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RIGHT TO TRANSFER:
PROHIBITION AND RESTRAINTS

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CHAPTER I

Introduction

A. Torrens System: System of registration of dealing in land.

The Torrens System is a system of land dealing and founded in Australia in beginning of 19th century. The Torrens System evolved in its place of origin as a statutory system of conveyancing. Its fundamental principle is registered ownership of land which may safely be relied upon by a bona fide purchaser in buying the land or taking any interest therein from the registered owner.

In so far as the Torrens System operates for the purposes of setting, by virtue of registration, the ownership for the title to a piece of private land in order to facilitate transfer or other dealings therein, it only concerns legal relationships between private person in respect of the land.

In the Palay states, as every private ownership of or title to a piece of land is founded on grant from the state, the registration of a title to land under the Torrens System unavoidably involves in the first instance the effect of such registration as between the state and the private land holder. In otherwords, the question as to who has ownership of a piece of land is first of all inseparably related to the question as to whether he does hold the land from the state. How good his registered ownership or title is as against the state is therefore antecedent to its effect in the sphere of private dealings in land.

H. Brief Account of Registration of Dealing Under the National Land Code (1965).

All registration of dealing in this country (except Sabah and Sarawak) are governed by National Land Code 1965. The System of dealing in this country in what is almost similar to the one in Torrens System.

Section 5 defines the term "dealing" as being any transaction entered into and effected in accordance with the provisions of the code. Section 205 details those transactions which are capable of being effected by those empowered by section 43 to deal with land under the provisions of the code. Those are the only transaction recognises by the code as capable of taking legal or statutory effect of registration.

Registration of dealings under the Code creates the appropriate statutory or legal estate or interest. Until registered, the dealing may, though not always, take effect in equity.

The process of registration is achieved by lodgement of the instrument in statutory form, thus giving rise to priority¹ in Torrens terms and, if all is in order, by an entry on the register book describing the dealing appropriate to the instrument and altering the ownership shown thereon. If a transfer is being registered the entry results in the transfers of the statutory or legal

1. Section 294.