

INDEFEASIBILITY AND EQUITABLE INTERVENTION  
IN THE MALAYSIAN TORRENS SYSTEM

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## PREFACE

In relation to its concept, effect of and exceptions to Indefeasibility of title in the Torrens system represents a very interesting area of study in Land Law. The very Central concept of Torrens system of registration is the Indefeasibility of title, the registered proprietor being given a shield of protection against any adverse claim as against the title of the landed property. Section 340 of the National Land Code confers upon registration to a registered proprietor of land an Indefeasible title.

However the fact remains that notwithstanding the concept of Indefeasibility as pointed out by Lord Wilberforce in *FRAZER V WALKER* (1967) 1 ALL.E.R. 649, Indefeasibility itself is never absolute.

Not only does Section 340(2) of the Code provides for specific statutory exceptions to Indefeasibility of title but the court have also in nature of exceptions made equitable Incursions attacking the very basis of the Concept of Indefeasibility.

The courts have stated that equity will step in to prevent the Machinery of the Act of Parliament being used to defeat equities. The Torrens System has not abrogated the principles of equity and its application but only so far as it is necessary to attain its own special objects it has altered the application of equity.

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30. Millar V. Minster of Mines (1963) 1 AK. E.R. 109
31. Macon Engineering Sdn. Bhd. V. Goh Hoi Yin (1976)2 M.L.J. 53
32. Munro V. Didcott (1911) AC 140
33. Murugappa V. Chinniah (1962) 28 M.L.J. 95

The Malay Customary dealings of land that were already well-established in the Malay States before the intervention of the imperialist British were mainly of three kinds.

i) Out-and-out transfer

Though it can be said to be a transfer of cleared or cultivated land by sale but in reality it is one of a take-over by way of recouping the original cultivator for his labour in clearing and cultivating the land.

ii) Letting

This entails a situation whereby a cultivator allowed another person to cultivate his land for the return of any in the produce crop.

iii) Security transactions

Which comprise two main forms. One is where a cultivator-borrower under an agreement made himself a tenant of his creditor whereby the latter became entitled, as in the case of "letting", to a share in the produce crops as his "interests" on the loan. The other, is commonly known as "jual janji", which can be translated as a "conditional sale". This involved the "transfer" of the borrower's land to the lender. The latter takes over the occupation of the land and whatever profits he could make out of the land would be all his as remuneration for the loan.