

**INDEFEASIBILITY OF TITLE: A COMPARATIVE STUDY
BETWEEN MALAYSIA AND AUSTRALIA**

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

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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.

TABLE OF CONTENTS

Acknowledgement	i
Abstract	ii
Contents	iii,
iv	
List of Cases	v
List of Statutes	vi

CHAPTER ONE: INTRODUCTION

1.0	Introduction	1
1.1	Background	3
1.2	Research Questions	7
1.3	Objectives and Scope	8
1.4	Significance of the Research	9
1.5	Scope and Limitations of the Research	9
1.6	Research Methodology	10
1.7	Outline of the Structure of the Paper	11
1.8	Conclusion	12

CHAPTER TWO: INDEFEASIBILITY OF TITLE IN MALAYSIA AND AUSTRALIA

2.0	Introduction	15
2.1	Indefeasibility of Title in The Torrens System of Land Registration	16
2.2	Conceptual Issues	16
	2.2.1 Definition of Indefeasibility of Title in Torrens System	16
	2.2.2 Types of Indefeasibility	17
2.3	Law on Indefeasibility of Title in Malaysia and Australia	18
	2.3.1 Malaysia: The National Land Code 1965	18
	2.3.2 Australia	20
	2.3.2.1 Real Property Act 1886	20
	2.3.2.2 Real Property Act 1900	21
	2.3.2.3 Transfer of Land Act 1958	21
	2.3.2.4 Analysis and Reviews	22
2.4	Similarities and Differences Between The Laws in Malaysia and Australia On The Indefeasibility of Title	24
2.5	Previous Findings On <i>Adorna</i> And <i>Au Meng Nam</i> Case	27
2.6	Present Case Of <i>Tan Ying Hong v Tan Sin Siang & Anor</i>	28
2.7	Conclusion	29

CHAPTER THREE: EFFECTIVENESS OF THE EXISTING LAWS ON THE INDEFEASIBILITY OF TITLE

3.0	Introduction	32
3.1	Malaysia: Section 340 of the National Land Code 1965	32
	3.1.1 Fraud	33
	3.1.2 Insufficient or Void Instrument	35
	3.1.3 Title or Interest Unlawfully Acquired	36
3.2	Australia	37
	3.2.1 Real Property Act 1886	37
	3.2.2 Real Property Act 1900	38
	3.2.3 Transfer of Land Act 1958	39
3.3	The Federal Court Decision in <i>Adorna Properties Sdn Bhd v Boonsom Boonyanit</i>	40
3.4	Recent development in the case of <i>Tan Ying Hong v Tan Sin Siang & Anor</i>	41
3.5	Conclusion	42

CHAPTER FOUR: CONCLUSIONS AND RECOMMENDATIONS

4.0	Introduction	46
4.1	Dealing With Challenges	48
	4.1.1 Land Fraud	51
	4.1.2 Curbing Forgery	54
	4.1.3 Enforcement of The Law	56
4.2	Recommendations	57
4.3	Conclusion	60

Bibliography	64	
Appendices	68	
	Appendix 1 : Letter from Faculty	
	Appendix 2 : Interview Questions	