

**FRAUD IN LAND TRANSACTION: CONFLICTING INTEREST
BETWEEN REGISTERED PROPRIETOR AND BONA FIDE
PURCHASER UNDER THE NATIONAL LAND CODE 1965**

BY:

NORAFFY BT AHMAD

(2010816644)

IZZANEE BT AB MALEK FOAD

(2010297962)

H Aidatul Munira bt Hamzah

(2010675668)

Submitted in Partial Fulfillment of the Requirement
for the degree of Bachelors in Legal Studies (Honours)

UNIVERSITI TECHNOLOGY MARA (UITM)

FACULTY OF LAW

24TH DECEMBER 2012

The students/authors confirm that the work submitted is their own and that an appropriate credit has been given where reference has been made to the work of others

ABSTRACT

The numbers of fraud and forgery cases in land transaction are on the rise in Malaysia. Because of that, the issue of conflicting interest between the innocent parties such as the registered proprietor and the bona fide purchaser regarding their rights over the disputed land remains unresolved. It seems that the current Torrens System in Malaysia which applies the mirror and curtain principles as well as the provisions stipulated in the National Land Code 1965 is inadequate to protect the rights of both the registered proprietor as well as the bona fide purchaser with regards to cases of fraud and forgery in land transactions. Realizing this problem, this research paper will examine whether Malaysia can be considered as being at crossroads since it is currently facing a challenge as to whether it should adapt, implement and establish a Trust Assurance Fund as practiced in Canada and Australia in order to guarantee a complete protection for the innocent registered proprietor and bona fide purchaser involved in cases of fraud in land transactions.

TABLE OF CONTENTS

ACKNOWLEDGMENT	i
ABSTRACT	ii
TABLE OF CONTENTS	iii
LIST OF STATUTES	vii
LIST OF CASES	viii
CHAPTER 1: INTRODUCTION	
1.0 RESEARCH BACKGROUND	1
1.2 PROBLEM STATEMENT	2
1.3 RESEARCH OBJECTIVES	3
1.4 RESEARCH METHODOLOGY	3
1.5 SCOPE AND LIMITATIONS OF THE RESEARCH	4
1.6 CONTRIBUTION AND SIGNIFICANCE OF RESEARCH	5
1.7 CONCLUSION	7
CHAPTER 2: LITERATURE REVIEW	
2.0 INTRODUCTION	8
CHAPTER 3: HISTORICAL BACKGROUND	
3.0 INTRODUCTION	19
3.1 THE MALAYSIAN TORRENS SYSTEM	23
3.1.1: HISTORICAL BACKGROUND	23
3.1.2 FEATURES OF NATIONAL LAND CODE 1965	25

(ACT 56)

3.2	APPLICABILITY OF ENGLISH LAND LAW	28
3.3	BASIC LAND LAW CONCEPTS AND TERMINOLOGY	29

CHAPTER 4: REGISTRATION OF DEALINGS

4.0	INTRODUCTION	32
4.1	REGISTRATION	33
4.1.1	DEFINITION	33
4.1.2	EFFECT OF REGISTRATION	33
4.2	MEANING OF INDEFEASIBILITY	35
4.2.1	TYPES OF INDEFEASIBILITY	37
4.2.2	MALAYSIA: INDEFEASIBILITY- IMMEDIATE OR DEFERRED?	39
4.2.3	STATUTORY EXCEPTIONS TO INDEFEASIBILITY	45
4.2.3.1	Fraud: Introduction	47
4.2.3.2	Fraud Pertaining to Unregistered Interests	51
4.3	EFFECTS WHEN A TITLE OR INTEREST IS DECLARED DEFEASIBLE UNDER SECTION 340(2)	62
4.4	BONA FIDE PURCHASER	63
4.5	CONCLUSION	66

CHAPTER 1

INTRODUCTION

1.0 Research Background

The incomplete Torrens system in Malaysia has been working like clock-work since the operation of the National Land Code 1965. However, despite the application of the system, conflicting interest between innocent as well as bona fide purchaser still arise. This is due to the fact that the numbers of fraud and forgery cases in land transaction are on the rise in Malaysia.

It seems that the current Torrens System in Malaysia which applies the mirror and curtain principles is inadequate to protect the rights of both the registered proprietors as well as the bona fide purchaser with regards to cases of fraud and forgery in land transactions. Realizing this problem, Malaysia can be considered as being at crossroads since it is currently facing a challenge as to whether it should adapt, implement and establish an Assurance Fund as practiced in Canada and Australia in order to guarantee a complete protection for the parties involved in cases of fraud in land transactions.

The decision made by the court in case of *Adorna Properties Sdn Bhd v Boonsom Boonyanit*¹ was considered as the beginning or the turning point which gave rise to the

¹ [2001] 1 MLJ 241