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TOWARD ISLAMISATION OF THE NATIONAL LAND CODE

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SUPERVISOR;

TAN SRI DATO' PROFESSOR SYED AGIL BARAKBAH

PREPARED BY;

ABDULLAH BIN HASSAN, LLB (RONS), I.I.U.

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CONTENTS

CHAPTER 1

1. HISTORICAL BACKGROUND OF ISLAMIC LAW AND MALAY CUSTOMARY TENURE

Islamisation of the present National Land Code, Act 56 of 1965, must be viewed as an effort of recovering lost treasure, or of re-establishing historical status quo of the country. Historical facts bear witness to these statements. Hall declared that in the 15th century, Malacca was the most important commercial centre in South East Asia as well as the main diffusing centre of Islam [1]. According to Professor Ahmad Ibrahim 'The law followed in Malacca was the Muslim law which had observed such points of the Malay customary law as were compatible with Islam[2]. S.K. Das in 'The Torrens System in Malaya' acknowleged "The traditional law in Malaya was a mixture of adat (or ancient custom) and hukum shara' (or orthodox Muslim works of the school of Shafii". The relationship between the Malay customary tenure and Islamic Law is documented in the Malacca Digest of A.D. 1523, the Pahang Digest dated 1650, Kedah Disgest of 1650, "adopted from regulations of the kind India knew embodied in the Moghul Tarikh-i-Tahiri", the Johore Digest, based on the Malacca Code, dated about 1789, the Perak Code and Ninety-nine laws of Perak, 1765. "These are digests, containing traces of Malay indigenous patriarchal law, but mixed with relics of Hindu law and overlaid with Muslim law".[3]

[1] DG Hall, History of South East Asia.

[2] Towards a History of Law in Malaysia & Singapore, p.5.

[3] Sir Richard Winstedt, The Malays: A Cultural History. p.91

"The Ninety-nine Laws of Perak, a compromise between the law of the Prophet[4] and ancient adat (custom), reputed to have been bought to Malaya by Saiyid Hassan in the days of Sultan Ahmad Tajidin (1765) dealt with real property only in two sections: section 13 (abandonment of tenement) and section 43 (right of a person clearing land)." [5]

These Malay Codes and Digests throw some light on the mode of acquisition of land and occupancy rights practised by the Malays which had Islamic influence."Among the Muslim states of South East Asia, therefore, indications exist in the presence of Islamic Law in the legal admi - nistration, prior to the era of colonial rule".[6]

The case of Ramah v. Laton [7] which was decided by the British Judges had long established that Islamic law is the law of the land. Islamic law is not foreign law. It is the local law which the local courts should take judicial notice. In Fatimah v. Haji Ismail [8] the court had also held that Islamic law is part of the law of Johore. In the recent case of Tengku Jaafar and Anor v. The State of Pahang [9] the Supreme Court held that the law in Pahang before the introduction of the Torrens system was Islamic law of the Shafii School. In Sahrip v. Mitchell & Anor.,[10] Sir Benson Maxwell C J categorically stated that:

[5] S.K.Das (Supra) p. 2.
[6] Winstedt (Fn. 3) p. 25.
[7] (1927) 6 F.M.S.L.R. 128.
[8] (1939) M.L.J. 134.
[9] (1987) 2 M.L.J. 74.
[10] (1879) Leic 466.

"It is well known that by the old Malay law or custom of Malacca, while the Sovereign was the owner of the soil, every man had nevertheless the right to clear and occupy all forest and waste land, subject to the payment, to the Sovereign, of one-tenth of the produce of the land so taken. The trees which he planted, the houses which he built, were his property which he could sell or mortgage or hand down to his children. If he abandoned the paddy land or fruit trees for three years or his gambier or pepper plantations for a year, his rights ceased, and all reverted to the Sovereign. If, without deserting the land he left it uncultivated longer than was usual or necessary, he was liable to ejectment".

Sahrip's case established beyond doubt that even after the arrival of the European settlers and administrators in Malacca, the Malay customary tenure was much alive and in force and in line to a great extent with Islamic law of property. His lordship statements regarding 'the sovereign, which he meant to be the ruler or sultan, was the owner of the land' are however not in line with Islamic teaching and therefore must be ignored by Muslims. Land is a gift of Allah and as such ownership absolutely vests in Him. Man holds land as a mere trustee.

In another case Abdul Latif v. Mohamed Meera Lebe,[11] a British Judge Claridge R held:

"It has been proved that in the territories of Malacca the owners of the soil and the cultivators of it are en-

[11](1829) 4 Ky 249.

tirely distinct persons, except in and in the immediate vacinity of the town. That the owner of the soil cannot eject the cultivator as long as he continues to pay him a certain portion of the produce - generally one-tenth. That the owner of the soil may sell or otherwise dispose of his interest without prejudice to the cultivator, and the cultivator vice versa. That in case the cultivator allows the land to lie waste, the owner of the soil may eject him by due process of law. That the fact of land being uncultivated for certain periods is evidence of waste. That the period allowed for paddy land is 3 years; cocoanut trees and other fruit trees etc 3 years; gambier 1 year; and pepper 1 year".

The decisions in Abdul Latif and Sahrip gave judicial recognition to the ancient laws of Malacca, in which it was stated:

"There are two kinds of land, first the 'living land' and second, the 'dead land'. With regard to 'dead land', nobody has property rights to it, (when) there is no sign of its being under cultivation by someone, (then) certainly nobody can lay a claim to that land. If someone cultivates it into (a rice-field, be it) a huma or ladang or sawah or bendang, no one can proceed against him. That is what is understood by 'dead land'." [12]

The incidents of the Malay customary land tenure as described above, reflected the rule and practices as fou-

[12] Liaw Yook Fang, Undang-Undang Melaka, Koninklijk Institute, The Hague, 1976.

nd in the classical Islamic law of property. These customary rules could therefore be said to represent the end result of a long periof of integration and harmonious blending between the classical Islamic law of property and local adat as observed by the Malays.[13]

In Shaik Abdul Latif v. Shaik Elias Bux[14] again an English judge, Edmonds J C acknowledged and held that under the several treaties made between the British and the Malay Rulers, the former were merely to act as 'advisers' to the latter. His lordship also pointed out that at the time when the British came to the Malay States 'the only law at that time applicable to the Malays was Mohammedan law modified by local customs ...'

By going through the historical records, our contemporary legal writers have highlighted the true perspective of our legal history. One of them has put it succinctly and effectively as follows:

"The brief historical survey on the law of property in Malaysia as recounted in chapter 1 (supra) has shown that what the western trained legal historians use to label as customary law or customary land tenure was in fact a harmonious blend of Islamic law and local customs. Whatever rules of Islamic law relating to land tenure that regulate the daily lives of the Malays over the centuries since the Sovereign Malacca Sultanate embraced Islam have finally seeped into the Malay psyche and became an integral and indistinguishable part of the

[13] See Salleh Buang, "The Law of Property in Malaysia. The Islamic Perspective - Seminar Paper: I.I.U.

[14] (1915) 1 FMSLR 204.

Malay way of life - the adat. An in-depth study of our early land law revealed the existence of a substantial body of Islamic legal principles, a historical facts which contemporary scholars find themselves in difficulty to accept, having been so engrossed with the civil law system introduced in these shores after the arrival of the British administrators towards the close of the eighteenth century."[15]

To reinforce these historical facts that Islamic Law or Muslim Law was the Lex Loci of Peninsular Malaya and its development from time to time will be undertaken and guaranteed, the Federal Constitution declares in Article 3 clause (1) Islam is the religion of the Federation; but other religions may be practised in peace and harmony in any part of the Federation. The Federal Constitution also provides that in all matters pertaining to Shariah law the Shariah Courts are given the full jurisdiction in the Federation.[16]

In this chapter we have provided the historical evidence and authorities regarding the status quo of Islamic law and Malay Customary land tenure in Malaysia especially Peninsular Malaysia.

In the next chapter, the writer will highlight the political and legal manoeuvring of the British colonial power in order to displace the lawful place of Islamic law and Malay Customary Tenure from their own soil.

[15] Hj. Salleh Hj. Buang, Malaysian Torrens System, Ed.1989.

[16] Article 121 ( ) Federal Constitution.

CHAPTER TWO

Displacement of Islamic and Customary Law

A critical study of the legal history of the country will highlight the fact that Islamic Law and the customs and usages of the Malays were displaced from their rightful place by the colonial powers. They were replaced by the common law gradually.

There were three separate entities before Malaysia attained independence. These three entities were:

(a) The Straits Settlements, comprised of Penang, Malacca and Singapore;

(b) The Federated Malay States of Perak, Selangor, Negeri Sembilan and Pahang; and

(c) The Unfederated Malay States of Kedah, Perlis, Kelantan, Terengganu and Johore.

First, we will highlight the historical evidence of taking over from a Muslim Sultan by the British colonial power.

The Straits Settlements

In the seventeenth century, the island of Penang was part of the territory of Kedah, then ruled by a Muslim Sultan. When Francis Light came to negotiate for a lease of the Island in the latter part of the eighteenth century, the Sultan was facing problems from the north and south, from the Siamese and the Bugis respectively. The arrival of the British was welcomed by the Sultan who had hoped that in return for the lease of the island, the British would render military assistance to Kedah in fighting off the Siamese and the Bugis. The Sultan was how-

manouvered, through deceit and threats, into finally giving up the island and the mainland of Province Wellesley (now Prai) to the British through three treaties in 1786, 1791 and 1800. Actual events and the three aforesaid treaties indicated that the island of Penang was never settled as a colony by the East India Company (agent of the British Government), but was in fact originally leased out by the Sultan to the East India Company. I legal parlance, the island was ceded to the British and not settled. Hence, the law of the place, i.e. Islamic Law and Malay custom then prevailing in the state of Kedah should have been regarded as the LEX LOCI of the island and be permitted to continue in force. English law, which is the law of the newcomers the English traders should not have been considered as the governing law in Penang. That would be more appropriate if the island had been 'settled' by them. The Privy Council in the case of ONG CHENG NEO V. YEAP CHEAH NEO[17] observed that the island was wholly uninhabited when the English arrived. As such, it held that it was really immaterial,

> to consider whether the island should be regarded as a ceded or newly settled territory for there is no trace of any laws having been established there before it was acquired by the East India Company. In either view the law of England must be taken to be the governing law, so far as it is applicable to the

[17](1872) 1 Ky. 326.

circumstances of the place and modified in its application by these circumstances.

English common law and equity was introduced in the Straits Settlements as a result of the three Charters of Justice passed by the English Parliament, the first soon after the acquisition of Penang in 1807, subsequently in 1826 after the acquisition of Malacca and Singapore, and finally in 1855. Thus it came about that the English deeds system was introduced in Penang at the turn of the 19th century.[18]

Unlike the island of Penang, which was comparatively a virgin territory occupied by a handful of fishermen when the East India Company first landed on it, Malacca had enjoyed a long illustrious history of self-rule under the Malacca Muslim Sultans, and subsequently the Portuguese conquerors in the 15th century followed by the Dutch in the 16th and 17th centuries. Thus when the English took over the reign in Malacca from the Dutch after the Anglo-Dutch Treaty of 1824, Malacca had already its LEX LOCI, consisting of a blending of Islamic Law and Malay custom. The land law then prevailing was the Malay customary tenure, with the system of Dutch grants implemented in the urban areas. In SAHRIP V. MITCHELL & ANOR, Maxwell C.J. held that:

> It is well-known that by the old Malay law or custom of Malacca, while the Sovereign was the owner of the soil, every man had nevertheless the right to clear and occupy all

[18] Judith S., 1981, National Land Code, Commentary, MLJ p.4.

forest and waste land subject to the payment to the Sovereign of one-tenth of the produce of the land so taken.[19]

The same pronouncement was made in the case of ABDUL LATIF V. MOHAMED MEERA LEBE (supra)

Amongst the principal characteristics of the Malay customary tenure were:-

(a) the nature of ownership of the land under Malay customary tenure was not one of absolute ownership as presently provided for under the National Land Code, but was of a lesser extent known as "proprietary right", where the right of ownership extends not to the soil as such but to the usufruct or the right to utilise the soil;

(b) the usual method of acquisition of the land is by opening up and cultivating virgin jungle land or waste land, as indicated in SAHRIP V. MITCHELL (supra);

(c) whilst maintaining the land under continuous cultivation, the owner was obliged to pay one-tenths of the proceeds to the Rulers as tax;

(d) if the land was neglected for any substantial period of time without any reasonable cause, it would be forfeited by the Ruler and the owner would lose all his rights therein;

(e) if the owner wishes to sell his land, the price which he could expect from the purchaser would reflect the sum total of his labour and out-of-

[19] See also Abdul Latif's case (1329) 4Ky. 249.

pocket expenses incurred in cultivating and developing the land. This was known as "pulang belanja", which literally meant "return of expenses";

(f) if the owner wishes to borrow money on the security of his land, Malay custom recognises the transaction known as "jual janji", which is basically a sale transaction with a collateral agreement by the buyer to sell back the land to the borrower upon the latter paying back an identical price before a stipulated date. If the buyer fails to do so, the sale agreement becomes absolute, in which event the transaction becomes known as "jual putus".

These characteristics of the Malay customary tenure were noted and studied in detail by Maxwell in his notable treatise "Law and Customs of the Malays with reference to the tenure of land" published towards the close of the 19th century. What Maxwell and later scholars, such as Das, Wong, Judith Sihombing and others, failed to see was that these customary traits of the land tenure actually reflected Islamic precepts. Thus we would observe that -

(a) the nature of "proprietary right" reflects the Islamic principle of ownership of property. In Islam, all things belong to Allah absolutely whilst man's ownership in the property is dependent upon his ability to utilise it for the general benefit of the ummah;

(b) the method of acquisition as described in SAHRIP V. MITCHELL reflected the principle of IHYA AL-MAWAT, which had been practised since the time of the Prophet;

(c) the duty to pay one-tenths of the proceeds to the Ruler conforms to the duty to pay "ushr" (literally meaning one-tenths) in Islam;

(d) the need to maintain the land under cultivation conforms to the Islamic injuction against waste. The case of Bilal during the time of Caliph Umar emphasises this rule against waste and neglect of cultivation;

(e) the principle of "pulang belanja" underscores the Islamic principle that man does not own the land, but is merely given the privilege to utilise it as long as he could do so for the public benefit;

(f) the customary transaction of "jual janji" corresponds to the transaction of "bai' bil wafa" which is accepted by the Hanafi School.

In Malacca, Malay customary tenure was abolished towards the end of the nineteenth century, some three decades after the passing of the third Charter of Justice. This was brought about when in 1861 a law was passed by the English administrators that henceforth all land shall be deemed to be "vested in the Crown", following the English law of property.

As in Penang, the English deeds system was also ultimately introduced in Malacca. This means that when Malacca. This means that when Malacca was administered by the British, three systems of land tenure were prevailing in the State, namely the Malay customary tenure, the system of the Dutch grants and the English deeds system. However, the Dutch grants were subsequently converted to the Eng-

lish "fee simple".

The Federated Malay States

After dealing with the history of Penang and Malacca and noted that the original LEX LOCI of the two States was that of Islamic Law and the Malay custom of land tenure, we now turn to establish the LEX LOCI of the Federated Malay States.

Unlike Penang, which was ceded but which was subsequently regarded for all intents and purposes as a settled territory, and Malacca which the British received in exchange for Bencoolen from the Dutch in 1824, the Federated Malay States were independent States under sovereign Muslim rulers. In THE PAHANG CONSOLIDATED COMPANY LTD. V. THE STATE OF PAHANG, Lord Tomlin observed that:

> "The Sultan of Pahang is an absolute ruler in whom resides all legislative and executive power, subject only to the limitations which he has from time to time imposed upon himself. [20]

In the case of WOON NGEE YEW & ORS. V. NG YOON THAI & ORS. (1941) M.L.J. Rep. 32, Terrel J. explained that:

> "There is, however, a difference between the Colony and the Federated Malay States .;. In the Colony the early settlers were deemed to have brought with them the common law of England and all that implied. There were the three Charters of Justice in 1807, 1826 and 1855, and these specifically provided that the administration of justice was to be

[20] (1933) M.L.J. 247.

> adapted soffar as circumstances would permit to the religious manners and customs of the several classes of litigants. As a result wither of the principle of comity introduced by the common law, or as a result of the Charters, the English rules of law have been modified in the case of persons of alien race and custom ... In the Federated Malay States there are no Charters of Justice, and the common law was not introduced until the passing of the Civil Law Enactment No. 3 of 1937.

In the case of SHAIK ABDUL LATIF & ORS. V. SHAIK ELIAS BUX (1915) 1 F.M.S.L.R. 204, the court had to consider what law to apply in relation to a will drawn up by a Muslim who lived and then died in Selangor. The trial judge, Innes J.C. held that Islamic law was to be applied and further observed that:-

> On each occasion when the introduction of British influence upon the administration of the States has been formally recognised by their Rulers the only law which existed and was accepted by the Malays and other Mohammadans as applicable to questions of inheritance and testamentary dispositions was that of Mohammad modified in few districts by local custom.

When the case went up for appeal, Edmonds J.C. took the apportunity to clarify the position further:-

> The British treaties with the Rulers of these States merely provided that the advice of the Bitish administration should be followed and in accordance with such advice Courts have been established by Enactment, British Judges appointed, and a British administration established. Before the first treaties the population of these States consisted almost solely of Mohammedan Malays with a large industrial land mining Chinese community in their midst. The only law at that time applicable to Malays was the Mohammedan law modified by custom. In Selangor, Perak and Pahang amongst Mussalmans successions on death was regulated by unmodified Mohammedan Law, in parts of Negri Sembilan there are special local customs based on matriarchy,[21] known as 'adat perpateh.

With the coming of the British administrators in the Federated Malay States, the rules of Malay customary tenure soon gave way to the Torrens system, a law alien to the local population at that time. The first Torrens Legislation in the Malay States was the Selangor Registration of Titles Regulations of 1891, and this later become the model for the other three States to follow, Perak and Pahang in 1897, and Negeri Sembilan in 1898.

The Unfederated Malay States

The Unfederated Malay States were Kedah, Perlis, Kelan-

[21] Shaik Abdul Latif (supra) p. 217.

tan, and Terengganu. Johore accepted the status of a protectorate in 1914. The northern states of Kedah and Perlis were very much under the influence of the Siamese King, and to a lesser extent so was Kelantan and Terengganu. The British gained possession of these four northern states from Siam (now Thailand) in 1909 pursuant to the terms of the Anglo-Siamese Treaty of that year, whereupon a British Adviser was appointed to look after British interests in each of these states. Johore was the last State to come under the British influence, but then Johore Sultan had always maintained a close allience with the Bitish monarch. In time, the Torrens system was also introduced in these five Unfederated Malay States.

Land tenure in these Unfederated Malay States, prior to British intervention, was that of early Malay tenure i.e. Malay customary tenure, having indication of Islamic influence although, other than in Johore, also certain incidents may have been those of Thai law.

The Beginning of the Torrens System.

Thus it is clear from telling historical facts, when the Torrens system was first introduced in the Federated and Unfederated Malay States, as well as Penang and Malacca, originally there was already then prevailing a system of land law based on Malay custom and Islamic law as the LEX LOCI. This has been recently been affirmed by the Supreme Court of Malaysia in the case of TENGKU JAAFAR & ANOR V. THE STATE OF PAHANG (1987) 2 M.L.J. 74 in

the Lord President held that the land law in Pahang before the introduction of the Torrens system was Islamic law of the Shafii School.

In the early stages of the introduction of the Torrens system, the General Land Regulations were enacted in all the four states (comprised the Federated Malay States), Perak in 1879, Selangor in 1882, Negeri Sembilan in 1887 and Pahang in 1888. This was soon followed by the Registration of Titles Regulations in Selangor (1891), Perak and Pahang (1897) and Negeri Sembilan (1898), and the Land Enactments of 1897, enacted in all the four states. By 1911, these several and separate State legislations finally gave way to two uniform laws for the four states, the F.M.S. Land Enactment of 1911 and the F.M.S. Registration of Titles Enactment, 1911. Thus, uniformity of law and land administration was finally achieved within six years of the formation of the Federated Malay States pursuant to the Agreement of 1895.

Whilst uniformity of law and consistent land administration procedures were attained in the four Federated Malay States, the position in the other five Unfederated Malay States still lagged behind in near disarray. Thus, Johore had its Land Enactment of 1910, Kedah had its Land Enactment of 1906, amended in 1912 and the Concession Enactment of 1909, Kelantan and Terengganu had their own respective Land Enactments of 1938.[22]

Amongst the principal characteristics of the Torrens system first introduced into the Malay States which could be regarded as constituting a radical departure from the

[22] Hj.Salleh BUang, Malaysian Torrens System, pp. 9-10.

rules of Malay customary tenure blended with Islamic Law, were:-

(a) all lands vest in the Ruler, who has the power to alienate land to his subjects wither in perpetuity or for a fixed term of up to 999 years;

(b) all dealings in land must be in the prescribed form must be duly registered with the relevant authorities; failure to do so would render the dealings null and void, as was clearly demonstrated by the Privy Council in the jual janji case of HAJI ABDUL RAHMAN & ANOR V. MOHAMED HASSAN (1917) A.C. 209;

(c) owners of land are given indefeasibility of title, which could be questioned only under special circumstances;

(d) the traditional method of acquisition of virgin land or waste land as permitted under the Malay customary tenure was abolished, as could be seen recently in the case of Sidek & 461 Ors. V. THE GOVERNMENT OF PERAK (1982) 1 M.L.J. 313;

(e) forms of dealings which were recognised under the law were transfers, leases exceeding three years, charges and liens; and

(f) two forms of caveats were recognised, namely private caveat and registrar's caveats. [23]

The uniform laws of 1911 mentioned above perpetuated the division of land in the country into two distinct categories. The Land Enactment dealt with the registration of country lands less than 100 acres in area on a

[23] Ibid, p. 10.

Mukim Register, i.e. lands formerly held under the Malay customary tenure. The Registration of Titles Enactment dealt with registry lands, i.e. town lands and country lands exceeding 100 acres and estates. These two parallel legislation in the Federated Malay States continued in force until it was amended by the Land Code of 1926, which came into force on 1st. January 1928 and came to cited as the Land Code 1928 (Cap. 138 of Revised Laws).[24]

The Land Code 1928 effected further changes in the law, whilst maintaining the two categories of land and the basic Torrens principles abovementioned. The following changes were however introduced:-

(a) The principle of indefeasibility of title was more clearly defined, with specific statutory exceptions being spelt out;

(b) Adverse possession against individual owners of land is now no longer possible; adverse possession against the State had been disallowed since the first Torrens legislation in the respective States;

(c) Customary tenure under Adat Perpateh is preserved;

(d) The strictness regarding compliance with statutory form and registration as indicated in the HAJI ABDUL RAHMAN case has been abandoned, as could be seen from the decision of Federal Court in MAHADEVAN S/O MAHALINGAM V. MANILAL & SONS (M) SDN. BHD. (1984) 1 C.L.J. 286;

(e) Specific types of cultivation were enforced.[25]

[24] Ibid, p. 11.
[25] Ibid, p. 11.

On the eve of its independence, the Federation of Malaya (formed in 1948 pursuant to the Federation of Malaya Agreement) found itself possessed of:-

(a) one uniform Land Code for the four Federated Malay States;

(b) five separate State legislation in each of the five Unfederated Malay States; and

(c) the English deeds system still prevailing in the former Straits Settlements of Malacca and Penang.

With independence around the corner, it therefore became imperative to work on a new National Land Code which can achieve uniformity of law and administration in all the eleven States comprised in the newly emerging independent State. To this end, the International Bank of Reconstruction and Development had formed a task force headed by Sir Louis Chick to study the land laws of the country with a view to making suitable recommendations to the Government.[26] A Report was duly submitted in 1955, in which the Mission strongly urged the Government to enact a national code to replace the various State enactments.

In due course, the Government set up a Commission of Experts[27] to study closely the Report of the Chick Mission. Amongst the several weaknesses in the law and administration which the Chick Mission had uncovered and which Government had subsequently asked to Commission to study in great detail were the following matters:-

(a) the indiscriminate issue of temporary occupation licences and the ease of renewals, giving rise to false ex-

[26] IBRD Report:The Econ. Devt. Of Malaya, W'ton.DC 1955.

[27] Abdul Hamid, Dato!Kanun Tanah Negara Dlm.Cabaran Zaman,'85.

lamic law which was practised to a great extent in the Malay customary tenure gave way to the English law and the Torrens system. This was possible because either the then Malays generally and Malay leaders specifically were indifference of their religion, Islam, and customs, or they were weak to resist the will and force of the British.

Essentially under the Torrens system the register reflects all the facts material to the registered owner's title in the land. These material facts refer to the name of the proprietor for the time being, the land which has been alienated, its area and location, its survey plan and its boundary limits. The torrens system has thus endowed the register with the attributes of a mirror of sorts that can reveal all the necessary particulars relating to the land that would interest a potential purchaser or chargee. Hence the label of "the mirror principle" as given by Das.[29]

A second attribute of the Torrens system is that the register becomes a "curtain". In any transaction between th the registered owner and any potential purchaser, the latter will be concerned only with the register and nothing else. The purchaser can safely rely on the information revealed in the register, and he need not, nor may he, look behind it.

The cumulative effect of these principles is that the Torrens system has conferred an indefeasibility of title to the registered owner. In TEH BEE V. K. MARUTHAMUTHU (1977) 2 M.L.J. 7, the Federal Court held that "Under the Torrens system, the register is everything". To allow

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[29] S.K.Das, The Torrens System in Malaya, p.65.