INDEFEASIBILITY OF TITLE: A COMPARATIVE STUDY BETWEEN MALAYSIA AND AUSTRALIA

By

Catherine Anak Agam (2006210366)
Faizura Binti Mansor (2006494972)
Mastini Binti Awang Besar (2006494965)
Zirwatul Hanan Binti Abdul Rahman (2006216347)

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The aim of this project paper is to provide a reasonably comprehensive understanding towards the practicality of the land registration system known as Torrens System adapted in Malaysia and Australia by way of comparison between both countries. Further, the aim is also to identify the differences between Torrens System practiced in Malaysia and Australia that we can highlight along the study in order to pave way for the improvement of our own provision, none other than the National Land Code 1965.

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ABSTRACT

The concept of indefeasibility of title and interests is central in any Torrens System of land registration. The Torrens System provides the concept of indefeasibility wherein all registered title and interests are guaranteed by the State to be good against the whole world in the absence of fraud or other vitiating circumstances statutorily specified or judicially laid down. Section 340 of the National Land Code 1965 provides for the concept of indefeasibility. The 2000 case *Adorna Properties Sdn Bhd v Boonsom Boonyanit* decided by the Federal Court was no longer good law pursuant to the judgment of the Federal Court in the case of *Tan Ying Hong v Tan Sian San & 2 Ors* delivered on Thursday 21 January 2010 wherein deferred indefeasibility concept has been reinstated. There is a loophole in the National Land Code in relation to the prevention of fraud and forgery. The Land Department is embarking on a long journey in efforts to amend the Section 340. Malaysia only have the mirror and curtain principles and lack the insurance principle that provides an avenue of indemnity for loss of rights and interest on a registered property due to fraud and forgery pursuant to creation of an assurance fund is a major step in restructuring our land administration the banking practice.
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