

陳鑑清律師行

JOHN CHAN & CO

Solicitors, Agents for Trademarks & Patents

香港新界元朗青山道 95-97 號海外信託銀行大廈 8 樓 電話: 2470 0811(六線) 傳真: 2473 2985
8/F, OTB Building, 95-97 Castle Peak Road, Yuen Long, NT, Hong Kong.
Tel: 2470 0811(6 lines) Fax: 2473 2985 Dx: 980 015 Yuen Long 1

Principal CHAN KAM CHING, 陳鑑清
JOHN BARRY
B Sc (Hons), M Phil

Your Ref : (26) in DLOTM 439/MLT/83 Pt.3

Date : 20 September 2012

Our Ref : JBC/S/8277/10(JBC)

Person in charge : Mr John B Chan

District Lands Office, Tuen Mun
6th Floor,
Tuen Mun Government Offices,
1 Tuen Hi Road,
Tuen Mun, NT

By Fax and By Hand

(Fax : 2459 0795)

Attn : Mr YK Wong

Dear Sirs,

Re : Lot No.559 in DD 131

We refer to your letter dated 6 August 2012.

2. In the first place, we would repeat our position that in the absence of the government lease, it is not open to Government to make the assumption that the above lot is subject to the terms and conditions as stated in GN No.278 of 1911.

3. In response to your proposition that "human remains" would include "ashes from burning of a human body, and ashes from cremation are no less to be regarded as human remains", our client has been advised that "human remains" does not include cremated human ashes for the following reasons :-

- 3.1 As a matter of plain English, "remains" in the context of "human remains" means what is left behind in a passive state after a natural process of organic decomposition of the human body over time, mainly by bacterial actions, without any human or artificial intervention to accelerate the process. On the other hand, production of cremated ashes from the human body requires active human intervention by a process of combustion.



JOHN CHAN & CO.,
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- 3.2 Human remains will retain a significant part of human characteristics. For instance, human identity may still be traceable by laboratory examination of the DNA of the human remains. However, upon reduction of cremated human body to ashes after the process of cremation, no human characteristics may be traceable. The end product of cremation is inorganic substances, essentially indistinguishable visually or by chemical composition as to whether they are of human or animal origin. Indeed, being inorganic substances, cremated ashes may not even have any evidence of the pre-existing life form from which they are derived.
- 3.3 When Special Condition No.5 in GN 278 ("Special Condition No.5") was introduced in 1911, earth burials in grave or deposits of human remains in earthenware above ground were already prevalent in the New Territories, which Special Condition No.5 was no doubt designed to address. In stark contrast, there were hardly known instances of cremation of human bodies then. Cremated ashes being inorganic substances, their interment or deposit will not give rise to hygienic or sanitation problem. Hence, it is highly unlikely that they came under the purview of Special Condition No.5.
4. In the circumstances, we do believe that the warning of re-entry action given in your letter under reply is premature. In order to establish the right of re-entry, there are at least the following two hurdles for Government to surmount :-
- 4.1 As a matter of fact, to adduce satisfactory evidence to prove that Special Condition No.5 applies to the lot.
- 4.2 As a matter of law, to establish that the meaning of "human remains" in Special Condition No.5 includes cremated human ashes.
5. We are instructed by our client that it will vigorously challenge both two issues of law and fact as above stated. Should you still consider re-entry action as an ultimate measure of lease enforcement notwithstanding our foregoing submission, we would respectfully suggest that the Court be invited to rule on these two issues as part of the way forward.
6. Looking forward to hearing from you in reply.

Yours faithfully,



JBC/ksc
cc client

電話 Tel: 2451 3250

圖文傳真 Fax: 2459 0795

電郵地址 Email:

來函檔號 Our Ref: (26) in DLOTM 439/MLT/83 Pt. 3

(來函請註明本函檔號 Please quote this reference in your reply)

來函編號 Your Ref:

Tsing Wan Kun
also known as T'ong Tsing Wan Kun
c/o John Chan & Co.
Solicitors
8/F, OTB Building,
95-97 Castle Peak Road,
Yuen Long, New Territories.

Dear Sirs,

Lot No. 559 in D.D. 131

I refer to your letters to the District Lands Office, Tuen Mun dated 25 August 2010, 24 September 2010 and 21 February 2011 respectively, which have been passed to me with instructions to reply.

Lot No. 559 in D.D. 131 (hereinafter referred to as "Lot No. 559") was sold by auction, notice of which was published in G.N. S. 76 of 1918, subject to the General Conditions in G.N. 365 of 1906 and Special Condition No. 5 in G.N. 278 of 1911.

Special Condition No. 5 in G.N. 278 of 1911 (hereinafter referred to as "Special Condition No. 5") provides that "*Without the consent of the District Officer no grave shall be made on, nor shall any human remains be interred in, or deposited on the land sold either in earthenware jars or otherwise, and a covenant to this effect shall be inserted in the Crown Lease of the Lot.*"

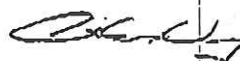
Our interpretation of "human remains" would include ashes from the burning of a human body. Ashes from cremation are no less to be regarded as human remains. Any operation involving deposit or storage of human remains will amount to a breach of Special Condition No. 5.

For the reasons stated aforesaid, it is the Government's position that your client's operation of niches/columbarium on Lot No. 559, if any, is prohibited and amounts to a breach of the lease.

I hereby give your client a warning that if Lot No. 559 is found to be used as columbarium in breach of Special Condition No. 5, lease enforcement action, including but not limited to re-entry action, will be taken against your client without further notice.

All rights of the Government under the lease conditions governing Lot No. 559 are hereby reserved.

Yours faithfully,



(Y. K. WONG)

for District Lands Officer, Tuen Mun

地政總署
屯門地政處
DISTRICT LANDS OFFICE,
TUEN MUN
LANDS DEPARTMENT

我們矢志努力不懈，提供盡善盡美的土地行政服務。
We strive to achieve excellence in land administration.

新界屯門屯門路一號屯門政府合署六樓
6/F., TUEN MUN GOVERNMENT OFFICES
1 TUEN HI ROAD, TUEN MUN, N.T.
網址 Web Site: www.lands.gov.hk

By Ordinary and Registered Post

6 August 2012

陳鑑清律師行

JOHN CHAN & CO

Solicitors, Agents for Trademarks & Patents

472456

香港新界元朗青山道 95-97 號海外信託銀行大廈 8 樓 電話: 2470 0811(六線) 傳真: 2473 2985
 8/F, OTB Building, 95-97 Castle Peak Road, Yuen Long, NT, Hong Kong.
 Tel: 2470 0811(6 lines) Fax: 2473 2985 Dc: 980 015 Yuen Long 1

Principal CHAN KAM CHING 陳鑑清
 JOHN BARRY
 B Sc (Hons), M Phil

COPY

Your Ref : (42) in DLOTM 439/MLT/83 Pt.2

Date : 21 FEB 2011

Our Ref : JBC/5/8277/10(JBC)

Person in charge : Mr John B Chan

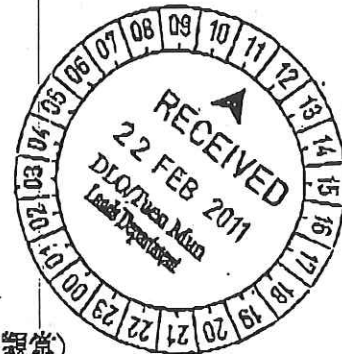
District Lands Office, Tuen Mun
 6th Floor,
 Tuen Mun Government Offices,
 1 Tuen Hi Road,
 Tuen Mun, NT

By Fax and By Hand

(Fax : 2459 0795)

Attn : Mr YK Wong

Dear Sirs,



Tsing Wan Kun also known as
 T'ong Tsing Wan Kun (青雲觀又名青雲觀堂)

Lot No. 559 in DD 131

We refer to your letter in Chinese dated 12/1/2011 addressed to 青雲觀又名青雲觀堂 (Tsing Wan Kun also known as T'ong Tsing Wan Kun).

Your letter was still sent to the address 新界屯門利發徑6號H座2樓, notwithstanding that our firm have already been in correspondence with you on the same subject matter since 25/8/2010. We would request you to send all your future correspondence to our firm, as the legal representative of Tsing Wan Kun (also known as T'ong Tsing Wan Kun) and their 2 registered managers, from now on.

It is noted that nearly all what you purported in your letter was already set out in your letter dated 23/7/2010, and was, in our view, already well responded to in our 2 letters to you dated 25/8/2010 and 24/9/2010.

...../2

N CHAN & CO
Agents for Trademarks & Patents

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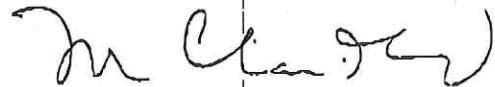
- 2 -

The only bit novel perhaps is the first sentence of paragraph 2 of your letter, which reads : “本處正籌議和研究相關土地契約中的用途限制條文。” But then, as we have already pointed out in our letter of 24/9/2010, the government lease governing the above lot has long been missing. As we do not anticipate that a copy of the Government lease would somehow become available now, we can only assume that what you actually meant was that your office was examining the Special Condition No.5 published in GN No.278 of 1911.

We would emphasize that in the absence of the lease document, it is not open to Government to make the assumption that the above lot is subject to the terms and conditions as stated in GN No.278.

We would also reiterate our view that the term “human remains” does not include “cremated ashes”.

Yours faithfully,



JBC/ksc
cc client

電話 Tel: 2451 3250

圖文傳真 Fax: 2459 0795

電郵地址 Email

本處檔案 Our Ref: (42) in DLO/M 439/MLT/83 Pt. 2

(在函件中引用本處檔案時請註明此參考編號於你的覆函)

來函檔案 Your Ref:

地政處
屯門地政處
DISTRICT LANDS OFFICE
TUN MUN
LANDS DEPARTMENT
We strive to achieve excellence in land administration
我們致力在土地管理上追求卓越
6/F, TUN MUN GOVERNMENT OFFICES
1 TUN MI ROAD, TUN MUN, N.T.
Web Site: www.lands.gov.hk

普通及掛號郵遞

新界屯門
利發徑6號H座2樓
青雲觀
又名 青雲觀堂

敬啟者：

文量約份第131約地段第559號

本處曾於二〇一〇年七月二十三日發信給你，指出本處有理由相信，有關文量約份第131約地段第559號(下稱「該地段」)用作骨灰龕用途的準備工作正在進行中。現附上有關信件的副本及其中文譯本，以供參閱(見附件一及二)。

本處正審議和研究相關土地契約中的用途限制條文。此外，本處重申，憑藉一九一一年第278號政府公告刊登、規管該地段的特別條件第5條，將該地段用作骨灰龕用途是不獲准許的。上述特別條件訂明，“如未得理民府允許不得在該地建築墳墓亦不得埋葬及放置人類遺骸或貯放金塔，……”。如發現該地段出現違反土地契約條文的情況，政府會根據《政府土地權(重收及轉歸補救)條例》(第126章)對你即時採取執行契約條款行動，包括但不限於重收行動。

政府根據有關的批地文件或其他文件而具有的所有權利獲予明示保留。

屯門地政專員

(黃遠強 黃遠強 代行)

連附件

二〇一一年一月十二日

陳鑑清律師行

JOHN CHAN & CO

Solicitors, Agents for Trademarks & Patents

470863

香港新界元朗青山道 95-97 號海外信託銀行大廈 8 樓 電話: 2470 0811(六線) 傳真: 2473 2985
8/F, OTB Building, 95-97 Castle Peak Road, Yuen Long, NT, Hong Kong.
Tel: 2470 0811(6 lines) Fax: 2473 2985 Dx: 980 015 Yuen Long 1

Principal CHAN KAM CHING, 陳鑑清
JOHN BARRY
B Sc (Hons), M Phil

COPY

Your Ref : (44) in DLOTM 439/MLT/83

Date : 24 September 2010

Our Ref : JBC/5/8277/10(JBC)

Person in charge : Mr John B Chan

District Lands Office, Tuen Mun
6th Floor,
Tuen Mun Government Offices,
1 Tuen Hi Road,
Tuen Mun, NT

By Fax and By Post

(Fax : 2459 0795)

Attn : Mr YK Wong

Dear Sirs,

Re : Lot No.559 in DD 131

Further to our earlier letter dated 25 August 2010 to you, we wish to draw your particular attention to and emphasize the fact that the government lease governing the above lot has long been missing. This is clear from the Remarks in the Land Register of the above lot. The relevant part of the Remarks is reproduced below for ease of reference :

"Remarks : The Lot is held under New Grant No.2714 registered in the Tai Po Land Registry Lease Term, its date of commencement and rent cannot be ascertained from New Grant"

In the absence of the lease document, it is not open to Government to make the assumption that the above lot is subject to the terms and conditions as stated in GN No.278.

Yours faithfully,



JBC/ksc
cc client

陳鑑清律師行

JOHN CHAN & CO

Solicitors, Agents for Trademarks & Patents

470668

香港新界元朗青山道 95-97 號海外匯豐銀行大廈 8 樓 電話: 2470 0811(六線) 傳真: 2473 2985
 8/F, OTB Building, 95-97 Castle Peak Road, Yuen Long, NT, Hong Kong.
 Tel: 2470 0811(6 lines) Fax: 2473 2985 Dx: 980 015 Yuen Long 1

Principal CHAN KAM CHING, 陳鑑清
 JOHN BARRY
 B Sc (Hons), M Phil

COPY

Your Ref : (44) in DLOTM 439/MLT/83

Date : 25 August 2010

Our Ref : JBC/5/8277/10(JBC)

Person in charge : Mr John B Chan

District Lands Office, Tuen Mun
 6th Floor,
 Tuen Mun Government Offices,
 1 Tuen Hi Road,
 Tuen Mun, NT

By Fax and By Hand

(Fax : 2459 0795)

Attn : Mr YK Wong

Dear Sirs,

Re : Lot No.559 in DD 131

We have instructions from the registered managers of T'ong Tsing Wan Kun (青雲觀堂) to act for them in connection with your letter addressed to the T'ong dated 23 July 2010.

Even assuming that Special Condition No.5 of GN No.278 of 1911 is applicable to the above lot (which we do not admit), we do not accept your assertion that columbarium use is not permitted by virtue of that Special Condition No.5. We see the following question of law raised : whether cremated ashes are human remains within the meaning of Special Condition No.5 of GN No.278 of 1911?

We are of the view that the term "human remains" does not include "cremated ashes".

Yours faithfully,



JBC/ksc
 cc client

電話 Tel: 2451 3250

圖文傳真 Fax: 2459 0795

電郵地址 Email:

本處編號 Our Ref: (44) in DLOIM 439/MLT/83

(不圖確証本處信號, Please quote this reference in your reply)

來函編號 Your Ref:

地政總署
屯門地政處
DISTRICT LANDS OFFICE,
TUEN MUN
LANDS DEPARTMENT

我們致力不懈，為改善屯門的土地行政服務。
We strive to achieve excellence in land administration.

新界屯門政府合署大樓
Q/E, TUEN MUN GOVERNMENT OFFICES
1 TUEN HI ROAD, TUEN MUN, N.T.
網址 Web Site: www.lands.gov.hk

By Ordinary and Registered Post

23 July 2010

T'ong Tsing Wan Kun
2nd Floor, Block H,
6 Lee Fat Path,
Tuen Mun, New Territories.

Dear Sirs,


Lot No. 559 in D.D. 131

I write to inform you that I have reason to believe that Lot No. 559 in D.D. 131 ("the Lot") is being prepared for columbarium use.

Please be advised that columbarium use is not permitted by virtue of Special Condition No. 5 published in G.N. No. 278 of 1911 governing the Lot which expressly provides that "*Without the consent of the District Officer no grave shall be made on, nor shall any human remains be interred in, or deposited on the land sold either in earthenware jars or otherwise,*" If the Lot is found to be used as columbarium in breach of the lease conditions, Government will take immediate lease enforcement action against you including but not limited to re-entry action under the Government Rights (Re-entry and Vesting Remedies) Ordinance, Cap. 126.

All rights of the Government under the relevant land grant or otherwise are hereby expressly reserved.

Yours faithfully,



(Y. K. WONG)

for District Lands Officer, Tuen Mun

貴局檔號：DEVB(PL-P)50/31/06/1

發展局規劃組
香港添馬添美道2號
政府總部西翼17樓

有關：青雲觀(又名青雲觀堂)
新界青山屯門

我們兩人是青雲觀的全體司理。

關於貴局本月13日來信，我們附上填妥的表格，連同我們的代表律師行與屯門地政處之間的來往信件的影印本(共7份)，作為補充資料。

陶根池

司理 陶根池

陶鑑籌

司理 陶鑑籌

日期：2012年12月20日

