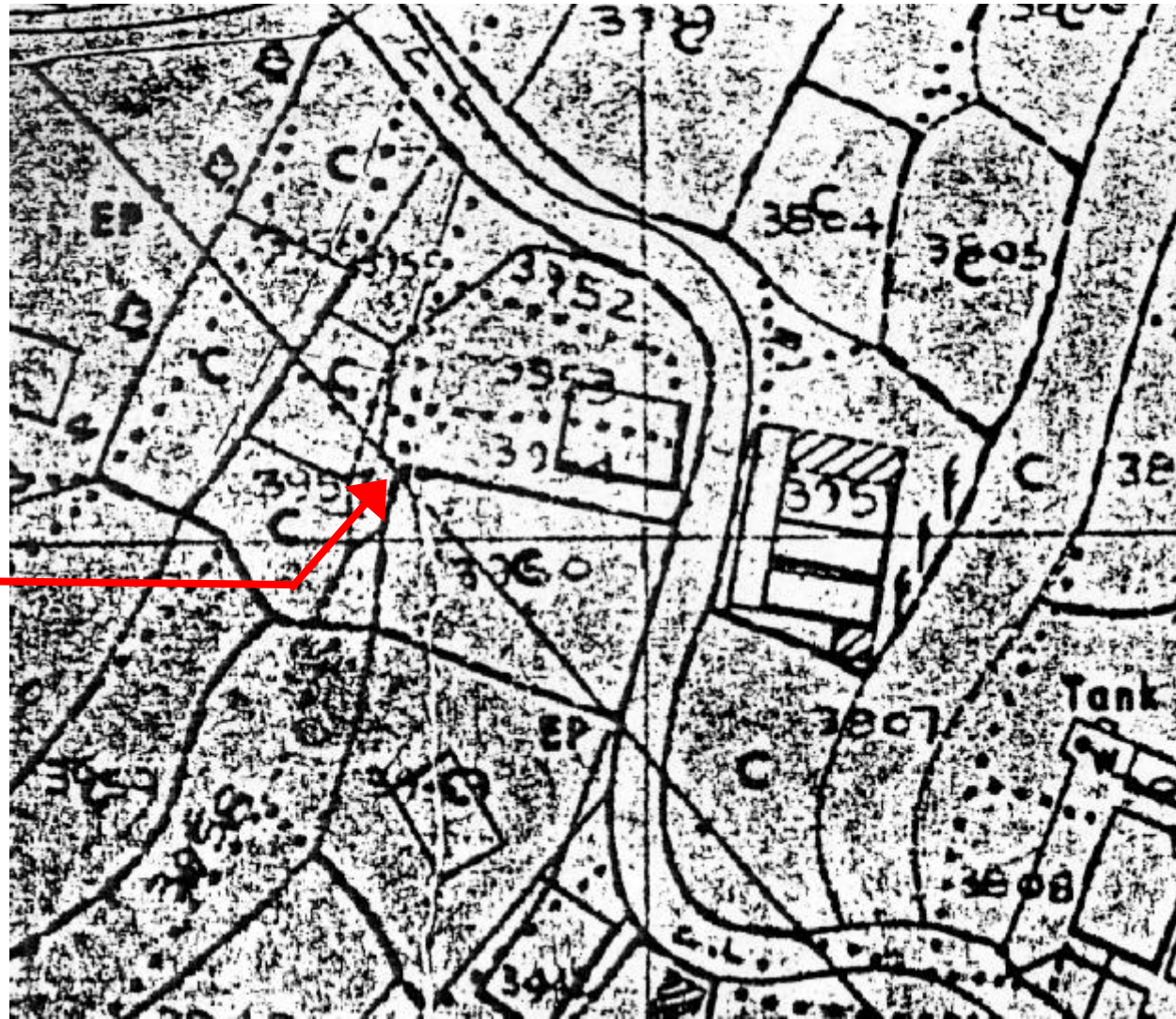
DD Sheet *(enlarged image)*



Same as
DLS

A Sheet (Cad/Svy Sheet)

DD104
Lot 3953
&
Lot 3954



Land Status Plan (around 1996)



Man Kam Tong v Man Lin Tai

HCA 5478 in 1981

Judge Hunter reconstructed the process of title acquirement and decided PWHL were on the same site.

Defendant's possessory title also succeeded

The Honorable Judge urges the Govt to improve current unsatisfactory situation

Lam Pak Kau v Yu Yuet Fat

Court of First Instance A2020 of 1996

Court of Appeal 205 of 1999

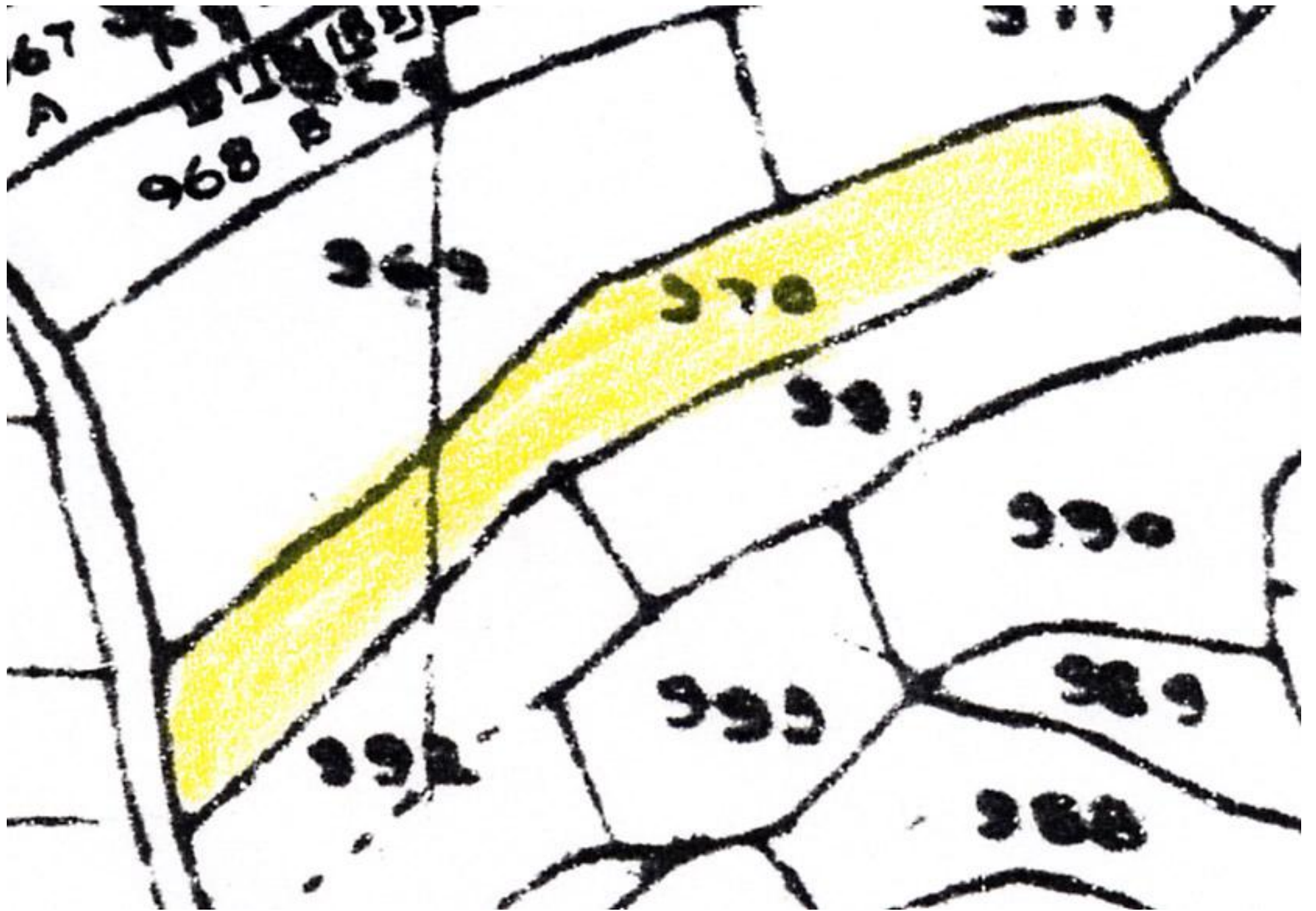
Plaintiff Lot 970A

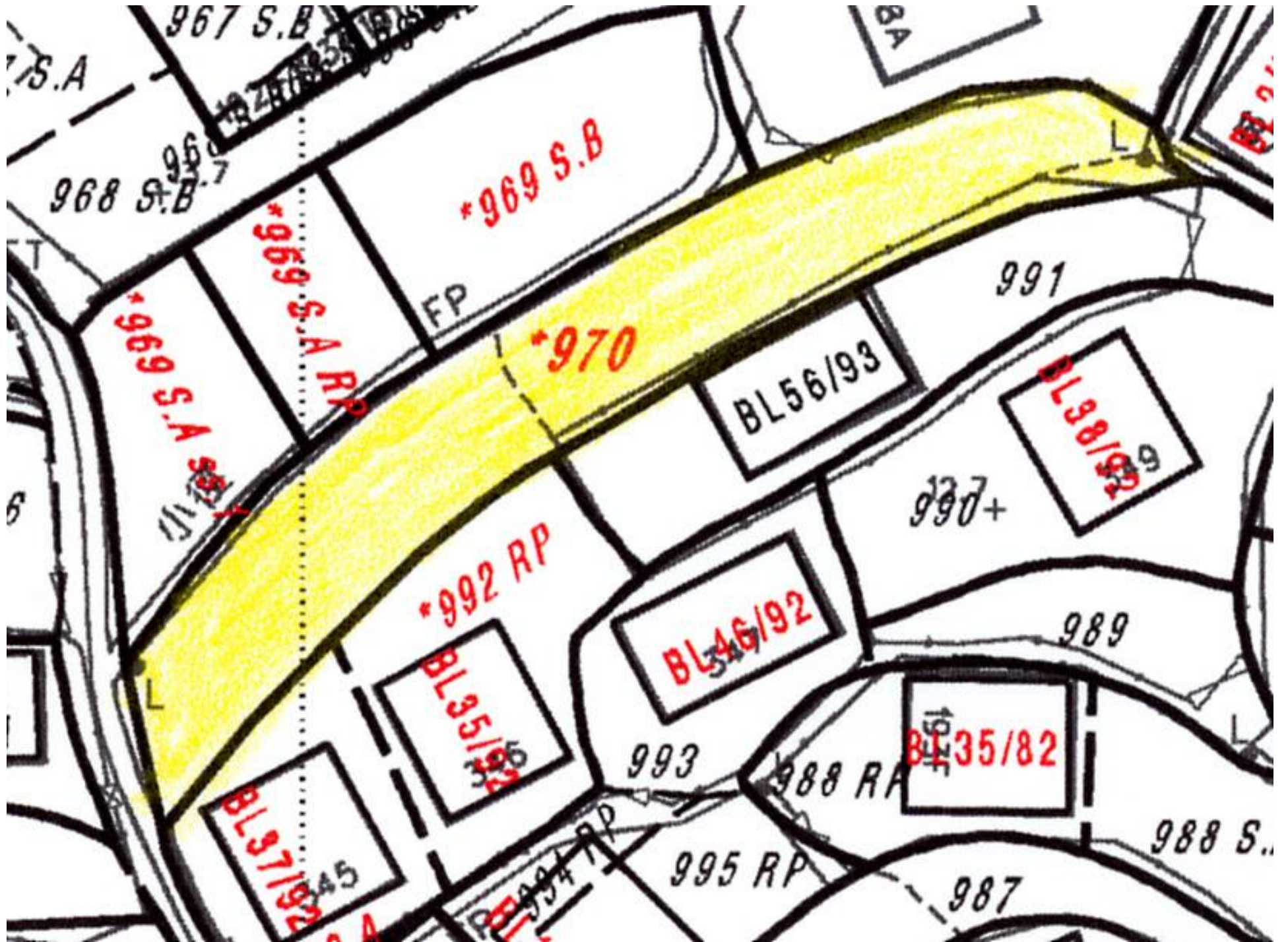
Defendant Lot 991

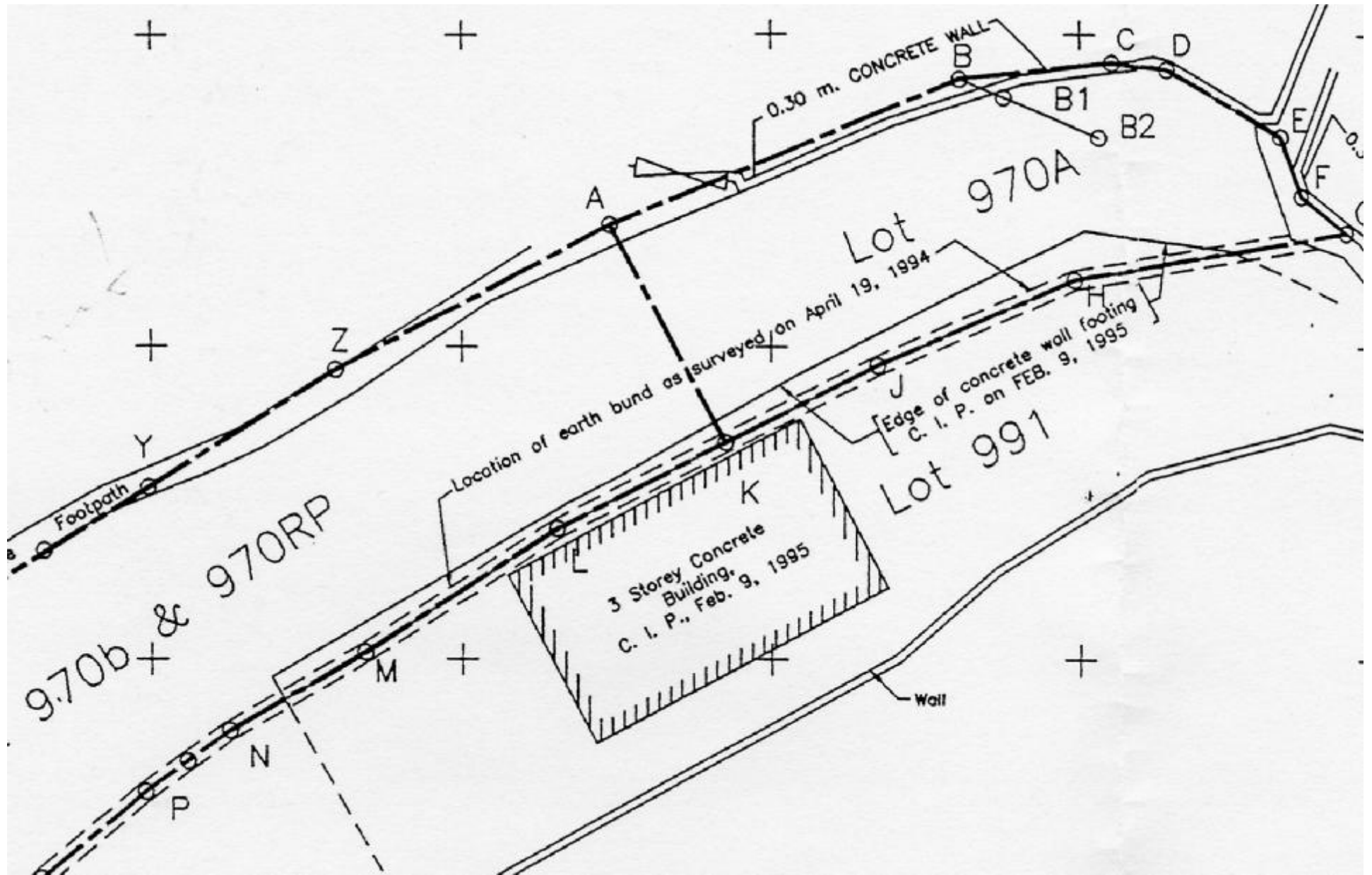
Defendant built a wall

Plaintiff Surveyor 'C' encroachment by 0.7 m

Defendant Surveyor Chinchen; no boundary
can be accurate to 1 m







Judge Findlay

- The bund "has been subject to the normal wear and tear from erosion and human and animal activity.....I do not accept that a land surveyor, no matter how proficient, is able to say that this or that point fixes the outer limits of the bund with any great degree of accuracy. Nor, of course, is any land surveyor able to say that the bund was placed precisely on the boundary of two pieces of land."

Comment from a Chief Land Surveyor

- Plaintiff's surveyor did not submit the SRP to DSO for record. Should that plan be deposited, the Defendant surveyor performed the survey two months later would have followed previous definition.
- Should introduce mandatory registration of survey plans

Nishimatse, Dragages and AG v Tang Clan of Wing Lung Wai

423	92	Orchard	鄧如壽	Lang Yi Shau	"	永隆園!	92
424	15	Whishing floor	鄧志生	Lang Kit Hong (Trustee)	"	"	15
425	24	Waste	鄧雲	Lang Wan Yiu Leo	"	"	24
			鄧紹洪	Lang Shiu Hong (Trustee)	"	"	11
426	11	Orchard			"	"	50

Precedent : Lintock case



Niceboard Development Ltd v China Light & Power Company Ltd

- Lands Tribunal [HKLRD, 1994]
- Lot 1812RP DD 104 2.70 ac
- 1935 0.03 ac converted to house lot
- Power line passing through a corner of the lot
- Compensation amounted to HK\$5,200,000
- Scheme of Control Agreement

Similar cases

- Lands Tribunal. NOS. MR 5 & 7 of 1996
- Wong Wai Tsak Tong v Sect of Transport
- Building land or Agricultural land ?
- Held - building land

Tang Wai Tak v Wong Hung Sun

- HCA 12599 of 1994
- Lot 2019C v Lot 2019A DD 124
- Surveyor 'M' v Surveyor Raymond King
- Judge Findlay for Defendant
- Judge expressed sympathy on the plaintiff but nevertheless made an order nisi that the plaintiff pay the defendant's costs.

Shing WO & WP v Wong YC & YM

- FI 13518 of 1999
- Lot 3255RP v Lot 4765A in DD 116
- Plaintiff sued Defendant for erecting a 3m gate and a wall on their land

- Surveyor Jackey Tull for Plaintiff
- Plans & Photos

Ng HH & Shum Y v Cheung KY

- HCMP 1091 of 2000
- False boundary dispute - blaming bad land boundary record
- 1999 sale agreement on the 2nd floor of a NTEH at Lot 1425RP DD 7
- Plaintiff - stop the sale
- Defendant - forfeit deposits

Ng HH & Shum Y v Cheung KY

- Plaintiff complaint:
- No legible certified copy of the Block Government Lease
- "No survey of the occupation boundaries of the said building has been made by Government. Confirmation of compliance is not to be taken as any indication that the said building ...is within the registered boundaries of the lot" [Cert of Compliance]

Ng HH & Shum Y v Cheung KY

- The judge opined that the boundary disclaimer of the government was intended to avoid liability to third parties, but not to the future owners.
- "it would look very silly...because it would be saying in effect that the certificate which it had issued simply did not mean what it said."
- Claimant sues Govt; Govt sues ALS

Metrocore Enterprises Ltd v Philip Pang Co & AA property Service Ltd

- HCA 54 of 1999
- Lot 107 DD 113 Ma On Kong YL
- Plaintiff a loan company
- 1st Defendant borrower
- 2nd Defendant valuation company

Lot Index Plan



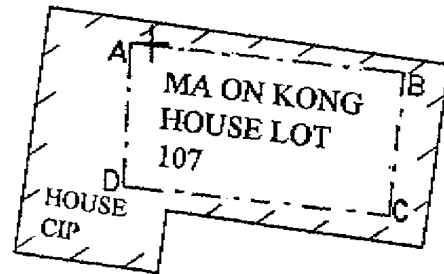
SETTING OUT PLAN MA ON KONG HOUSE LOT 107 (D.D. 113)

BR4850E



NO090E8

830800N



COLOURED PINK AREA : 28.5 SQUARE METRES (ABOUT)

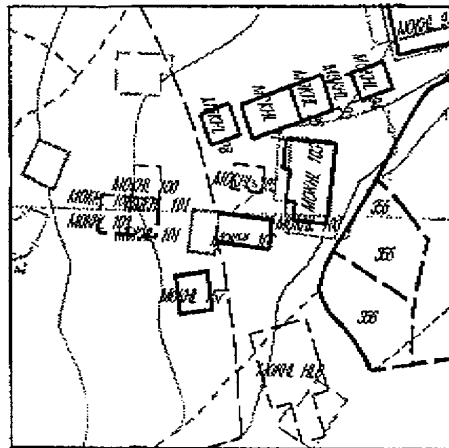
LINE	DISTANCE IN METRES	BEARING	NORTHING	EASTING	PI.	CORNER MARKED BY
A-B	7.52	95° 53'	830 600.00	824 839.44	A	Unable to peg
B-C	3.84	185 53	830 599.23	824 846.92	B	Unable to peg
C-D	7.32	275 53	830 595.41	824 846.52	C	Unable to peg
D-A	3.85	02 55	830 596.16	824 839.24	D	Unable to peg

200mm diff.

CIP = Construction in progress

Scale 1 : 200

LOCATION PLAN



Scale 1 : 1000

Survey Sheet No : 6-NE-22D

Plan No : J.YL1805/01

Date : June 1997

陳 達 榮 測 量 師 行 有 限 公 司

TED CHAN & ASSOCIATES LIMITED

Authorized Land Surveyors

香港百灣街與民街 88 號海天廣場 1107 室
香港新界元朗新富街 53 號元朗中心 911 室

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903 Yuen Long Centre, 55 Sau Fu Street, Yuen Long, N.T., Hong Kong.

Tel: 2967 8882 Fax: 2967 1812
Tel: 2478 6386 Fax: 2478 6428

A E Tarrant MNZIS AHKIS ALS
for Ted Chan & Associates Limited
Authorized Land Surveyors



Site photo



Site photo



Site photo



Site photo



The judgment

- Judgment entered in favour of the plaintiff against the 1st defendant in the sum of \$400,000 with interest at judgment interest rate(s) from the date of issue of writ in this action.
- The plaintiff's action against the 2nd defendant was dismissed.

Thank You