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Contractual Transfer of Property Interests in Myanmar

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for Beloved Mother Daw Khin San Myint, Ko Sai Seng Sai and Nang Muay Ngin Lao Seng a.k.a. Ai Chan

In memoriam

Beloved Father U Kyi Win

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ABSTRACT

This dissertation examines the transaction of real property conveyancing in Myanmar. Because the people in Myanmar mostly convey the real property with informal sale contracts even though the relevant laws provide to register the contract document as an obligatory matter. As a result, high volume of property conveyancing disputes is increasing that triggered common risks to the buyer. Major disputes are as of the people who create 1) double contracts in order to sell one property to two buyers and 3) fraudulent contracts to sell the property, which the seller has no property at all, to the buyer. The research analyses the following hypothesis:

- 1) Why do people stay away from the registration process?
- 2) Is there any other secure way not to make registration for the real property transfer?
- 3) What is the effect of the courts' decision for the registered document?
- 4) Do statutory languages under the relevant laws require revisiting?
- 4) What is the position of deed recording system at the office of the registration of deeds? And
- 5) What is the role if informal sale contracts in conveyancing practice?

To this regard, the research analyses to find out the possible solutions and justifications to facilitate the above issues and to encourage the people for taking advantage registration process in order to reduce the risk of real property conveyancing in Myanmar by recommending for the system concerning registrations to be made at the office of the registration of deeds thereby contributing to the safe and smooth conduct of transactions on the real property.

In doing the research, real property conveyancing in England and Japan will be studied with the objective of exploring possible solutions to the real property conveyancing problems currently faced in Myanmar. The reason for comparing with the English property system is that the British imported the current

property related laws in Myanmar that apply compulsory registration during the British colonization. England is one of the first countries to successfully adopt and develop a title registration system. The title registration system of England works has seen reform through its 1925 and 2002 legislation. In Japan, even though the relevant real property laws implement a voluntary registration system, almost all transfers are in fact registered. Comparison with the system of England will provide hints for the betterment of Myanmar's system. Japanese real property law is of interest because almost 100 % of the people make registration for real property transfer.

The research paper is composed of three chapters plus the introduction and the conclusion parts. In Chapter 1, the study of conveyancing scheme for real property in Myanmar will be studied. This will encompass the transaction in theory and actual conveyancing practices. Relevant problems and cases will be presented to illustrate the issues currently faced in Myanmar. Chapter 2 will examine the legal process and legal practice of Myanmar courts with respect to the application of existing laws. The most critical provisions related to the problem will be identified in this chapter. Chapter 3 concerns comparison with real property conveyancing in England and Japan. Comparison will reveal factors that lead to a risky environment for real property transactions in Myanmar. Potential implications and simplifications to lay the foundation for a more secure conveyancing process for immovable property will be identified in this chapter. Following the Chapter 3, the conclusion part will offer suggestions, implications and recommendations to encourage people to take advantage registration process for their transfer of real property by removing and reducing the obstacles in conveyancing processes for obtaining the secure transaction of real property in Myanmar.

As the recommendations of the research after the study, it can be noted that since Myanmar courts themselves have to abide the laws, have to give court's decision within the framework of the laws and therefore, the laws are crucial to be in line with the current circumstances since some 19th century laws and rules under them become anachronism. As the laws tended to become static, it is particularly required to revisit the current Registration Act of 1909 in the following parts not to wither but to keep pace with the progressive ideas of an advancing community.

- 1) Raising the threshold value to 100,000 kyats under section 17 of the Registration Act 1909 to be

consistent with the sections 54 and 59 of the Law Amending the Transfer of Property Act 2013

- 2) Shortening the time for registration from 4 months to 60 days under sections 23, 24, 25 and 26 of the Registration Act 1909
- 3) Adding explicit language to section 47 of the Registration Act 1909, by including “Though effective date of registration will be the execution date of the sale contract, first registration contract will have priority if it is compared with other registered sale contracts by following the chronological order of registration.”
- 4) Enacting the Condominium Law in the very near future for the conveyancing of flats

Besides, other areas in making the registration process can also be considered as in the followings for possible reform to persuade the people for taking registration for transfer of real property.

- 1) Reducing the 30% income tax on purchase price
- 2) Recreating the income tax system, not only to reduce the 30% income tax but also to entirely reform the current system of tax recovery based on “white money” and “black money”
- 3) Raising the amount of annual property tax
- 4) Transferring records relating to registered transactions to a single local office, thus reducing complexity and risk, and saving unnecessary work
- 5) Creating a more effective deeds recording system at the office of the registration of deeds to avoid overlapping registration documents on same property, through a title owner name index system keyed to land maps and registered deeds, or (more ambitiously) migrating to title registration based on land parcels
- 6) Establishing more secure title possession documents to forestall problems of forgery
- 7) Expediting procedures for title search
- 8) Offering training to the public concerning the risks of informal property transfers and the mechanisms for registration

Eventually, the risk of real property conveyancing may be reduced if Myanmar considers the

recommendations above. The task will take time, however. Myanmar is fortunate to have comprehensive, well thought-out well-trying schemes in the Japanese and English real property registration systems, for a more certain path to long-overdue reforms of the conveyancing system. These resources are invaluable to prospective reform of the Myanmar registration system.

Keywords: Property, Real Property, Land and Buildings attached to Land, Flats, Conveyancing, Registration, General Power of Attorney, Stamp Duty, Taxation, Seller, Buyer, Legal Affairs Bureau, Judicial Scrivener, Revenue Office, Municipal Office and Office of the Registration of Deeds.

CONTRACTUAL TRANSFER OF PROPERTY INTERESTS IN MYANMAR

I. INTRODUCTION

Developments in Myanmar have prompted an onset of property projects and investment opportunities under the 2011 new government. Since 31st March 2011, Myanmar has embarked upon a series of reforms, including political, economic, and administrative amendments.¹ Progress has been made on the economic front with reforms initiated to address issues of corruption, integrated foreign investment and taxation laws in order to attract foreign investment. However, the pace and extent of economic reforms in the country remains slow and leaves much to be desired in the area of real property transactions, which is one the crucial elements for foreign investment.² International companies of various sectors are rushing to enter the Myanmar market, and this trend is expected to continue to grow, causing a strain on office and residential space. Property law will become crucial under these circumstances.³ Property is indeed a fundamental element in any system of rules concerned with the governance of human activity and it is thus very important to have a smooth and safe real property conveyancing system in a country.⁴

¹ Nayantara Shaunik, “Myanmar’s Economic Reforms: Imperatives And Opportunities,” *Eurasia Review* (February 18, 2013), <http://www.eurasiareview.com/18022013-myanmars-economic-reforms-imperatives-and-opportunities-analysis/> (accessed February 23, 2013).

² Ibid.

³ Kay Tu, “Foreign Investors Mainly Ask about the Land Situation in Myanmar” [မြဝတီ - နိုင်ငံတကာ ရင်းနှီးမြှုပ်နှံသူများ အနေဖြင့် မြေနေရာကို အဓိကထား မေးမြန်းကြောင်း သိရ], *Business News, Myawady*, July 29, 2013, <http://www.myawady.com.mm/business/news/item/20754-2013-07-29-08-58-32> (accessed July 30, 2013); “2nd Myanmar Real Estate Summit (MRES) 2013,” October 1, 2013, <http://www.cmtevents.com/aboutevent.aspx?ev=130941> (accessed July 15, 2013).

⁴ K.J. Gray and P.D. Symes, *Real Property and Real People: Principles of Land Law* (London: Butterworths, 1981), 3.

The general use of the term “property” by lawyers and laymen alike is to indicate land, building, fixtures,⁵ chattels,⁶ and incorporeal things, which are the objects of ownership.⁷ Property thus encompasses in general real property and personal property, or in other words immovable property and movable property. English law distinguishes between “real” property and “personal” property, or “land” and “other kinds” of property.⁸ The property systems concerned in this thesis are similar in their purpose and broad outlines.

According to English law, land comprises not only the surface of the earth, but also anything attached to it such as buildings, fixtures, things fasten to them and growing plants, the air-space above it, and anything below it, so that rights to land extend an indefinite distance into space.⁹ Under article 86(1) of the Japanese Civil Code, “[l]and and any fixtures thereto are regarded as real estate”.¹⁰ Likewise, section¹¹ 5(a)(20) of the Interpretation of Expressions Law 1973 of Myanmar states that immovable property includes land, benefits that arise out of land and things attached to the earth, permanently fastened to anything attached to the earth.¹²

⁵ Fixtures comprise that category of material objects which, when attached physically to the land, are regarded as becoming annexed to the real property. The fixture therefore passes with all subsequent conveyance of the real property unless and until lawfully severed from the land. Mere juxtaposition or the laying of an article, however heavy, upon the land does not prima facie make it a fixture, even though it subsequently sinks into the ground. Likewise, if a superstructure can be removed without losing its identity, it will not in general be regarded as a fixture.

⁶ The category of chattels consists of physical objects which never lose their character as mere personalty, but which retain their chattel status even though placed in some close relation with real property. The general rule is that a chattel is not deemed to be a fixture unless it is actually fastened to or connected with the land or building. Not being included within the real property, chattels do not automatically pass with the conveyances of the land.

⁷ William F. Walsh, *Commentaries on the Law of Real Property*, I (Albany, N.Y.: Matthew Bender, 1947), 1.

⁸ Eric Poole, *English Property Law* (London: C. Knight, 1973), 8.

⁹ Ibid.

¹⁰ Civil Code [民法], art. 86(1) (jp); 脇本和也 and サルヤードジョン, *Illustrated Dictionary: Real Property Business in English* [図解事典 英語で学ぶ不動産ビジネス] (Shuwa Systems, 2011), 14.

¹¹ The term “section” here is synonymous with the term “article” in most countries’ usage.

¹² U Thet Phay (ဦးသက်ဇေ) and U Maung Maung Win (ဦးမောင်မောင်ဝင်း), *Matters to Know Dealing with the Transfer of Property Act 1882* [ပစ္စည်းလွှဲပြောင်းခြင်းဥပဒေ၏ သိကောင်းစရာများ], 2nd ed. (Yangon, Myanmar: Cho Tay Than SarPay, 2009), 6.

Section 3 of the Transfer of Property Act of 1882 states that immovable property does not include standing timber, growing crops or grass...¹³ Personal property can be tangible, such as a glass, a book or a pencil, or it can be intangible, such as an idea.¹⁴ In this dissertation paper, the focus will be on conveyancing of land, buildings and flats.

Economic reform started from the year of 2011 and economic transactions including the transfer of immovable properties such as flats, land and buildings have increased accordingly. Since flats are being constructed to respond to the demands of the population in major cities such as Yangon where economic opportunities exist,¹⁵ sale or transfer of flats has also increased. With these increases, there has also been an increase in contractual problems created by informal contracts for the transfer of immovable properties from one person to another, and this highlights the need for a study to find solutions for possible reform in conveyancing real properties in Myanmar.

Several specific problems in conveyancing the land, buildings and flats have come to the attention of the author. One major problem is that the possessors of the real properties do not often register their contract of sale at the office of the registration of deeds in Myanmar, and this leads to uncertainty and misconduct. Since conveyances of realty are infrequently registered, this gives rise to many disputes in the Myanmar courts over real property possession problems. For example, a person might sell one real property to more than one buyer by forming more than one document. By making more than one document, one could be able to sell a property, which one had no legal power to convey. Persons who purchase such property become victims. To protect themselves, buyers carefully search and inquire based on the documents concerned, to be sure that no third-

¹³ Transfer of Property Act, X BURMA CODE § 3 (Union of Burma 1958).

¹⁴ Roger Bernhardt and Ann M. Burkhardt, *Real Property in a Nutshell*, 6th ed. (West Group, 2010), 1.

¹⁵ Aung Naing (Lat Pa Tan) (အောင်နိုင် (လက်ပံတန်း)), “Can the Flats Be Sold with No Agreement of the Land Owner?” [အပျောက်တိုက်ခန်းကို အိမ်ရှင်၏သဘောတူညီချက်မယူဘဲ ရောင်းနိုင်သလား], *The Voice Weekly Journal*, June 20, 2011, 36.

party rights exist which will bind the property after it has been transferred to the buyers. Such independent inquires are costly and time-consuming, and cannot completely control the risk of the buyer.

Given this situation, in considering these problems, it can be said that despite the fact that the Registration Act of 1909¹⁶ and the Transfer of Property Act of 1882 in Myanmar provide for compulsory registration of deeds, nonetheless very few people register their transfer of property, most people rarely register the sale documents. This encourages misconduct in the conveyancing of real property. In analyzing the contractual problems dealing with the conveyancing of flats, land and buildings attached to land in Myanmar, the scheme of the transfer of real properties in England and Japan will be examined as models for Myanmar in the search for possible ways to overcome the contractual problems in conveyancing of real property in modern Myanmar. For this purpose it is required to analyze the legal process in Myanmar to illuminate the relationship between legislation and actual court practice.

Although Myanmar is known as a common law country due to British colonization, the disputed cases before the courts are chiefly decided pursuant to the existing laws and/or acts alone, since all Myanmar courts have to limit their review to statutory laws and procedures.¹⁷ In Myanmar, the provisions under the laws and acts are crucial since all Myanmar courts in general have to give a decision based on the framework of relevant laws of the dispute concerned.¹⁸ Some minor parts of court's decision can include reference to similar cases from reported rulings in order to support the current case decision as a model only if they have the similar facts

¹⁶ Transfer of Property Act, § 3.

¹⁷ U Sein Than, Director General, "Current Judicial System, Formation and Functions of Courts in Myanmar" (presented at Promoting Justice Sector Development in New Democracies "Seminar on Comparative Experiences from the Region" 24-25 January, Nay Pyi Taw, Myanmar, January 25, 2013), Nay Pyi Taw, Myanmar, <http://www.mm.undp.org/NewsandPressreleases/NarNewsandPressreleases/Pressreleases/Justice%20dev%20presentations.html>.

¹⁸ "Legal System Myanmar | The Supreme Court of the Union," Government, *Union Supreme Court*, n.d., <http://www.unionsupremecourt.gov.mm/?q=my/content/legal-system-myanmar> (accessed August 11, 2013); "Policies and Aims," *Supreme Court of The Union*, n.d., <http://www.unionsupremecourt.gov.mm/?q=content/about-us> (accessed August 11, 2013).

and grounds to the present case. However, all Myanmar courts have first of all to adhere strictly to the laws and/or the acts.

Of course, Myanmar courts are obliged to decide the matter based on justice, equity and good conscience where there is no relevant statutory law on point,¹⁹ but this covers very few matters in practice since almost all the disputes are covered by provisions of the relevant laws and acts.²⁰ So, if a law or an act is under-specified in the relevant subjected area, reparation may not be effective. It is thus necessary to understand the legal process applied when considering court-decision of disputed matters to fully understand actual practice of the common law legal system in Myanmar.²¹

II. PROBLEM IDENTIFICATION

In Myanmar, although the Registration Act of 1909 and the Transfer of Property Act of 1882 created a system of compulsory registration, most of the people convey immovable properties with unregistered documents.²² Unregistered sales of real property create many disputes. Non-registered sale contracts also make people insecure in their possession of real properties and those insecure possessors are reluctant to claim for their possession rights in the courts. This thesis explores why people fail to follow the registration process even though the transferee/buyer does not obtain title when transferring with unregistered documents. Court records reveal common risks to the buyer in conveyancing real property, namely: “Double Contracts” (selling one real property to two buyers by creating two sale contracts), and “Fraudulent Contracts” (sales by a seller with no property interest by creating forged documents).

¹⁹ The Burma Laws Act, BURMA CODE VOLUME I, 17 (1898).

²⁰ “Policies and Aims.”

²¹ Union Attorney General’s Office, *Law Journal* (ဥပဒေညာရာနယ်), I, II (Yangon, Myanmar: Union Attorney General’s Office, 1999), 143.

²² “Real Estate Situation Beyond the Action” [အရေးယူမှုများအလွန် အိမ်ခြံမြေ], *7-Day News Journal* 12, no. 20 (July 24, 2013): 1 & 8.

“Double Contracts” occur when a party tries to sell one property to two different buyers by creating two sale contracts. This raises a question over which of the buyers shall be entitled to the legally enforceable title right to possess the real property. If the court decides in favor of one party, the other will face a serious loss. Therefore, the question to pose for this problem is which of such “Double Contracts” are valid and which evidence the court should weight in order to decide between the parties.

“Fraudulent Contracts” arise when a person – who has no real property – tries to sell real property to the buyer. In this case, the parties conclude a contract for real property that was not actually owned by the person who sold it. Disputes over fraudulent contracts create not only legal issues, but also result in personal losses suffered by the parties who are the victims of the fraud. Such cases involve the transferring of not only land and buildings but also flats. The question here is similar to the question above.

The fundamental questions for all these contractual problems are (a) why and how the parties avoid the processes and procedures for registration of the sale documents and (b) whether there are possible ambiguities in the statutory languages of the existing laws in Myanmar that enable such forms of conveyancing. As such, it is necessary to understand court practice in applying legislation to these disputes. Practical legal process is therefore an element of this research. Given the non-registered conveyancing issues and contractual problems mentioned above, this is an area that requires special attention to explore possible solutions to overcome these problems in order to offer a stable and secure environment for transactions and to persuade the people to take advantage of the registration process in Myanmar.

III. RESEARCH QUESTIONS

The main question for the research is to determine why people fail to register at the relevant office in order to reduce risk in real property conveyancing even though the relevant laws provide that registration is compulsory. Related questions include:

- 1) Do those not registering have any other secure way to protect their property?

- 2) Are costs associated with registration a factor in their decision?
- 3) Is there statutory language that makes parties reluctant to register?
- 4) Or is there any failure of the deed recording system at the office of the registration of deeds?
- 5) What factors enable the above-mentioned types of contract – double contracts and fraudulent contracts?

IV. OBJECTIVES OF THE STUDY

The purpose of this study is ultimately to encourage the people in Myanmar to take advantage of the registration process to reduce the risk of real property transfer. In order to achieve this objective, it also needs:

- 1) to provide simple and clear elements under the relevant laws to help the Myanmar courts; and
- 2) to address other obstacles in processing registration including taxation cost which may discourage people from making registration.

V. METHODOLOGY AND SUBJECT MATTER

In the dissertation paper, a comparative and analytical approach will be taken. Comparative analysis of the real property transferring system, practice and procedures dealing with the conveyancing of land and buildings attached to the land, and flats of Myanmar, England and Japan will be studied with the objective of exploring possible solutions to the real property conveyancing problems currently faced in Myanmar.

The reason for comparing with the English property system is that British colonized Myanmar for over 100 years and during British colonization, the British imported the current property related laws that apply compulsory registration. England is one of the first countries to successfully adopt and develop a title registration system. The title registration system of England works has seen reform through its 1925 and 2002 legislation. In Japan, even though the relevant real property laws implement a voluntary registration system,

almost all transfers are in fact registered. Comparison with the system of England will provide hints for the betterment of Myanmar's system. Japanese real property law is of interest because almost 100 % of the people make registration for real property transfer. Relevant cases regarding the problems of conveyancing real property will be discussed in the paper, as may be necessary.

As important foundation, the background of Myanmar legal process from the ancient Myanmar kingdom period to present day and the application of legislation in the Myanmar courts will also be explored to illuminate its role in resolving disputes in the Myanmar courts. As noted above, it is important to understand the central role of laws and provisions in considering the operation and application of law in Myanmar. Reform proposals must be guided by these factors.

Throughout the research, both the primary and secondary sources will be utilized. Primary sources contain government-enacted laws, acts, statutes, annual ruling's books, government-released documents, periodicals, official daily released newspapers and so forth. Secondary sources encompass journals, articles, cases, critiques by eminent lawyers and other scholarship. Given the high volume of real property disputes in Myanmar, it is important and worthwhile to study in comparison with how the system of transfer of real properties are conducted and registered in Japan where the voluntary registration system exists, and in England where the compulsory title registration system is practiced. The analytic discussion of court decisions and of regulations will focus on the Yangon municipality, as the largest urban area in Myanmar.

VI. STRUCTURE OF THE STUDY

The dissertation paper is composed of three chapters plus the introduction and the conclusion parts. In Chapter 1, the study of conveyancing scheme for immovable property – land, buildings affixed on the land and flats – in Myanmar will be studied. This will encompass the transaction in theory for transferring real property and actual conveyancing practices. Relevant problems and cases will be presented to illustrate the issues currently faced in Myanmar.

Chapter 2 will examine the legal process and legal practice of Myanmar courts with respect to the application of existing laws. The most critical provisions related to the problem will be identified in this chapter.

Chapter 3 concerns comparison with real property conveyancing in England and Japan. Particularly, the background of real property reform in each country will be analyzed. Comparison will reveal factors that lead to a risky environment for real property transactions in Myanmar. Potential implications and simplifications to lay the foundation for a more secure conveyancing process for immovable property will be identified in this chapter.

Following the Chapter 3, the conclusion part will offer suggestions, implications and recommendations to encourage people to take advantage registration process for their transfer of real property by removing and reducing the obstacles in conveyancing processes for obtaining the secure transaction of real property in Myanmar.

CHAPTER 1

TRANSFER OF REAL PROPERTY INTERESTS AND IT'S ISSUES IN MYANMAR

1.1 INTRODUCTION

In this chapter, the conveyancing system of land, buildings attached to the land and flats in Myanmar will be analyzed. The author explores the conveyancing process of real property, the procedures prescribed under the relevant laws and directions and in actual conveyancing practice. Accordingly, the research will refer to specific cases and case studies involving real property in Myanmar. This chapter clarifies the legal and practical issues that arise, as foundation for the examination of court reasoning in the following chapter.

1.2 PROPERTY: REAL PROPERTY

Real property and personal property are the two main subunits of property in English law. Real property generally is immovable, whereas personal property or personalty consists of movable objects. Real property (or immovable property) is legally defined as land and the permanent improvements to it made by human efforts: buildings, machinery, dams, mines, canals, and roads. Stated more generally, real property consists of land and objects, which are permanently, affixed to land, for instance, fixtures, buildings and trees.²³

In Myanmar, section 2(d) of the Transfer of Immovable Property Restriction Act of 1987 provides: “[i]mmovable property means land and benefits arising out of land, building and things built or imbedded in the earth and other things attached to the building.”²⁴ According to section 2(6) of the Registration Act of 1909, it illustrates that “immovable property includes lands, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth or permanently

²³ Bernhardt and Burkhart, *Real Property in a Nutshell*, 1.

²⁴ The Transfer of Immovable Property Restriction Act, 1/1987 § 2(d) (1987).

fastened to anything, which is attached to the earth, but not standing timber, growing crops nor grass.”²⁵ Similarly, under section 3 of the Transfer of Property Act of 1882, it provides that “immovable property does not include standing timber, growing crops or grass.”²⁶

Accordingly, section 5(a)(20) of the Interpretation of Expressions Law 1973 also prescribes that immovable property includes land, benefits that arise out of land and things attached to the earth, permanently fastened to anything attached to the earth.²⁷ The law of Myanmar therefore adopts a definition of “land” (or “immoveable property”) that is quite similar to that of the English legal system from which its rules are in large part derived. Therefore, with respect to Myanmar it can generally be recognized that immovable property commonly includes land, buildings attached to the land and flats.

1.3 CONVEYANCING AND CATEGORIZATION OF REAL PROPERTY

There are ten categories of land in Myanmar, as follows:

- 1) State owned land:
- 2) Government administered land:
- 3) Government organizations owned land:
- 4) Municipal owned land:
- 5) Religious and Buddha holy land:

²⁵ The Registration Act, BURMA CODE VOLUME X § 2(6) (1909); U Kyaw Zay Ya (ဦးကျော်ဇေယျာ), *Knowledge for the Holders of Land, Buildings and Flats* [အိမ်မြေတိုက်တာရှိသူများနှင့်သက်ဆိုင်သောပြည့်န်ချက်များ], 2nd ed. (Yangon, Myanmar: SaKar Pyaw Nay Thu Myar SarPay, 1999), 39.

²⁶ Transfer of Property Act, X BURMA CODE § 3 (Union of Burma 1958).

²⁷ U Thet Phay and U Maung Maung Win, *Matters to Know Dealing with the Transfer of Property Act 1882*, 6.

6) Rice field and cattle field land:

7) Garden land:

8) Grandfather owned land (land that is owned by the inheritors in family members as the ancestors bought it under the British period as their own land since British announced the land in Myanmar as government owned land in 1853 and sold the land to people. People who bought and owned the land at the British time were recognized as grandfather owned land.)²⁸

9) Government granted land or leasehold land for the term of years:²⁹ and

10) Government licensed land.

Amongst the above ten categories of land, only 8) grandfather owned land³⁰ and 9) government granted land or leasehold land for the term of years³¹ can be conveyed from one person to another. Dealing with the conveyance of real property, the transactions commonly giving rise to a transfer of ownership in Myanmar are as of the following:

- 1) Transfer by sale;
- 2) Transfer by mortgage;

²⁸ U Kyaw (ဦး ကျော်), *Land Laws and Land Administration* [မြေယာအုပ်ချုပ်မှု ယန္တရား နှင့် အသုံးချ မြေယာဥပဒေများ] (Yangon, Myanmar: Kyaw SarPay, 2010), 11; U Kyaw Zay Ya, *Knowledge for the Holders of Land, Buildings and Flats*, 3 & 13.

²⁹ An example dealing with the documents of Government Granted Land or leasehold land for the term of years can be seen in Appendix II.

³⁰ The same as Fee Simple in English usage, and in this sort of real estate, the owner can dispose of the property as he or she pleases, and it will descend to the owner's heirs at death or according to the terms of the owner's will.

³¹ This is also almost the same as Fee Tail in English usage, and this kind of real estate passes from generation to generation of the family line until the government granted lease term end. Even if the government granted lease term ends, the generation of the family can extend the period by the reasonable facts. It passes to each holder's children at the holder's death and cannot be inherited by collateral heirs, such as the holder's siblings. Nonetheless, the different is that the holder can transfer the estate if the holder acts in accordance with the rules prescribed in the document in respect of the granted lease.

- 3) Transfer by lease;
- 4) Transfer by exchange; and
- 5) Transfer by gift.³²

For grandfather owned land and government granted land or leasehold land for the term of years, only for the possession right can be conveyed since the Republic of the Union of Myanmar is the ultimate owner of all land.³³ The remaining categories of land cannot be transferred from one person to another. For instance, government licensed land³⁴ cannot be transferred or sold as the government licensed land is granted for the use of a specific person only.³⁵ Contracts made for the conveyance of government licensed land from one person to another are therefore illegal, and the persons who purchase that kind of land cannot assert rights in the land concerned in Myanmar courts.³⁶ Any person who purchases government licensed land obtains no enforceable property interest.

1.4 REGISTRATION OF CONVEYANCING DOCUMENTS IS COMPULSORY

In conveyancing the real property grandfather owned land and government granted land or leasehold land for the term of years, the buyer registers the real property sale document at the office of the registration of deeds. Under section 17 of the Registration Act of 1909,³⁷ for properties with a value 100 kyats or more the

³² U Kyaw Zay Ya, *Knowledge for the Holders of Land, Buildings and Flats*, 39 & 40.

³³ Constitution of the Republic of the Union of Myanmar, art. 10 (2008).

³⁴ Government licensed land is the one allowed to be used to construct a house or building with some limitations at the areas required to be developed. Those sorts of land are not permitted to convey from one person to another.

³⁵ Aung Naing (Lat Pa Tan) (အောင်နိုင် (လက်ပံတန်း)), “Can Government Licensed Land Be Transferred or Sold?” [ပါမစ်မြေကို လွှဲပြောင်းရောင်းချနိုင်သလား], *The Voice Weekly Journal*, November 14, 2011, 40.

³⁶ Ibid.

³⁷ The Registration Act, BURMA CODE VOLUME X § 17(1) (1909) (“The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which this Act came or comes into force, namely:- (a). . . ; (b) other non-testamentary instruments which purport

buyer must register the contract documents at the relevant office in order to move the property to the transferee/buyer. This is the accepted interpretation of this provision.³⁸ Section 54 of the Transfer of Property Act of 1882 provides that, “[s]ale is a transfer of ownership in exchange for price paid or promised or part-paid and part-promised. Such transfer in case of tangible immovable property of the value of one hundred thousand kyats and upward, or in case of a reversion or other intangible thing, can be made only by a registered instrument.”³⁹ Registration is compulsory for two categories of property, to wit 1) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent; and 2) sale of immovable property of the value of one hundred kyats⁴⁰ and upwards.⁴¹ Thus in Myanmar every document regarding the conveyance of real property must be registered at the relevant office for the registration of deeds for the transaction to take effect in law.⁴² registration of documents at the office of the registration of deeds is required to convey grandfathered land and government granted land, or a leasehold land for the term of years.⁴³

Registration of real property conveyancing documents is to take place within four months from the date of execution.⁴⁴ If, owing to urgent necessity or unavoidable accident, any document executed is not

or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property; (c) ... etc.”).

³⁸ Daw Maryianbi with Daw Ma Jum and 5 others v. Daw Ma U [ဒေါ်မာရီရမ်ဘီ (ခ) ဒေါ်မဂျမ်း ပါ ၅ ဦး နှင့် ဒေါ်မဦး (ခ) ဘုရား], [1986] မတစ 163; Daw Htwe Thein v. U Shwe Ku and 2 others [ဒေါ်ထွေးသိန်း နှင့် ဦးရွှေကု ပါ နှစ်ဦး], [1990] မြန်မာနိုင်ငံတရားစီရင်ထုံး (မတစ) 60.

³⁹ Transfer of Property Act, X BURMA CODE § 3 p. 158 (Union of Burma 1958).

⁴⁰ Currency applies in Myanmar.

⁴¹ U Kyaw Zay Ya (ဦး ကျော်ဇေယျ), *Registration of the Contracts on Immovable Property* [စာချုပ်စာတမ်း ရေစွရီမှတ်ပုံတင်ခြင်းဆိုင်ရာ ကိစ္စများ] (Yangon, Myanmar: SaKar Pyaw Nay Thu Myar SarPay, 1998), 3–4.

⁴² Daw Khin Mi v. Daw Nilar Luu & three others, [1995] Ruling of Myanmar 24 (Supreme Court).

⁴³ U Kyaw Sein, interview by Nay Chi Oo, April 25, 2011.

⁴⁴ The Registration Act, BURMA CODE VOLUME X § 23 (1909).

presented for registration until after the expiration of the time prescribed, the documents are to be accepted for registration, but the Registrar may levy a fine not exceeding ten times the amount of the proper registration fee.⁴⁵

1.4.1 OFFICE OF THE REGISTRATION OF DEEDS

As mentioned above, since registration of documents for transfer of immovable property conveys legal title to property, registration of documents is a means of protecting against disputes dealing with third parties of the right to title. In Yangon and Mandalay, documents to be submitted to the respective office for the registration of deeds. In the remaining cities and townships, registration matters are dealt with through the “Settlements and Land Records Department” of the relevant township in Myanmar.⁴⁶ It is a general principle that registration by deed of a valid registrable interest protects the proprietor of the interest registered from any possible adverse claims.⁴⁷

1.4.2 PERSONS TO PRESENT DOCUMENTS FOR REGISTRATION

Regarding the persons to present the documents for registration, section 32 of the Registration Act of 1909 provides that, “[e]xcept in the cases mentioned in section 31 and section 89, every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration office – (a) by some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order, or (b) by the representative or assign of such person, or (c)

⁴⁵ U Kyaw Zay Ya (ဦး ကျော်ဇေယျာ), *The Registration Act 1909* [စာချုပ်စာတမ်းများ မှတ်ပုံတင်ရေး အက်ဥပဒေ] (Yangon, Myanmar: SaKar Pyaw Nay Thu Myar SarPay, 2007).

⁴⁶ Office of the registration of deed in Yangon and Mandalay, and office of the settlement and land record department and registration of deeds in every city and township are branch offices under the Ministry of Agriculture and Irrigation in Myanmar.

⁴⁷ Michael Harwood, *English Land Law* (London: Sweet & Maxwell, 1975), 458.

by the agent of such person, representative or assign, duly authorized by power-of-attorney executed and authenticated in manner hereinafter mentioned.”⁴⁸

1.4.3 REGISTRATION FEE AND STAMP FEE

Upon registration, the registration fee is 0.4 percent of the purchase price up to 50,000 kyats, and 0.2 percent of the price above 50,000 kyats.⁴⁹ The buyer is required pay a 7 percent stamp fee on the contract price in the municipal areas of Yangon, Mandalay and Nay Pyi Taw, and a 5 percent stamp duty in all remaining townships. In the leading municipal areas, the total of registration fee and stamp duty is therefore 7.2 percent of the purchase price of the property.

1.4.4 TAXATION ON PURCHASE PRICE

As a precondition of registration, the buyer needs to present proof of payment of income tax on the purchase price at the relevant revenue office.⁵⁰ In this matter, there are two kinds of tax system for the buyer in Myanmar: tax-free and an assessed rate of 30%. For buyers who can document the source of the purchase price

⁴⁸ The Registration Act, § 32, See also *ibid.*, §§ 31 & 89: “[i]n ordinary case the registration or deposit of documents under this Act shall be made only at the office of the officer authorized to accept the same for registration or deposit; Provided that such officer may on special cause being shown attend at the residence of any person desiring to present a document for registration or to deposit a will and accept for registration or deposit such document or will.”

⁴⁹ U Kyaw Zay Ya, *Registration of the Contracts on Immovable Property*, 15.

⁵⁰ “Announcement of Taken Actions by Ministry of Finance Based on Advisory Paper Regarding the Tax Reducing on the Transfer of Real Property Which Is Submitted to the Board of Real Estate Appraisal”
[ပြည်သူ့ဝန်ဆောင်မှုလုပ်ငန်းများ စွမ်းဆောင်ရည်အကဲဖြတ်အဖွဲ့သို့ ပေးပို့တင်ပြလာသည့် အိမ်၊ မြေ၊ အဆောက်အအုံ၊ တိုက်ခန်း ရောင်းဝယ်ရာတွင် အခွန်နှုန်းထား လျှော့ချသတ်မှတ်ပေးနိုင်ပါရန်နှင့် စပ်လျဉ်းသည့် အကြံပြုချက်အပေါ် ဘဏ္ဍာရေးဝန်ကြီးဌာန၏ အရေးယူဆောင်ရွက်ချက်များကို ပြည်သူများသိရှိစေရန် ထုတ်ပြန်ကြေညာခြင်း], *Kyae Mon*, July 20, 2013, 5.

paid the transaction is tax-free.⁵¹ However, for the buyers who cannot document the source of funds, a 30% presumptive income tax is applied to the purchase price.⁵² In current practice in Myanmar, in most transfers of real property, the rate of 30% is applied, since buyers commonly cannot provide information on source of funds used for purchase. Note, however, that it is common practice to create a General Power of Attorney as a proxy for actual transfer of title, rather than to make use of the registration process.⁵³ In this case, the tax regime described here is not applied.

1.4.5 COMPETENT PERSON TO CONTRACT

Title to property can only be transferred between legally competent persons. Contracts with an incompetent are invalid, and the transfer is treated as voidable. Section 11 of the Myanmar Contract Act of 1872 provides that, “[e]very person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.”⁵⁴ In Myanmar, the age of majority is 18 according to section 5(a)(25) of the Interpretation of Expressions Law 1973.⁵⁵ Persons of age 18 and over can form a contract according to these rules.

⁵¹ U Kyaw Zay Ya (ဦးကျော်ဇေယျာ), *Law of Real Estate Buying, Selling and Renting in Myanmar* [အိမ်ခြံမြေ ဝယ်ရောင်းငှား ဥပဒေ] (Yangon, Myanmar: SaKar Pyaw Nay Thu Myar SarPay, 2013), 13.

⁵² In Myanmar, this is called black money and white money income tax systems. For instance, if the buyer buys a real property by black money, which he cannot tell, where the purchase money comes from, to the relevant authorities, he needs to pay 30 % income tax on purchase price. If the buyer can reveal about the purchase price, where he earns from, and if he gets the money legally, he will not need to pay this income tax on purchase price except the 7 % stamp duty and 0.2 % registration tax.

⁵³ Dealing with the role of General Power of Attorney in transferring the real property, the author explains under sub section 1.7.2.1 of chapter 1.

⁵⁴ U Mya (ဦး မြ), *Myanmar Contract Act and Rulings* [ပဋိညာဉ် အက်ဥပဒေ နှင့် စီရင်ထုံးပေါင်းချုပ် (ပထမတွဲ)], I (Yangon, Myanmar: Tet Lann SarPay, 1997), 10.

⁵⁵ Interpretation of Expressions Law [၁၉၇၃ ခုနှစ် စကားရပ်များ အနက်အဓိပ္ပါယ် ဖွင့်ဆိုရေး ဥပဒေ], 22/1973 § 5(a)(25) (1973). The age of majority is 20 in Japan, and 21 in England.

1.4.6 ANNUAL PROPERTY TAX

The annual tax on real property levied by the government of the Yangon municipal area is around 12,288 kyats (approximately ¥10,000) per year for 40 feet × 60 feet = 2400 square feet in general while the market price of that area is around 80 million kyats. This annual property tax of 12,288 kyats covers the entire property (land and fixtures). The tax is calculated based on the structure of the building and the land price.

Against this background of taxation and registration requirements, the study now turns to the theoretical approach to real property transaction in greater detail, in order to form a clear picture of the formal legal requirements for obligatory registration of real property transfers.

1.5 TRANSACTION ON CONVEYANCING OF REAL PROPERTY: THEORETICAL APPROACH

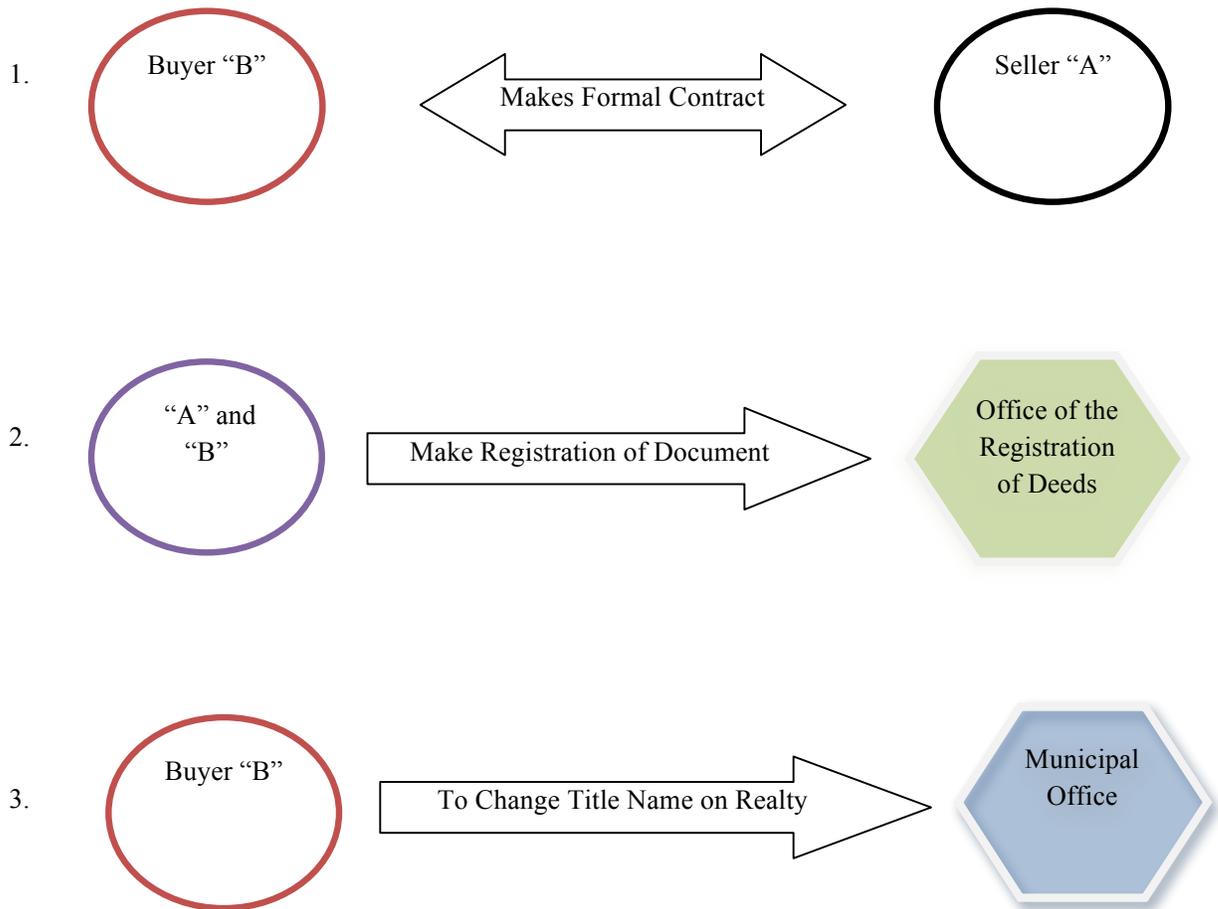
To convey real property from one person to another, a contract of sale typically recites the parties, describes the property to be sold, sets forth the promise to sell and to buy, specifies the purchase price and how this shall be payable, and fixes a time and place for the delivery of the required documents.⁵⁶ To complete the transfer of title, the seller and buyer are in theory required to go to the relevant office for registration of deeds in order to register documents after conclusion the sale contract. Only after registration at the relevant office of the registration of deeds is the conveyance of real property perfected. Once the actual transfer of title has been completed, the buyer can then go to the municipal office in order to change his/her title name on the purchase real property by producing proof of registration. The following flow chart illustrates the entire span of the real property conveyancing process, in accordance to the relevant laws – The Registration Act of 1909 and The Transfer of Property Act of 1882 – and directions of the government of Myanmar.

⁵⁶ Burma Code Volume IX, 13 (Government of the Union of Burma [Myanmar] 1957); Milton R. Friedman, *Contracts and Conveyances of Real Property* (New York: Practising Law Institute, 1975), 6 other jurisdictions have similar requirements. See, e.g. .

**“Phases to make real property sale contract registration for the conveyance of real property in
Myanmar”**

Steps:

Processes:



4. Then, the buyer perfectly possesses the real property with his name.

1.6 ACTUAL PROCESS ON CONVEYANCING REAL PROPERTY UNDER THE RELEVANT LAWS AND DIRECTIONS

The actual process for conveyancing real property in the vast majority of cases follows a slightly different path from the process described above. In Myanmar, if someone buys land (with any building attached to the land), the buyer and the seller initially negotiate a price, mode payment, place of payment and the property to be sold, etc. as in an orthodox sale transaction. The parties then make an informal sale contract with the price agreed, including at least two witnesses on the document.

Before forming the informal sale contract, however, the seller needs to go to the municipal office to take the land map as the first step toward registration of the contract of sale.⁵⁷ After that, the seller and buyer create the informal sale contract, and commonly make two contract documents: one with the actual price, to held privately by the parties, and the other stating a lower price, to submit to the Regional Revenue Office for appraisal.⁵⁸ The seller and buyer then submit the land map, the sale contract – normally the one stating a lower purchase price – made between the seller and buyer, three photos of the seller, photos of the land and house and the seller's census record to the Regional Revenue Office for appraisal.⁵⁹

The Regional Revenue Office will send a document with the appraised price of the relevant real property to the relevant Township Revenue Office where the real property is located. After receiving a statement of the appraised price of property from the relevant Township Revenue Office, the seller and buyer must create a formal contract again, stating the property value fixed by Regional Revenue Office for their transfer of property. Upon the property price appraised by the Regional Revenue Office, the seller and the

⁵⁷ U Kyaw Zay Ya, *Law of Real Estate Buying, Selling and Renting in Myanmar*, 22.

⁵⁸ Making two documents with two different prices intends to avoid the tax levied by the relevant revenue office.

⁵⁹ “Processes of Real Estate Conveyancing in Myanmar,” *Myanma A Lin* (Nay Pyi Taw, Myanmar, September 5, 2013), 14.

buyer, normally the buyer needs to pay a 7%⁶⁰ stamp tax on the appraised price⁶¹ as required by the Burma Stamp Act of 1899.⁶² It is also required in most cases for the buyer to pay another 30% income tax⁶³ on the appraised price set by the relevant Township Revenue Office. The total tax amount for the buyer is therefore 37% of the formal appraised price of real property.

After forming a formal contract between the seller and the buyer by paying the stamp duty and income tax of 37%,⁶⁴ the formal contract is submitted to the office of the registration of deeds in order to make registration for the sale contract regarding the conveyance of property.⁶⁵ At the relevant office of the registration of deeds, the registering officer shall endorse thereon a certificate containing the word “registered,” together with the number and page of the registration book in which the document has been copied for the

⁶⁰ Yangon Municipal Act, § 68 (1920) (The 7% includes 5% for the stamp fee under the Burma Stamp Act of 1899 and another 2% for the stamp fee).

⁶¹ U Maung Maung San (ဦး မောင်မောင်စန်း), *Knowledge about Registration of Sale Contract* [စာချုပ်စာတမ်း မှတ်ပုံတင်အကြောင်း သိကောင်းစရာ], 9th ed. (Yangon, Myanmar: New Dream SarPay, 2010); “Fifteen Percent Taxation on Real Property Transfer Will Be Extended One More Year from 12th August 2010 to August 2011” [သက်တမ်း ကုန်ဆုံးတော့မည့် အိမ်ခြံမြေရောင်းဝယ်ခွန် လျော့ချပေးထားမှုအား တစ်နှစ်သက်တမ်း ထပ်တိုးမည်ဟု သိရ], *Eleven Media Group*, August 5, 2010, http://www.news-eleven.com/index.php?option=com_content&view=article&id=4158%3A2010-08-05-08-52-29&Itemid=112 (accessed December 22, 2010).

⁶² The Burma Stamp Act, BURMA CODE VOLUME III, 377 (Government of the Union of Burma 1899); U Hla Ko (ဦးလှကို), *Applying of Stamp Fee and Court Fee Acts* [အသုံးချ ရုံးခွန် တံဆိပ်ခွန် ဥပဒေ] (Mandalay, Myanmar: Sis The Taw SarPay, 1994), 83.

⁶³ “Existing 15% Revenue Taxes Rate Will Continue Be Levied on Conveyancing of Real Property” [လက်ရှိနှုန်းထားနဲ့ ဆက်ကောက်မယ့် အိမ်ခြံမြေအခွန်], *Mizzima*, August 11, 2011, <http://web.archive.org/web/20120317224416/http://www.mizzimaburmese.com/news/breaking-newsbrief/8121-2011-08-11-10-14-55.html> (accessed November 26, 2013).

⁶⁴ The relevant ministry currently levies 30% income tax on purchase price of real property conveyancing on August 11, 2012 for those who have black money i.e. buyers cannot reveal the track of purchase money. And 7% stamp duty is levied in municipal areas of Yangon, Mandalay and Nay Pyi Taw. However, 5% stamp duty will be levied in all other remained townships in Myanmar for the transfer of real property.

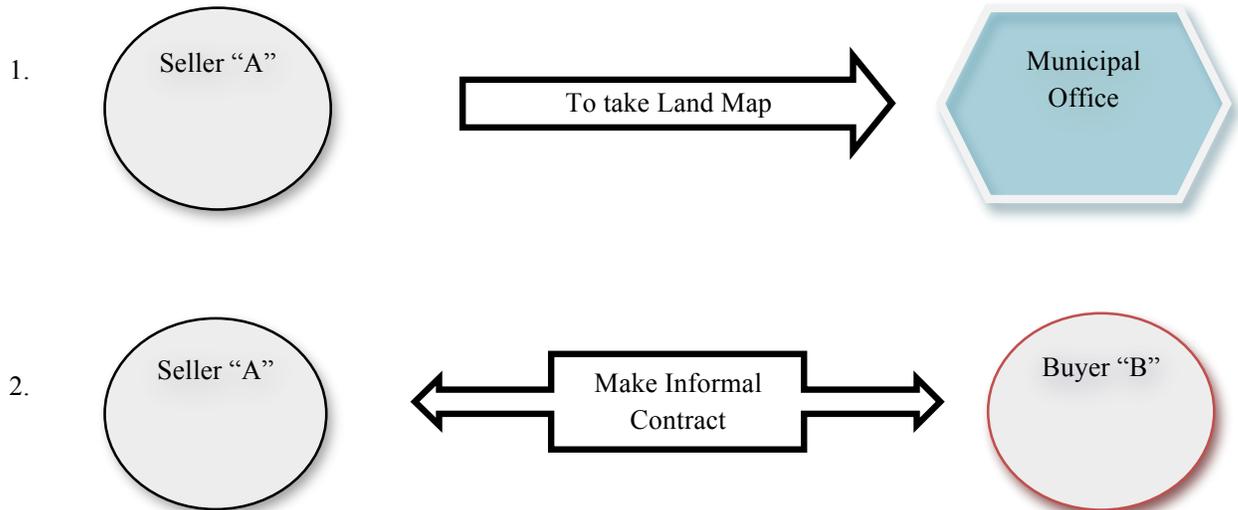
⁶⁵ Khin Yadanar (ခင်ရတနာ), “Real Estate Market Will Be Increased as of New 37% Taxation Rate in August 2012” [အခွန်စနစ် အပြောင်းအလဲများကြောင့် အရောင်းအဝယ်ပြန်လည်ကောင်းမွန်လာနိုင်], *Myanmar A Lin* (Nay Pyi Taw, Myanmar, September 5, 2012), 10.

conveyance of property.⁶⁶ There at the office of the registration of deeds, the buyer needs to pay 0.2% of the stated purchase price as registration tax. Therefore the total tax amount is: stamp duty 7%, income tax 30%, and registration tax 0.2%: 37.2%. After registering the sale document, the buyer finally needs to go to the municipal office in order to change the name on the plat record in order to be the fully recognized title owner of the property transferred. After changing the title's name to the buyer, the buyer eventually possesses the real property peacefully in his own name. The following flow chart indicates the entire span of making conveyancing of real property in this process according to the relevant laws and directions.

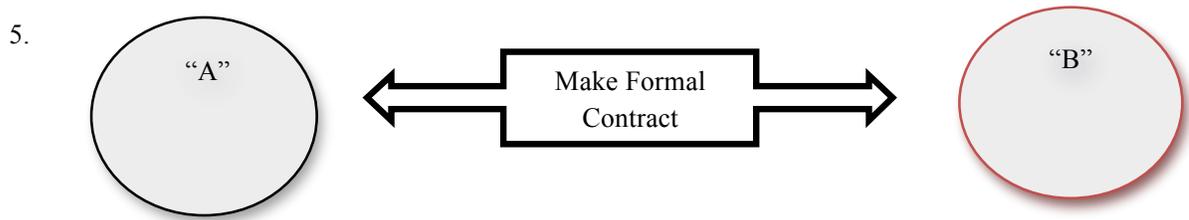
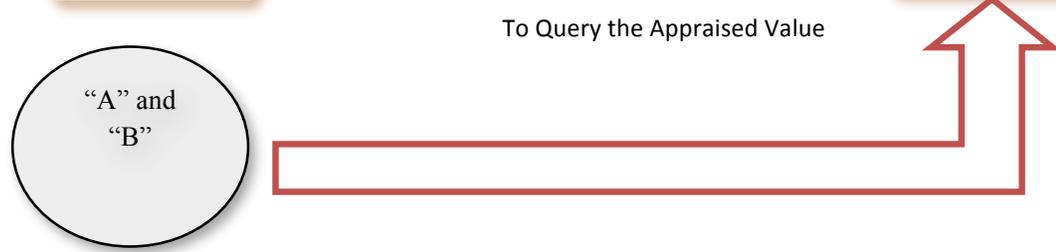
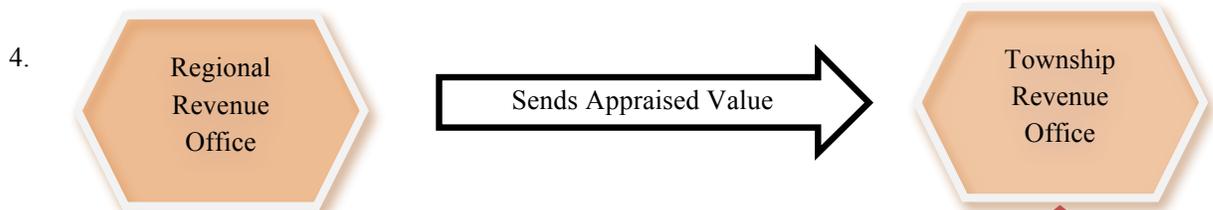
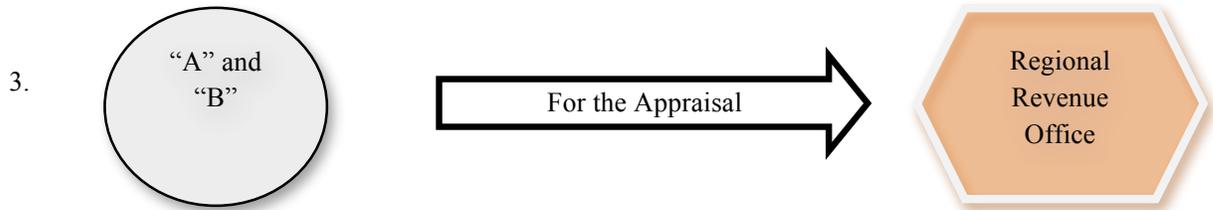
Conveyancing of Land and Building affixed on the Land: Practical Processes under the Relevant Laws and Directions

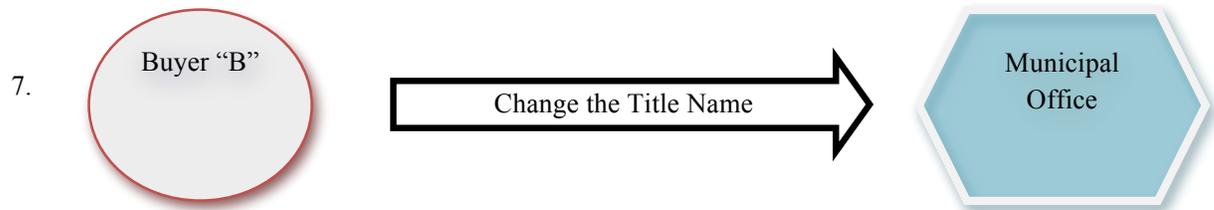
Steps:

Processes:



⁶⁶ Transfer of Property Act, X BURMA CODE § 3 (Union of Burma 1958); U Maung Maung San, *Knowledge about Registration of Sale Contract*, 25.





8. Then, the buyer possesses the real property with his title name.

The two flowcharts above illustrate the conveyancing process of real property in theory under the laws, and the practical conveyancing process according to updated directions issued by the relevant authorities in response to need. The latter is the procedure followed by sellers and buyers in Myanmar in order to convey perfected title. However, most transactions in Myanmar follow one of four alternative methods which have arisen in practice. These result in imperfect conveyance of title, and have led to a high volume of disputes in real property transactions. These four methods are described below.

1.7 INFORMAL REAL PROPERTY CONVEYANCING PROCESSES: PRACTICAL APPROACHES

The following four flowcharts illustrate the range of transaction methods adopted by parties in Myanmar that lead to a high degree of risk and create high volume of property conveyancing disputes in Myanmar.

1.7.1 METHOD 1: INCOMPLETE PROCESS FOR OBTAINING PERFECTED TITLE

The first way of transaction practice in real property conveyancing, following the relevant laws and directions as described above, is followed in a very small amount number of transactions in Myanmar. There are significant disincentives to this procedure. Registration involves many independent steps at separate government offices, and requires much time to finish. This creates inconvenience in the need to involve the seller at each stage, and this in turn gives rise to risk to the buyer. Moreover, the buyer must pay at least 37.2% in duties (7% stamp duty, 30% income tax and 0.2% registration tax) on the purchase price. Due to these discouraging factors, most buyers do not complete the registration process.

1.7.2 METHOD 2: COMPLETED REGISTRATION USING GENERAL POWER OF ATTORNEY

In this method, the seller “A” deals initially with an intermediary “C”, who is a party trusted by the intending buyer “B” (typically a close relative). Seller “A” and party “C” initially make an informal contract as the preliminary basis for their real property conveyancing transaction. Party “C” then asks seller “A” to grant a General Power of Attorney⁶⁷ covering the property to be purchased, and the seller “A” and the party “C” make a General Power of Attorney at the office of the registration of deeds by way of expression there that the seller “A” assigns to the party “C” the power to deal the real property to manage, to sell, or to transfer, or to repair and so on. Based on the General Power of Attorney, party “C” then takes possession, and assumes the position of the seller with respect to all matters concerned with the preceding real property. By means of this informal conveyancing transaction, party “C” obtains possession while avoiding the burden of the 37.2% total tax on real property value levied by relevant offices. The party “C” obtains the right to manage – either to resell the property or to rent to others or to convey his or her rights by will to relatives and so on – on the real property offered by the seller “A”.

⁶⁷ Please see the Appendix I as an example of the General Power of Attorney.

After lodging the General Power of Attorney with the relevant office for the registration of deeds, the party “C” goes to court to make an affidavit stating that the seller is still alive and affirms the General Power of Attorney. This affidavit is a prerequisite to obtaining the land map from the municipal office. The intending buyer “B” may then proceed to register his purchase and perfect his title. The next step of the party “C” in that process is to visit the municipal office to obtain the land map, submitting the necessary documents including the affidavit. The buyer “B” then enters into a further informal sale contract with the trusted party “C”.⁶⁸

The trusted party (buyer “C”) stands in the shoes of the original seller “A” in the ensuing registration process. The party “C” is himself barred from acquiring title directly, as he is bound under the General Power of Attorney to act as the agent of “A”. The trusted party “C” works through the registration process together with buyer “B”, until the former completes procedures at the office of the registration of deeds.

Following this transaction flow, party “C” and buyer “B” go to the Regional Revenue Office to obtain an appraisal of the purchase property. In this phase, the parties (“C” and “B”) need to submit the contract formed between them, the land map obtained from the municipal office, three photos of the property, a photo of buyer “B” himself, and a census to the Regional Revenue Office to get an appraisal of the real property.

At the Regional Revenue Office, the so-called Six Person Panel⁶⁹ makes an appraisal of the real property based on the submitted documents. After a decision is made concerning the appraised value of the property, the Regional Revenue Office validates the submitted documents and sends them together with the

⁶⁸ The buyer generally creates the General Power of Attorney with the seller, as the buyer does not want to go together with the seller for the very long process to finish the registration since it is too long to finish registration and the seller is very often difficult to call along the registration process. After getting the General Power of Attorney, the buyer can make conveyancing at his convenient time with his close relatives by making another new transaction on real property.

⁶⁹ According to the notification No. 103/2007 of the Ministry of Finance and Revenue dated on June 18, 2007, it was formed an organization with six persons’ group who appraise the real property value. In that six persons’ group organization, it includes 1) a head from relevant revenue office who acts as a president; 2) a representative from the relevant municipal office who acts as a secretariat; 3) a representative from the relevant administrative office who acts as a member; 4) a representative from the relevant police force who acts as a member; 5) a representative from the relevant planning office who acts as a member; and 6) a representative from the relevant settlement and land record department who also acts as a member.

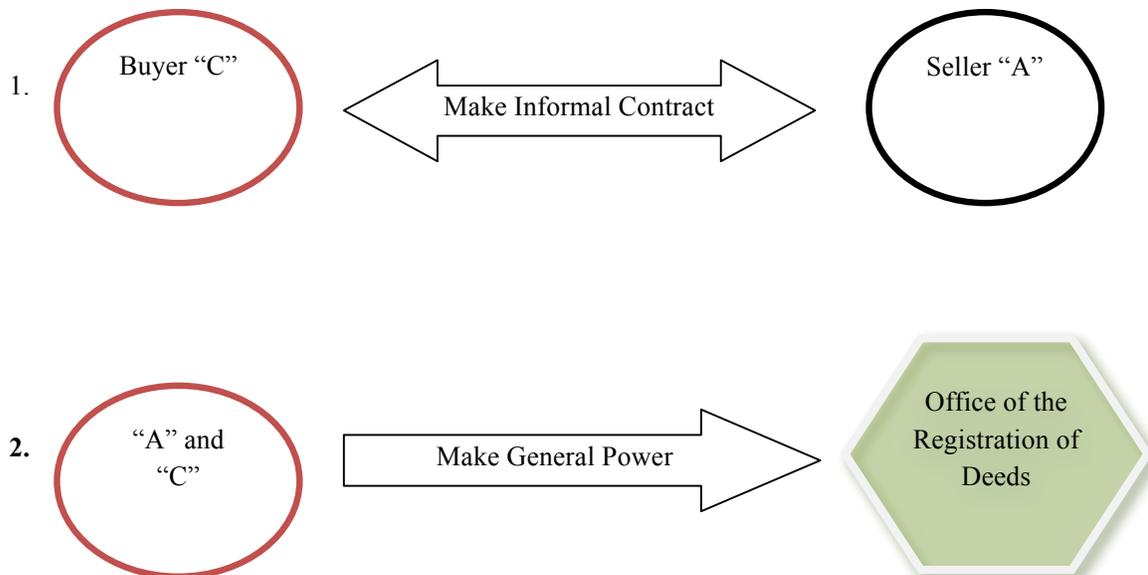
document of appraised value to the Relevant Township Revenue Office where the property is located. The buyer “B” must query at the Township Revenue Office directly to inquire whether the documents with the appraised value on realty have arrived there. When the appraisal arrives at the Township Revenue Office, the buyer “B” needs to pay 7% stamp duty and 30% income tax on the appraised value of property. Next, buyers “B” (the actual buyer) and “C” (the intermediate buyer) create a formal sale contract based on the property value appraised by the Regional Revenue Office. Then, both parties – “B” and “C” – go to the office of the registration of deeds for sale document registration. After registering the real property at the office of the registration of deeds, the intending buyer “B” finally needs to go to the municipal office in order to change the name of the title for getting the title right perfectly with his/her name. Eventually, the buyer “B” perfectly receives the title dealing with the purchase property as the title owner.

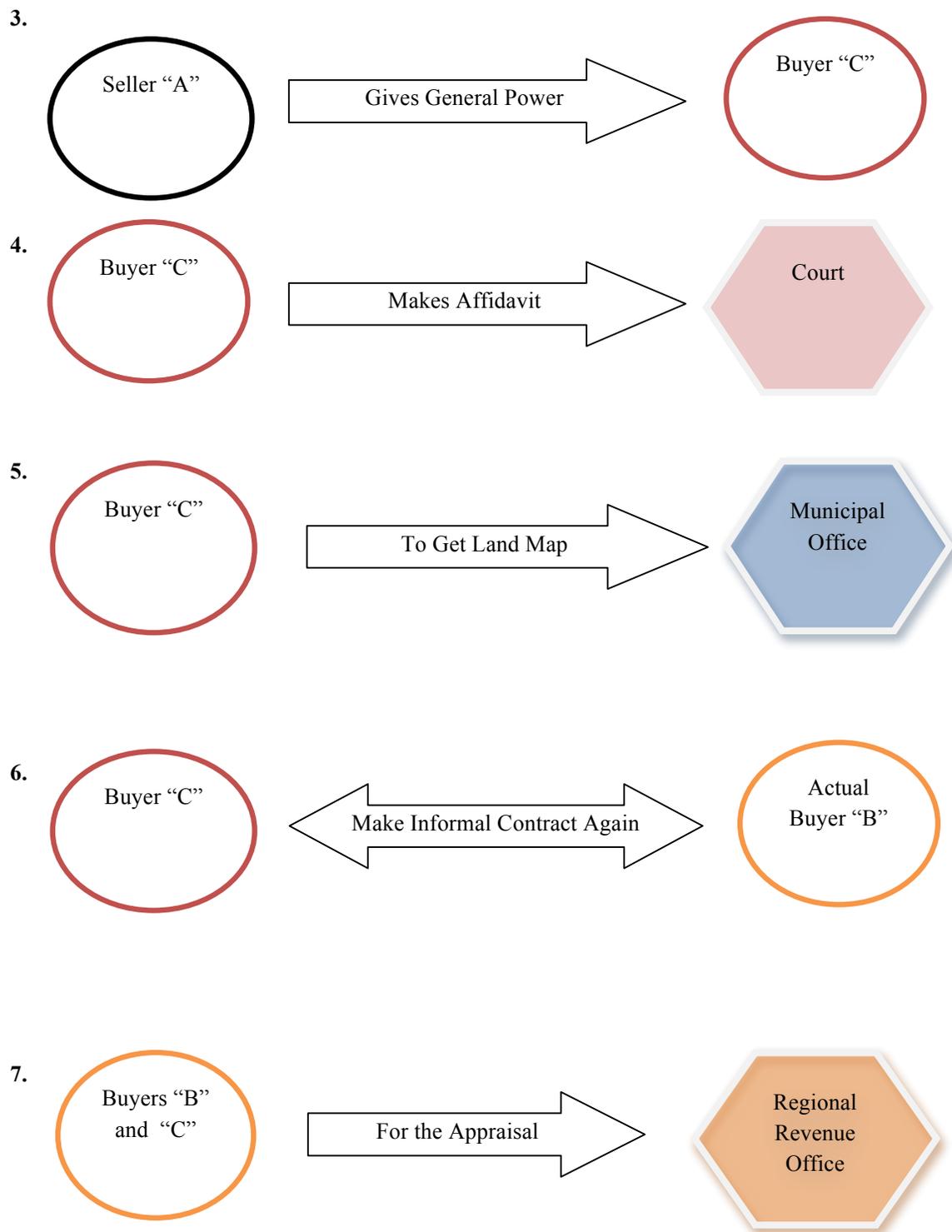
The following flow chart reveals this second type of transaction.

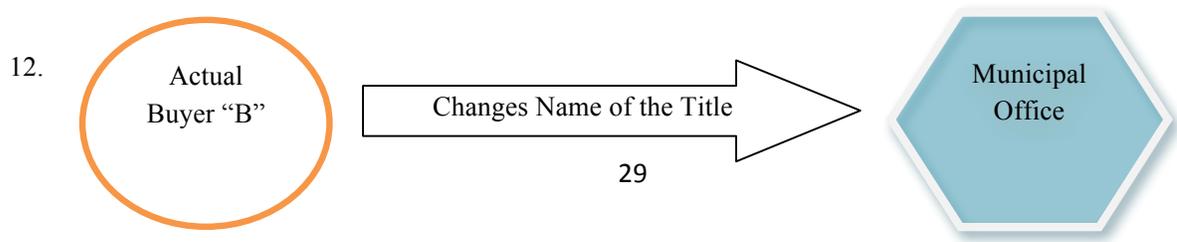
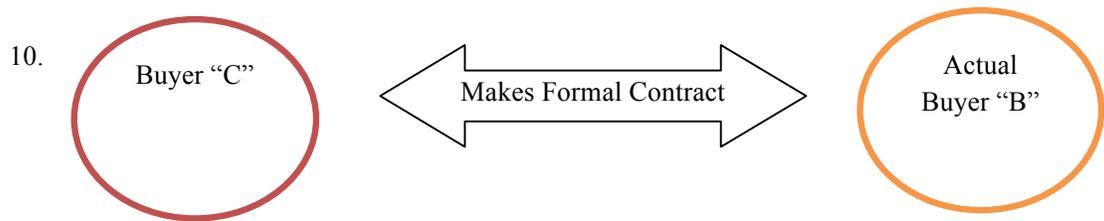
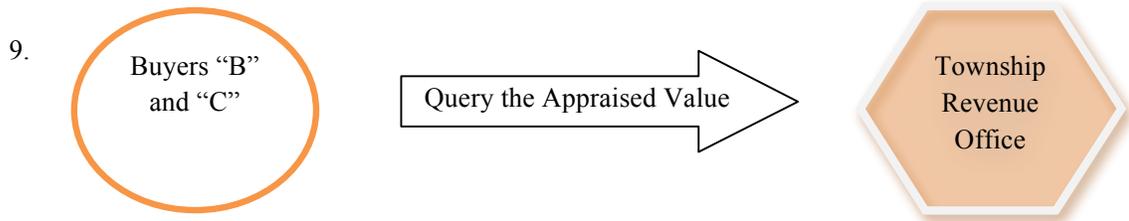
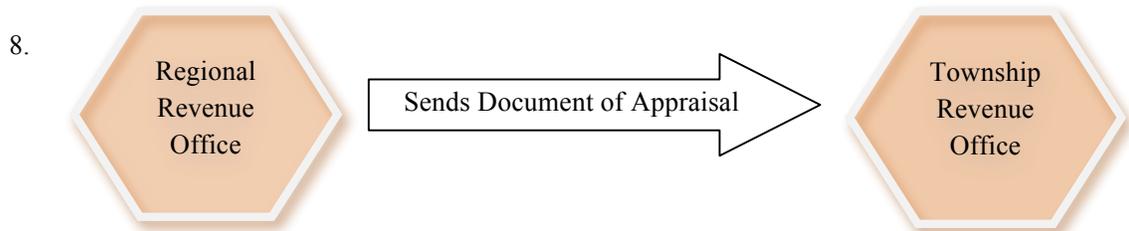
“Phases to make transaction for the second informal conveyance of real property”

Steps:

Processes:







13. Eventually, the actual buyer “B” perfectly possesses the title.

1.7.2.1 GENERAL POWER OF ATTORNEY AND TRANSFER OF TITLE

Almost half of transactions in real property in Myanmar make use of a General Power of Attorney involving a closely related party. Use of a General Power of Attorney in property transactions may be used in two ways by the buyer: 1) to exclude the seller from the registration process if the buyer wants to register the property he has purchased, since the seller is very often reluctant to cooperate throughout the long process required for registration; and 2) simply to hold the General Power of Attorney (by the buyer) without proceeding with the registration process. In the former case, the buyer must still complete the lengthy process of registration, but the steps are facilitated by removing a potentially reluctant seller from the picture. Because of this convenience, creating a General Power of Attorney in transferring property has thus emerged as a common practice in conveyancing.⁷⁰ When the device is used in the way described in this section, it has the same ultimate effect, in terms of title transfer as well as taxation, as a sale in which the seller participates directly at every stage. However, it is very common for buyers to adopt the latter purpose, suspending the registration process and holding a General Power of Attorney as a proxy for actual title. An advantage to this, from the buyer's perspective, is the possibility of avoiding income tax and the costs associated with the long process of registration.

Using a General Power of Attorney in this way constitutes a third real property conveyancing method,⁷¹ but one that introduces certain risks to the buyer.⁷² In such cases, when the seller sells the real

⁷⁰ See section 1.7.2 and 1.7.2.1 of Chapter 1.

⁷¹ See section 1.7.3 of Chapter 1.

property to the buyer, the actual intending buyer typically sets forward the relevant documents in his own name, and asks the seller to create a General Power of Attorney in his favor. As the actual intending buyer, the buyer does not aim to enter into the registration process, until such time as the property is sold on to another party. The problem in this case is that if the buyer (i.e. the buyer who has taken the General Power of Attorney without proceeding with property registration) wants to resell the property, he and his own buyer must locate the original property owner in order to have the original General Power of Attorney withdrawn, and replaced with one in favor of the new buyer. This act can only be performed by the original seller, in whose name the property is still registered. In this phase, it can very often be seen that the former buyer is unable to find the original property owner because he has died or moved to some other unknown place. When this occurs, there is a strong temptation to act outside of the registration process altogether, and transfer possession and notional ownership using documents bearing the name of the unidentifiable original owner, following procedures of their own devising. This avoids the costs associated with registration, but with the disadvantage that transactions become less stable.

1.7.3 THIRD WAY OF INFORMAL REAL PROPERTY CONVEYANCING TRANSACTION

In this kind of real property conveyancing, the intended buyer and the seller initially make an informal sale contract. The seller and the buyer then go to the office of the registration of deeds in order to set up a General Power of Attorney to grant management authority to the buyer, with authority to manage and deal with the property. Most transactions in Myanmar follow this pattern, which does not contemplate finalizing a conveyance of the legal interest in the property. The buyer obtains only the right to manage the property in accordance with the provisions under the General Power of Attorney made at the office of the registration of deeds. The buyer by obtains the possession right and management authority over the real property, which he bought from the seller, but the legal title does not move to the buyer. If the original property owner dies, the

⁷² “Notice for Informal Sale Contract, General Power and Special Power Holders Regarding the Real Estate Transfers in Myanmar,” *New Light of Myanmar* (Nay Pyi Taw, Myanmar, September 5, 2013), 14.

General Power of Attorney loses its effect, management authority over the property moves back to the original property owner. It can be said that this exposes the buyer to significant risk.

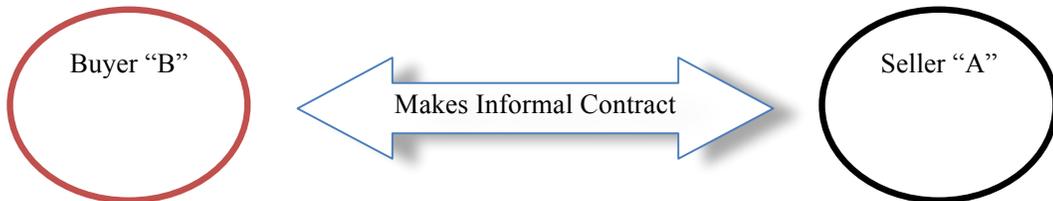
The following flow chart illustrates the third informal conveyancing process of real property by way of General Power of Attorney which many people practice in Myanmar.

“Phases to make transaction for the third informal conveyance of real property”

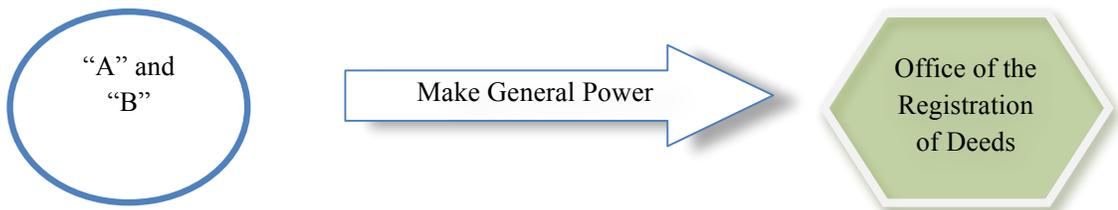
Steps:

Processes:

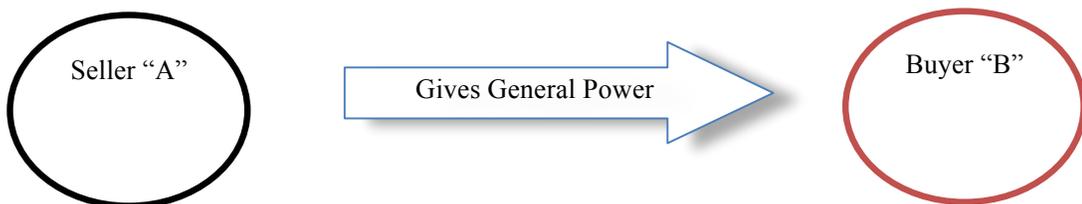
1.



2.



3.



4. The buyer then gets the management authority on real property by holding the General Power of Attorney.

1.7.4 FOURTH WAY OF INFORMAL REAL PROPERTY CONVEYANCING TRANSACTION

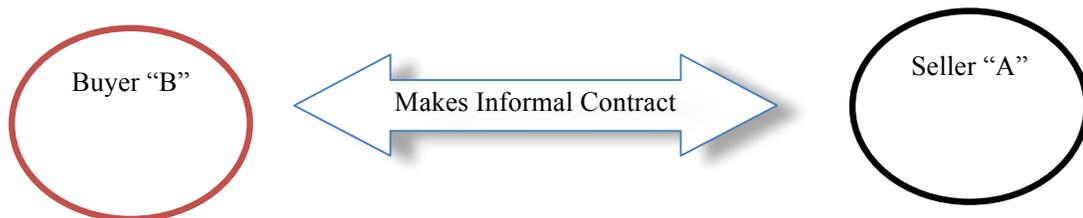
In this transaction, in order to sell the real property, the seller and the buyer initially make an informal sale contract or sometimes they just fill in the blanks in a form contract for the conveyance of real property with an amount of money they agree upon. Simultaneously, the seller provides the buyer with a number of relevant documents, such as receipts for electricity, receipts from the municipal authority for water, the underlying granted land lease book or certificate from the relevant government authority, and prior sale contracts, which the seller acquired upon his own earlier purchase of the property. These documents are taken to represent the sale of the property as between the parties. This is in fact the most risky method of informal conveyancing process in Myanmar, even though it is quite common among the lower and middle income strata. The title to the real property in this case remains in the original owner's name at the office of the registration of deeds and municipal office, and as a result, the buyer receives no title or management right whatsoever, in the eyes of the law. The following flow chart illustrates this fourth informal conveyancing of real property process.

“Phases to make transaction for the fourth informal conveyance of real property”

Steps:

Processes:

1.





3. The buyer then gets possession of the real property with no title right.

The preceding sections illustrate four types of conveyancing process applying to real property, including the three types of informal conveyancing transactions practiced by most people. The high volume of disputes with respect to real property transactions arises mostly from the latter three forms of informal transactions.

The next section will examine these problems in detail through cases dealing with the transfer of land, buildings and flats involving these informal conveyancing processes. Before turning to the cases themselves, an overview of the registration of inheritance, the availability of lawyers, the payment methods used, and the effect of registration and non-registration of sale contracts will be presented, as essential background.

1.8 REGISTRATION OF INHERITANCE

Registration of inheritance is a necessary step for the change of the name of the legal title holder to that of surviving family members, upon the death of the owner. Regarding this requirement, people in Myanmar do not usually go to the relevant office to change the title name when a registered owner within the family passes away, although the cost of doing so is modest. In such cases, the title remains in the name of the deceased family member. This poses an additional procedural barrier to the reconciliation of actual possession and beneficial ownership with the legal state of title. When a buyer purchases property in this condition, and desires to proceed to registration or to obtain a valid General Power of Attorney over the property, relevant family members need to make a declaration in court, stating that the name on the title is that of a family

member who has already passed away, and establish that they themselves do indeed have rights over the property. Once this step is complete, the records (particularly the name recorded on the land map) at the relevant office – in Yangon, the municipal office – must be reconciled with the actual state of title before other procedures can go forward. As registration of inheritance is often overlooked, this is a common issue in transactions in Myanmar.

1.9 LAWYERS PER CAPITA OF MYANMAR

The number of lawyers in Myanmar is an issue, insofar as the parties themselves make most real property transactions without taking any advice from lawyers. The number of lawyers in Myanmar is currently around 40,000 while the population is estimated to be over 60 million (in the year 2013). Lawyers in Myanmar are divided into two types: “advocate” and “higher-grade pleader”.⁷³ While the former is allowed to stand in all types of courts, including the Supreme Court of the Union, the latter can stand in all courts except the Supreme Court of the Union of Myanmar.⁷⁴ However both types of lawyer – advocate and higher-grade pleaders – can deal with real property transactions in Myanmar. The country therefore has nearly one lawyer for every 1,500 people in this area of legal service. It cannot be said that Myanmar has a scarcity of lawyers with respect to property transactions.

⁷³ Different from law officers or judicial officers, there is no examination required to become a lawyer. In order to become a higher-grade pleader, the applicant must go through a one-year internship after obtaining a bachelor degree in law. During the internship, they must attend trials more than 155 times under the supervision of an advocate with not less than 10-year experience and receive a testimonial from the judge every time they attend a trial. After submitting an application with over 155 testimonials to the Supreme Court, they can finally be certified as higher-grade pleaders. Subsequently, when they have obtained seven testimonials from judges of five township courts, one district court, and one state or regional high court in three years, they are qualified to apply for a promotion to the rank of advocate to the Supreme Court. If the Supreme Court approves their promotion, they are allowed to stand in all types of the courts though the promotion to the rank of advocate cannot be approved immediately after application. The Supreme Court issues an ID card to each lawyer containing his/her photo, and these cards are numbered in order of the acquisition of qualification. There are approximately 8,000 advocates and over 30,000 higher-grade pleaders in Myanmar.

⁷⁴ Hiroki Kunii, *Report on the Results of a Field Survey in Myanmar: The Reality of the Legal Community in Myanmar*, ICD News, February 2013, 11–12.

1.10 PAYMENT METHOD FOR PURCHASE PRICE

Almost all of the transactions of transferring real property in Myanmar are backed up by a cash payment directly to the seller, without the involvement of an intermediary. Only in some transactions, particularly those involving property of very high value, is payment through lawyers. Myanmar has no bank loan system at all for the payment of purchase money, and so the seller and buyer mostly make cash payments directly to the relevant person, the seller.

1.11 EFFECTS OF REGISTRATION AND NON-REGISTRATION OF REAL PROPERTY SALE DOCUMENT

As discussed in the previous sections, registration of sale documents is obligatory for the transfer of immovable property under the laws of Myanmar.⁷⁵ Since few property transactions take advantage of the registration process, there is a high volume of property disputes, and these are increasing over time. This section presents the effects of sale document registration and non-registration of immovable property according to the provisions under the relevant laws of the Registration Act of 1909 and the Transfer of Property Act of 1882.

Section 48 of the Registration Act of 1909 prescribes that registered documents relating to property take effect against oral agreements. To wit: “[a]ll non-testamentary documents duly registered under this Act, and relating to any property, whether movable or immovable, shall take effect against any oral agreement or declaration relating to such property, unless where the agreement or declaration has been accompanied or followed by delivery of possession and the same constitutes a valid transfer under any law for the time being in force. Provided that a mortgage by deposit of title deeds as defined in section 58 of the Transfer of Property Act of 1882, shall take effect against any mortgage-deed subsequently executed and registered which relates to the same property.”

⁷⁵ The Registration Act, BURMA CODE VOLUME X (1909).

Section 49 of the Registration Act of 1909 concerns the effect of non-registration of documents required to be registered at the relevant office of the registration of deeds. With respect to unregistered documents, the section provides that “[n]o document required by section 17 or by any provision of the Transfer of Property Act of 1882 or by any law formerly in force for the registration of document in the Republic of the Union of Myanmar to be registered shall –

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered. Provided that an unregistered document affecting immovable property may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act 1877, or as evidence of part performance of a contract for the purposes of section 53A of the Transfer of Property Act 1882, or as evidence of any collateral transaction not required to be effected by registered instrument.”

The primacy of registered over unregistered documents is the subject of section 50(1) of the Registration Act 1909, which states: “[e]very document of the kinds mentioned in clauses (a), (b), (c) and (d) of section 17, sub-section (1), and clauses (a) and (b) of section 18, shall, if duly registered, take effect as regards the property comprised therein, against every unregistered document relating to the same property, and not being a decree or order, whether such unregistered document be of the same nature as the registered document or not.”

1.12 PROBLEMS AND CASES IN CONVEYANCING THE REAL PROPERTY: LAND AND BUILDINGS ATTACHED ON LAND

This section concerns conveyancing problems and cases on land and buildings attached to the land. As detailed in the above section, registration of documents is compulsory for the transfer legal title to real property. When the sale contract is registered, the effective date of registration is prescribed under part X of the Registration Act of 1909. The effective date of registration according to section 47 of the Registration Act of 1909 is determined as follows: “[a] registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made and not from the time of its registration.”⁷⁶ The accepted interpretation of this provision in Myanmar is that if the sale documents are not properly registered, the title of the immovable property does not move to the transferee. This interpretation is reinforced by section 49(a) of the Registration Act of 1909, which provides: “[n]o document required by section 17 or by any provision of the Transfer of Property Act or by any law formerly in force for the registration of documents in the Union of Myanmar [Republic of the Union of Myanmar] to be registered shall affect any immovable property comprised therein ...”⁷⁷

The import of section 49 is thus that unregistered documents shall have no affect on the legal title to real property, and shall not ordinarily be recognized as evidence in the courts. An important exception is the use of unregistered documents as evidence of part performance of a contract to carry through with the registration process in the future. Part performance is the subject of section 53A of the Transfer of Property Act of 1882.⁷⁸ Taken together, section 49 of the Registration Act of 1909 and section 53A of the Transfer of Property Act of 1882 mean that while the buyer cannot assert claims based on legal title in the courts based on

⁷⁶ Ibid., § 150.

⁷⁷ U Kyaw Zay Ya, *Registration of the Contracts on Immovable Property*, 150–51.

⁷⁸ Transfer of Property Act, X BURMA CODE § 53A (Union of Burma 1958).

unregistered documents,⁷⁹ the buyer does have a right, in the event of part performance, that can be set up against the seller and any successors-in-title from him.⁸⁰

It may be noted that registration of documents is a necessary but not sufficient condition for the conveyance of title: the conveyance depends in the first instance on contract and performance. Even if the sale documents are registered to complete the formal requirements of a transfer, the underlying sale is not completed unless the buyer respects contractual terms requiring payment. This can be seen in the case of *Maung Saing & two others v. Shwe Lon* (1907).⁸¹ In this case, Shwe Lon purchased a house and a site from Maung Saing with the value of Rs. 4000. The plaintiff, Shwe Lon, alleged that the defendant, Maung Saing refused to give the possession of the house and the site, and Shwe Lon therefore sued for the possession of his purchase property. The defendants pleaded that the purchase money had not been paid, although the plaintiff had promised to pay within one month. The court found in the case that the plaintiff, Shwe Lon, did not make any payment to the defendants to support the transfer of the real property though plaintiff had in fact registered the sale documents and required to perfect the transfer. Based on the section 54 of the Transfer of Property Act of 1882, the court held that if the buyer does not make any payment or promise to the seller for the value of purchase property, sale of the property is not completed despite the completion of registration requirements. Therefore, the court held in favor of the defendants in this case since the buyer did not make any payment to the seller, despite the fact that the buyer had in fact registered the documents relating to transfer of the property.⁸²

⁷⁹ *U Soe Aung v. Daw Myint; Daw San Yin and two others; and Daw Khin Aye and two others* [2011] Case no 108–9 (mm Supreme Court of the Union, Nay Pyi Taw, December 30, 2011) 37.

⁸⁰ *U Maung Maung Latt & three others v. U Kyee Kyain a.k.a. U Kan Kaung*, (2001) Ma Ta Sa (Special) 281.

⁸¹ *Maung Saing & two others v. Shwe Lon*, (1908) IV Lower Burma Rulings 369; *U Thet Phay and U Maung Maung Win*, *Matters to Know Dealing with the Transfer of Property Act 1882*, 111.

⁸² *Maung Saing & two others v. Shwe Lon*, (1908) IV Lower Burma Rulings 369–71.

In Myanmar, it is very common for people to fail to register documents at the relevant office of the registration of deeds for the conveyancing of real property. The Mayor of Mandalay City called attention to this situation in a speech reported in the 7-Day News Journal: “the parcels of land even in Mandalay downtown area are being transferred by creating informal sale contracts without registration at the office of the registration of deeds.” Concerning the consequences of such transfers, “those kinds of sale contracts will be ineffective as documents representing legal transfer, and do not move title to these properties to the transferee.” The Mayor appealed to the people to make proper document registration as required at the relevant office of the registration of deeds, and at the municipal office, to change the registered title on real properties in properly reflect the intended effect of conveyances.⁸³ Because unregistered transfers using the informal methods described in the preceding sections do not result in conveyance of legal title, these practices give rise to frequent disputes, in addition to the loss of tax revenue. These issues stand behind the statement of the Mayor of Mandalay City.

A common issue that arises when title is not properly registered is the sale of one property to two buyers in two separate, conflicting transactions. On this point, in a “race-notice” registration system, if a seller enters into two contracts to sell the same property, then in a contest between the two buyers, the buyer that registers first is recognized as the new owner, provided that the winner of the race to the registration office does not have notice (constructive or actual) of an earlier contract at the time of registering.⁸⁴ In Myanmar, in such a double-sale scenario, the legal title can be asserted only by a buyer who registers. However, when the document is registered, under court decisions, the effective date will be the date on which the sale document was executed, not the date of document registration, following section 47 of the Registration Act of 1909 (as noted above). The effect of this difference is illustrated by the following case.

⁸³ Sai Thar Aung, “Selling and Buying of Real Property in Mandalay Will Be Required to Make Registration” [မန္တလေးမြို့ မြေအရောင်းအဝယ်များ တရားဝင်မှတ်ပုံတင်ရန် လိုအပ်ဟုဆို], *7 Day News Journal*, November 17, 2011, 15, 18.

⁸⁴ See, e.g. *In re Duncombe*, 143 BR 243 (us Bankr. Court, CD California 1992).

In *Daw Khin Mi v. Daw Nilar Lu & three others* (1995),⁸⁵ Daw Nilar Lu bought two lots of land from U Maung Maung by sale contract registered with priority number 1244/1975. The execution date of the sale contract between Daw Nilar Lu and U Maung Maung was February 18, 1975. However, U Maung Maung also sold the same lots to Daw Khin Mi, again by registered sale contract, with a priority number of 441/1975. Daw Khin Mi had executed his own sale contract with U Maung Maung on March 25, 1975. Registration numbers are assigned in ascending order by the registration office. It can therefore be seen, comparing the document registration numbers of Daw Nilar Lu and Daw Khin Mi, that Daw Khin Mi's contract was registered before that of Daw Nilar Lu. However, the date of execution of the sale contracts is the reverse: Daw Nilar Lu executed his contract before Daw Khin Mi.

The defendant, U Maung Maung, said in the case that he intended only to sell the disputed lands to Daw Khin Mi, and not to Daw Nilar Lu, although the lots described in the two contracts were the same (No. 4/8/1 and No. 4/8/2). He testified that he intended to sell only a separate set of lots (4/g and 4/a/11) to Daw Nilar Lu, explaining the content of the contract as a mistake in transcription. He further testified that, at the time of registration, Daw Nilar Lu knew of the sale Daw Khin Mi of the disputed lands.

Daw Nilar Lu and Daw Khin Mi therefore bought the same lots of land by registered sale contracts from U Maung Maung. U Maung Maung, the double seller of the same lots of land, said that he only sold the lots of land to Daw Khin Mi but not to Daw Nilar Lu. So, it is required to examine the decision and reasoning of the court on the point of whether Daw Khin Mi or Daw Nilar Lu are the proper owners of the property,⁸⁶ where, as mentioned above, the former form was the first to execute a contract of sale, and the latter the first to register. In this regard, it should be noted that the mistake asserted by the seller U Maung Maung was not

⁸⁵ *Daw Khin Mi v. Daw Nilar Lu & three others*, [1995] Ruling of Myanmar 24 (Supreme Court); see also U Kyaw Zay Ya (ဦး ကျော်ဇေယျာ), *Things to Avoid When Registering* [စာချုပ်ချုပ်မည်ဆိုလျှင် ဆောင်ရန်နှင့် ရှောင်ရန်များ], 2nd ed. (Yangon, Myanmar: SaKar Pyaw Nay Thu Myar SarPay, 2006), 129–36.

⁸⁶ Ruth Annand and Brian Cain, *Remedies Under the Contract*, Conveyancing Solutions (London: Sweet & Maxwell, 1988), 74.

accepted by the court, and did not figure in the grounds for decision. The judgment depended instead on the interpretation of provisions relating to the date of priority. According to section 47 of the Registration Act of 1909, the effective date of a registered sale is the execution date of sale contract, if the sale contract is registered at the office of the registration of deeds,⁸⁷ and not the date of registration.⁸⁸

The court in this case compared the two registered documents of Daw Nilar Lu and Daw Khin Mi and decided that the date of execution of the sale document determines priority. Of the two registered deeds, executed by the same seller in respect of the same property to two different persons at two different times, the one which is executed first has priority under section 47 of the Registration Act of 1909, although the former deed is registered subsequently to the latter.⁸⁹ Accordingly, the court held in favor of Daw Nilar Lu with respect to the contested lots (No. 4/8/1 and 4/8/2), on the grounds that Daw Nilar Lu's sale contract execution date was earlier than that of Daw Khin Mi, without regard to the later registration of Daw Nilar Lu's conveyance.

It is worth pausing to examine the rules on perfecting a conveyance of real property according to the relevant laws. According to section 17(1)(b) and section 49(a) of the Registration Act of 1909 and section 54 of the Transfer of Property Act of 1882, a conveyance of real property will be perfected only if the sale document is registered at the office of the registration of deeds. Section 47 of the Registration Act of 1909 specifies the effective date of a sale contract as the date of execution, but does not specify that this date should be used when determining which of two registered sale contracts should be given priority. In the case described, although Daw Nilar Lu bought the disputed lands on the earlier date, she made a later registration. Daw Khin Mi bought those same two lots of lands later than Daw Nilar Lu, but she made an earlier registration. Daw Khin Mi made document registration earlier in accordance with the provisions of laws and obtained a registration number

⁸⁷ Transfer of Property Act, X BURMA CODE § 3 p. 124 (Union of Burma 1958).

⁸⁸ U Kyaw Zay Ya, *Things to Avoid When Registering*, 134.

⁸⁹ *Ibid.*

441/1975, while Daw Nilar Lu's registration number was 1224/1975. The author's view is that the conveyance of the property to Daw Khin Mi was perfected on the day of her registration under section 47 of the Registration Act of 1909. Accordingly, under a plain reading of the statute, the title had moved on this date, and the later registration would be ineffective. The author would assume that the court did not need to consider section 47 of the Registration Act of 1909 for the operation date of sale documents in comparing the two transactions, since the sale had been perfected through the completion of registration on the earlier date. On this view, the perfection of the property right would depend solely on the chronological order of the registration of documents of sale.

In light of the above case of Daw Nilar Lu and Daw Khin Mi, several technical questions concerning conveyancing and registration practice invite consideration: 1) that the seller could sell his same lots of land to two buyers; 2) that both buyers could register their sale documents on same property at the office of the registration of deeds; 3) that office of the registration of deeds accepted the documents to be registered for the same lots of land; and 4) that the result suggests that a buyer is not necessarily safe in their title despite making document registration in accordance with the provisions of the laws. As a companion to the Daw Khin Mi v. Daw Nilar Lu case, we may examine a second dispute dealing with a double sale: that of U Ai Phone and U Shwe Moe.

In *U Ai Phone & two others v. U Shwe Moe & three others* (Civil case number 22 of 1986, dated February 11, 1986),⁹⁰ U Ai Phone sought specific performance against U Shwe Moe of an oral promise made in 1984 to sell several lots of land and a building. U Ai Phone claimed that U Shwe Moe accepted several payments from him beginning on July 9, 1985 as the part of the purchase price of the land concerned. The suit was prompted by information U Ai Phone received, to the effect that U Shwe Moe and his wife Daw Ei Kham had sold the disputed lots of land to the third parties U Thein Maung and Daw Ohn May on December 31, 1985, without first obtaining consent from U Ai Phone. After purchasing the disputed lots of land, U Thein

⁹⁰ Case describe in *ibid.*, 151–61.

Maung and Daw Ohn May submitted the sale document to the office of the registration of deeds in Yangon and completed registration on January 30, 1986. The office of the registration of deeds issued registration number of 201/1986 for the conveyancing document of U Thein Maung and Daw Ohn May on May 2, 1986. In the case, U Shwe Moe stated at the court that he had made no promise to sell the disputed lots to U Ai Phone, and was therefore free to sell the lots to U Thein Maung. After trial, the court decided on favor of U Ai Phone, holding that U Shwe Moe had made a promise to sell the said properties to U Ai Phone and accepted part of the purchase money.

In an appeal by U Shwe Moe (Case number 301/1990), the first appeal court approved the trial court decision. A special civil appeal on the issue of which party should hold perfected title to the disputed lots was accepted by the Supreme Court (Case number 602/1992). Sitting as the court of special civil appeal, the Court considered the application of sections 17(1)(b) and 49(a) of the Registration Act of 1909, and of section 54 of the Transfer of Property Act of 1882, which provide that the documents must be registered at the office of the registration of deeds in order for the title to be perfected in the buyer. The Court also considered the application of section 47 of the Registration Act of 1909 on the effective date of registered contracts of conveyance, and of section 52 of the Transfer of Property Act of 1882.

In the case, U Thein Maung and Daw Ohn May purchased the disputed lots of land from U Shwe Moe and Daw Ei Kham on December 31, 1985. U Thein Maung then submitted the sale document to the office of the registration of deeds for document registration on January 30, 1986. The office of the registration of deeds issued the registered document with registration number of 201/1986 to U Thein Maung and Daw Ohn May, on May 2, 1986. With respect to the application of section 47 of the Registration Act of 1909, the contract for the disputed lots of land had been executed in favor of U Thein Maung and Daw Ohn May on December 31, 1985.

U Ai Phone filed the original case at the court on February 11, 1986. The civil special appeal court established that U Thein Maung and Daw Ohn May made document registration at the office of the registration of deeds during the court proceeding period. The civil special appeal court referred to section 52 of the Transfer

of Immovable Property Act of 1882. That section provides for an automatic stay of lis pendens: “[d]uring the pendency in any Court having authority in the Union of Myanmar [Republic of the Union of Myanmar] of any suit or proceeding, which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding to affect the rights of any other party thereto under any decree or order, which may be made therein, except under the authority of the Court and on such terms it may impose.”

Indeed, according to the above-mentioned section 52 of the Transfer of Property Act of 1882, a transfer of property cannot be initiated during the pendency of a dispute in court to the detriment of a party to the dispute. The civil special appeal court applied this rule, on the basis that U Thein Maung and Daw Ohn May had completed document registration for the transfer of those properties during the court proceeding process. So, even though U Thein Maung and Daw Ohn May finished the document registration process for the disputed lots of land, the court decided that this conveyance was not an effective conveyance under section 52. The civil special appeal court thus held in favor of U Ai Phone, and the title of U Thein Maung and Daw Ohn May was dissolved.

The case of U Ai Phone v. U Shwe Moe turns on a specific interpretation of section 52 of the Transfer of Property Act of 1882, and some comment on the provision and its application are in order. Section 52 says that the property cannot be conveyed during the pendency of a dispute in the court in a way detrimental to one of the parties. Precisely stated, the litigation in this case was initiated on February 11, 1986; while the date on which the sale contract was submitted to the office of the registration of deeds for document registration was January 30, 1986. Thus, at the time U Ai Phone filed suit, U Thein Maung had already submitted the sale documents for registration. After submitting these at the office of the registration of deeds, no further action by U Thein Maung was required until the issuance of the registration documents on May 2, 1986. Indeed the process was beyond U Thein Maung's control during this interval.

This is not to suggest that a party in the plaintiff's position in this case is without possibility of relief. In this case, it was open to U Ai Phone to ask the court to issue an 'injunction order' (a writ of *lis pendens*) to the office of the registration of deeds for the registration of disputed lands, but he failed to do so. Then, the office of the registration of deeds issued the registration of document on May 2, 1986. When U Thein Maung completed document registration on May 2, 1986, the effective date for the conveyance of title became the execution date of the sale document, or December 31, 1985. This implies that the title of U Thein Maung was perfected on December 31, 1985. Under the relevant laws, a conveyance is perfected upon registration of the sale document at the relevant office of the registration of deeds. Though U Thein Maung had delivered the registered document in accordance with the laws, he lost his case. Reflecting on *U Ai Phone vs. U Shwe Moe*, one might consider the position of a buyer, where the person who makes registration of a conveyance according to the relevant laws is unable to set up their interest against another claimant. Under a strict view of the provisions concerning registration, it would seem that on the court's interpretation in this case, their effect is diminished, since the decision defeats the party who appears to have a better right. A revisitation of the interpretation in this case of Registration Act 1909 and the Transfer of Property Act 1882 might, on reflection, be beneficial to the stability of transactions and enhance the role of the registration system.

Unregistered sale contracts pose a further issue. If the seller or his successor-in-title asks for the return of the real property, which they sold, the buyer has a defense under section 53A of the Transfer of Property Act of 1882. Nonetheless, if a party other than the seller or his successor-in-title seeks possession against the buyer, the buyer cannot defend on the basis of unregistered documents:⁹¹ Section 53A of the Transfer of Property Act of 1882 is of no use to him in that case. Holding property on the basis of unregistered documents poses a significant risk to the buyer. The risks associated with unregistered conveyancing can be seen in two reported cases: that of *Daw Tin Tin Hla v. U Than Lwin a.k.a. Awli & U Hlaing Tint*, and that of *Daw Kyawt Kyawt & five others v. U Win Kying*.

⁹¹ *Daw Mu Mu Thein vs. Daw Tin Tin Hlaing a.k.a. Ingela Hlaing and Seven Others*, [2011] Burma Laws Rulings 83 (Supreme Court of the Union of Myanmar).

In *Daw Tin Tin Hla v. U Than Lwin a.k.a. Awli & U Hlaing Tint* (first-level civil appeal case of 1992 in the Supreme Court),⁹² Daw Tin Tin Hla had sought to eject the defendants, U Than Lwin a.k.a. Awli and U Hlaing Tint, from land she herself held under an informal contract by permission of another (No. 108, Sapal Street, Block 395, Htan Pin Kone, 88/109, Saw Bwa Gyi Kone Quarter, Insein Township, Yangon). The plaintiff appellant Daw Tin Tin Hla asserted title to the disputed land, claiming that it had been let on a bare license to the first defendant, her son, U Than Lwin a.k.a. Awli, as his residence. Upon learning that the second defendant, U Hlaing Tint, had built a large tent on the lot, she sued to eject them from her permitted lot of land. Although the first defendant, U Than Lwin a.k.a. Awli, conceded his mother's claim, the second defendant, U Hlaing Tint asserted that he had purchased the 75-by-50 foot lot of land from U Than Lwin a.k.a. Awli, and that his occupation did not depend on permission from Daw Tin Tin Hla or U Than Lwin a.k.a. Awli. U Hlaing Tint said that he had built the tent on the lot of land after purchasing from U Than Lwin a.k.a. Awli.

After thorough consideration of the case, the Supreme Court found that though U Than Lwin a.k.a. Awli lived on the land with the permission of the appellant Daw Tin Tin Hla, the occupation of U Hlaing Tint was supported by an (informal) purchase of some part of the land from U Than Lwin a.k.a. Awli. The Supreme Court remarked that the lower court's decision had stated that: "as a contract of sale made between U Than Lwin a.k.a. Awli and U Hlaing Tint was not registered at the office of the registration of deeds, it could not be said to be a perfected sale of the 75-by-50 foot lot of land to U Hlaing Tint. Nonetheless, U Hlaing Tint was entitled [according to the lower court judgment] to protection under Section 53A⁹³ of the Transfer of Property

⁹² *Daw Tin Tin Hla v. U Than Lwin a.k.a. Awli and Two Others* (Rulings of Myanmar) [1992] Case no 191/1992 (mm Supreme Court of the Union, September 3, 1992) 60–64.

⁹³ Section 53A provides as follows: "Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract, then, notwithstanding that the contract, though required to be registered, has not been registered, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefore by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under

Act of 1882.” The Supreme Court reversed on this issue, reasoning that: “this case was not about enforcing against the transferor for the property right as provided under section 53A.” As foundation for this position, the Supreme Court found that the appellant, Daw Tin Tin Hla, maintained her case on the basis of her own permission use the property (under and informal contract), and was thus not entitled to the protection of section 53A. For that reason, the Court found that the appellant had no right to eject the second defendant, since he did not live on the disputed lot of land with the permission of the appellant, but lived there by purchasing from appellant’s son.

Therefore, the Supreme Court held that although the appeal succeeded with respect to U Than Lwin a.k.a. Awli, it failed with respect to the second defendant, U Hlaing Tint.⁹⁴ In this case, it should be noted that if the appellant had been registered title holder to the property, she would have been able to recover her land from the second defendant, as the interest of the second defendant depended on a purchase with unregistered documents from the first defendant, who actually had no legal title to sell. In a purchase of real property, it is necessary and important for the buyer to identify the actual legal owner of the property, in order to obtain a perfected right to title.

This kind of property possession problem can also be seen in U Myint Soe v. U Aung Kyaw Min & two others’ (reported in 2001 MaTaSa⁹⁵ 168-169). In this case, U Aung Kyaw Min made two claims against U Myint Soe: (1) to perform a promise to complete registration of a sale contract; and (2) to convey the disputed land and building to U Aung Kyaw Min deliver a perfected title right. Commenting on the rights of the seller, U Myint Soe, the Court found that U Myint Soe had originally purchased the disputed land and building from

him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

“Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.”

⁹⁴ *Daw Tin Tin Hla v. U Than Lwin a.k.a. Awli and Two Others (Rulings of Myanmar)* [1992] Case no 191/1992 (mm Supreme Court of the Union, September 3, 1992) at 64.

⁹⁵ MATASA is the abbreviated name of Rulings of Myanmar, the national case reporter.

U Thu Taw for a payment of 1000 kyats by unregistered sale contract. As U Myint Soe had purchased the disputed property by unregistered documents from U Thu Taw, U Myint Soe did not hold a perfected right to title for the purposes of section 54 of the Transfer of Property Act of 1882 and section 17(1)(b) of the Registration Act of 1909.

Therefore, the court held in the case that since U Myint Soe did not hold a perfected right to title, but that despite the original informal sale contract the title still resided in U Thu Taw, the defendant U Myint Soe had no right to sell or transfer to any buyer including U Aung Kyaw Min. Therefore, the court did not grant an order in favor of U Aung Kyaw Min. Following the rule applied in this case, if a seller has only an informal contract for the property, they have no right to sell, and consequently the buyer has no right to compel sale of the property as against such an imperfect seller. This adds a further risk factor for buyers in transactions of this kind.

The uncertainty of unregistered contracts is further illustrated by the case of Daw Kyawt Kyawt & five others v. U Win Kyaing (2002 MaTaSa 165), in which the court held that the buyers of real property have no right to protect for their interest under section 53A of the Transfer of Property Act of 1882 where a party other than the seller or his successor-in-title sues for return of the property.⁹⁶ That is, section 53A of the Transfer of Property Act of 1882 does not give any protection to the buyer under an informal contract where a third party, other than the seller or his successor-in-title, sues for possession. Naturally, the success or failure of the third party's claim will depend on evidence, but it is crucial in the interest of stability to make registration of the real property conveyancing document, as the buyer will otherwise be at risk, given that section 53A of the Transfer of Property Act 1882 only protects an unregistered buyer against claims by the original seller or his successor-in-title.

⁹⁶ U Mya Sein (ဦး မြစ်နီ), *Court Reported Rulings on Civil Cases* [တရားမလမ်းညွှန် စီရင်ထုံးများ] (Yangon, Myanmar: Gone Htoo SarPay, 2008), 120.

The limitation of claims offers one means of resolving the uncertainties posed by the widespread use of informal sale contracts. This can be seen in several early cases, the first of which is *Ma Than Kyi & six others v. Daw Ge* (first-level civil appeal case No. 43 of 1963)⁹⁷ (this was an appeal against the decree of the 4th Judge, city civil court of Rangoon [Yangon] in civil regular suit No. 1209 of 1963, dated on 20th February 1965). In the trial below, the appellants had sued the respondent for recovery of possession of a house site (Holding No. 234, Block No. 23 D, 2nd Kwin Kyaung Street, Ahlone Township, Rangoon [Yangon]), on the ground that the respondent, who had been in occupation thereof since 1947 with the permission of their deceased father U Po Kyan, had refused to give up possession although the permission granted to her had been terminated. The judgment reads in pertinent part as follows:

The respondent pleaded that she had been in occupation of the land as the owner thereof after her purchase from U Po Kyan by a deed of sale dated on 1st March 1947, and that the suit was barred by time limitation. The learned 4th Judge of the case heard the parties and their witnesses and dismissed the suit after coming to the conclusion that the respondent had been in occupation of the suit premises as an owner, not as a licensee as alleged by the appellants, and that the suit was barred by the section 144⁹⁸ of the Limitation Act of 1908.⁹⁹ Hence this appeal was submitted.

It is no longer in dispute that the respondent had been in possession of the suit land after her purchase from the late U Po Kyan, the father of the appellants for a sum of 150 kyats by means of a sale deed, dated on 1st March 1947. Since this sale deed, though compulsorily registrable under section 17 of the Registration Act

⁹⁷ *Ma Than Kyi and Six Others v. Daw Ge* (Rulings of Myanmar), 1966 Rulings of Myanmar 556–60 (us Supreme Court of the Union May 18, 1966).

⁹⁸ U Hla Ko (ဦး လှကို), *Limitation Act* [ကာလစည်းကမ်းသတ် ဥပဒေ] (Yangon, Myanmar: U Ye' Myint, 1995), 56; U Kyaw Zay Ya (ဦး ကျော်ဇေယျာ), *Limitation Act* [ကာလစည်းကမ်းသတ်ဥပဒေ] (Yangon, Myanmar: SaKar Pyaw Nay Thu Myar SarPay, 2004), 47.

⁹⁹ *Suit for Recovery of Possession of a House Site - Infructuous Sale Deed - Evidence of Possession of the Site as Purchaser Not as Licensee - Adverse Possession from the Date of Invalid Sale - Limitation Act, Article 144.*, 1966 Rulings of Myanmar 556, 557.

of 1909,¹⁰⁰ had not been registered it does not affect the suit property nor can it be received as evidence of any transaction affecting the suit property. Nonetheless, under proviso to section 49 of the Registration Act of 1909, the respondent is entitled to use it in evidence for the purpose of proving a collateral purpose, namely, the nature or character of the possession and how she had come upon the suit land.

The infructuous sale deed clearly shows that the respondent had been in possession of the land not in the capacity of a licensee as alleged by the appellants but in the capacity of an owner after her purchase from U Po Kyan, father of the appellants. Since the respondent came into and remained in possession of the property after the execution of the unregistered sale deed, her possession became adverse to the seller from the date of the invalid sale and a suit by the seller or his successor-in-title after the lapse of 12 years¹⁰¹ from that date would undoubtedly be barred under section 144 of the Limitation Act of 1908. In the result, the court held that the appeal fails and was accordingly dismissed with costs by favoring the side of respondent, Daw Ge.¹⁰²

A second case concerning limitations is that of Sohan Lal vs. Mohan Lal, decided in 1928 under the India Code. In that case, Mukerju, J. wrote in the leading judgment:

“... Where in an intended sale, which can be effected in law only by a registered document, no such document is executed and yet the intending purchaser gets possession, he gets possession with the consent of the intending vendor; but, nonetheless, the purchaser’s possession begins adversely to the vendor. If the intending purchaser be fortunate enough to continue, undisturbed by the vendor, in possession for 12 years, he would acquire a perfect title as against the former owner, the vendor...”¹⁰³

¹⁰⁰ Transfer of Property Act, X BURMA CODE § 3 pp. 114–16 (Union of Burma 1958).

¹⁰¹ Statutes dealing with the adverse possession vary from twenty years in some countries to five years in others. In the UK, the statute of limitations in ejectment is ten years while it is 12 years in Myanmar.

¹⁰² *Suit for Recovery of Possession of a House Site - Infructuous Sale Deed - Evidence of Possession of the Site as Purchaser Not as Licensee - Adverse Possession from the Date of Invalid Sale - Limitation Act, Article 144.*, 1966 Rulings of Myanmar 559,560.

¹⁰³ *Sohan Lal & others v. Mohan Lal & others*, (1928) 118 Ind. Cas. 177 (Allalabad High Court).

According to the cases above, if the buyer possesses the property over 12 years continuously, the seller or his successor-in-title cannot claim for return of the property against the buyer under section 144¹⁰⁴ of the first schedule of the Limitation Act of 1908.

According to a news report published in January 2012, most fraud cases in Myanmar relate to land possession problems.¹⁰⁵ The same report contains an account of one Mr. A, a resident of Thanlyin Township, who purchased a lot of land (No. L/377, 40-by-60 feet, in Aye Tharyar Ward, Thanlyin Township) from Mr. B and Mr. C, residents of Bogyoke Village), for a price of Kyat 150 Lakhs on November 29, 2011. In the case, Mr. B and Mr. C provided the documents relating to the land necessary for a conveyance, such as the originals of prior conveyances, a receipt for money paid for the previous purchase and so forth to Mr. A, the buyer. Mr. A checked the documents and made a sale contract with Mr. B and Mr. C in front of witnesses.¹⁰⁶ When Mr. A later queried about the land he had purchased at the land record department, the housing department, and the administrative department in Thanlyin Township, he learned that the land was only government owned land held under permission, and that Mr. B and Mr. C. had no power to convey title. Mr. A also understood that Mr. B and Mr. C forged the documents used to sell the land, and sold to Mr. A in bad faith. Ultimately, Mr. A sued Mr. B and Mr. C at Thanlyin Police Station under section 420¹⁰⁷ and section 468¹⁰⁸ of the Penal Code on January 18, 2012. This case illustrates the risks of fraud and deception associated with the prevalence of

¹⁰⁴ Article 144 provides: “The period of limitation is twelve years from the date when the possession of defendant becomes adverse to the plaintiff ...]

¹⁰⁵ “Most of the Disputes Dealing with Cheating Are about Land and Vehicle Cases in January 2012” [၂၀၁၂ ခုနှစ် ဇန်နဝါရီလအတွင်း တိုင်ကြားခဲ့သည့် လိမ်လည်မှုဖြစ်စဉ် အများစုမှာ မော်တော်ယာဉ်၊ မြေကွက်နှင့် ပတ်သက်သည့် အကြောင်းရင်းများ ဖြစ်ကြောင်းသိရ]၊ Eleven Media Group, January 29, 2012, http://www.news-eleven.com/index.php?option=com_content&view=article&id=12147:2012-01-29-09-05-15&catid=42:2009-11-10-07-36-59&Itemid=112 (accessed January 30, 2012).

¹⁰⁶ Ibid.

¹⁰⁷ Penal Code, VIII BURMA CODE § 420 (1861).

¹⁰⁸ Ibid., § 468.

informal contracts. Most people have to purchase based on bare documents, since most sellers do not have the registered sale documents due to the fact that they themselves purchased without registration.

1.13 CONVEYANCING THE FLATS

In the conveyancing of flats, people chiefly make transfers by informal sale contracts. The registration process can be used to protect interests in flats in Myanmar, but it is very seldom used, and this fact gives rise to many disputes over possession rights to this form of property. Fraudulent persons can make false documents regarding the flat possession, and credibly hold themselves out as true owners in a sale transaction. Since people ordinarily convey the flats based on unregistered documents in their possession, the conveyancing problems described in the sections above are very common, and increasing, for this very common form of property.

In *Daw Tin Maw & two others v. U Myint Thein & two others* (2004 MaTaSa 89),¹⁰⁹ one U Tin Win Tun (son of Daw Tin Maw, the plaintiff) sold a flat to which he did not in fact hold title, to the defendant, U Myint Thein. In actual fact, Daw Tin Maw was the true owner of the flat, and had given only a right to stay in that flat (i.e. a bare license) to her son, U Tin Win Tun. Nonetheless, U Tin Win Tun purported to convey the flat to the defendant, U Myint Thein. Throughout the transaction, U Tin Win Tun held himself out as the true owner of the flat.

Following the maxim “*nemo dat quod non habet*” (no one can convey any right which he does not himself have), the court held that U Tin Win Tun had no right in the flat that he could sell, and that the defendant who bought the flat from U Tin Win Tun acquired only a defeasible interest. So the court held in favor of the plaintiffs that the defendants had no right to possess the flat since the defendants had bought the flat from a person who actually did not own it. The court commented, however, that the defendants could sue U

¹⁰⁹ U Mya Sein, *Court Reported Rulings on Civil Cases*, 260–61.

Tin Win Tun for the recovery of damages, although they had no right to the flat itself. The conditions that make such situations likely to arise are worth reflecting upon.

1.14 SUMMARY

To sum up, the principle rules on the transfer of title to immovable property from one person to another are contained in section 17(1)(b) and section 49(a) of the Registration Act of 1909, and section 54 of the Transfer of Property Act of 1882. Under these provisions, the sale document of real property must be registered at the relevant office of the registration of deeds in order to perfect the transfer of legal title. As for the process for registration of the sale contract of immovable property, the parties need to contact (1) the Municipal Office,¹¹⁰ (2) the relevant State/Regional Revenue Office,¹¹¹ (3) the relevant Township Revenue Office,¹¹² (4) the relevant Office of the Registration of Deeds,¹¹³ and (5) the Municipal Office again.¹¹⁴ As this list shows, there are many offices to contact, and completing the registration process for sale contract of conveyancing property can be burdensome and time-consuming. Buyers face costs of (1) 30% in “income tax”, (2) 7% in stamp duty, and (3) 0.2% of the purchase price as a registration fee.

In response to these factors, most people make informal transfers with unregistered documents, avoiding the total 37.2% in costs and the other burdens of registration procedures. Informal transfers are however fraught with risk, and are a source of a rising number of disputes over sales transactions. Commonly observed issues include (1) sale of one property to two buyers and sale of property by parties fraudulently holding themselves out as true owners, (2) registration of sale contracts by separate buyers over the same

¹¹⁰ To take the land map and to change the title name.

¹¹¹ For the appraisal of property.

¹¹² To learn the property appraised value fixed by the Regional or State Revenue Office and to pay 30% income tax, 7% stamp duty on appraised value.

¹¹³ To make sale document registration.

¹¹⁴ To change the title name.

property, (3) issuance of registration documents over the same property by the office of the registration of deeds, (4) avoidance of registration due to the high cost of “income tax” on sales, and (5) widespread failure to take advantage of the registration process.

In solving the disputes for these issues, is there any statutory language to be reconsidered in order to help the courts? What are the effects of Myanmar court decisions favoring informal transferors who neglect the registration process? In order to observe the application of legislation in Myanmar courts, the next chapter will deal with “Legal Process in Myanmar” by approaching the crucial elements of enacted laws in order to learn the criteria of the courts in contemplation of disputed cases for decision.

CHAPTER 2

LEGAL PROCESS IN MYANMAR: CRUCIAL ELEMENTS OF LAWS

2.1 INTRODUCTION

In this chapter, the process of legal history and legal practice from the ancient Myanmar kingdom period up to the present day will be examined in order to more fully understand the context of laws in that country. In examining the chronology of legal process in Myanmar, the court practice from the British time until the present period dealing with the application of laws in the Myanmar courts will be described. Although the courts in Myanmar partly practiced the common law legal practice under the British time by highlighting justice, equity, and good conscience: at the present time, those equity, justice and good conscience were chiefly based on the existing laws by constituting the different level of courts. Actually, under British rule as well, the Myanmar courts had tried disputes mainly based on the statutory laws introduced by the British. Currently, all Myanmar courts are obliged to give decisions within the framework of the elements and provisions of the adopted laws in disputed cases. The overview will reveal that Myanmar courts have no recognized discretionary power in production of judgments. In this section, the significance of the elements and provisions under the existing laws¹¹⁵ will be raised and discussed dealing with a view to illuminating the consideration of laws in the courts of Myanmar.

¹¹⁵ Republic of the Union of Myanmar, “People Need to Know about the Enacted Laws in Order to Abide and Avoid the Provisions under Them (Legal Talk by Legal Professionals U Than Aung, U Min Kyaing, U San Lwin, U Myo Nyunt and U Thant Zin on August 4, 2013)” [ပြဌာန်းလိုက်သမျှဥပဒေကို ပြည်သူများနားလည်သိရှိရန်လို၊ ဥပဒေပါအချက်များလိုက်နာပြီး တားမြစ်ချက်ကိုရှောင်ကြဉ်။ (ဥပဒေပညာရှင် ဦးသန်းအောင်၊ ဦးမင်းကြိုင်၊ ဦးစန်းလွင်၊ ဦးမျိုးညွန့် နှင့် ဦးသန်းဇင်တို့၏ ၂၀၁၃ ခုနှစ် ဩဂုတ်လ ၄ ရက်နေ့ ဥပဒေရေးရာ စကားပိုင်း)]၊ August 5, 2013, 9,24; “Lord Bingham’s Eight Principles- The Rule of Law | Sabah Carrim - Academia.edu,” *Academia.edu*, August 5, 2013, http://www.academia.edu/1749011/Lord_Binghams_Eight_Principles-The_Rule_of_Law (accessed August 5, 2013); “Rule of Law (Lord Bingham’s Eight Principles),” November 16, 2011.

2.2 THE CHRONOLOGY OF THE LEGAL PROCESS IN MYANMAR

This chapter will be composed with the background of Myanmar legal process from the era of ancient Myanmar kingdom periods, the British colonization period, Japanese occupation period, pre-independence British colonization period, independence and parliamentary government period, revolutionary council period, socialist government period, state law and order restoration council period, state peace and development council period, and until up to the current *pyidaungsu hluttaw* period to learn the process of legal practice in Myanmar. The legal process of a country accommodates the alterations of its political, administrative and economic systems to be in line with the changing circumstance, and Myanmar is no exception.¹¹⁶

¹¹⁶ Union Attorney General's Office, *Law Journal* (ဥပဒေပညာဂျာနယ်), I:154.

Republic of the Union of Myanmar



The Republic of the Union of Myanmar is composed of seven regions and seven states as shown in the above map. Looking back in history, it can be seen that after the ancient Myanmar kingdom period, the British colonial rule came into Myanmar in three stages. The British at the first time annexed the lower maritime areas of Rakhine and Taninthayi regions after the first Anglo-Burmese war in 1826, and the lower Myanmar of Bago and Moat-ta-ma in 1852. The entire country was eventually consolidated as a province of British India in

1885.¹¹⁷ The British introduced their common law legal system into Myanmar to govern and to administer the country. Discussion of the common law legal system of the British, will be preceded by discussion of the original legal system of Myanmar at the time of ancient Myanmar Kings, in order to learn which kind of legal processes have been practiced in Myanmar over time. Then, the processes of legal reforms pursuant to the processes of changing political situations in Myanmar will be examined. To this regard, the steps from the ancient Myanmar kingdom era to the current presidential period can be divided into seven government periods of legal history and legal practice.

2.2.1 SEVEN PERIODS OF LEGAL PROCESS IN MYANMAR

1. Before Independence Period (Up to January 4, 1948)
 - a) Era of Ancient Myanmar Kings
 - b) British Colonial Annexation Period (Before 1936-1937)
 - c) Burma as a colonial State Period after Separation from India (From April 1, 1937 to December 1942)
 - d) Japanese Occupation Period (From 1942 to 1945)
 - e) Pre-Independence British Colonial Period (From 1945 to January 4, 1948)
2. Independence and Parliamentary Government Period (From 1948 to 1962)
3. Revolutionary Council Government Period (From 1962 to 1974)
4. Socialist Government Period (From 1974 to 1988)
5. SLORC Government Period (From 1988 to 1997)
6. SPDC Government Period (From 1997 to March 30, 2011)
7. Pyidaungsu Hluttaw Period (From March 31, 2011 to Present)

¹¹⁷ Dr. Maung Maung, *Law and Custom in Burma and the Burmese Family* (The Hague, Netherlands: Martinus Nijhoff, 1963), 20.

The following table indicates the entire span of the acts and laws in Myanmar from the Ancient Myanmar Kingdom period up to December 25, 2013.

2.2.2. CHRONOLOGY, ERA AND OVERALL FIGURES OF ACTS AND LAWS IN MYANMAR (MODIFIED UP TO DECEMBER 25, 2013)

No.	Era	Enacted	Repealed	Remained	Main	Amended
1	Before Independence Period: - Up to December 31, 1954 (including Burma Code Vol. I to XIII)	435	248	187	186	1
2	Parliamentary Period: - (From 1955 to March 1, 1962)	334	165	169	54	115
3	Revolutionary Council Period: - (From March 2, 1962 to March 1, 1974)	182	77	105	73	32
4	Socialist Period: - (From March 2, 1974 to September 17, 1988)	125	41	84	57	27
5	SLORC Period: - (From September 18, 1988 to November 14, 1997)	139	18	121	78	43
6	SPDC Period: - (From November	141	5	136	89	47

	15, 1997 to March 30, 2011)					
7	Pyidaungsu Hluttaw Period: - (From March 31, 2011 to December 31, 2011)	15	-	15	6	9
8	Pyidaungsu Hluttaw Period: - (From January 1, 2012 to December 31, 2012)	24	-	24	22	2
9	Pyidaungsu Hluttaw Period: - (From January 1, 2013 to December 25, 2013)	37	-	37	24	13
	Total	1432	554	878	589	289

	Existing Laws which are not necessary to apply anymore under the Main Laws				(-) 166 ¹¹⁸	
	Total Existing Laws applying by the relevant Authorities and Ministries				423	

Notes:

(1) Enacted = Enacted Laws.

¹¹⁸ The following laws are among those which, although not formally repealed, are no longer enforced because they contain provisions inconsistent with the current situation: Judicial Officers Protection Act (India Act 18/1850, Burma Code Volume I, page-179), The Arms (Temporary Amendment) Act (Burma Act 51/1951, Burma Code Volume II, page-198), The Explosive Substances Act (India Act 6/1908, Burma Code Volume II, page-199), The Betting Tax Act (Burma Act 9/1928, Burma Code Volume III, page-375), The Building (Regulation of Construction and Repair) Act (Burma Act 2/1946, Burma Code Volume IV, page-343), The Measuring Basket Standardization Act (Burma Act 1/1939, Burma Code Volume V, page-37), The Measures of Length Act (India Act 2/1889, Burma Code V, page-40), The Rural Self-Government Act (Burma Act 4/1921, Burma Code Volume VI, page-74), The Cantonments Act (India Act 2/1924, Burma Code Volume VI, page-343), The Carriers Act (India Act 3/1865, Burma Code Volume VII, page-58), The Bills of Lading Act (India Act 9/1856, Burma Code Volume VII, page-68), The Hackney Carriage Act (India Act 14/1879, Burma Code Volume VII, page-98), The Whipping Act (India Act 4/1909, Burma Code Volume VIII, page-428), The Charitable Endowments Act (India Act 6/1890, Burma Code Volume IX, page-157), The Treasure Trove Act (India Act 6/1878, Burma Code Volume X, page-254), The Partition Act (India Act 4/1893, Burma Code Volume XI, page-169), The Process Fees Act (Burma Act 1/1910, Burma Code Volume XII, page-382), and The States (Extension of Laws) Act, 1948 (Burma Act 50/1948, Burma Code Volume XIII, page-96).

- (2) Repealed = Repealed Laws.
- (3) Remained = Remaining Laws.
- (4) Main = Main Laws.
- (5) Amended = Amendment Laws.
- (6) SLORC = State Law and Order Restoration Council
- (7) SPDC = State Peace and Development Council
- (8) Pyidaungsu Hluttaw = Present Presidential Period (2011-2015)
- (9) Excluded the Government of Burma Acts of 1935 enacted by the British Governor.
- (10) Excluded the Laws Regulating the Administration of Burma, 1305 M.E. (1943) enacted by the Japanese Chancellor.
- (11) Excluded the 1947 (the first), 1974 (the second) and 2008 (the third) Constitutions of Myanmar though the amendment laws of the said 1947 and 1974 Constitutions are included.

As shown in the table above, there had been a total of 1,432 enacted laws in Myanmar as of December 25, 2013. Of these, 554 laws have been repealed, leaving 878 laws currently in force. Among the 878 existing or remaining laws, 589 are original statutes, 289 are amending acts. Of the 589 statutes, 166 are no longer applied by the authorities and ministries on the grounds that they are anachronistic or conflict with other legislation. Therefore, the relevant authorities and ministries apply, as of December 25, 2013, at total of just 423 statutes in Myanmar.

2.2.3 THE LEGAL PROCESS IN THE ERA OF ANCIENT MYANMAR KINGDOM PERIOD

The era of Myanmar Kingdom period can be divided into three Dynasties – Bagan Dynasty, Taungoo Dynasty and Konboun Dynasty – and Myanmar had its legal administration to administer justice under the Myanmar kingdom periods.¹¹⁹ In the period of the Bagan Dynasty (1044-1287), a judicial system and courts of law (an ordinary court and an upper court, or court of appeal) were established to administer justice in both civil and criminal cases. The Bagan period was followed by the Taungoo Dynasty (1510-1752), culminating in the reign of King Bayintnaung Kyaw Htinnawrahtar (1551-1581) during the period of 1510-1752. The Manusara Dhammathat (a compendium of laws) was produced in reign of King Sinbyumyashin at Bago in 1549. The Dhammathat Kyaw produced by King Ngazudayaka of Taungoo in 1733 was one of the nine leading accomplishments of Myanmar literature.¹²⁰ The third and last Dynasty of Myanmar, the Konboun Dynasty (1753-1885), was built by King Alaungpaya in A.D. 1752-1760. During the reigns of King Mindon (A.D. 1853-1878), chief minister of justice, Kinwun Mingyi U Kaung's 34 and 36 volumes of consolidated Dhammathats were very popular in Myanmar.

During the three Dynasties of Myanmar kings, the legal frameworks and different level of courts were constituted in order to administer justice for not only civil cases but also criminal cases, even though Myanmar had no statutes and no national code of laws passed by a national assembly.¹²¹ The administration of justice at the time of ancient Myanmar kings was based on rules of three types: Yazathat¹²², Dhammathat¹²³ and

¹¹⁹ Tun Shin, "The Legal System of Myanmar and Update on Myanmar Business Law" (Workshop on Recent Development of Myanmar and the Challenges, Tokyo, Japan, June 12, 2013), Tokyo, Japan.

¹²⁰ Ibid.

¹²¹ Aung Than Tun, *Kinwun Mingyi and Dhammathats* (Yangon, Myanmar: Tun Foundation Literary Committee, 2009), 7–8.

¹²² Most legislation of kings was Yazathat as criminal law for the crimes. The Yazathats are composed of the king's commands and criminal laws for prevalence of law and order, security and peace. The criminal cases were trial and punished in accordance with the provisions of Yazathats which were edicts issued by the kings.

Phyathon.¹²⁴ The Myanmar Buddhist Customary Law – gathered from Dhammathats, decided cases, prevailing customs and practice – is applied in Myanmar Buddhist family matters.¹²⁵ Over 130 laws were enacted during the era of last King Thibaw of Konboun Dynasty. The ancient Myanmar Kingdom period ended abruptly with the commencement of British rule in 1826.

2.2.4 BRITISH COLONIAL ANNEXATION PERIOD AS THE COLONIAL PROVINCE OF BENGAL AND INDIA (AFTER THE ANGLO- BURMESE WARS BEFORE 1936 – 1937)

After the first Anglo-Burmese war in 1826, the British annexed the Rakhine state¹²⁶ and the Taninthayi region¹²⁷ of Myanmar. The Bago and Moat-ta-ma regions¹²⁸ fell under British colonial rule after the second Anglo-Burmese war in 1852. Although the Rakhine state, the Taninthayi and the Bago regions were kept as a separate state and separate regions respectively under the Chief Commissioner in 1862, the Governor-General of India ruled over these, and the laws in each were enacted by the legislature under the Governor-General. In 1866, the legislative power was conferred to the Chief Commissioner, who was also charged with enforcing the laws prescribed in India within British Burma [Myanmar]. After the third Anglo-Burmese War in 1885, the British eventually conquered the entire kingdom of Myanmar.

¹²³ Dhammathats were similar with the customary law of Myanmar family. The civil cases relating to Myanmar Buddhist family and custom were decided by the judges under the rules of Dhammathats. The Dhammathats were composed of rulings and case laws relating to family affairs such as marriage, divorce and inheritance. In respect of the Dhammathats, there are a total of 175 documents including 57 Pittakas, 16 Dhammathats Lingars, 82 Rulings, 10 Dhammathats precedents and 10 Dhammathats branches in the history of Pittaka.

¹²⁴ Pyathtones were the rulings or records of judicial decisions of criminal and civil cases rendered by various monarchies and judges in Myanmar.

¹²⁵ U Kyaw Sein, “Myanmar Legal History and Future Legal Reform in Myanmar” (July 2009): 1.

¹²⁶ Western coast of Myanmar.

¹²⁷ Southern coast of Myanmar.

¹²⁸ Lower parts of Myanmar.

After the territory of Burma [Myanmar] was occupied, the region's legal process was derived from the practice of British common law legal system. That legal system was applied through codified laws inspired by English common law legal principles and the rules of English equity. Accordingly, in the absence of any specific statutory law, judicial courts had the right to act according to the principles of justice, equity and good conscience, as under the English Common Law. The operation of the Yazathat and statute laws of the ancient Myanmar kings faded out gradually after the first and second Anglo-Burmese wars, and ceased completely in 1885 after annexation of the whole territory of modern-day Myanmar by the British. Nonetheless, the Myanmar Buddhist customary laws were still applied by the judicial courts from the colonial period up to the present-day.

In terms of content the Arakan Hill District Laws Regulation of 1874 was prescribed for Rakhine hills area,¹²⁹ and comprehensively amended in 1916. A total of fifty pieces of legislation from India, three Regulations, seven specific pieces of legislation applicable to Burma, and the Bengal State Prisoners Regulation of 1818 entered into force in Myanmar. The Bengal State Prisoners Regulation of 1818, prescribed in India, was the earliest of the India legislation that entered into force in Myanmar (now repealed).¹³⁰

In 1886, the British formed the Shan State¹³¹ and the Kachin State,¹³² under the Scheduled District Act of 1874. Also in 1886, the Shan State was given a specific status under the Upper Burma Laws Act. Significant changes were introduced by the “Sanad document”. The court of the judicial commissioner of upper Burma was also founded in 1886. In 1888, the Shan State Act was promulgated, and the Shan Saw-Bwas were given limited powers in civil, criminal, taxation and administrative matters under the Sanad document. The Shan State Act was repealed in 1898, and the Act of Myanmar laws were extended to cover the Shan State as well.

¹²⁹ Rakhine hills area is located in the western part of Myanmar.

¹³⁰ U Kyaw Sein (ဦးကျော်စိန်), “A Brief Legal History of Myanmar,” *ဥပဒေပညာဂျာနယ် (Law Journal)* I, no. II (1999): 154–64.

¹³¹ Eastern part of Myanmar.

¹³² Northern part of Myanmar.

The Karenni area (i.e. the Kayah State)¹³³ was placed under the control of the Karenni Chief with the advice and supervision of the Shan State deputy commissioner under the Sanad document. The Kachin Hill Tribes Regulation of 1895 was applied to the tribes in Kachin hills region. Chin State¹³⁴ was placed under separate control by the Chin Hills Regulation of 1896. At this point, the Indian Bengal Codes and other Acts prescribed by the Governor-General under the Government of India Act took effect in both upper and lower parts of Myanmar. During the period from 1843 to 1896, a total of 159 Acts and Laws were took effect in Myanmar.

On 1st May 1897, Burma [Myanmar] was upgraded to the status of a colonial province directly governed by the deputy Governor-General. At that time, the legislative council was created under the Indian Council Act of 1861, and therefore, Burma [Myanmar] had its first experience with legislative power. From this time forward, laws where identified as “Burma Acts”. Nevertheless, the Indian government was assigned the power to prescribe laws on financial matters. There were changes in administration between 1909 and 1919 under the so-called Morley-Minto reforms; the number of members in the legislative council was increased from 9 members previously to 30 members.¹³⁵

Burma [Myanmar] laws enacted during the British colonial period up to 1932 were published serially year by year in Myanmar as Burma Codes from volume I to III. The Burma Code Volume I consists of the laws and regulations prescribed during the year of 1876 to 1898, Volume II of the Burma Code includes laws adopted during the year of 1898 to 1923, and Burma Code Volume III contains laws promulgated during the year of 1924 to 1932.

In early 1923, Burma was granted a dual administrative mechanism known as “Diarchy” like the other States of India (the Shan State, Kachin State, and Chin State were excluded from this arrangement). The number of members in the legislative council was also increased to 103 members. In Shan State, the Shan Saw-

¹³³ South-Eastern part of Myanmar.

¹³⁴ North-Western Part of Myanmar.

¹³⁵ U Kyaw Sein, “Myanmar Legal History and Future Legal Reform in Myanmar.”

Bwas council was put under the control of the Governor of India and administered separately. The British declared the Shan State, Kachin State and Chin State as “Backward Tracts”. The British separated Burma from the province of India in 1937.

2.2.5 BURMA AS A COLONIAL STATE AFTER SEPARATION FROM INDIA (APRIL 1, 1937 TO DECEMBER 1942)

During the period of endeavors to gain independence in Burma [Myanmar], the movement suffered a setback with the separation of Burma from India. Burma was separated from India under the Government of Burma Act of 1935 and the said 1935 Act was prescribed as in the nature of a constitutional law. The 1935 Government of Burma Act came into force on 1st April 1937 and Burma [Myanmar] became a colony governed by the British Government through the Governor and it ceased then to be a dependency under India. In this 1935 Act, the provisions relating to the executive, legislature, legislation, constitution of high court and its jurisdiction were contained in part II, III, IV and VIII.¹³⁶

According to the above 1935 Act, the Governor of Burma [Myanmar] was directly appointed by the British Government. In the sector of administration, the Burmese Government gained more administrative power in the form of 91 administrative divisions. In the legislative sector, there were two chambers, namely the House of Representatives and the Senate. The laws prescribed by the two chambers had to be confirmed by the Governor, and those laws came into force only after the approval of the British King. Due to the separation, further enactments of India Acts by India Parliament were no longer enforced in Burma [Myanmar]. Nonetheless, as it was prescribed in section 14 of the Government of Burma Act of 1935, “laws prescribed for Burma under the Government of India Act shall, unless amended, altered or repealed continue to have effect,” and so the India Acts prescribed for the states of India were revived in Myanmar. Up to the present-day, a number of those India Acts are being in force in Myanmar as the Myanmar Acts.

¹³⁶ Government of Burma Act of 1935 (1935).

In 1934 and 1935, the certain laws prescribed previously were repealed, amended or annulled in order to be consistent with the changing situation in Myanmar, under the Repealing and Amending Act of 1934 and that of 1935. Furthermore, in order to be consistent with the changing administrative system, existing laws were amended, inserted and repealed under the Government of Burma (Adaptation of Laws) Order of 1937 and the Burma (Adaptation) Act of 1940. Out of the laws, which were prescribed for Myanmar excluding the repealed laws, annual finance Acts and temporary Acts, all the other laws, which took effect up to December 1942, were published in 1943, arranged by subject, as the Burma Code volumes I through VII.

2.2.6 JAPANESE OCCUPATION PERIOD (FROM 1942 TO 1945)

British rule was briefly interrupted in the years 1942 to 1945 by the Japanese Army's occupation of Myanmar. Thus, the Government of Burma Act of 1935 was suspended during the Second World War. During this period, the Governor of India took over the notional legislative and executive power under section 139 of the Government of Burma Act 1935.

The Burmese Patriotic Force for Independence, with the aid of the Japanese Army, attacked and drove out the British forces. The Japanese Army then conquered the whole country and decided to grant independence to Burma forthwith. According to this decision, on 1st August 1943, the Law Regulating the Administration of Burma, 1305 M.E (1943) was adopted, and independence was granted to Burma [Myanmar]. Pursuant to this 1943 law, Dr. Ba Maw was elected as Chancellor of the State in Myanmar. Under the legislation, the Chancellor of the State had the power to prescribe the laws after consultation with the Council of Ministers according to section 19 of the law. The legislative, executive and judicial powers were exercised by the government headed by the Chancellor under section 3.

In section 23 of the 1943 law, the existing laws including the Indian Acts and Burma Acts continued to be applicable insofar until they were not inconsistent with the new arrangements. Thus, the Government of Burma Act of 1935 and its enactments continued in force during the Japanese occupation period. During the

period of the Japanese regime, Myanmar language was prescribed as the official language for use in Myanmar. The interests of foreigners were restricted in conformity with the patriotic spirit. Three laws in particular protecting Myanmar national interests were enacted:

- 1) The Transfer of Immoveable Property (Restriction) Act;¹³⁷
- 2) The Company Law;¹³⁸ and
- 3) The Law on Marriage with Foreigners.¹³⁹

Since Burma [Myanmar] fell under the Japanese control, the British Evacuee Government that retreated in India, established headquarters in Simla town of Bengal India, and carried out administrative and legislative measures for Burma [Myanmar]. From 1942 to 1945, the British Evacuee Governor enacted 68 laws and the Compendium of Governor's Acts of 1942-45 was published comprising those laws. However, the above-mentioned three laws enacted by the Japanese Chancellor were not recognized by the British Evacuee Governor according to the Government of Burma Act of 1935. That is why; the said three laws are omitted in the list of laws enacted during this period and also from the Burma Code.

2.2.7 PRE-INDEPENDENCE BRITISH COLONIAL PERIOD (FROM 1945 TO JANUARY 4, 1948)

A patriotic force which endeavored for Burmese Independence with the assistance of British forces fought back against the Japanese occupation, and the Japanese forces ultimately retreated from Myanmar. In May 1945, the British re-occupied the whole of Burma [Myanmar] and the country come once again under the control of the British. Consequently, the Government of Burma Act of 1935 was reapplied as amended by the

¹³⁷ Prescribed the immoveable property to be owned by Myanmar Nationals and not to be owned by foreigners without the prior sanction of the Government.

¹³⁸ Prescribed not to be allowed the Joint Venture Company with foreigner without at least 60% of share capital of Myanmar national.

¹³⁹ Prescribed to be in accordance with the Myanmar Buddhist Dhammathat, where the Myanmar woman married with foreigner.

British Evacuee Government. The Burma Indemnity and Validating Act of 1945 was enacted, and the Acts, Rules and Regulations which were prescribed before the Japanese regime, and had been suspended during it, came into force again in the relevant regions insofar as they had not been repealed. However, the three above-mentioned laws enacted during the Japanese occupation were not revived, and accordingly they were not included in the list of Burma Acts.

Instead of electing the members of two chambers, which constituted under the Government of Burma Act of 1935, a legislative council consisting of 32 members was formed by the order of Government in 1945. In addition, the Governor issued Legislative Council Rules of Procedure 1945, under which it was prescribed that the Governor had legislative authority without consultation with the legislative council. In 1945, the Crown Office Rules of 1945 were adopted and the Crown Office¹⁴⁰ was established. Legislative drafting officers were appointed and assigned duties. In 1947, this Crown Office was abolished and the Attorney General was appointed and assigned its duties. After the withdrawal of Martial Law on 1st January 1946, the Governor directly appointed the members of legislative council.

During the Japanese regime before independence, 150 laws were enacted by the British Evacuee Government in Simla, Bengal of India. Then the British Evacuee Government came back to Myanmar from Bengal in 1945. Simultaneous with the endeavors for independence, a committee for drafting a Constitution was formed. On 14th September 1947, the Constituent Assembly approved and adopted the Constitution of the Union of Burma [Myanmar].

2.2.8 INDEPENDENCE AND PARLIAMENTARY GOVERNMENT PERIOD (FROM 4TH JANUARY 1948 TO 1ST MARCH 1962)

¹⁴⁰ Present usage for Crown Office is “Union Attorney General’s Office” in Myanmar.

Myanmar regained its sovereignty and independence on January 4, 1948 under the 1947 Constitution.¹⁴¹ At that time, the Union Parliament was newly established as exercised a bicameral parliament with a “chamber of deputies and chamber of nationalities”. Separation of legislative, executive and judicial powers was provided for under chapters I, VI and VIII of the Constitution. The general legislative power of the Union was vested in the Union Parliament under section 65 of the 1947 Constitution, and under sections 90 and 92 (1) of the 1947 Constitution, the power of making laws was vested in the Parliament. Under section 92 (1), the power to make laws on matters enumerated in “List-II”¹⁴² was assigned to the State Council.¹⁴³ By virtue of section 226 (1) of the 1947 Constitution, all existing Acts including India Acts and Burma Acts were extended into force until and unless they were repealed and to the extent to which they were not inconsistent with the Constitution.

The Union of Burma (Adaptation of Laws) Order of 1948 was prescribed to adapt the clauses and expressions contained in the 1947 Constitution to those contained in the Order. Under that 1948 Order, the expression, “British Burma” was substituted with the expression, “Union of Burma”; “Crown” was substituted with “Government” and “Governor” with “President.” On January 4, 1948,¹⁴⁴ the Supreme Court and high court were established and courts at different levels were also created according to the Union Judiciary Act of 1948.¹⁴⁵ Moreover, an Advocate of the High Court nominated by the Prime Minister was appointed and assigned duties as Attorney General.

Likewise, the Laws Revision Committee headed by a Supreme Court judge was formed in order to amend laws, which had been enacted before Independence, in order to make the law consistent with the

¹⁴¹ “The 1947 Constitution of the Union of Burma [Myanmar],” 1947, <http://www.blc-burma.org/html/Constitution/1947.html> (accessed January 14, 2012).

¹⁴² State Legislative List being the Province Legislation.

¹⁴³ “The 1947 Constitution of the Union of Burma [Myanmar].”

¹⁴⁴ January 4, 1948 was the Independence Day in Myanmar.

¹⁴⁵ Union Judiciary Act, 10/1948 (1948).

changing situation. At the same time, the Statutory Burmese Version and Legal Terms Act (No.27/1948) was enacted, and efforts were made to translate the laws in English into Myanmar. A total of 460 laws were enacted from January 4, 1948 to December 1954 under parliamentary government. The laws enacted before independence, which were still in force, and the laws enacted after Independence up to 1954 were classified subject-wise in the Burma Codes from Volume I to XIII by the Laws Revision Committee and published.

Therefore, the year 1954 is an important milestone when researching (or counting) Myanmar laws, since Myanmar laws enacted from the period before Independence to 31st December 1954 were modified and published subject-wise as Burma Code from volume I to volume XIII. Much of the content of Burma Code volumes I to XIII is still in force, and many of the laws contained therein have not been repealed and are applied today. Since publication of the Burma Code in its 13 volumes, all Acts and Laws enacted have been published yearly down to the present day.

Era	En	Rp	Rm	Mn	Am
1. Before Independence, Independence and Parliamentary Period (up to December 31, 1954) Burma Code Volume I to XIII	435	248	187	186	1
2. Parliamentary Period (From 1955 to March 1, 1962)	334	165	169	54	115

2.2.9 REVOLUTIONARY COUNCIL PERIOD (FROM 2ND MARCH 1962 TO 2ND MARCH 1974)

As there was imminent danger of disintegration of the State, on 2nd March 1962 the Revolutionary Council dissolved the parliament and took over sovereign power. The Revolutionary Council issued declaration No.14 on 7th March 1962 to the effect that the existing laws should, with effect from 2nd March 1962, continue to be in force until they were repealed. The legislative, executive and judicial powers were vested to the chairman of the Revolutionary Council under Declaration No. 20 of 1962. Declaration No. 22 was issued on

12th March 1962 to the effect that, in existing laws, the expression “the President of the Union” should be substituted by the expression “the Chairman of the Revolutionary Council.” Furthermore, on 30th March 1962 “Minister/Cabinet”, “Prime Minister”, “Minister” were also substituted respectively.

In order to implement the existing laws to be in line with the policy of the Revolutionary Council, the Laws Revision Committee was formed on 1st October 1963, with the Attorney General as chairman. In 1965, the Adaption of Expressions Law No. 9/1965 and the Law Amending the Burma General Clauses Act of 1965 were published and the expression of “President” was substituted with the expression of “Government.”

During the Revolutionary Council period from 1962 to 1974, the laws that were not consistent with the system were repealed and the laws that accommodated towards that system were enacted, with consequent amendments to some existing statutes. A total of 182 laws were adopted and the Law for Prevention of Contravention of the Establishment of the Socialist Economic System of 1964 and the Law Conferring Powers for the Establishment of the Socialist Economic System of 1965 were prominent at that time.

Era	En	Rp	Rm	Mn	Am
3. Revolutionary Council Period (From March 2, 1962 to March 1, 1974)	182	77	105	73	32

2.2.10 SOCIALIST GOVERNMENT (PYITHU HLUTTAW) PERIOD (FROM 2ND MARCH 1974 TO 17TH SEPTEMBER 1988)

As the 1947 Constitution of the Union of Burma was inconsistent with the new socialist government system, a Constitution Drafting Commission consisting of 97 members was formed on September 25, 1971 in order to draft a new Constitution to conform to the Myanmar socialist system. A nationwide referendum was held and the Constitution of the Socialist Republic of the Union of Burma was promulgated on 3rd January

1974.¹⁴⁶ Article 44¹⁴⁷ and article 45¹⁴⁸ of the 1974 Constitution provided the legislative, executive and judicial powers of the state. This produced a unicameral parliamentary system under which the “Pyithu Hluttaw” became the supreme authority enjoying legislative power.

It was prescribed in article 199 of the 1974 Constitution that the laws and rules enacted by the Revolutionary Council devolved on the Socialist Republic of the Union of Burma.¹⁴⁹ In article 202 of the 1974 Constitution, it was provided that the existing laws should remain in force insofar as they were not contrary to the Constitution, until and unless they were repealed or amended by the Pyithu Hluttaw (People's Assembly).¹⁵⁰ Furthermore some expressions in the existing laws, which did not conform in usages, and some expressions in the existing 1974 Constitution were substituted by the notification dated on 7th August 1974 of State Council.

On 27th August 1976, under Notification No. 66 of the State Council, a law revision and law translation committee was formed with the chairman of the Council of People's Attorneys as the chairman. However, after the law commission was formed under Notification No. 29 of the State Council, the law revision and law translation committee was abolished. The State Council prescribed new methods of drafting laws and rules. Under the 1974 Constitution, only the Pyithu Hluttaw can approve and enact laws and rules. During the Pyithu Hluttaw period from March 1974 to 17th September 1988, a total of 125 laws were enacted and published yearly.

¹⁴⁶ Constitution of the Union of Burma [Myanmar] (1974).

¹⁴⁷ Ibid., art. 44: “The legislative power of the state is vested solely in the Pyithu Hluttaw (People's Assembly).”

¹⁴⁸ Ibid., art. 45: “The Pyithu Hluttaw may delegate executive and judicial powers of the State to central and local organs of State power in accordance with this Constitution. Such powers under article 45 are delegated and assigned to the Council of State, Council of Minister, Council of People's Justice, Council of People Attorneys, Council of People's Inspector and People's Council under this Constitution.”

¹⁴⁹ Ibid., art. 36.

¹⁵⁰ Ibid., art. 37.

Era	En	Rp	Rm	Mn	Am
4. Socialist Period (From March 2, 1974 to September 17, 1988)	125	41	84	57	27

2.2.11 THE STATE LAW AND ORDER RESTORATION COUNCIL PERIOD (FROM 18TH SEPTEMBER 1988 TO 14TH NOVEMBER 1997)

Since the prevalence of law and order, peace and tranquility of the State were in danger, the State Law and Order Restoration Council (SLORC) assumed power on 18th September 1988, under the Declaration No. 2/1988. By this Declaration, SLORC abolished other organs of state power at the various levels formed under the 1974 Constitution. The State Law and Order Restoration Council declared under Declaration No.6/1988 dated 24th September 1988 that all the laws existing on 18th September 1988 should remain in force until they were annulled or repealed. For expressions such as “The Socialist Republic of the Union of Burma, the State Council, Council of Ministers, Council of People’s Justice and Council of People’s Attorney etc.” contained in existing laws were substituted the terms such as “the Union of Myanmar, SLORC, Government, Supreme Court and Attorney General Office etc.” under the Adaptation of Expressions Law No.8/1988.¹⁵¹ On 26th September 1988, the Attorney General Law was enacted and the Attorney General was assigned the duties to scrutinize, to draft, to translate and to amend the laws.¹⁵²

¹⁵¹ Adaptation of Expression Law 1988 [၁၉၈၈ ခုနှစ် စကားရပ်များ အစားထိုးသည့် ဥပဒေ], 8/1988 (1988).

¹⁵² The method of drafting laws was that drafts bills were initially prepared by the relevant Ministry or in coordination with the Attorney General’s Office and then scrutinized the draft bills by the Union Attorney General’s Office. These scrutinized drafts bills were sent back to the relevant Ministry, which would submit the bills to the Pyidaungsu Hluttaw (Union Assembly) for the discussion and approval there. After getting the approval from Pyidaungsu Hluttaw, those bills were submitted to the President. Laws, which were required to be enacted, were generally published under the signature of the President.

The State Law and Order Restoration Council exercised all powers of the state under Declaration No. 1/1988 and the Government was formed under Declaration No. 4/1988 of the SLORC. In addition, the legislative, executive and judicial powers were exercised by the SLORC, under the Martial Law.¹⁵³ Furthermore, the State Law and Order Restoration Council formed the Central Laws Scrutiny Body, with the Attorney General as chairman, and assigned the duties to review and to revise the existing laws in order to conform to the political movements under the Notification No.33/1991 of the SLORC on 17th July 1991.

Since there were changes in the administrative, political, and economic systems, the laws, which should not be affected and exercised anymore, were repealed and those, which should be amended, substituted and inserted, were amended. The laws, which were inconsistent with the current situation of the State, were repealed. In performing the duties of the Central Laws Scrutiny Body, 137 laws were repealed under the Law for repeal of laws (No.1/1992) and 14 laws under the law for the (second) repeal of laws (No. 4/1993). The words “Burma, Burman or Burmese” contained in the existing laws, rules and regulations were substituted by “Myanmar” according to the Adaption of Expressions Law (No.15/1989). Since then, the name of “Burma, Burman or Burmese” was substituted with “Myanmar”. A total of 139 laws were enacted during this SLORC period from 1988 to 1997.

Era	En	Rp	Rm	Mn	Am
5. SLORC Period (From September 18, 1988 to November 14, 1997)	139	18	121	78	43

¹⁵³ Paragraph 19 of the declaration No. 1/1990 of State Law and Order Restoration Council.

2.2.12 THE STATE PEACE AND DEVELOPMENT COUNCIL PERIOD (FROM NOVEMBER 15, 1997 TO MARCH 30, 2011)

The State Law and Order Restoration Council was dissolved on 15th November 1997 in order to adopt a well-disciplined multi-party democratic system and to build a new, peaceful and modernized State and market economy system. Simultaneously, the State Peace and Development Council (SPDC) was constituted under the declaration No. 1/1997 of the SPDC, and the Government was reformed by the SPDC under Declaration No. 2/1997 on 15th November 1997.

The expressions such as “SLORC and Regional Law and Order Restoration Councils” contained in the existing Laws, Rules and Regulations were substituted with the expressions such as “SPDC and Regional Peace and Development Councils” under the Adaption of Expressions Law, 1997 (No. 1/1997) published on 17th November 1997.¹⁵⁴ In abbreviations of SLORC and Regional Law and Order Restoration Council were substituted by the expression in abbreviations of SPDC and Regional Peace and Development Councils, such as Na-wa-ta, Pa-wa-ta, Ta-wa-ta, Kha-wa-ta, Ma-wa-ta and Ra-wa-ta were substituted with Na-ya-ka, Pa-ya-ka, Ta-ya-ka, Kha-ya-ka, Ma-ya-ka and Ra-ya-ka.

The methods of drafting and enacting laws that were formerly applied by the State Law and Order Restoration Council continued to be applicable in that period. In this SPDC period from 15th November 1997 to 30th March 2011, a total of 141 laws were enacted. Furthermore, the SPDC government adopted the Constitution of the Republic of the Union of Myanmar in 2008 to form the Presidential government period from March 31, 2011.

Era	En	Rp	Rm	Mn	Am
6. SPDC Period (From November 15, 1997 to March 30, 2011)	141	5	136	89	47

¹⁵⁴ Adaption of Expressions Law, 1997 [၁၉၉၇ ခုနှစ် စကားရပ်များ အစားထိုးသည့် ဥပဒေ], 1/1997 (1997).

2.2.13 PYIDAUNGSU HLUTTAW PERIOD (FROM MARCH 31, 2011 TO PRESENT)

In order to create a well-disciplined democratic system in Myanmar, Myanmar's new civilian government was created on March 31, 2011 according to the Constitution of the Republic of the Union of Myanmar of 2008. Besides, Pyidaungsu Hluttaw was formed as the legislative organ by including the two Hluttaws – Amyotha Hluttaw and Pyithu Hluttaw – in order to provide the necessary laws in Myanmar. Accordingly, the expressions such as “Union of Myanmar”, “Government”, “Attorney General Office”, “Supreme Court”, etc. under the existing laws were substituted with “Republic of the Union of Myanmar”, “Union Government”, “Union Attorney General’s Office”, and “Supreme Court of the Union”, and so on.

According to Section 11 of the 2008 Constitution, the three branches of sovereign power namely; legislative, executive and judicial powers are separated, to the extent possible, and exert reciprocal control, check and balance among themselves.¹⁵⁵ The three branches of sovereign power, so separated are shared among the Union, Regions, States and Self-Administered Areas. The legislative power of the Union is shared among the Pyidaungsu Hluttaw, Region Hluttaws and State Hluttaws.¹⁵⁶ The Head of the Union and the Head of Executive of the Union is the President of the Union under section 16 of the said 2008 Constitution.¹⁵⁷ During the Pyidaungsu Hluttaw period from 31st March 2011 up to 25th December 2013, a total of 76 laws were adopted in order to meet the current changing circumstances.¹⁵⁸

¹⁵⁵ Constitution of the Republic of the Union of Myanmar (2008).

¹⁵⁶ H.E U Htun Htun Oo, “Current Developments of Judicial System in Myanmar,” *Judicial Journal of the Supreme Court of the Union of Myanmar* 3, no. 2 (December 2012): 2.

¹⁵⁷ Constitution of the Republic of the Union of Myanmar.

¹⁵⁸ “Eighty-Two Percent of the Laws Were Submitted by the Government While 18% of the Laws Were Created by Pyidaungsu Hluttaw during the 2.5 Year Term of Pyidaungsu Hluttaw” [ပြည်ထောင်စု လွှတ်တော်သက်တမ်း တစ်ဝက်အတွင်း ပြဋ္ဌာန်းနိုင်ခဲ့သည့် ဥပဒေ ၅၈ ခုတွင် အစိုးရမှ တင်သွင်းသည့် ဥပဒေမှာ ၈၂ ရာခိုင်နှုန်းရှိပြီး လွှတ်တော်မှ ရေးဆွဲတင်သွင်းသည့် ဥပဒေမှာ ၁၈ ရာခိုင်နှုန်းသာရှိ], *Eleven Media Group*, August 2, 2013.

Era	En	Rp	Rm	Mn	Am
7. Pyidaungsu Hluttaw Period (From March 31, 2011 to December 31, 2011)	15	-	15	6	9
8. Pyidaungsu Hluttaw Period (From January 1, 2012 to December 31, 2012)	24	-	24	22	2
9. Pyidaungsu Hluttaw Period (From January 1, 2013 to December 25, 2013)	37	-	37	24	13

2.3 THE LEGISLATURE IN MYANMAR

For the purpose of the legislative power, the legislature has been created and regulated by the relevant Constitution, or other laws in the nature of a Constitution (i.e. the Government of Burma Act of 1935), or under Martial Law where it was in the absence of Constitution, or when the Constitution was in suspension. The procedures of drafting the laws and bills and enacting the laws are to be in conformity with the Constitution or such Act or such Martial Law. It is crucial that the bills, which are to become Acts or Laws of the legislature should be drawn in a manner prescribed in the relevant Constitution or relevant laws of the time.

During the periods dealing with the Myanmar legal process, it can be seen that the legislative powers were respectively exercised by the:

- 1) British Governor under the Government of Burma Act of 1935 (before independence);
- 2) Japanese chancellor under the Law Regulating the Administration of Burma of 1943 (from 1942 to 1945);
- 3) Parliament under the 1947 Constitution (from 1948 to 1962);
- 4) Revolutionary Council under declaration No.14 (From 1962 to 1974)

5) Socialist Government *Pyithu Hluttaw* (People Assembly) under the 1974 Constitution (from 1974 to 1988);

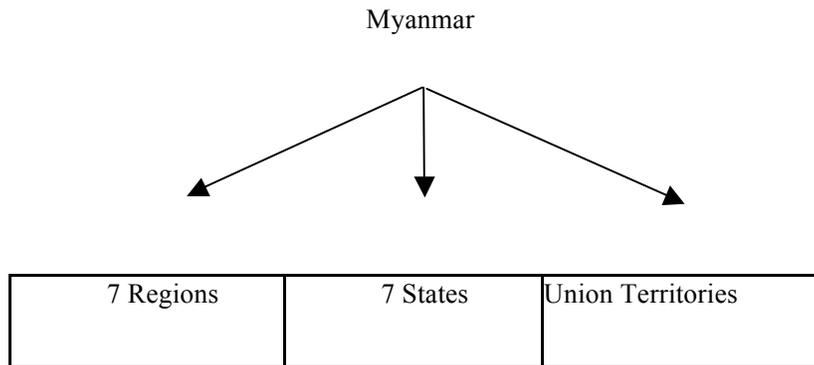
6) SLORC and SPDC under the Martial Law (from 1988 to March 30, 2011); and

7) Pyidaungsu Hluttaw under the 2008 Constitution (from March 31, 2011 to present) in Myanmar.

2.4 CURRENT LEGAL REFORM IN MYANMAR

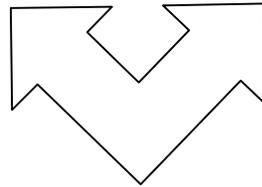
In order to examine the current legal reform in Myanmar, it is important to understand the structure of the Republic of the Union of Myanmar, in order to understand the sharing of legislative power. According to section 49 of the 2008 Constitution, Myanmar is composed of 7 states, 7 regions and union territories. Under section 56 of the Constitution, self-administered division and self-administered zones¹⁵⁹ are also created in the form of the Sagaing Region and Shan State.

Section 49 of the 2008 Constitution



¹⁵⁹ Self-Administered Division and Zones are known as Self-Administered Areas.

Section 56 of the 2008 Constitution



Self-Administered Division and Zone (from Sagaing Region and Shan State)

Self-Administered Areas

The Pyidaungsu Hluttaw¹⁶⁰ is comprised of the Pyithu Hluttaw¹⁶¹ and Amyotha Hluttaw¹⁶² according to section 74 of the 2008 Constitution. Under section 100 of this Constitution, laws dealing with national plans, annual budget and taxation are made only at the Pyidaungsu Hluttaw though Amyotha Hluttaw and Pyithu Hluttaw can make the laws listed in Schedule One¹⁶³ according to section 96 of the 2008 Constitution. In accordance with the state structure, it also has 7 Region Hluttaws and 7 State Hluttaws and those 14 Hluttaws make the laws listed in Schedule Two¹⁶⁴ of the 2008 Constitution under section 188. Likewise, the Self-Administered Area leading bodies also have authority to make the laws listed in Schedule Three¹⁶⁵ according to

¹⁶⁰ The term “Pyidaungsu Hluttaw” is synonymous with “Parliament”.

¹⁶¹ The term “Pyithu Hluttaw” is synonymous with the lower house, “House of Commons” in the U.K and “House of Representatives” in the U.S.

¹⁶² The term “Amyotha Hluttaw” is also synonymous with the upper house, “House of Lords” in the U.K and “Senate” in U.S.

¹⁶³ Constitution of the Republic of the Union of Myanmar, 181 (2008).

¹⁶⁴ *Ibid.*, 188.

¹⁶⁵ *Ibid.*, 191.

section 196 of the 2008 Constitution. Therefore, it can be seen under section 12 of the 2008 Constitution that Union legislative power is shared amongst Pyidaungsu Hluttaw, Region Hluttaws and State Hluttaws, and the legislative power stipulated by the 2008 Constitution is shared delegated to self-administered areas as well. In light of these current legal reforms under the 2008 Constitution, we now turn to the law making process in Myanmar.

2.4.1 LAW MAKING PROCESS IN MYANMAR

Laws in Myanmar can initially be made either at the Hluttaw or relevant Ministry depending on the demands of the situation. If a law is started at the relevant Ministry, it is then necessary to submit it to the relevant Hluttaw for discussion there. Before submission to the relevant Hluttaw, the outlines of the bill are generally drafted in the relevant ministry or organization and then forwarded to the Union Attorney General's Office (UAGO) for checking.¹⁶⁶ This task is performed by the Union Attorney General under the UAGO.¹⁶⁷

¹⁶⁶ U Nyan Naing Win, "The Role of the Union Attorney General's Office in Legal System Development in Myanmar" (presented at Promoting Justice Sector Development in New Democracies "Seminar on Comparative Experiences from the Region" 24-25 January, Nay Pyi Taw, Nay Pyi Taw, Myanmar, January 24, 2013), Nay Pyi Taw, Myanmar, <http://www.mm.undp.org/NewsandPressreleases/NarNewsandPressreleases/Pressreleases/Justice%20dev%20presentations.html>.

¹⁶⁷ The Union Ministries vet the laws under their administration are in conformity with the time or not and when the existing laws are not in conformity, draft laws are sent to the Union Attorney General's Office in order to amend, substitute, repeal and promulgate necessary new laws. The Union Attorney General's Office not only advises the above mentioned draft laws but also vets according to the orthography to promulgate the laws smoothly. Draft laws advised by the Union Attorney General's Office are of four types, namely; draft law amending the existing law, draft law substituting the existing law, draft law repealing the existing law and the new draft law. Situation of consideration is different according to the nature of various draft laws and the Union Attorney General's Office has to observe the content of the relevant law thoroughly. Advising the draft laws is based on whether they are in conformity with the Constitution or whether they are contrary to the existing laws or whether they are in conformity with the time or not. Moreover, if the provisions contained in the draft law are in connection with international conventions and agreements, the Union Attorney General's Office vets whether they are in conformity with these conventions and agreements or not. If a draft law is in connection with international organizations, necessary coordination should be made with these organizations.

After checking of the bill in the UAGO, it is returned to the relevant ministry or organization,¹⁶⁸ which then submits it to the President's office, and then to the Union Government for discussion. After approval by the Union Government, the bill is submitted to the Bill Committee and from the Bill Committee, the text is submitted to either the Amyotha Hluttaw or Pyithu Hluttaw for discussion by members of parliament. If both Hluttaws approve the bill, it is deemed that the Pyidaungsu Hluttaw approves the bill, as provided by section 95(a) of the 2008 Constitution. After that, the bill is submitted to the President for enactment as a law.

In order to promulgate a law, section 105(a) of the 2008 Constitution requires that the President sign the bill approved (or deemed to be approved) by the Pyidaungsu Hluttaw within 14 days after the day of receipt, and shall promulgate it as the law in a timely fashion. Within the prescribed period, the President may send the bill back to the Pyidaungsu Hluttaw together with his comments, under section 105(b) of the 2008 Constitution. If the President does not send the bill back to the Pyidaungsu Hluttaw together with his signature and comments within the prescribed 14-day period, or if the President does not sign to promulgate on the day after the completion of the 14-day period, the bill becomes law under section 105(c) of the 2008 Constitution.¹⁶⁹

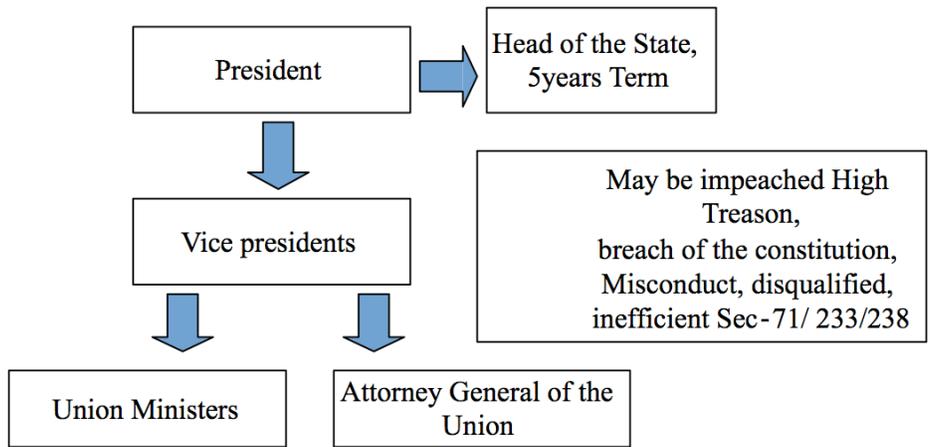
Section 80(d) of the 2008 Constitution provides that if the President sends a bill back to the Pyidaungsu Hluttaw together with his comments within the prescribed period, remarks of the President shall be discussed and resolved in the Pyidaungsu Hluttaw. After discussion of the President's comments, the Pyidaungsu Hluttaw may accept the President's comments and resolve to amend the bill, or it may resolve to confirm the bill without amendment, rejecting the President's comments according to section 106(a) of the 2008 Constitution. When a bill which is amended in accord with the President's comments, or confirmed, the President shall sign within seven days after receiving the bill back under section 106(b) of the 2008 Constitution. If a bill sent back by the Pyidaungsu Hluttaw is not signed by the President within the prescribed

¹⁶⁸ "The Union of Myanmar : Office of the Attorney General," Government, *Union Attorney General's Office*, July 3, 2013, <http://www.oag.gov.mm/> (accessed July 3, 2013).

¹⁶⁹ Constitution of the Republic of the Union of Myanmar, 37.

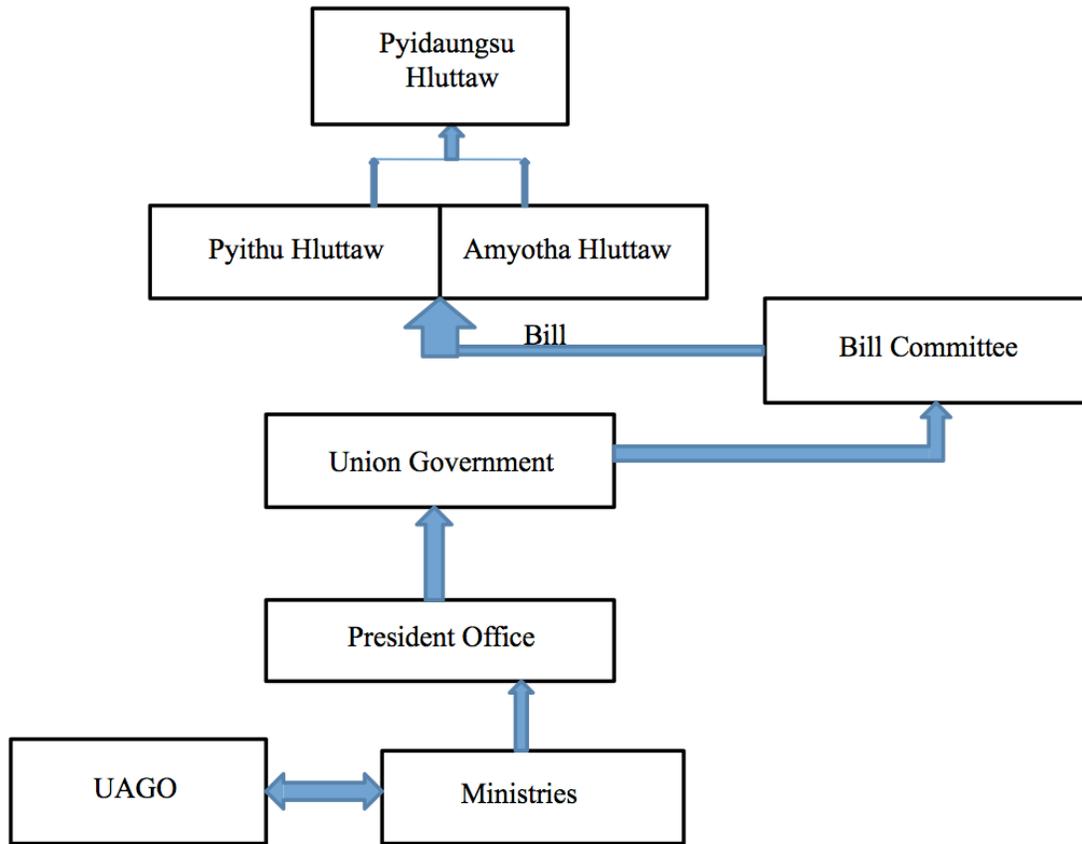
7-day period, it becomes law under section 106(c) of the 2008 Constitution. After promulgating the law, it is published to reach immediately to the people in many ways including the President’s website.¹⁷⁰ Within the structure of the Union Government under section 200 of the 2008 Constitution, the following charts illustrate the bill and figure of current laws making process in Myanmar can be learned in the following charts illustrate the lawmaking process.

2.4.2 FORMATION OF THE UNION GOVERNMENT (SECTION 200 OF THE CONSTITUTION)



¹⁷⁰ “Laws, Myanmar President Office” [ပြဇ္ဇာ: Myanmar President Office], *Myanmar President Office*, July 5, 2013, <http://www.president-office.gov.mm/hluttaw/laws> (accessed July 5, 2013).

2.4.3 CHART OF THE CURRENT LAW MAKING PROCESS IN MYANMAR¹⁷¹



2.5 PUBLICATION OF THE LAWS

Concerning the publication of laws, section 107 of the 2008 Constitution provides that, “the laws signed by the President or the laws deemed to have been signed by him shall be promulgated by publication in the official gazette. And the law shall come into operation on the day of such promulgation unless the contrary

¹⁷¹ U Nyan Naing Win, “The Role of the Union Attorney General’s Office in Legal System Development in Myanmar.”

intention is expressed.” For transparency of discussions in the Hluttaws, section 89 of the 2008 Constitution provides that the proceedings and the records of the Pyidaungsu Hluttaw shall be published, apart from matters concerning which publication is prohibited by any law or the resolution of the Pyidaungsu Hluttaw. The law can be accessed in many ways, such as by downloading from the Myanmar President website,¹⁷² or by referring to the official daily newspaper.¹⁷³

As can be seen from overview of changing laws and legal institutions from the ancient Myanmar kingdom period up to the present time of the Pyidaungsu Hluttaw, it is apparent that the law is adapted to conform to the political movements of the State in each period. We next turn to the formation of different levels of courts in Myanmar, and to the application of acts and laws in the Myanmar courts.

2.6 THE HIERARCHY OF THE COURTS IN MYANMAR SINCE THE BRITISH TIME

Under British rule, the high court was the highest court in Myanmar, with the Privy Council of England serving as the appeal court.¹⁷⁴ Under the British system, all judicial courts had the right to act according to the principles of justice, equity and good conscience, following basic principles of the English common law. However, a difference in legal practice in Myanmar, compared with England, arises from the fact that justice, equity and good conscience in the Myanmar courts was implemented within a statutory framework established under British rule. For instance, the British adopted the Transfer of Property Act in 1882 and the Registration Act in 1909, for property-related statutes to govern disputes in these areas.

After the British colonization period, Myanmar regained its independence on January 4, 1948. The Supreme Court and High Court were established, and courts at different levels were also formed under the

¹⁷² “Laws, Myanmar President Office.”

¹⁷³ “News and Periodical Enterprise,” December 24, 2013, <http://www.moi.gov.mm/npe/> (accessed December 24, 2013).

¹⁷⁴ Frances Quinn and Catherine Elliott, *English Legal System*, 7th Revised edition (Prentice Hall (UK), 2006), 13.

Union Judiciary Act of 1948. In 1962, the Revolutionary Council of the State abolished the Supreme Court and High Court but established the Chief Court instead. Subsequently, under the Socialist government, the Central Court, the State and Divisional Courts, the Township Courts, and the Wards and Village Tracts Courts were formed under the 1974 Constitution. At that time and until 1988, the judicial system involved the participation of working people (lay judge system) in all levels of Myanmar courts.¹⁷⁵ Nowadays, according to the 2010 Judiciary law and the 2008 Constitution, the Supreme Court of the Union is the highest court. The following part indicates the present-day different level of courts system in Myanmar. It can be noted that current courts' formation includes Courts-Martial¹⁷⁶ and Constitutional Tribunal¹⁷⁷ of the Union.¹⁷⁸

¹⁷⁵ U Htin Zaw, "The Judicial System and Court Proceeding in Myanmar" (Osaka, Japan, July 27, 2012), 6, Osaka, Japan.

¹⁷⁶ Section 319 of 2008 Constitution: "According to sub-section (b) of section 293, the Courts-Martial shall be constituted in accord with the Constitution and the other laws and shall adjudicate Defence Services personnel."

¹⁷⁷ The functions and the duties of the Constitutional Tribunal of the Union under Section 322 of the 2008 Constitution are as follows:

- 1) interpreting the provisions under the Constitution;
- 2) vetting whether the laws promulgated by the Pyidaungsu Hluttaw, the Region Hluttaw, the State Hluttaw or the Self-Administered Division Leading Body and the Self-Administered Zone Leading Body are in conformity with the Constitution or not;
- 3) vetting whether the measures of the executive authorities of the Union, the Regions, the States, and the Self-Administered Areas are in conformity with the Constitution or not;
- 4) deciding Constitutional disputes between the Union and a Region, between the Union and a State, between a Region and a State, among the Regions, among the States, between a Region or a State and a Self-Administered Area and among the Self-Administered Areas;
- 5) deciding disputes arising out of the rights and duties of the Union and a Region, a State or a Self-Administered Area in implementing the Union Law by a Region, State or Self-Administered Area;
- 6) vetting and deciding matters intimated by the President relating to the Union Territory;
- 7) functions and duties conferred by laws enacted by the Pyidaungsu Hluttaw.

¹⁷⁸ H.E U Htun Htun Oo, "Current Developments of Judicial System in Myanmar," 2.

2.7 THE PRESENT HIERARCHY OF THE COURTS IN MYANMAR¹⁷⁹

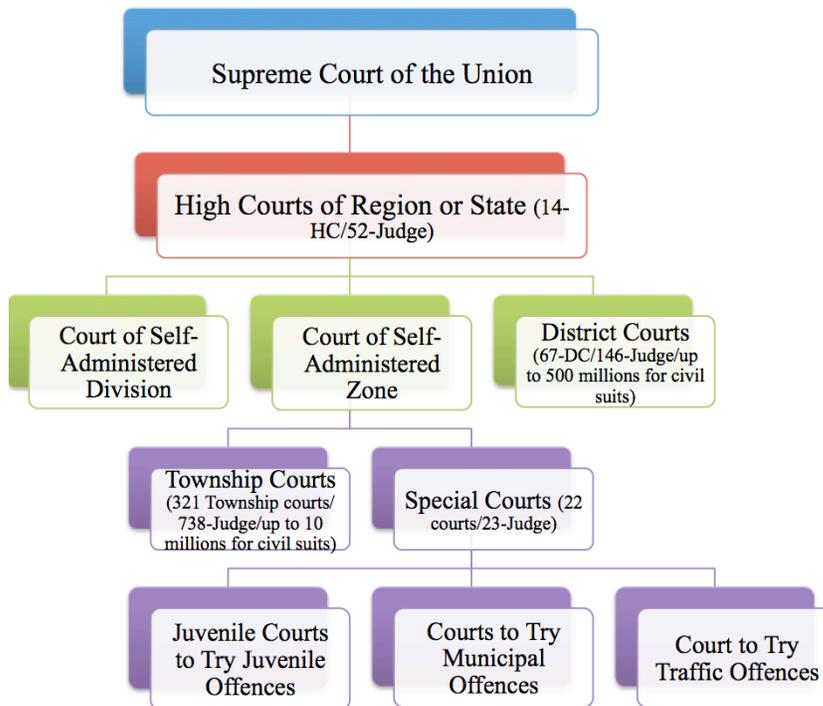
- 1) Supreme Court of the Union;
- 2) High Courts of the Region or High Court of the State;
- 3) Courts of the Self-Administered Division;
- 4) Courts of the Self-Administered Zone;
- 5) District Courts;
- 6) Township Courts;
- 7) The other Courts constituted by law;
- 8) Courts-Martial; and
- 9) Constitutional Tribunal of the Union.¹⁸⁰

2.7.1 CHART OF CURRENT COURTS' FORMATION IN MYANMAR (SECTION 293 OF 2008 CONSTITUTION AND 2010 JUDICIARY LAW)¹⁸¹

¹⁷⁹ “Formation of Courts at Different Levels | The Supreme Court of the Union,” Government, *Supreme Court of The Union*, n.d., <http://www.unionsupremecourt.gov.mm/?q=content/formation-courts-different-levels> (accessed August 11, 2013).

¹⁸⁰ Constitution of the Republic of the Union of Myanmar, 125 (2008).

¹⁸¹ U Sein Than, Director General, “Current Judicial System, Formation and Functions of Courts in Myanmar”; “Formation of Courts at Different Levels | The Supreme Court of the Union.”



2.8 IMPORTANCE OF LAWS AT THE MYANMAR COURTS

This section will review the application of laws in the Myanmar courts. The particular focus is the balance between judicial decision-making based on statutory law, provisions of the laws, and discretionary application of principles or rules derived from case law by the judge in the event of gaps in statutory law. Since the British period, Myanmar courts have been bound to act in accordance with the provisions of the British-adopted laws, as statutory law was the primary source of law imposed by the British during colonization.

Apart from the common law itself, the courts in Myanmar decide cases based on the principles of justice, equity and good conscience; but those principles have to be found within the framework of the enacted laws, not based on the consideration and only the opinion of the courts, as in common law countries. Of course, the Myanmar courts have the power to decide cases based on justice, equity and good conscience in disputed

matters where there is no relevant law, under section 13(3)¹⁸² of the Burma Laws Act of 1898, found in Burma Code volume I,¹⁸³ but such disputes are limited to those dealing with succession, inheritance, marriage or caste, or any religious usage or institution in Myanmar.¹⁸⁴ So, it can be recognized that Myanmar courts themselves have to abide by the provisions of the statutory law in deciding disputes: it is taken as a basic principle that courts must adjudicate the cases in strict accordance with the laws and procedures.¹⁸⁵

Mr. Htun Htun Oo, Chief Justice of the Supreme Court of the Union, as reported in Myanmar Alin, the official daily newspaper, on 18th August 2012, stated that “the duty of the Myanmar courts is to abide by the existing laws and to practice cases in accordance with the laws”.¹⁸⁶ Thus, although Myanmar is generally acknowledged as a country practicing the Indo-British legal system since achieving independence in 1948, the

¹⁸²

Section 13:

(1) Where in any suit or other proceeding in the Union of Burma it is necessary for the Court to decide any question regarding succession, inheritance, marriage or caste, or any religious usage or institution,-

(a) the Buddhist law in cases where the parties are Buddhists,

(b) the Muhammadan law in cases where the parties are Mohammedans, and

(c) the Hindu law in cases where the parties are Hindus, shall from the rule of decision, except in so far as such law has by enactment been altered or abolished, or is opposed to any custom having the force of law.

(2) * * * * *

(3) In cases not provided for by sub-section (1), or by any other enactment for the time being in force, the decision shall be according to justice, equity and good conscience.

¹⁸³ “Burma Code Volume I: The Burma Laws Act,” n.d., <http://www.blc-burma.org/index.php?q=book/export/html/189> (accessed January 21, 2013).

¹⁸⁴ The Burma [Myanmar] Laws Act, India Act XIII, 1898, 9 (1898).

¹⁸⁵ H.E U Htun Htun Oo, “Current Developments of Judicial System in Myanmar,” 3; U Sein Than, Director General, “Current Judicial System, Formation and Functions of Courts in Myanmar.”

¹⁸⁶ H.E U Htun Htun Oo, “Laws Should Be Updated to Protect the People” [ပြည်သူတို့၏ အခွင့်အရေးများကို ထိပါးမှုရှိလျှင် ဥပဒေနှင့်အညီ ပြင်ဆင်ပေးရမှာဖြစ်။ တရားရုံးများတွင် လာဘ်ပေးလာဘ်ယူမှုများပေါ်ပေါက်ပါက ထိရောက်စွာ အရေးယူသွားမည်။], *Myanma A Lin* (Nay Pyi Taw, Myanmar, August 17, 2012), 3 & 20.

legal practice in Myanmar is not exactly the same as practiced in other common law countries. According to Dr. Tun Shin¹⁸⁷ also:

“[t]he legal system of the Republic of the Union of Myanmar is a unique system that has its root in the common law system belonging to the common law legal family. Myanmar legal system is not a replication of the common law system but it is a unique combination of common law and civil law legal systems. It used the principles of the common law and implants them into the vehicle of codified laws or statute laws that are promulgated by the legislature and given the force of law of the country.”¹⁸⁸

In case of the legal practice in Myanmar, Mr. San Lwin¹⁸⁹ also writes in his article that,

“[s]ince 1962, it has expressly ruled not to refer foreign rulings and legal maxims dogmatically. Moreover, it laid down principles to refer to legislation if it is clear and not to depend on rulings, which are venerable in nature.... It shows that even Myanmar seems to adopt some principles of the civil law system in modernization of its legal system without changing its national character.”¹⁹⁰

In an ordinary common law country, the court has full authority to decide the dispute with its own discretion based on justice, equity and good conscience, both when there is no statutory law to cover an issue, and where the law has gaps. Judges adapt decisions to be consistent with the current situation, decisions of the senior appellate courts become, through the rule of precedent binding lower courts, part of the content of the law.¹⁹¹ According to the Oxford Advanced Learner’s Dictionary, the common law in England is defined as unwritten laws developed from old customs and from decisions made by the judges, but not created by

¹⁸⁷ Present Union Attorney General of the Union Attorney General’s Office in Myanmar.

¹⁸⁸ Union Attorney General’s Office (ပြည်ထောင်စုရှေ့နေချုပ်ရုံး), *Law Journal 2000* [ဥပဒေပညာဂျာနယ်], II, I (Yangon, Myanmar, 2000), 105.

¹⁸⁹ Retired Director from Union Attorney General’s Office, Myanmar

¹⁹⁰ U San Lwin, “Elements of Civil Law System,” *Law Journal* (ဥပဒေပညာဂျာနယ်) VI, no. I (July 2004): 146.

¹⁹¹ “The UK Legal System,” n.d., http://www.ilex.org.uk/about_legal_executives/the_uk_legal_system.aspx (accessed May 28, 2011).

Parliament.¹⁹² The law of England contains a mass of custom and judge-made maxims, which form the body of the common law. As Professor Curzon says: “the term common law is the common sense of the community, crystallized and formulated by forefathers.”¹⁹³ The second source of English law is legislation, i.e., statutes or acts of Parliament. Legislation is only a secondary source of law, a series of errata and addenda to the main body of English law formed by the decisions of the courts. It makes corrections and adjunctions to the judicially established principles or renders them more specific.¹⁹⁴ Nevertheless, Professor Dr. Rene David gave a remark, dealing with the idea of legislation as a secondary source, as follows:

“[t]he idea that legislation in England is a source of only secondary importance should be abandoned. This point of view is no longer true today. It is true that England had no Code of Napoleonic type, but written law in practice, as important and as developed as it is in continental Europe. Today Statutes contain much more than merely corrections to the common law. There are vast areas of social activity for which the very principles of legal order are to be looked for in legislation.”¹⁹⁵

Professor George says that, “the civil law and common law systems were homogeneous at their inception. They were adopted later by different territorial units, where they were subjected to the antithetical processes of diversification and harmonization.”¹⁹⁶ In any case, courts in a common law system can give decisions based on their own opinion of justice, equity and good conscience, in order to achieve a just result in individual cases. In civil law systems, on the other hand (Japan being one example), the decision or the result of

¹⁹² *Oxford Advanced Learner’s Dictionary*, 8th ed. (Oxford University Press, 2011).

¹⁹³ “The Common Law,” n.d., http://nuweb.northumbria.ac.uk/bedemo/Sources_of_English_Law/page_05.htm (accessed February 28, 2012).

¹⁹⁴ Dr. Tin Aung Aye, *Interpretation of Statue Law and Treaty* (Yangon, Myanmar: Cho Tay Than SarPay, 2004), 8.

¹⁹⁵ Rene David and John E.C. Brierley, *Major Legal Systems in the World Today*, 3rd ed. (Stevens & Sons Ltd, 1985), 363.

¹⁹⁶ George A. Zaphiriou, “Harmonization of Private Rules Between Civil and Common Law Jurisdictions,” *The American Journal of Comparative Law* 38 (1990): 72.

a disputed matter in the court is chiefly decided by applying the relevant provisions of the relevant laws in a civil law country. In a civil law system, the legislation is the main source of the law, and laws are systematically codified. Rulings or official collections of decided cases stand only in a minor role, and they are not binding upon the courts. Moreover, in civil law countries, judges, prosecutors and lawyers chiefly refer to relevant legislation in search of a solution to the issues in a case. In common law countries, the judge is expected to formulate the rule, which provides a solution to the disputes. However, in the civil law legal system, the aim to establish a systematic framework of the law dominates, and this furnishes the judge with standards for decision-making. That said, it is considered desirable that the legal rule even in civil law systems leaves the judge a certain margin of discretion.¹⁹⁷

Of course, judgments of the Myanmar courts sometimes depend on previous rulings that have similar facts to those of the case at hand, but previous judgments are a source of persuasive authority only. Despite an occasional reference to previous cases, the Myanmar courts are chiefly charged with deciding cases within the framework of the adopted laws.¹⁹⁸ Dr. Tun Shin said in his “Rule of Law in Myanmar: Perspectives and Prospects” speech at Thingaha Hotel in the Nay Pyi Taw Hotel Zone, delivered on 9th February 2013, that, “... discretion in interpreting the law whether by officials of government or judges should be limited by law. Law and justice are inseparable twin sisters. Needless to say a fair law is the vehicle of justice.”¹⁹⁹ Since the judicial courts in Myanmar have no discretionary power, promulgation of fair laws and fair provisions is crucial, since

¹⁹⁷ U San Lwin, “Elements of Civil Law System,” 134.

¹⁹⁸ “Policies and Aims.”

¹⁹⁹ Dr. Tun Shin, “As Myanmar Belongs to the Common Law Legal System Family, Myanmar Judicial System Is Deeply Rooted with Legal Maxims, Judicial Customs and Precedents Which Are Enshrined with International Legal Principles That Are Utilized by the Successive Judges All Over the World,” *New Light of Myanmar* (Nay Pyi Taw, Myanmar, February 9, 2013), 1 & 8; Tun Shin, “Rule of Law in Myanmar: Perspectives and Prospects” (Nay Pyi Taw, Myanmar, February 9, 2013), 1 & 9; Dr. Tun Shin, “Rule of Law in Myanmar: Perspectives and Prospects” [လူ့အဖွဲ့အစည်းတွင် တရားဥပဒေစိုးမိုးမှသာ တည်ငြိမ်အေးချမ်းမှု၊ သာယာဝပြောမှု၊ ဒီမိုကရေစီ ရရှိမှုတို့ ရရှိမည်။], *Myanma A Lin* (Nay Pyi Taw, Myanmar, February 9, 2013), 1 & 8.

the decision of courts in Myanmar is largely constrained by and limited to statutory provisions.²⁰⁰ Therefore, promulgation of updated laws and provisions under the promulgated laws is crucial in Myanmar where statutory law is the primary source of law applied in the courts for the consideration of disputes.

2.9 SUMMARY

To sum up, during the ancient kingdom period, Myanmar adopted the Yazathats and Dhammathats as the legal process applicable to both criminal and civil cases. In the British colonization period, the British promulgated laws for application through the Myanmar courts. Since the end of British colonization down to the present Pyidaungsu Hluttaw period (which began on 31st March 2011), laws have been promulgated necessary in order to meet the changing political currents, and, most recently, the lifting most of the sanctions imposed by the West. Up to 25th December 2013, 1432 laws had been adopted and 554 British-era laws had been repealed. Of the 878 laws that remained on the books, 589 are original legislation, and 289 are amending acts. However, among the 589 legislative acts, the relevant authorities and ministries no longer apply 166 laws, as being inconsistent with the current situation. Therefore 423 legislative acts have practical effect in Myanmar.

In the British time, the high court was the highest court in Myanmar, and the Privy Council of England served as the court of appeal. After the British, the Supreme Court and High Court were established and courts at different levels were also formed under the Union Judiciary Act of 1948. In 1962, the Revolutionary Council of the State established the Chief Court instead. In 1974, the Central Court, the State and Divisional Courts, the Township Courts, the Wards and Village Tracts Courts were formed under the 1974 constitution. Currently, Supreme Court of the Union and different levels of courts were formed under the 2010 Judiciary law.

In administering disputes, Myanmar courts ground their decisions in the provisions of statutory law. All Myanmar courts have responsibility to adhere to the laws in deciding disputes. So, it can be said that

²⁰⁰ Tin Aung (Moe Gok) (တင်အောင် (မိုးကုတ်)), “Rule of Law in Myanmar” [တရားဥပဒေစိုးမိုးရေးနှင့် မတရားဥပဒေမစိုးမိုးရေး], *The Voice Weekly Journal*, February 18, 2013.

Myanmar courts have no discretionary power in deciding disputes, since all decisions are given within the framework of the enacted acts and laws. Therefore, updating of the provisions under the existing acts and laws is crucial to dynamic response to the current moving situation of the country. Besides, it is also a necessity to provide clear and simple provisions under the laws, with the objective of helping the courts to give clear and predictable decisions, with a view to enhancing the rule of law within the country.²⁰¹ The aim of reform must be to enable the Myanmar courts to efficiently apply clear and updated acts and laws for the fair and just resolution of disputes.

²⁰¹ Republic of the Union of Myanmar, “People Need to Know about the Enacted Laws in Order to Abide and Avoid the Provisions under Them (Legal Talk by Legal Professionals U Than Aung, U Min Kyaing, U San Lwin, U Myo Nyunt and U Thant Zin on August 4, 2013).”

CHAPTER 3

REAL PROPERTY CONVEYANCING IN ENGLAND AND JAPAN: THE CASE STUDY FOR MYANMAR

3.1 INTRODUCTION

This chapter concerns real property conveyancing in England and Japan. With respect to registration rules, England applies compulsory registration of title, while Japan relies on voluntarily registration of title. Both exemplify successful real property conveyancing systems. Analyzing these as models for comparison with real property transactions in Myanmar will yield valuable lessons concerning the source of problems observed in Myanmar's real property conveyancing system, with a view to exploring possible solutions to the relevant issues. After reviewing the operation of the systems in England and Japan, discussion will turn to the implications of the comparison, and to suggestions and recommendations to facilitate improvement on the risks association with transactions in real property in Myanmar through more widespread use of the registration process.

3.2 REAL PROPERTY CONVEYANCING IN ENGLAND

This section examines the background of English property reforms from the period of the ancient feudal system up to the current successful 2002 legislation, as one potential model for reform of the Myanmar property system. Before turning to the English property reforms themselves, a review of the English colonization period of Myanmar is in order, since it was the British who introduced the current property-related laws that implement the compulsory registration of deeds in Myanmar. The British colonized Myanmar for a period of over 100 years, from 1824 to 1948. During that colonization period, the British adopted the Transfer of Property Act 1882 and the Registration Act 1909 in Myanmar. Myanmar still applies those laws for compulsory registration of deeds with respect to immovable property transfers. The same period saw attempts at reform to implement an effective property system in England, prior to the adoption of the successful English

property legislation of 1925. Therefore, to understand the situation of property-related laws, it is worthwhile to look back at the historical background of the English property reforms that ultimately led to the current functioning English property legislation passed in 2002.

3.2.1 HISTORICAL BACKGROUND OF PROPERTY REFORMS IN ENGLAND

Looking back in history, the land law of England is based on the feudal system²⁰² imposed by the Norman Conquest nearly a thousand years ago.²⁰³ English solicitors recognized the burdens of this system in the light of social and economic changes, and expressed their vision of a land registration system in which transactions could be quickly and smoothly registered in the same manner as securities are transferred in the stock exchange.²⁰⁴ The English recognized that a successful new approach had to deal with existing legal interests as an integral part of the reform. The idea of title registration has initially introduced by English solicitors in the years 1830 to 1836, almost twenty years before the system was actually implemented. Registration of title has a long history in England. The first British territory to adopt this system was actually South Australia, where Sir Robert Torrens introduced it in 1858.²⁰⁵ Experiments with registration of title in England date as far back as 1862,²⁰⁶ but gathered pace after 1897 when registration on sale became compulsory

²⁰² There were varieties of feudal land tenure, consisting of military and non-military service. There was only one absolute owner of land in the feudal system, in the person of the king asserting his allodial right. All nobles, knights and other tenants, called vassals, merely held land from the king, who was thus at the top of the feudal pyramid. Such feudal tenures were deemed freehold where of indeterminate duration and hereditary, and non-freehold where they for a fixed term and non-hereditary. Freehold fiefs were however only conditionally heritable, the condition being the payment by an heir of a suitable feudal relief.

²⁰³ E. H. Burn and J. Cartwright, *Cheshire And Burn's Modern Law of Real Property*, 17th ed. (Oxford Univ Pr (Txt), 2006), 6; Edward Hector Burn and Ronald Harling Maudsley, *Maudsley and Burn's Land Law: Cases and Materials* (London: Butterworths, 1986), 3, 4.

²⁰⁴ Haim Sandberg, "Real Estate E-Conveyancing: Vision and Risks," *Information & Communications Technology Law* 19, no. 2 (2010), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2034390 (accessed February 14, 2013).

²⁰⁵ Burn and Maudsley, *Maudsley and Burn's Land Law*, 95.

²⁰⁶ Burn and Cartwright, *Cheshire And Burn's Modern Law of Real Property*, 101.

in central London. A comprehensive system of land registration was instituted in England as part of a sweeping land reform in 1925.²⁰⁷

In the early nineteenth century, legislative reforms in England were prompted by real property rules that were in harmony with the earlier feudal system, but had become static anachronisms unsuitable to the pace of transactions in an advancing economy.²⁰⁸ Given this, statutory reform began by adopting a number of statutes over a long period of time. Early reform legislation in this process included: the Prescription Act of 1832; the Fines and Recoveries Act of 1833; the Real Property Limitation Act of 1833; the Dower Act of 1833; the Inheritance Act of 1833; and the Wills Act 1837. Between 1837 and 1922, the English legislature became more and more active in the area of real property law, and made further enactments in order to simplify property conveyancing and extend the landowner's powers of enjoyment.

In July 1862, the English adopted the Land Registry Act to facilitate the proof of title, and the conveyance of real estate.²⁰⁹ This 1862 Land Registry Act, followed by further legislation in 1875 and 1897, was the first attempt at a system of land registration in England. Although this system proved ineffective,²¹⁰ the desire at that time was to give an impetus to land legislation through the pressure of enforceable third party rights against a land possessor in the absence of registered title. In the absence of registered title, a buyer could protect himself only through careful searches and inquires to learn of the existence of third party rights binding on the buyer.²¹¹ This was a costly process, since the English real property laws had developed an intricate nature, with various means by which and by whom title to realty could be held. In view of the failure of the

²⁰⁷ Thomas J. Miceli et al., "Title Systems and Land Values," *Journal of Law and Economics* 45, no. 2 (October 1, 2002): 566.

²⁰⁸ Burn and Cartwright, *Cheshire And Burn's Modern Law of Real Property*, 6.

²⁰⁹ "Land Registry Act 1862," n.d., <http://www.legislation.gov.uk/ukpga/Vict/25-26/53> (accessed July 5, 2013).

²¹⁰ The present system was brought into force by the Land Registration Act 1925 as amended by the Land Registration Act 2002.

²¹¹ Burn and Cartwright, *Cheshire And Burn's Modern Law of Real Property*, 7, 8.

1862 and subsequent legislation, it was considered to make another reform in the law of property area in 1922.²¹²

3.2.2 SECOND REFORM OF THE PROPERTY LAW IN ENGLAND

The English property law around 1922 was, in the words of Walter Bagehot, like “an old man who still wears with attached fondness clothes in the fashion of his youth: what you see of him is the same; what you do not see is wholly altered”.²¹³ Thus new reform was made again in England by adopting the 1922 law of property act by assimilation of real and personal property. However the operation date of the 1922 law was postponed for redrafting and consolidating, ultimately emerging as the Real Property (Amendment) Act of 1924. After that, the 1925 legislation implementing compulsory land registration absorbed the transitional provisions of the 1922 and 1924 Acts and the terms of the previous six statutes of 1832 to 1837.

The 1925 legislation reflected the view of land as a market commodity, the object of absolute individual ownership and exploitation. The legislation was designed to simplify the ownership of land, its acquisition and disposition.²¹⁴ This vision led to the development of the Torrens system, which was adopted in various parts of the globe. The Torrens system has been followed in many other countries, but it differs materially from the system eventually adopted in England. Torrens system’s objective was to escape from the grievous yoke of the English property law by making radical changes in it. On the other hand, the English policy was to simplify the machinery of conveyancing without altering the substantive rules of law. The Torrens system of land registration was designed to reflect (following the “mirror principle”) all of the rights of the property, and the registry was intended to be the only source for information in this regard. Right after the

²¹² Before making this reform in England, British adopted the property related laws of 1882 and 1909 for compulsory deeds registration for land transfer in Myanmar. But those laws are failure in practice in Myanmar.

²¹³ Walter Bagehot, “The English Constitution,” 2001, <http://www.myilibrary.com?id=44459> (accessed August 14, 2013).

²¹⁴ Michael Harwood, *Cases and Materials on English Land Law* (London: Professional Books, 1977), ix.

1925 legislation, land registration became compulsory in selected parts of England and Wales, extended by degrees to cover the entire country. Nonetheless, compulsory registration did not mean that every acre of land was to be registered immediately: only that dealings in land must be carried out under the new compulsory registration system.

3.2.3 FURTHER DEVELOPMENT IN PROPERTY LAW AREA

After the 1925 legislation, legislators made further adjustments to property law throughout the 20th century, and into the 21st for compulsory registration of title.²¹⁵ The triggers for compulsory registration were increased by the Land Registration Act of 1997; and have been further increased in 2003, through the Land Registration Act of 2002.²¹⁶ The latest legislation extends compulsory registration of title to every parcel of land in England and Wales, bringing closer the day when unregistered conveyancing will finally disappear.²¹⁷ The following section will be concerned with the conveyancing and registration of land in England.

3.3 CONVEYANCING AND REGISTRATION OF PROPERTY IN ENGLAND

According to the Land Registration Acts of 1925 and 2002, in a case of first registration, legal title is passed by an unregistered conveyance but it is divested after two months unless an application is made for registration within a two-month period, although the registration office may extend this time for sufficient

²¹⁵ Burn and Cartwright, *Cheshire And Burn's Modern Law of Real Property*, 9.

²¹⁶ Peter Sparkes, *Report from England and Wales, Real Property Law and Procedure in the European Union*, May 31, 2005, 28, <http://www.eui.eu/Documents/DepartmentsCentres/Law/ResearchTeaching/ResearchThemes/EuropeanPrivateLaw/RealPropertyProject/England%20and%20Wales.PDF> (accessed July 15, 2012).

²¹⁷ Burn and Cartwright, *Cheshire And Burn's Modern Law of Real Property*, 10.

cause.²¹⁸ There are two systems of conveyancing in England nowadays; the unregistered system, under which title to land is deduced from past transactions relating to the property, and the registered system, where the title is recorded on a national register and is guaranteed by the State.²¹⁹ In the case of unregistered land, title to land is proved by the production of deeds recording the history of transactions affecting the land. The buyer must satisfy himself, covering a period of at least fifteen years prior to the conveyance, from the abstract of title, from the deeds, from his requisitions on title, from his searches and his inspection of the property that the seller has power to sell the property. This investigation must be repeated in full by every subsequent buyer. According to the Limitation Act of 1980, proof of title during the last fifteen years is sufficient for practical purposes. The result of this research is referred to as “good root of title”.²²⁰

That unregistered system is steadily being overtaken, as the wasteful reexamination of the same title is eliminated in the case of registered land. The latter system, the buyer discovers from the mere inspection of the register whether the seller has power to sell the property. The current title registration system of England is a great improvement on the old system of private conveyancing, and the present system becomes easier, quicker and cheaper for the buyers’ inspection. The registered system under the Land Registration Acts of 1925 and 2002 has gradually superseded the unregistered system and as the author presented above, ultimately the plan is that all land will be registered and the unregistered conveyancing will disappear, since the government plans to transfer all land to the registered system. Currently about 70% of the land in England is registered.²²¹ Since the registered system has been made compulsory over the whole of England for dealings in land conveyancing since 1990,²²² there is no room in the registered land system for the doctrine of bona fide buyer of the legal

²¹⁸ C. Dent Bostick, “Land Title Registration: An English Solution to an American Problem,” *Ind. L.J.* 63 (Winter 1987): 93; Sparkes, *Report from England and Wales*, 36.

²¹⁹ Burn and Cartwright, *Cheshire And Burn’s Modern Law of Real Property*, 91.

²²⁰ Burn and Maudsley, *Maudsley and Burn’s Land Law*, 5, 162.

²²¹ Harwood, *English Land Law*, 439.

²²² Burn and Cartwright, *Cheshire And Burn’s Modern Law of Real Property*, 91.

estate for value without notice, though the court will fall back on general equitable principles in cases where the relevant legislation fails to provide an answer.²²³

Thus the English property conveyancing system has been changed from the old conveyancing system²²⁴ to new conveyancing system, based on registration of title, which is a wholly new system of conveyancing, designed to replace the traditional system in its entirety.²²⁵ This should continue to increase steadily, particularly with the Land Registration Act 2002. The prime objective of the new conveyancing system is to replace a single established title which is guaranteed by the State, in place of the traditional title which must be separately investigated on every purchase at the buyer's own risk.²²⁶ Under the registered title system, buyers can quickly check the official title details on the Land registry website and an official record exists of the exact boundaries, defusing any potential disputes. The property registration system was created to reduce the risk of fraud and to simplify the conveyancing process as far as possible. Besides, the current title registration system's great merits are that it eliminates repetitive and unproductive work in property conveyancing.²²⁷

3.4 EXAMINATION ON REGISTERED AND UNREGISTERED PROPERTIES

In order to transfer property, the parties initially make a contract of sale.²²⁸ A contract for sale of land must be in writing and signed by both parties since 1989 in England. Although a valid contract relating to land

²²³ Burn and Maudsley, *Maudsley and Burn's Land Law*, 96.

²²⁴ Registration of deeds, which is the traditional practice of investigating the title to land on sale, so as to make sure that the buyer really becomes owner and does not find himself burdened with unsuspected liabilities.

²²⁵ Sir Robert Megarry and H.W.R. Wade, *The Law of Real Property* (London: Stevens, 1984), 141, 194.

²²⁶ *Ibid.*, 194.

²²⁷ *Ibid.*, 197.

²²⁸ Peter L. Murray, "Real Estate Conveyancing in 5 European Union Member States: A Comparative Study," 2007, 17~25.

may be made orally, it will be unenforceable by the most important method of enforcing contracts.²²⁹ In England and Wales the process of real property transfer is essentially a two-stage process: first contract, then conveyance.²³⁰ Before completion takes place the seller has to prove his title to the buyer in accordance with the contract. The method of proving title depends on whether the land is registered or unregistered. With respect to unregistered land, the seller must produce 1) a good root of title – that is a document at least 15 years old which deals with the whole interest being sold, adequately identifies the property, and does not contain anything to cast doubt on the title; and 2) documents and other proper evidence showing how the title was devolved from the root of title down to his own ownership.²³¹ The buyer then peruses the abstract of title, considers the validity of the title shown, and checks the abstract against the seller's title deeds, grants of probate, and other papers, which prove the statements made in the abstract.²³² Dealing with the registered land, the method of proving title is that the seller will supply the buyer with an office copy²³³ of the entries on the register together with the filed plan and authority to inspect the register.²³⁴ Once the seller has proved his title in the manner required by law, the buyer is under an obligation to accept and proceed to completion.²³⁵

When a binding contract of sale of real estate is finally concluded, it may take any form, such as and oral or written agreement, although a written agreement is preferable.²³⁶ With respect the transfer of property,

²²⁹ Burn and Maudsley, *Maudsley and Burn's Land Law*, 63; Megarry and Wade, *The Law of Real Property*, 567.

²³⁰ Gray and Symes, *Real Property and Real People*, 78.

²³¹ Megarry and Wade, *The Law of Real Property*, 154; Harwood, *English Land Law*, 477,478.

²³² Megarry and Wade, *The Law of Real Property*, 154.

²³³ The office copy corresponds with the abstract in the case of unregistered conveyancing.

²³⁴ Harwood, *English Land Law*, 479.

²³⁵ *Ibid.*

²³⁶ Law of Property Act 1925, § 40(1): “no action may be brought upon any contract for the sale or other disposition of land or any interest in land unless the agreement upon which such action is brought, or some memorandum or note

the buyer in acquires not merely a contractual right, but also a property right from the very moment of the exchange of contracts, in the unregistered system.²³⁷ In order to convey the property from one person to another, a basic contract recites the parties, describes the property to be sold, sets forth the promise to sell and to buy, the purchase price, and how this shall be payable, and fixes a time and place for the delivery of the deed.

In order to transfer ownership of a piece of land in the registered system, people have to alert the land registry office. The registry office keeps information on both ownership and the benefits enjoyed by the land including e.g. rights of way, the covenants and other burdens that might adversely affect the land and its usage e.g. an old covenant that denies any building in a certain area from selling alcohol, and an ordinance survey map detailing the full extent of the land. The land register is the competent authority for registering the transfer of ownership and the creation of interests in land. With respect to subdivided interests in buildings, the condominium ownership is legally separated from land ownership, as in Japan. Each person owns his own

thereof, is in writing, and signed by the party to be charged or by some other person thereunto by him lawfully authorized.”

²³⁷ Kevin Gray, *Elements of Land Law* (London: Butterworths, 1987): “By virtue of the exchange of contracts, vendor and purchaser are legally committed to complete the transaction. However, as Lord Erskine observed in *Hiern v Mill*, ‘no man in his senses would take an offer of a purchase from a man merely because he stood on the ground.’ Mere possession by the vendor is not sufficient; the vendor must satisfy the purchaser that he has a good title to the property and that it is subject only to the adverse interests specified in the contract. If the title is unregistered, the vendor must supply an abstract of the title of the property that discloses dealings affecting the land during at least the past 15 years. In case of registered title, the purchaser is given authority to inspect the Land Register for entries in respect of the vendor’s title. If either the abstract of title or the register entries disclose apparent defects in the title, the purchaser may make ‘requisitions’ in order to clarify matters in doubt. When satisfied that the title is in order, the purchaser sends to the vendor a draft conveyance or, in the case of registered land, a draft form of transfer, for approval. When approved, the draft conveyance or transfer is engrossed. The purchaser makes a final search of the Land Charges Register or the Land Register, as is appropriate, in order to ensure that the property remains free of undisclosed adverse interests. On the day fixed for completion, the purchaser pays over the balance of the purchase moneys and the vendor hands over the appropriate title deeds or documents. The transaction is now complete, except that in case of registered land the document of transfer must be sent to the Land Registry in order that the purchaser may be registered as the new proprietor.” (citations omitted).

space within the building, and has in addition a right of common property to shared parts of the building, notably the hallway and stairs.²³⁸

3.5 REAL PROPERTY CONVEYANCING IN JAPAN

This section concerns the Japanese real property conveyancing system. Japan has very high rate of registration in real property transfers, even though registration is voluntary, in the sense that it is not necessary for the conveyance of title. In Japanese real property transaction practice, conveyancing procedures are normally followed to the finish of the registration process in order to perfect title in the transferee. In Japan, land and any building on the land are treated as separate estates in the law of property as a building is an independence immovable property.²³⁹ Therefore, the registration systems are also separated for land and building since land and buildings are each regarded as independent pieces of real property.²⁴⁰ This system stems from the Japanese tradition at the time of the enactment of the Japanese Civil Code. In conveyancing the immovable property especially for the general land and detached house in Japan, the following are the general processes of the transaction in selling and buying the real property:

- 1) Firstly, the buyer identifies the property to be purchased,²⁴¹
- 2) The purchase price is determined by negotiation between the parties, usually, but not necessarily,

²³⁸ Christoph U. Schmid and Christian Hertel, *Real Property Law and Procedure in the European Union*, May 31, 2005, <http://www.eui.eu/Documents/DepartmentsCentres/Law/ResearchTeaching/ResearchThemes/EuropeanPrivateLaw/RealPropertyProject/GeneralReport.pdf>.

²³⁹ Since traditional Japanese buildings were small and made of wood, it was relatively easy to remove them in parts. Sometimes they were treated as movable property rather than immovable.

²⁴⁰ Shusei Ono, "A Comparative Study of the Transfer of Property Rights in Japanese Civil Law (part 1)," *Hitotsubashi Journal of Law and Politics* 31 (February 2003): 6; 脇本 and サルヤード, *Illustrated Dictionary: Real Property Business in English*, 14.

²⁴¹ If the buyer wants to buy only house, he/she should lease land also from at least 20 years to at most 50 years.

via a licensed agent or judicial scrivener.²⁴² In case of a transaction of a certain size, a licensed appraiser may make appraisal of the real estate under the Real Estate Appraisal Act,²⁴³

- 3) In a normal real property purchase, the agent or judicial scrivener, who is usually introduced by the real estate agency, prepares a sale contract for the seller and buyer. In a real property transaction, judicial scriveners play a crucial role in real estate business since they record the ownership of the property.²⁴⁴ The agent or judicial scrivener serves an intermediary role, and prepares the content of the sale contract.²⁴⁵ The sale contract will set forth all necessary conditions for the real estate transfer, such as the description of location, size, and type etc. of the real estate;
- 4) After that, the seller needs to provide the registered seal, and relevant certificates and other documents relating to the property to the judicial scrivener. The judicial scrivener then checks everything to learn whether the property is actually owned by the seller for the transaction. If no mistake is found, the buyer will pay the purchase price to the seller in the presence of the judicial scrivener.
- 5) On the execution date of the sale agreement for the conveyance of real property, while making the payment of the purchase price, the judicial scrivener also prepares the forms for the real property registration process of the new owner, since the application for the registration of the property transfer is usually, but not necessarily, delegated to the licensed judicial scrivener under the Real Property Registration Act;
- 6) The title to real estate is transferred by agreement of both seller and buyer. Technically, the parties do not need any written agreement. Nonetheless, it is normal practice for the transaction of

²⁴² Judicial Scrivener is also called Shiho-Shoshi lawyer.

²⁴³ “SummaryofrealestateappraisalsysteminJapan_E.pdf,” n.d., http://www.fudousan-kanteishi.or.jp/publish/pdf/SummaryofrealestateappraisalsysteminJapan_E.pdf (accessed February 6, 2013).

²⁴⁴ 脇本 and サルヤード, *Illustrated Dictionary: Real Property Business in English*, 94.

²⁴⁵ In general transaction, the purchaser usually calls the Shiho-Shoshi lawyer for the judicial scrivener. But if buyer needs bank’s loan to purchase the property, the bank will contact judicial scrivener.

valuable and important property like real estate, to execute a written agreement. Furthermore, a written agreement is required for the application of the registration of the conveyance of title. Registration is normally carried out, and the use of written agreements is the norm;

- 7) In law, therefore, if the buyer does not want to pay the registration fee based on the purchase price (3.5%, comprised of 1.5% for land and 2% for the building) of the purchase price, the buyer can just forget about the registration process and the buyer can obtain the title to the real estate without it;
- 8) Nonetheless, after the transaction, if the seller later on for any reason enters into another agreement with a third person and this third person registers the transfer of the title, then at this moment, the first buyer will lose the title since it is not registered, although the first buyer does have recourse to a claim against the seller;
- 9) Thus, almost all of the people in Japan create a written agreement and register the transfer of title, despite the fact that the property interest in real estate is transferred by the agreement of the parties;
- 10) Concerning the offices involved in the registration of the transfer of title, it is necessary to go only to the local legal affairs bureau where the property is located in order to register the transfer of title;
- 11) As mentioned above, the registration fee for the perfection of the transaction mentioned above is normally 3.5% of the purchase price;
- 12) After registration, property acquisition tax²⁴⁶ is payable by the new owner, normally at a rate of 4.5% (3% for building and 1.5% for land) of the purchase price;²⁴⁷

²⁴⁶ When purchasing a property, the buyer must pay the real estate acquisition tax. Approximately 3 to 6 month after purchasing a property, the tax office responsible for the purchased property will send the buyer all necessary documents related to the real estate acquisition tax.

²⁴⁷ “Step.3 - Guide to Buying Property in Japan by Plaza Homes’ Professionals,” n.d., <http://www.realestate-tokyo.com/sale/guide/guide3.aspx> (accessed July 7, 2013).

- 13) Stamp duty varies according to the purchasable price. For example, it is JPY 150,000 if the purchase price is JPY 500,000,000 (0.03% of the purchase price), and JPY 200,000 if the purchase price is over JPY 1,000,000,000 (less than 0.02% of the purchase price). (Approximately from 2000 JPY to 600,000 JPY per agreement).²⁴⁸
- 14) In short, the aggregate tax payable for the whole transaction is less than 10% of the purchase price.
- 15) To sum up, the closing of the transaction is perfected once the seller has received payment and the buyer has recorded the official change of ownership in the real estate registry. A judicial scrivener records the change in title ownership and the procedure is carried out at the legal affairs bureau in the district where the property is located.²⁴⁹

Concerning conveyancing transactions of real property, below is a detailed summary of the steps, time and cost involved in registering property in Japan. It assumes a standardized case of an entrepreneur who wants to purchase land and a building that is already registered and free of title dispute.²⁵⁰

No.	Procedure	Time to Complete	Associated Costs
1	<u>Obtain a corporate registry certificate</u> The parties (as companies) must obtain a corporate registry certificate that must be issued within 3 months before the registration application. It can be obtained from a relevant registry office of a corporate registry at which	1day (simultaneous with Procedures 2, 3, and 4)	JPY 700 each copy

²⁴⁸ “Tax Guidance,” n.d., http://www.realestate-tokyo.com/sale/guide/w_tax.html#n01?returl=w_cost.html%3ftab%3d2 (accessed July 7, 2013).

²⁴⁹ 脇本 and サルヤード, *Illustrated Dictionary: Real Property Business in English*, 182.

²⁵⁰ “Registering Property in Japan - Doing Business - World Bank Group,” n.d., <http://www.doingbusiness.org/data/exploreconomies/japan/registering-property> (accessed February 13, 2013).

	<p>the party is registered. The cost is JPY 700 per copy.</p> <p>Agency: Legal Affairs Bureau</p>		
2	<p><u>Obtain a certificate of Seller's seal impression (inkan shomei)</u></p> <p>Seller must obtain a certificate of its seal impression for the seal used for execution of the registration documents, which must be issued within 3 months before the registration application. It can be obtained from the Legal Affairs Bureau (homukyoku).</p> <p>Agency: Legal Affairs Bureau</p>	<p>1day (simultaneous with Procedures 1, 3, and 4)</p>	<p>JPY 500 each copy</p> <p>JPY 440 online</p>
3	<p><u>The seller obtains a certificate of evaluation for fixed asset tax of the real property at a local tax office</u></p> <p>The seller must obtain a certificate of evaluation for fixed asset tax of the real property before the registration application. This should be obtained for the transaction because such certificate must show the most updated evaluation and will be used later to calculate taxes to be paid. It can be obtained from a relevant local tax office, which governs the relevant real estate. The cost of the issuance is JYP 400 for land and JPY 400 for building.</p> <p>Agency: Local Tax Office</p>	<p>1day (simultaneous with Procedures 1, 2, and 4)</p>	<p>JPY 400 for land + JPY 400 for building</p>
4	<p><u>Obtain stamps for stamp duty²⁵¹ at a post office</u></p> <p>Stamps for stamp duty can be purchased at various places, such as post offices. Stamp is the sole official cost for execution of the sale agreement, if a written agreement is prepared. The preparation and execution of a written sale</p>	<p>1day (simultaneous with Procedures 1, 2, and 3)</p>	<p>JPY 80,000</p>

²⁵¹ The stamp duty amount is variable according to the purchase price in general real estate conveyancing, for instance, it is 150,000 ¥ if the purchase price is 500,000,000 ¥ (0.03% of the purchase price) and 200,000 ¥ if the purchase price is over 1,000,000,000 ¥ (less than 0.02% of the purchase price).

	<p>agreement is not necessary. Even an oral agreement is acceptable for transferring the title to the real estate, although usually a written agreement is prepared. The normal price of stamps for the case study property value is 100,000 yen, but reduced to 80,000 until March 31, 2013.</p> <p>Agency: Post Office</p>		
5	<p><u>File an application at the Legal Affairs Bureau</u></p> <p>The parties file an application for registration at the Legal Affairs Bureau. The Legal Affairs Bureau will register the title under the name of the new owner.</p> <p>A registration and license tax must be paid at the Legal Affairs Bureau at the amount of 2% of building value plus 1.5% of land value. The normal tax rate for registering transfer of land is 2%, but reduced rate of 1.5% is applicable until March 31, 2013.</p> <p>As registration is a requirement for perfection vis-à-vis third parties, reviewing the certified copy of the real property registry is generally sufficient for identifying any existing perfected encumbrances over the real property. The parties may apply for registration by themselves. However, because of the complexity of filing, usually they retain a judicial scribe for registration.</p> <p>There is a 5% consumption tax in Japan. Sales or leases of land are exempted. However, if the transaction includes the sale or lease of buildings, consumption tax applies only to the price of the building.</p> <p>The documentation shall include:</p> <ul style="list-style-type: none"> • Executed original copy of the purchase and sale agreement (alternately a copy of registration application 	7-10 days	2% of building value + 1.5% of land value evaluated for fixed asset tax (registration and license tax)

	<p>signed by the seller and the buyer)</p> <ul style="list-style-type: none"> • "Certificate of registration of seller's title of the real property (toukizumi kenri sho) or registration identification code (touki shikibetsu johu) (Already in his possession)" • Certificate of corporate registry of the parties (if any of them is a corporation) (obtained in Procedure 1) • Certificate of the parties' seal impression (obtained in Procedure 2) • Certificate of evaluation for fixed asset tax of the real property (obtained in Procedure 3) • Power of attorney of the seller (if a judicial scribe applies for the registration on behalf of any of the parties) <p>Agency: Legal Affairs Bureau</p>		
6	<p><u>Payment of the real property acquisition tax</u></p> <p>This is a post-closing matter; the buyer will receive the notice of the real property acquisition tax from the local tax office a few months after the registration. The real property acquisition tax must be paid at the local tax office. Actually, 4% is the normal tax rate for land. The 3% reduced tax rate for personal use real property is applicable until March 31, 2012.</p> <p>Agency: Local Tax Office</p>	1 day	4% of property price evaluated for fixed asset tax

After studying the conveyancing process of real property in Japan, the following part will concern the individual conveyancing costs for which seller and buyer are responsible.

3.5.1 COST OF SELLER AND BUYER IN REAL PROPERTY CONVEYANCING TRANSACTION²⁵²

With respect to conveyancing cost, the buyer must cover all of the above costs mentioned in the previous section in order to complete registration at the legal affairs bureau. The seller must cover personal income tax and resident tax for capital gains on the property he sold.²⁵³ These income and resident taxes can be divided into two brackets: a 39% tax (30% income tax and 9% resident tax) on profit from short-term property possession; and a 20% tax (15% income tax and 5% resident tax) on profit from long term property possession.²⁵⁴

3.5.2 ANNUAL PROPERTY TAX

The annual property tax in Japan, which is payable by persons who own real estate as of January 1st of every year, is generally about 1.7% of the property price and it includes fixed asset tax and city planning tax.²⁵⁵ The local government uses the fixed asset tax payments for general purposes and city planning tax payments for new city planning projects. The property tax rate is usually 1.4% of the tax assessed value of the property and the city planning tax rate is usually 0.3% of the tax-assessed value. The local government of Japan determines the tax-assessed value of each property and may also modify the tax rate.²⁵⁶

²⁵² “Japan Capital Gains Tax Rates, and Property Income Tax,” *Global Property Guide*, n.d., <http://www.globalpropertyguide.com/Asia/japan/Taxes-and-Costs> (accessed July 7, 2013).

²⁵³ 脇本 and サルヤード, *Illustrated Dictionary: Real Property Business in English*, 42.

²⁵⁴ The author is indebted to Professor Takehiro Ohya for this information.

²⁵⁵ Koji Murase, interview by Nay Chi Oo, July 18, 2013: Revealing that the property tax rate in Japan is approximately 165 times that in Myanmar.

²⁵⁶ 脇本 and サルヤード, *Illustrated Dictionary: Real Property Business in English*, 42.

3.5.3 REGISTRATION OF INHERITANCE

In Japan, as mentioned previously, most transfers of real property are registered. When the registered owner of land passes away, surviving family members generally go to the legal affairs bureau to change the name on the title, although there may be some delay (a year or more) before it is decided in whose name the property will be registered.²⁵⁷ When the change in registration due to inheritance is registered, the stamp duty is 0.4% on land and 0.4% on buildings.²⁵⁸ It is most common for a shiho-shoshi to be involved in the inheritance registration process.

3.5.4 JUDICIAL SCRIVENERS PER CAPITA OF JAPAN

The population of Japan is currently over 127-million.²⁵⁹ In the whole country of Japan, the number of attorneys is over 30,000, so the number of attorneys per capita is 3,977.²⁶⁰ The number of judicial scriveners, who are responsible for real estate matters, is 21,000, for a per capita ratio of 6,047.²⁶¹ Despite this apparently small population of professionals, people mostly contact judicial scriveners in connection with the transfer of real property.

²⁵⁷ Hiroyuki Ito, Shuji Kato, and Koji Murase, interview by Nay Chi Oo, February 22, 2013.

²⁵⁸ “Inheritance Tax and Law,” *Global Property Guide*, January 30, 2013, <http://www.globalpropertyguide.com/Asia/japan/Inheritance> (accessed July 7, 2013).

²⁵⁹ “Japan’s Population Falls by Record Level,” *Japan Times*, August 30, 2013, Online, <http://www.japantimes.co.jp/news/2013/04/17/national/japans-population-falls-by-record-level/> (accessed August 30, 2013).

²⁶⁰ Japan Federation of Bar Associations, *White Paper on Attorneys*, 2012, 47.

²⁶¹ Annamarie Sasagawa, “Lack of Lawyers Is No Joke in Japan,” *Tokyo Weekender*, April 10, 2012, <http://www.tokyoweekender.com/2012/04/lack-of-lawyers-is-no-joke-in-japan/> (accessed June 18, 2013).

3.5.4.1 ROLE OF THE JUDICIAL SCRIVENER OR SOLICITOR (SHIHO-SHOSHI) IN JAPAN

This section contains further observations on shiho-shoshi, or judicial scriveners. Members of the profession are authorized to represent clients in registration of company incorporations, real estate transfers, and other matters to be registered at local legal affairs bureaus.²⁶² Judicial scriveners enjoy a limited license to practice law, which generally does not permit representation of clients in court, with the sole exception being that judicial scriveners are allowed to appear before the summary courts. To qualify for the profession, an aspiring judicial scrivener must pass an examination administered by the Ministry of Justice, and maintain membership in their prefectural Judicial Scrivener Association.²⁶³

Judicial scriveners' work may include the preparation of documents for court trials. As noted above, they can represent clients in litigation before the summary courts (where the amount at issue is below JPY 1.4 million), and in contract negotiations.²⁶⁴ In Japan, it needs to apply at the regional legal affairs bureau to buying real estate and become registered owner. A judicial scrivener confirms the documents needed for registration, submits the application to the legal affairs bureau as the buyer's agent, and protect the rights of the buyer. As a registration expert in real estate matters, a shiho-shoshi lawyer can handle a wide range of rights transfer procedures on the buyer's behalf, including procedures for sale or purchase and inheritance, and registration of mortgage and leasing rights of valuable land and building assets.²⁶⁵

²⁶² Judicial Scrivener Act [司法書士法], Law no. 197 of 1950, art. 3 (jp); See, e.g. “Duties of a Shiho-Shoshi Lawyer,” *Japan Federation of Shiho-Shoshi Lawyer's Associations* [日本司法書士会連合会], November 26, 2013, <http://www.shiho-shoshi.or.jp/english/duties.html> (accessed November 25, 2013).

²⁶³ Judicial Scrivener Act 1950, arts. 6–19.

²⁶⁴ *Ibid.*, art. 3(6).

²⁶⁵ See, e.g. “What Is a ‘Shiho-Shoshi Lawyer’?,” *Japan Federation of Shiho-Shoshi Lawyer's Associations* [日本司法書士会連合会], 2013, <http://www.shiho-shoshi.or.jp/english/> (accessed July 10, 2013).

3.5.5 PAYMENT METHOD OF REAL ESTATE TRANSFER IN JAPAN

If the buyer makes payment by cash, the payment usually goes through a judicial scrivener in Japan. However, payment is most often made through the banking system, with the property itself serving as security for the loan.

3.5.6 JAPANESE VOLUNTARY CONVEYANCING

Although the registration process is voluntary, in the sense that registration is not a precondition to the transfer of title, almost all transactions are in fact registered in Japan. One important incentive for registration is stability, since an unregistered transfer is not perfected, and vulnerable to third party claims. A second factor, in comparison with Myanmar, is the relatively low cost for registration – 3.5% of the purchase price – and the limited effort required – people only need to go to the local legal affairs bureau.

Japanese “voluntary” registration arises from article 176 of the Civil Code, which provides that: “[t]he creation and transfer of real rights shall take effect solely by the manifestation of intention of the relevant parties.”²⁶⁶ Since the transfer of property occurs at the time of conclusion of the contract of sale, it is obvious that the creation and transfer of rights in real property take effect by a mere declaration of intention by the parties. Under the system of consensual contracting practiced in Japan, no element other than the consent of the parties need exist to transfer the property. Neither delivery nor registration of the interest is required. The property transfer is a result of the intention of the parties, and the intention of the parties is the paramount standard. So, property is acquired as a result of the contractual obligation and no formal element is required to transfer the property.²⁶⁷

²⁶⁶ Civil Code, art. 86(1) (jp).

²⁶⁷ Ono, “A Comparative Study of the Transfer of Property Rights in Japanese Civil Law (part 1),” 7.

Under the consensualism approach, a property is transferred before it is delivered or the transfer is made public in the land register. However, these private transfers sometimes present an obstacle to open and clear transactions in the event of a double sale or acquisition. For example, where “A” has sold his land to “B” without registering the transfer, the land will appear still to be owned by “A”, enabling “A” to sell the same land again to “C”. Nonetheless, “C” cannot gain any property right with respect to the land since “A” no longer owned the land and thus could not transfer any rights to “C”, and “C” may suffer great damage as a result.²⁶⁸

In this case of double acquisition, “B” can assert his acquisition of the property right against “A”, the party to the contract of sale, without registration of the transfer or delivery. Neither registration of transfer nor delivery is necessary to complete the sale under the contract between “A” and “B”, nonetheless they are necessary in order to enforce property right against a third party. Without registration, “B” cannot assert his acquisition of the property against “C”, a third party unrelated to the contract of sale between “A” and “B”. Another example would be where “B” secured a mortgage over “A”’s land without registration of that interest. The land would appear free of such encumbrance. “A” could mortgage the same land to “C”, and it is quite possible that “C” could obtain a valid mortgage over the land. However, if the contract date were taken as the conclusive date of priority, “C”’s right would be inferior to “B”’s, causing “C” to suffer a great damage as a result of the double mortgaging.²⁶⁹ Therefore, the Japanese Civil Code requires registration of the transfer of real estate in order to avoid such kind of damage to “C”. This requirement of perfection of changes in real rights concerning immovable properties is prescribed under article 177 of the Japanese Civil Code.²⁷⁰

Likewise, it has the Real Property Registration Act of 2004 for the securing the rights of people by supporting a system dealing with the registration to be made to notify the public of descriptions of real property

²⁶⁸ Ibid., 8.

²⁶⁹ Ibid.

²⁷⁰ Civil Code, art. 177: “Acquisitions of, losses of and changes in real rights concerning immovable properties may not be asserted against third parties, unless the same are registered pursuant to the applicable provisions of the Real Estate Registration Act (Act No. 123 of 2004) and other laws regarding registration.”

and rights relating to real property, thereby contributing to the safe and smooth conduct of transactions.²⁷¹ According to article 4(1) of the Real Property Registration Act of 2004, the order of priority of rights registered in relation to the same real property shall, unless otherwise provided for in laws and regulations, follow the chronological order of registration.²⁷²

3.6 LESSONS LEARNT FROM ENGLAND AND JAPAN

Discussion now turns to lessons learnt from the general overview of property reforms of England and the conveyancing system of Japan. England has converted from a deeds-based system backed by a failed mandatory registration system similar to that in place in Myanmar to a successful system of registered title, while Japan has achieved near-universal registration of title records without imposing a mandatory requirement of registration as a precondition for transfer of title.

3.6.1 LESSONS FROM ENGLISH PROPERTY REFORMS

England has made property reforms many times from the ancient feudal system up to current 2002 property legislation. English attempts at reform failed to achieve an effective title registration system during the 19th century, during the colonization period of Myanmar (1824 to 1948). During that period, English adopted the Transfer of Property Act 1882 and the Registration Act 1909 for the compulsory registration of deeds in Myanmar. The Myanmar legislation is similar to the English Land Registry Act 1862, an attempt at statutory reform in the early 19th century. The 1862 Act failed to meet the progressive ideals of the advancing economy, which sought to overcome problems of long and expensive conveyancing process in the absence of title registration, with a persistent risk of third party claims against the land possessor due to the complexity of title.

²⁷¹ Immoveable Registration Act [不動産登記法], Law no. 123 of 2004, art. 2 (jp).

²⁷² Ibid., art. 4.

Given this, the comprehensive reform effort began in 1922, culminating in the 1925 land legislation. The process was a long one. Land registration became compulsory throughout England and Wales by 1990. English legislators persisted in reforms for further development of land registration, making revisions throughout the 20th and 21st centuries, resulting in the effective 2002 legislation. By analyzing the English property legislative reform processes, it can be seen that English legislators have been trying to get the simple, clear and reliable land title registration system by adopting updated legislation over a long period. England has made property law reforms since the early 19th century in order to reach an effective compulsory title registration system and to be inline with the sophisticated circumstances of the community. In contrast to England, and as discussed earlier in this thesis, in Myanmar, the priority of competing claims is not determined exclusively by the date of registration. Under Section 47 of the Registration Act 1909 as interpreted by the courts, competing registered contracts of sale are ranked according to their respective dates of signing. This means that in Myanmar the incentives for using the registration system are much weaker than in England.

3.6.2 LESSONS FROM JAPANESE REAL PROPERTY TRANSACTION

In Japanese real estate transactions, the seller and the buyer can solely transfer their real right by indication of their intention according to article 176 of the Japanese Civil Code. Nonetheless, almost all real property transfers are registered, in order to protect against double acquisition of title. This teaches that making registration a condition for transfer of title is less important than other factors. As in England, priorities are determined strictly by date of registration according to article 4(1) of the Real Property Registration Act 2004. Therefore, a buyer to registers their transfer immediately is protected against third party claims. This certainty is attractive to banks, which are more willing to lend money for the purchase of immoveable property than in Myanmar, and insist that the buyer check the seller's title registration status to protect against risk. Banks encourage the use of the professional service of a judicial scrivener in the property transfer, to be certain that procedures are completed quickly and correctly. As a result, a very high rate of property transfers go through the registration process despite the fact that the cost to finish the title registration cannot be said to be very low

in Japan. In Myanmar, the uncertainty of registration reduces its value to banks,²⁷³ removing an important source of private motivation for making active use of the system.

3.6.3 REVISITING THE CURRENT PRACTICE OF MYANMAR PROPERTY SYSTEM

According to the property laws in Myanmar, as prescribed in chapter 1 of this paper, to achieve perfected transfer of immovable property under section 17(1)(b) and section 49(a) of the Registration Act of 1909, and section 54 of the Transfer of Property Act of 1882, the sale contract must be registered at the relevant office for the registration of deeds if the property value is 100 kyat or more. Without registration, the legal title to the property still resides in the seller. To complete sale contract registration, the seller and buyer need to visit 1) the Municipal Office, 2) the relevant State/Regional Revenue Office, 3) the relevant Township Revenue Office, 4) the relevant Office for the Registration of Deeds, and 5) the Municipal Office (again). The burden of visiting five separate administrative offices requires much time, and adds greatly to the burden of registration. In addition, the buyer must ordinarily pay 37.2% of the purchase price as a condition of registration. To avoid these burdens and costs, most people make informal transfers by creating an informal contract, thus avoiding the registration process and the associated tax burden. As a result, most property holders have no perfect title right in their properties. The seller can sell one property to two buyers, and the sparsity of registered properties makes it possible for fraudulent parties to masquerade as the true owner in order to sell to a buyer on the basis of forged documents. Despite the complexity of the registration process, the office for the registration of deeds, because its records are organized by transaction number alone, and are not index-linked to the land map held by the Municipal Office, is able to issue two or more registered documents for the same property, a fact which further complicates the problem.

²⁷³ “Flat Owners Do Not Get Bank’s Loan because of the Insecure Flat Possession Documents” [ကွန်ဒိုတိုက်ခန်းများ အပါအဝင် တိုက်ခန်းများတွင် ပိုင်ဆိုင်မှု အထောက်အထား ခိုင်မာမှုမရှိခြင်းကြောင့် ပုဂ္ဂလိကဘဏ်များက အပေါင်အဖြစ် လက်ခံ၍ ငွေချေးငှားခြင်း မပြုကြောင်း သိရ], *Eleven Media Group*, July 10, 2011, http://www.news-eleven.com/index.php?option=com_content&view=article&id=9289:2011-07-10-06-56-42&catid=42:2009-11-10-07-36-59&Itemid=112 (accessed July 10, 2011).

Lack of transparency of ownership affects the conveyance of flats as well as land. Disputes over the sale of flats have been on the rise in Myanmar. A typical example is documented in volume 7, no. 29 of the Voice Weekly Journal. The possessors of flats from building A and B of one Pearl Condominium, located in Ka Bar Aye Road, Yangon, complained to the Union Government that Asia Express (Yangon) Co., Ltd., the construction company responsible for Pearl Condominium, had breached the original contract in three respects: by selling and renting common places in the Pearl Condominium compound to individuals; by selling electric meters to the possessors of the flats at inflated prices; and by providing parking space for only 54 cars, although advertisements for the Pearl Condominium had stated that parking space for 700 cars would be available.²⁷⁴ While the second and third claims involve fraudulent practices beyond the scope of this thesis, the first reveals the risks associated with a lack of legal clarity over rights to common and private space in transactions involving condominiums. Mr. Sis Han Kyi who currently lives in one of the flats of building A of the Pearl Condominium and Dr. Nyo Nyo Thin, who is a representative of Yangon Regional Hluttaw, also pointed out the need for special legislation covering condominium ownership to prevent the problem mentioned above.²⁷⁵ The present Deputy Attorney General of the Union Attorney General's Office, H.E. Mr. Tun Tun Oo, has promoted the promulgation of a Condominium Law at the second regular session of the first Pyithu Hluttaw meeting dated October 4, 2011.²⁷⁶

²⁷⁴ “Flats’ Owners of the Pearl Condominium Were Complaint to the Union Government to Take Action the Construction Company” [ပုလဲကွန်ဒိုမှ အိမ်ခန်းရှင်များ ဆောက်လုပ်သည့်ကုမ္ပဏီကို အစိုးရအဖွဲ့ထံတိုင်ကြား], *The Voice Weekly Journal*, July 4, 2011, 4.

²⁷⁵ Moe Kyaw Lwin (မိုးကျော်လွင်), “Documents of Government Granted Titles Will Be Replaced with the Secure Documents” [မြေငှားစာချုပ် (ဂရန်) ဟောင်းများ လုံခြုံရေးစနစ်မြေဂရန်နှင့် လဲလှယ်ပေးမည်], *The Voice Weekly Journal*, November 21, 2011, 4.

²⁷⁶ “Second Regular Session of First Pyithu Hluttaw Continues for 31st Day,” *New Light of Myanmar* [မြန်မာ့အလင်းသတင်းစာ], October 4, 2011, <http://www.mrtv3.net.mm/open8/041011brief.html> (accessed October 6, 2011); Nyi Thit (ညီသစ်), “Discussing The Condominium Bill at the Parliament” [ကွန်ဒိုမီနီယမ်ဥပဒေ လွှတ်တော်တွင် တင်သွင်း], *Mizzama*, October 6, 2011, <http://www.mizzimaburmese.com/news/inside-burma/8440-2011-10-06-08-18-48.html> (accessed October 7, 2011).

With respect to flats, it is particularly difficult to obtain a bank mortgage to borrow money to support a sale, because of the uncertainty of ownership. According to officials at the Central Bank, banks do make use of the mortgage interest with respect to land. However, banks do not allow mortgages by the possessors of a flat due to the untrustworthiness of documents of possession, even though the price of a condominium is sometimes higher than that of land.²⁷⁷ According to the Weekly Eleven journal, possessors of flats have difficulty borrowing money from banks because 1) possessors do not have an interest in the land, despite their occupation; 2) no condominium law yet exists to support ownership; and 3) it is difficult to assess the veracity of documents relating to the possession of a flat.²⁷⁸

For property transfers of land, the overall procedure for a properly perfected conveyance does provide assurance of veracity, due to the combined effect of the record of the owner's identity on the land map held by the Municipal Office and the transaction record at the office for the registration of deeds (if the registration process is completed). However, for the possessors of the flats, it is required to make new law, in order to cover the insecure possession of flats in Myanmar.

3.7 DETAILED SUMMARY OF THE STEPS, TIME, AND COST INVOLVED IN REGISTERING PROPERTY IN MYANMAR AND JAPAN

The table below is the detailed summary of the steps, time and cost dealing with the registering property by comparing between Myanmar and Japan.²⁷⁹

²⁷⁷ “Flat Owners Do Not Get Bank’s Loan because of the Insecure Flats Possession Documents.”

²⁷⁸ Ibid.

²⁷⁹ Source: “Buying Guide,” *Housing Japan*, June 19, 2013, <http://housingjapan.com/real-estate-tokyo/buying-guide/> (accessed June 18, 2013).

No.	Contents	Myanmar	Japan	Remark
1.	Stamp Duty	7% of property value Agent: Revenue Office	0.02% or 0.03% Agent: Post Office	Stamp duty is levied on the sale contract and mortgage agreement and varies on the contract type and amount in Japan.
2.	Registration Tax	0.2% of property value Agent: Office of the Registration of Deeds	2% of Land +1.5% of Building = 3.5% Agent: Legal Affairs Bureau	
3.	Property Acquisition Tax	Nil	1.5% of Land + 3% of Building = 4.5% Agent: Local Tax Office	In Japan, this tax is usually due within six month of the purchase. ²⁸⁰
4.	Income Tax	30% Agent: Revenue Office	Nil	This tax will be levied on seller in Japan based on the capital gain of the property while the buyer in Myanmar pays

²⁸⁰

The government valuation is generally about 60-80% of the market price of the property.

				this based on the property price.
5.	Consumption Tax (for building only)	Nil	5% Agent: Legal Affairs Bureau	No consumption tax in Myanmar.
6.	Time Consuming	At least 2/3 months	Within One Week	
7.	Document's Safety	Risky	Safe as of title registration system	
8.	Registry Office	Overlap Registered Documents on same property as of deed registration system	Exact Registered Title system	
9.	Office	5-Office to deal with to finish registration	Only legal affair bureau to contact for registration	
10.	Law	1882, 2013, and 1909 laws	Civil Code, Real Property Registration Act 2004 etc.	
11.	Percentage of Registration in	At most 20% of property	Almost 100%	

	general	conveyancing		
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3.8 ANALYZING THE PROPERTY LAWS OF MYANMAR

Since the volume of property disputes is increasing, it is necessary to revisit the property laws of Myanmar in order to learn whether the current compulsory registration practice system can be improved. The most relevant property laws of Myanmar are particularly the Transfer of Property Act 1882 and the Registration Act 1909, since the Myanmar courts must give decisions within the framework of the adopted laws for the settlement of the disputes. In analyzing the property laws of Myanmar, it will emphasize the most relevant provisions or sections under those laws regarding the property registration matters with the objective of simplifying the provisions to help the courts in reaching proper decisions in property disputes.

It is necessary to promote registration at the relevant office of the registration of deeds as of the provisions of section 17(1)(b)²⁸¹ and section 49(a)²⁸² of the Registration Act 1909 and section 54 of the Transfer of Property Act 1882. However, while registration affects property with a value of 100,000 kyats and upwards under section 54 of the Law Amending the Transfer of Property Act 2013,²⁸³ the value stated in section 17 of the Registration Act 1909 is still 100 kyat. Parties are required to make document registration within four months from the execution date of the sale contract according to section 23 of the Registration Act

²⁸¹ The Registration Act, BURMA CODE VOLUME X § 17(1)(b) (1909): “The following document shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which this Act came or comes into force namely: (b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred purposes and upwards to in immoveable property.”

²⁸² Ibid., § 49(a): “No document required by section 17 or by any provision of the Transfer of Property Act or by any law formerly in force for the registration of document in the Union of Myanmar to be registered shall affect any immovable property comprised therein.”

²⁸³ Law Amending the Transfer of Property Act, 10/2013 (2013).

1909. The effective date of registration stated in section 47 of the Registration Act 1909, and its interpretation by courts, is also an issue: “[a] registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made and not from the time of its registration.” These are the most applicable sections for property registration disputes.

With regard to threshold property values, it is required to raise the threshold value under section 17 of the Registration Act 1909 to 100,000 kyats and upwards to be consistent with section 54 of the Law Amending the Transfer of Property Act 2013. With respect to priority dates under section 47 of the Registration Act 1909, when the sale contract is registered at the office of the registration of deeds, the effective date will be the date of the execution date of the sale contract but not the date of document registration. Nonetheless, when the office of the registration of deeds issues more than one-registered documents on same property and disputes arise for that fact, courts have tended to favor the document with the earlier execution date, regardless of the date of registration. From the review of cases in this thesis, it can be seen that even in cases where a bona fide buyer has made document registration immediately after making the sale contract with the seller, the buyer is not necessarily secure in his property right, if the former buyer's contract with the seller for same property bears an earlier date. It means that the later buyer cannot get perfect title right on property even if he makes document registration first. Therefore, it will be beneficial to include simple and clear provisions under section 47 of the Registration Act 1909 to give courts quite specific guidance on this point. Furthermore, the author assumes that allowing four months' time to register after completion of the sale contract is a long interval, and a third party may have a chance to make document registration during this period. So, it is also another way to consider shortening from four-month to some reasonable and acceptable time under sections 23, 24, 25 and 26 of the Registration Act 1909 to make sale contract registration.

3.9 IMPLICATIONS AND RECOMMENDATIONS

Real property is the most valuable asset owned by most members of the population²⁸⁴ and since realty becomes target for fraudsters, it is crucial that such transactions be simple and reliable. Otherwise, only the most reckless buyer will engage in a purchase without exhaustive efforts to assure the bona fides of the seller and the absence of third-party claims.²⁸⁵ When ownership of land (or any other asset) lacks transparency, buyers have to decide how much effort to devote to learning whether or not the seller is the rightful owner.²⁸⁶ In the case of land, the buyer may choose not only to inspect the property, the registered deed, but to make other exceptional efforts if he wants to avoid losing his property to unexpected physical or legal impairments. This is true of all jurisdictions, and is not unique to Myanmar. As Professor Anderson writes of the English move to registered title:

“... [T]itles are insecure; this is bad in itself because it sometimes leads to loss; it is also bad because the fear of insecurity causes generally high conveyancing costs in assessing just how secure a particular title is; it is also bad because it has encouraged the development of an expensive, and as it happens, inefficient, insurance device. Registration will remove the underlying insecurity, thus removing the risk of lost, reducing costs generally, and obviating the need for attendant terms.”²⁸⁷

Likewise concerning registration rules, Carol Rose argues that hard-edged rules are the very stuff of property: their great advantage is that they signal to all of us, in a clear and distinct language, precisely what our obligations are and how we may take care of our interests.²⁸⁸ As Professor Rose has written, “muddy” rules

²⁸⁴ See, e.g. Diana Forde, Penningtons Manches LLP, “Safeguarding Your Property Against Fraud,” *Lexology*, June 4, 2013, <http://www.lexology.com/library/detail.aspx?g=bc1edfb3-7ef5-4d8a-81ac-add39a96ffb5> (accessed June 3, 2013).

²⁸⁵ Matthew Baker et al., “Optimal Title Search,” *The Journal of Legal Studies* 31, no. 1 (January 1, 2002): 139.

²⁸⁶ *Ibid.*, 158.

²⁸⁷ J. Stuart Anderson, *Lawyers and the Making of English Land Law: 1832-1940* (New York: Oxford University Press, 1992), 44, <http://www.jstor.org/stable/845680> (accessed February 18, 2013).

²⁸⁸ Carol M. Rose, “Crystals and Mud in Property Law,” *Stanford Law Review* 40, no. 3 (February 1, 1988): 577.

are sometimes necessary, but “crystal” rules are a necessary foundation, since they let the buyer (and everyone else) know where he stands, and people can strike bargains with one other if they want to stand somewhere else.²⁸⁹ In Myanmar, where statutory law is a required foundation for judicial judgments, and the scope of judicial discretion is limited, clear and simple rules are the pillars fairness and justice in the resolution of disputes. In this context, in particular, creating clear and acceptable rules and procedures, which the people can follow and abide by, is important in property transactions. There are two facets of property transactions to consider when contemplating any move toward reform: the provisions of relevant law; and the actual process of property registration, viewed from the standpoint of the parties.

There is much to learn from the history of English law reforms in the property field. Reflecting on a comparison of the modern English system with Myanmar, one can contemplate revisions to sections 17, 23, 24, 25, 26 and 47 to achieve a more certain and smoother real property transaction process. Consistent rules should be provided under section 17 of the Registration Act 1909 and section 54 of the Law Amending the Transfer of Property Act 2013. The time limits for registration under sections 23, 24, 25 and 26 of the Registration Act 1909 can and should be shortened. Furthermore, it is recommended to include more clear and simple elements under section 47 of the Registration Act 1909. Finally, it is also recommended to provide the Condominium Law in the near future to reduce the risk of possession and transfer the flats.

In the area of the property transferring process, there is much to learn from the Japanese property registration system, insofar as the Japanese title registration system is very effective despite the recognition of title transfer without registration. As the author mentions in the above chapters, sale contract registration is necessary in order to obtain a perfected legal right to title in Myanmar. In theory, this should be sufficient. However, we must consider that at the initial phase for property transfer, the parties (together) need to obtain the land map at the Municipal Office, and the name of title owner has to be shown on the land map. While this does mean that only the title owner can make title transfer to other persons, practically speaking this is but the

²⁸⁹ Ibid.

first step in a long process. The parties then need to deal with many other offices and take much time to finish registration. Taking a hint from Japanese practice, there should be a single office for property registration matters. This would save effort and time. The current system in Myanmar is in effect a hybrid system, combining the title registration and deeds recordation systems, since a non-title owner cannot transfer the property without obtaining a land map with his name on it, and the map is a necessary document for recordation of the deed. The separation of the two offices is not only inconvenient; it also raises the risk of forgery and fraudulent misrepresentation. The author's recommendation is to improve convenience and certainty by moving these two offices under the same roof, as is the case for the legal affairs bureau in Japan.

A further point of difficulty in the registration process in Myanmar is the possibility of issuing multiple registration documents against the same property at the office for the registration of deeds. This is an inherent weakness of a system recorded deeds, which, as one commentator stated with respect to American systems of registered deeds, "the current practices for recordation deeds system in all American jurisdictions are wasteful, involve duplication of effort, and are unreasonably expensive for title search".²⁹⁰ This issue could be addressed through adjustments to indexing practices, if the land map and deeds registers were brought together for more closely coordinated administration. Otherwise, overlapping documents cause the later buyer risk, even if he makes a sale contract registration first as per section 47 of the Registration Act 1909, under current judicial interpretation.

With respect to the burden of cost in particular, under current taxation policy, the government sets the assessed value of the land in Yangon with a view to getting full tax value at the time of transfer.²⁹¹ However, this plainly presents a disincentive to registration, since the assessed land valuation only affects those who

²⁹⁰ Bostick, "Land Title Registration: An English Solution to an American Problem," 57,58.

²⁹¹ Sone Nyein Pyae (ညိုမ်းပြည့်စုံ), "Land Price Will Be Fixed to Get Full Tax on Property Transfer" [အိမ်ခြံမြေ အရောင်းအဝယ် အခွန်ကောက်ရန် ကာလတန်ဖိုး သတ်မှတ်ပေးမည်], ဧရာဝတီ, September 19, 2013, <http://burma.irrawaddy.org/archives/48291> (accessed September 19, 2013); "Land's Value May Be Changed Depend on the Situation of Market Price" [အိမ်၊ ခြံ၊ မြေ စံနှုန်းသတ်မှတ်ချက် ပြောင်းလဲနိုင်], *The Voice Weekly Journal* (September 25, 2013), <http://www.shweproperty.com/article/detail/471/standard-rate> (accessed September 25, 2013).

make registration at the office for the registration of deeds but not for informal property transferors.²⁹² Since most property transfers are already made by informal sale contract, avoiding registration procedures, the policy affects only the small number of people who make registration for their transfers.²⁹³ The policy should be carefully reconsidered, in light of its potential impact on conveyancing practices, and consequent effect on disputing levels and the risks of property possession and ownership.

In response to increasing levels of conveyancing dispute, the government official daily, the New Light of Myanmar newspaper, revealed in the November 11, 2011 issue a countermeasure aimed at improving the security of real property transactions, stating that “documents dealing with government granted titles for some years of term have been arranged to be provided by including security system in those documents since the former ones can be created as the false documents.”²⁹⁴ Likewise, in the Voice Weekly journal issued on 21st November 2011, it was written that the present documents issued for terms of years granted by government present a risk of forgery by fraudulent persons.²⁹⁵ Given this, the Municipal offices have arranged to replace the relevant documents for this category of government granted titles.²⁹⁶ The security of documents is crucial, but it is also an important project to set up a place where the buyer can easily research the title that he wants to buy,

²⁹² Si Thu Aung Myint (စည်သူအောင်မြင့်), “Ineffective Land Price Fixing Pattern” [“မြေကွက်စံနှုန်း သတ်မှတ်မှု (သို့မဟုတ်) ဖိနပ်နဲ့ မတော်လို့ ခြေဖနောင့်ကို လှီးခြင်း”], *Yangon Times Newspaper* (September 27, 2013): 6.

²⁹³ “Impossible to Control the Land Issues by Fixing Only the Market Price” [The Myawady Daily: လက်ရှိ အိမ်ခြံမြေ ဈေးနှုန်းကို ထုတ်ပြန်ချက်များဖြင့် ထိန်းချုပ်ရန် မလွယ်ကူ], *News, Myawady Daily*, September 26, 2013, http://themyawadydaily.blogspot.jp/2013/09/blog-post_6146.html (accessed September 25, 2013).

²⁹⁴ Khin Yadanar (ခင်ရတနာ), “Documents of Government Granted Land Will Be Replaced with the Secure Documents” [မြေငှားစာချုပ် (ဂရန်) များ လုံခြုံမှုစနစ်ဖြင့် အသစ်ထုတ်ပေးမည်], *New Light of Myanmar* [မြန်မာ့အလင်းသတင်းစာ], November 11, 2011.

²⁹⁵ Moe Kyaw Lwin (မိုးကျော်လွင်), “Documents of Government Granted Titles Will Be Replaced with the Secure Documents” [မြေငှားစာချုပ်(ဂရန်)ဟောင်းများ လုံခြုံရေးစနစ် မြေဂရန်နှင့်လဲလှယ်ပေးမည်], *The Voice* 7, no. 49 (November 21, 2011): 19.

²⁹⁶ Moe Kyaw Lwin, “Documents of Government Granted Titles Will Be Replaced with the Secure Documents.”

in order to avoid later dispute. This is currently a serious issue, as it is today very touch to make queries whether the property possessor is the real owner or not.

3.10 SUMMARY

To sum up, according to the study of English historical property reform processes, the English legislatures have regularly updated the property laws in order to match advances of society. In the case of Japan, the nation has a very high rate of registration in property transferring matters, and property disputes are relatively uncommon. The Japanese property registration system is both sophisticated and simple, offering the service through one office – legal affairs bureau – enabling a registration system in which real property registration matters can be completed within a week.

In light of the background of historical reforms in England, and the evidence of effective voluntary registration in Japan, the author is led to propose several reforms to the methods of immovable property conveyancing in Myanmar. Set forth below, these recommendations concern particularly: revisions for clarity and simplicity to the Registration Act 1909; serious consideration to the drafting of a law governing condominium ownership; the transfer of official records to a single point of contact for the people engaged in property transactions; and reduction in the exceptional tax levied on the purchase price in property transfers.

CONCLUSION

The chambers of the Pyidaungsu Hluttaw are to be encouraged to view the evidence of ongoing reform in England as a positive example. Indeed, the chambers are charged with actively implementing updated laws to keep pace with advancements in society. This is particularly important, since Myanmar courts are largely constrained by tradition and practice to the four corners of legislation when issuing judgments. Modern real property laws should effectively reflect the view of land as a market commodity, and as the object of individual ownership and private benefit. This will help the Myanmar courts to produce clear and acceptable results in adjudicating disputes.

By obtaining valuable ideas from Japanese realty transaction, the author has determined that Myanmar needs to revisit its real property area to reach a successful and reliable deed recordation system. Professor Bostick says, “[t]he successful system is one that is simple, accessible, inexpensive to administer once in place, and all reliable”.²⁹⁷ Therefore, the author in this dissertation paper recommends the following as the areas for possible reform, to overcome and to reduce risk in conveyancing transactions in Myanmar:

- 1) Raising the threshold value to 100,000 kyats under section 17 of the Registration Act 1909 to be consistent with the sections 54 and 59 of the Law Amending the Transfer of Property Act 2013
- 2) Shortening the time for registration from 4 months to 60 days under sections 23, 24, 25 and 26 of the Registration Act 1909
- 3) Adding explicit language to section 47 of the Registration Act 1909, by including “Though effective date of registration will be the execution date of the sale contract, first registration contract will have priority if it is compared with other registered sale contracts by following the chronological order of registration.”
- 4) Enacting the Condominium Law in the very near future for the conveyancing of flats
- 5) Reducing the 30% income tax on purchase price

²⁹⁷ Bostick, “Land Title Registration: An English Solution to an American Problem,” 62.

- 6) Recreating the income tax system, not only to reduce the 30% income tax but also to entirely reform the current system of tax recovery based on “white money” and “black money”
- 7) Raising the amount of annual property tax
- 8) Transferring records relating to registered transactions to a single local office, thus reducing complexity and risk, and saving unnecessary work
- 9) Creating a more effective deeds recording system at the office of the registration of deeds to avoid overlapping registration documents on same property, through a title owner name index system keyed to land maps and registered deeds, or (more ambitiously) migrating to title registration based on land parcels
- 10) Establishing more secure title possession documents to forestall problems of forgery
- 11) Expediting procedures for title search
- 12) Offering training to the public concerning the risks of informal property transfers and the mechanisms for registration

Eventually, the risk of real property conveyancing may be reduced if Myanmar considers the recommendations above. The task will take time, however. Myanmar is fortunate to have comprehensive, well thought-out well-tried schemes in the Japanese and English real property registration systems, for a more certain path to long-overdue reforms of the conveyancing system. These resources are invaluable to prospective reform of the Myanmar registration system.

APPENDIXES

APPENDIX I

GENERAL POWER OF ATTORNEY

Know All Men By These Present, that,

I (name) (NRC no.) (Address) do hereby

NOMINATE, CONSTITUTE & APPOINT (name) (NRC no.) (Address)
..... to be my true and lawful ATTORNEY and AGENT for purposes hereinafter expressed
that is to say;-

TO TAKE CHANGE OR SUPERVISE, MANAGE and CONDUCT all or any of my lands, estates, farms, houses, buildings, hereditaments, immovable properties or other properties which I or any person or persons in trust for me now am, is or are, or at any time hereafter shall become seized or possessed or to the possession or which now am, is or are, or shall at any time hereafter become entitled for any estate or interest whatsoever, and all or any moneys, stocks, funds, goods, things or other movable properties of whatsoever nature now belonging or which shall at any time hereafter belongs to me; and also all documents of title, deed and papers relating to all and every property immovable or movable and all securities, shares, stocks, debentures and accounts to which I have now or shall at any time hereafter become entitle.

TO ENTER INTO and upon all and singular any farms, lands hereditaments, estates, houses, buildings, or other properties belonging to me or in which I may be interested or concerned in and to view the defects, state reparation thereof, to get the same repaired, to oversee, let manage and improve the same and if necessary to ensure houses, buildings or other properties as occasion;

TO BUY AND SELL goods, merchandise and other commodities of whatsoever nature And TO TAKE CHARGE and POSSESSION of any business or businesses or transaction in which I now am or at any time hereafter shall be concerned or interested as proprietor, partner or otherwise and to take such part and interest in the possession and management thereof as I may be entitled to take: to employ any assistant or assistants, accountant or accountants, clerk or clerks or other employee or employees on such terms as to salary, service and period of service at the attorney may deem fit and proper; and at his pleasure to remove and dispense with service of any assistant, accountant, clerk or other employee or all or any of them;

TO BUY AND ACQUIRE for me any piece or pieces of land, or any other property or properties, immovable, or movable whatsoever nature by private agreement or at public auction for any price or other consideration or by settlement or any account or satisfaction or any judgement, decree, order, claim or debts of whatsoever nature: or from the Government or any Public Authority by Grant, Licence, Lease, Permit or by sale or otherwise;

TO INVEST any sum or sums of money now belonging or which shall at any time hereafter belong to me; and any funds, stocks, shares debentures of in any Government or Public loans of whatsoever nature; to open an account or accounts (current, deposit, savings bank or of other nature) in any Bank or Banks, Post Office or Post Offices and to deposit, therein from time to time any sum or sums of money now belonging, or which shall at any time hereafter belong to me and from any Bank or Banks, Post Office or Post Offices to draw or withdraw any sum or sums of money that may now or at any time hereafter lie to my credit; also if he thinks fit to close any such account or accounts: and for such withdrawals of moneys or closing of accounts to sign, issue or grant cheques drafts and other acknowledgements;

TO LEND and ADVANCE to any person or persons firm or firms, company or companies, corporation or corporations, Government or any Public Authority any sum or sums of money out of the funds now belonging, or which shall at any time hereafter belongs to me on such terms as to repayment period of loan and rate of interest and such security and conditions as the Attorney may approve of;

TO BORROW and RECEIVE from any person or persons, firm or firms, company or companies, corporation or corporations, Bank or Banks; Government or any Public Authority any sum or sums of money and to apply to any Bank or Banks to open a cash or credit or overdraft account or accounts, or such terms as to repayment period of loan and rate of interest and on such security and conditions as the attorney shall think fit and proper and for such purpose to create and mortgage (of any nature whatsoever) pledge; hypothecation or charge of and on all or any of the properties immovable or movable or whatsoever nature, now belonging or which shall at any time hereafter belong to me to make payment settle accounts and discharge the debts and liabilities which now are or shall any time hereafter be due by, or incurred on behalf of me;

TO PARTITION, SELL or EXCHANGE to or with any person or persons, firm or firms, company or companies, corporation or corporations, Government or Public Authority all or any of the immovable properties now belonging or which shall at any time hereafter belong to me at such price or consideration or for other property or properties and at such valuation as the Attorney shall deem fit; Also to sell and deliver or exchange to or with any person or persons, firm or firms, company or companies, corporation or corporations, Government or Public Authority all or any of the goods stocks, things, share certificates, or other movable properties of whatsoever nature now belonging or what shall at anytime hereafter belongs to me at such price or consideration, or for such other property or properties, and as such valuation as the Attorney deems, fit and for such purpose to enter into any agreement of contract, and if he deems fit, to rescind or cancel the same; AND TO negotiate, endorse, transfer assign or otherwise convey any promissory note, hundi, bill of exchange, mortgage, pledge or hypothecation or other security claim, stocks, shares, debentures or debts, now belonging, owing or due or which shall at any time hereafter belonging or due to me, for any such price or other consideration at the attorney shall deem fit and proper;

TO LET, DEMISE, LEASE or GRANT or LICENCE for such period as the attorney may think fit all or any of my immovable properties of whatsoever nature at such rent as the Attorney may think fit, to execute or enter into deeds necessary there for, and to increase or reduce rents from time to time to receive rents and give notices to quit the tenants or occupiers of any immovable property belonging to me, accept surrenders of

lease, to file rent and ejectment suits, or take distress or other proceeding as may be permitted by The Law prevailing therefor, recovery of possession areas of rent, ejectment and necessary proceedings;

TO MARK, DRAW, ENDORSE, NEGOTIATE, DEMAND, RECOVER, AND RECEIVE of and from any person or persons, firm or firms, Bank or Banks, company or companies, corporation or corporations, Government or Public Authority whom it may concern, all and every or any sum or sums of money or goods; effects and thing as and which now are or shall at any time hereafter be due, owing, payable or belonging to me by way of bills of exchange, pay orders, hundies, cheques, acceptances promissory notes, bills of lading, stocks, debentures, shares, stocks, Railway receipts, money order registered and insured articles or other postal articles or any other documents of title or Government securities or Foreign State's securities, dividends share-certificates, papers hire, rent, arrears of rent or for the principle money or interest there on or in respect of any mortgage or bond, balance of account, consignment, contract, agreement, decree, judgement order or execution or upon any other account whatsoever, AND upon payment, transfer or delivery thereof, to sign, execute any given receipts, releases, and other sufficient acquittances and discharges for the same respectively;

TO RFECEIVE compensation and other payments in respect of any loss caused to me or any properties belonging to me AND to REPRESENT AND ACT in all matters pertaining to land compensation, to sign and verify all forms therefor, to appear before the Chief or District Compensation officers to prove my title, interest on my lands, to settle and receive Compensation due to me either in cash or bonds and grant receipts thereof, to apply before the Controller of Foreign Exchange to remit the compensation amount and to do all acts and things which may be legally necessary in that regard;

TO INSTITUTE, FILE, CONDUCT, PROSECUTE, DEFEND and CONTEST any suit, action, appeal, application, application for review or revision from and of any judgement decree or order, all other legal proceedings that may now or at any time hereafter be pending against me; to intervene and apply to be made a part to any legal or other proceedings of whatsoever nature affecting my interest; to execute any decree or order in any manner he chooses, to sign and verify complaints, written statements, petitions, applications and all

others pleadings, to withdraw and receive from any court or office any money that may now or at any time hereafter be lying to my credit; to pay all taxes, rates, and revenues as the all due and become payable by me; to apply for a remission, exemption from payment of any taxes, rates or revenues also to make any application, petition, or memorial for any relief or reliefs whatsoever; to engage and appoint any Advocate or Advocates Pleader or Pleaders;

TO VOTE AT any meeting or meetings, company or companies, assemble or assembly of State or Council or Chamber or otherwise; in which I now or shall at any time hereafter be interested or concerned and to do in all acts things as may be necessary in all such proceedings;

TO APPEAR, ACT and TO TAKE ALL STEPS and PROCEEDINGS for me in all Courts, Civil, Revenue, Criminal and in all Government, Public, Municipal, Revenue Stamp, Post and Telegraphic Office, Port, Customs, Police, Railway, Income Tax Office, Excise Office, Rationing Office, Supply and Service Departments, Directors of Civil and Military Supplies, Commissioner of Income-Tax Office, Registrar (sic) of Firms, Registrar (sic) of Deeds, Boards and other Offices of Registration, Controller and Commissioner and Authorities of Government and Public and before all Ministers, Official Receivers, Official Assignees, Collector, Judges, Magistrates (sic), Controller of Rents, Foreign Exchange Immigration, Emigrants, National and Foreigners Registration and Custodians of enemy properties, Custodians of movable and immovable properties, Boards of Conciliation, Courts of Enquires, Land Office, Land Acquisition Tribunals and other Officers and Authorities of Civil Military Naval and Air Force, Officers of hills tracts, Munsiffs, Tehsildars, Rules and Special Registrars; Settlements Office, Ship Agents Insurance Office of Companies, Bank or Banks, Commercial Tax Office, Business Premises Tax Office, Commercial Office, Income Tax Office, Foreign Section Foreign Office, Joint Registrars, Notary Public, Embassy, Consulate, Stamp, Office Chief Inspector of Factories, Labourers Office, Accountant General's Office, Secretaries, Judicials Department, Home Department and other departments and Offices functioning under any Act, Law or AUTHORITY in all cases and matters in which I now or shall at any time hereafter be interested or concerned;

TO COMPROMISE, ADJUST, SETTLE or COMPOUND any CLAIM, DEMAND, or other MATTER being subject matter or any dispute or litigation that may now or at any time hereafter be pending between me and any other party or parties, on any terms, and in any matter the Attorney deems fit and proper to make allowances and grant time to, or make arrangements with my, present or future tenants, lessees or debtors; to submit and refer any suits, litigation, claim or dispute whatsoever to arbitration and sign submission to arbitration; if need be, revoke such submission, to accept or contest any award to apply to any Court concerned to pass a decree or order in terms of any award or to consent to, or contest any such application;

TO SIGN, ACKNOWLEDGE, EXECUTE, DRAW and GRANT any promissory note, hundi, bill of exchange, cheque, deeds, of sale or exchange, mortgage of hypothecation bond, agreement, contract deed of partnership deed or release, or any other Instrument receipt acknowledgement, discharge or acquittance, power of attorney or writing of whatsoever nature in and touching and of the purposes herein mentioned; to prevent any such deed, bond, instrument; power of attorney or writing executed by the Attorney or by me for registration or authentication at the proper Registration Office and to make and perform all and necessary endorsements and act to effect a proper and legal registration or authentication thereof;

AND GENERALLY concerning the matters, properties and purposes mentioned herein to exercise all the rights and power to which I now or shall at any time hereafter be entitled; and to do execute and perform any and every act, deed, matter or thing which in connection there with ought to be done, executed or performed as fully and effectually, to all intents and purposes as I might or could do were I personally present;

TO APPOINT any substitute or substitutes, to exercise all or any of the powers mentioned herein, and at his pleasure to remove the said substitute or substitutes, and in his or their place or places to appoint another or others;

AND ALL AND WHATSOEVER the attorney or the substitute or substitutes shall do or cause to be done by virtue of these presents or in exercise of these powers, I do hereby for myself, my heirs, executors and administrators to agree to ratify and confirm.

IN WITNESS WHEREOF I have hereto set my hand at (Venue) this
(Day) day of (Month) (Year)

IN THE PRESENT OF:

1. Sign

Name

NRC No.

Address

2. Sign

Name

NRC No.

Address

(Name of the)

အထွေထွေကိုယ်စားလှယ်လွှဲစာပေးအပ်သူ

ပြည်ထောင်စုမြန်မာနိုင်ငံတော်

ရန်ကုန်မြို့တော်စည်ပင်သာယာရေးကော်မတီ

မြေယာစီမံခန့်ခွဲမှုဌာန

မြေငှားဂရန်စာချုပ်

အမည်	မြို့နယ်
နိုင်ငံသား အမျိုးသား	မြေတိုင်းရပ်ကွက်
မှတ်ပုံတင်အမှတ်	လူနေရပ်ကွက်အမှတ်
မြေငှားစာချုပ်အမှတ်	မြေကွက်အမှတ်
အမှုတွဲအမှတ် နေ့စွဲ	မြေကွက်လိပ်စာ

မြေငှားဂရန်စာချုပ်

နေ့စွဲ၊ ၁၉၉၃ ခုနှစ်၊ စက်တင်ဘာလ၊ ၂၇ ရက်။

မြေငှားစာချုပ်အမှတ်၊ အမှုတွဲအမှတ်.....

ပြည်ထောင်စုမြန်မာနိုင်ငံတော်၊ ရန်ကုန်မြို့တော်စည်ပင်သာယာရေးကော်မတီ၊မြေယာစီမံခန့်ခွဲမှုဌာန (နောင်တွင် “အငှားချထားသူ” ဟုရည်ညွှန်းသည်။ “အငှားချထားသူ” ဆိုသည်စကားရပ်တွင်၊ ရန်ကုန်မြို့တော်စည်ပင်သာယာရေးကော်မတီ၊မြေယာစီမံခန့်ခွဲမှုဌာနကို ဆက်ခံသူများ၊ အဆိုပါဌာနက လွှဲအပ်သူများလည်းပါဝင်သည်။) နှင့် မြို့နေ၊ ဦး ၏ သား/သမီးဖြစ်သော ဦး/ဒေါ် နိုင်ငံသား/အမျိုးသား မှတ်ပုံတင်အမှတ် (နောင်တွင် “အငှားစာချုပ်ရသူ” ဟုရည်ညွှန်းသည်။) တို့ ၁၃၅၅ ခုနှစ်၊ တော်သလင်းလဆန်း/လပြည့်ကျော် ၁၂ ရက်နေ့၊ ၁၉၉၃ ခုနှစ်၊ စက်တင်ဘာလ ၂၇ ရက်နေ့တွင်အောက်ပါအတိုင်း မြေငှားစာချုပ် ချုပ်ဆိုကြသည်။

အငှားစာချုပ်ရသူက နောက်တွင် သတ်မှတ်ထားသည့်မြေငှားခကို ပေးဆောင်ရန် သဘောတူသောကြောင့်လည်းကောင်း၊နောက်တွင်ပါရှိသောပဋိညာဉ်ခံချက်များကိုပြုသောကြောင့်လည်းကောင်း၊ အောက်ပါဇယား၌ဖော်ပြထားသော မြေကွက်အားလုံးကို ထိုမြေကွက်နှင့်သက်ဆိုင်သော ပိုင်ဆိုင်ခွင့်များ၊ ဝင်-ထွက်သွားလာနိုင်ခွင့် စသောသက်သာခွင့်များနှင့် အခြားအခွင့်အရေးများနှင့်တကွ အငှားချထားသူက အငှားစာချုပ်ရသူအား ဤစာချုပ်ဖြင့်အငှားချထားသည်။ အဆိုပါမြေကွက်အတွင်း မြေပေါ်မြေအောက်ရှိသတ္တုတွင်းများ၊ဓါတ်သတ္တုပစ္စည်းများ၊ကျောက်မျက်ရတနာများ၊မြေမြှုပ်ဘဏ္ဍာများ၊ကျောက်မီးသွေးရေနံနှင့် ကျောက်မိုင်းစသည်တို့သည်၊ ဤစာချုပ်ဖြင့်အငှားချထားခြင်း၌မပါဝင်ချေ။ ထိုသို့ရှာဖွေတူးဖော်သယ်ဆောင်ရာ၌၊ အဆိုပါမြေကွက်၏ မျက်နှာပြင်ကို နောက်ယုတ်ပျက်စီးစေခဲ့လျှင်၊အငှားစာချုပ်ရသူအား သင့်လျော်သောလျော်ကြေးကို အငှားချထားသူကပေးရမည်။ ထိုလျော်ကြေးနှင့်စပ်လျဉ်း၍ အငြင်းပွားခဲ့သော် လျော်ကြေးကို တည်ဆဲမြေသိမ်းအက်ဥပဒေ သို့တည်းမဟုတ် စည်းမျဉ်းဥပဒေများ၏ ပြဌာန်းချက်နှင့်အညီ ရန်ကုန်မြို့တော်စည်ပင်သာယာရေးကော်မတီ၊မြေယာစီမံခန့်ခွဲမှုဌာန၊ ဌာနမှူးကဆုံးဖြတ်ရမည်။

ထို့ကြောင့်ဤစာချုပ် ချုပ်ဆိုသည် ၂၇-၉-၁၉၉၃ နေ့မှစ၍ နှစ်ပေါင်း ၆၀ ကာလအပိုင်းအခြားအတွက် လက်ရှိထားနိုင်ရန် အငှားစာချုပ်ရသူအား အဆိုပါစာချုပ်ကို အငှားချထားသည်။

နှစ်ပေါင်း ၆၀ မြေငှားစာချုပ် ကာလအပိုင်းအခြားတွင်၊ ၂၀၀၈ ခုနှစ် စက်တင်ဘာလ ၂၆ ရက်နေ့၌ ကုန်ဆုံးသည့် ပထမ (၁၅)နှစ်အတွင်းတွင် သုံးလပတ်မြေငှားရမ်းခငွေကျပ် ...၁၃ကျပ်.../ ...ပြား (ကျပ် တစ်ဆယ့်သုံးကျပ်..တိတိ)ကို ဇန်နဝါရီလ၊ ဧပြီလ၊ ဇူလိုင်လနှင့် အောက်တိုဘာလများ၏ လဆန်း ၁ ရက်နေ့များတွင် ကြိုတင်ပေးဆောင်ရမည်။ အဆိုပါ နှစ်ပေါင်း ၆၀ ကာလအပိုင်းအခြား၏ ဒုတိယ၊ တတိယနှင့် စတုတ္ထ (၁၅) နှစ်စီအတွက် အပိုဒ် (၃)တွင်ပြဌာန်းထားသည့်နည်းလမ်းအတိုင်း အငှားချထားသူအား သတ်မှတ်သည့် မြေငှားခများကို အငှားစာချုပ်ရသူက ပေးဆောင်ရမည်။

၁။ အငှားစာချုပ်ရသူသည် အငှားချထားသူအား အောက်ပါအတိုင်း ပဋိညာဉ်ခံချက်ပြုလုပ်သည်။...

(က) အထက်၌မြေငှားခကိုပေးဆောင်ရန်သတ်မှတ်သည့်နေ့ရက်တွင် သတ်မှတ်သည့် နည်းလမ်းအတိုင်းမြေငှားခနှင့် အဆိုပါ မြေကွက်ပေါ်၌လည်းကောင်း၊ ထိုမြေကွက်ပေါ်တွင် ဆောက်လုပ်ထားသောအဆောက်အအုံပေါ်၌လည်းကောင်း၊ အငှားစာချုပ်ရသူအပေါ်၌လည်းကောင်း၊ အဆိုပါနှစ်ပေါင်း (၆၀)ကာလ အပိုင်းအခြားအတွင်း စည်းကြပ်ဆဲ၊ စည်းကြပ်လတ္တံ့ဖြစ်သော အခွန်အတုပ်အားလုံးကို ပေးဆောင်ရမည်။

(ခ) ဤစာချုပ် ချုပ်ဆိုသည်နေ့မှ (၆)လ အတွင်း စတင်ဆောက်လုပ်၍ အဆိုပါမြေကွက်ပေါ်တွင်ကောင်းမွန်ခိုင်ခံ့သောလူနေအိမ်ကို၊ရန်ကုန်မြို့တော်စည်ပင်သာယာရေးကော်မတီ၊အင်ဂျင်နီယာဌာန(အဆောက်အအုံ)မှသတ်မှတ်ခွင့်ပြုသည့်ပုံစံအတိုင်းစည်ပင်သာယာတရားဥပဒေနှင့် အညီ၊ ပြီးစီးအောင်ဆောက်လုပ်ရန်နှင့် ထိုလူနေအိမ်စသည်တို့ကို အဆိုပါ နှစ်ပေါင်း (၆၀) ကာလ အပိုင်းအခြားအတွင်း ပြုပြင်မွမ်းမံထားရှိရန်။

(ဂ) အဆိုပါ မြေကွက် တည်ရှိသောရပ်ကွက်၌ သက်ဆိုင်ရာဒေသန္တရအာဏာပိုင်များက မိလ္လာပိုက်များနှင့် ရေပိုက်များချထားလျှင် ဒေသန္တရအာဏာပိုင်နှင့်သက်ဆိုင်သည့် တရားဥပဒေနှင့်အညီ အဆိုပါ မြေကွက်ပေါ်၌ဆောက်လုပ်ထားသော အဆောက်အအုံများကို ထို မိလ္လာပိုက် ရေပိုက်များနှင့်ဆက်သွယ်ရန်။

(ဃ) အဆိုပါ မြေကွက်ပေါ်၌ အဆောက်အအုံများတည်ဆောက်ရာတွင် ဒေသန္တရအာဏာပိုင် (သို့မဟုတ်) ရန်ကုန်မြို့တော်စည်ပင်သာယာရေးကော်မတီ၊အင်ဂျင်နီယာဌာန(အဆောက်အအုံ)၏ ကြိုတင်ခွင့်ပြုချက်ရယူရန်။

(င) အငှားချထားသူ၏ စာဖြင့် သဘောတူညီချက်ကို ကြိုတင်မရရှိဘဲ နှစ်ပေါင်း (၆၀) ကာလအပိုင်းအခြားအတွင်း အဆိုပါမြေကွက်ကို လူနေအိမ်ဆောက်လုပ်ရန်အတွက်မှတစ်ပါး အခြားကိစ္စအတွက် အသုံးမပြုရန်နှင့် အဆိုပါမြေကွက်ပေါ်တွင် ဆောက်လုပ်သည့်လူနေအိမ်ကို၊ လူနေအိမ်အဖြစ်မှတစ်ပါး အခြားနည်းအသုံးမပြုရန်။

(စ) အငှားချထားသူ၏ စာဖြင့် သဘောတူညီချက်ကို ကြိုတင်မရရှိဘဲစာချုပ်ပါမြေကိုခွဲခြမ်းခြင်း မပြုရသည့်အပြင် ၎င်းမြေ၏တစ်စိတ်တစ်ဒေသကိုလည်း လွှဲပြောင်းခြင်း၊ တစ်ဆင့်ငှားရမ်းခြင်း၊ လက်လွတ်ခြင်းများ မပြုလုပ်ရ။

(ဆ) ဤစာချုပ်နှင့် စပ်လျဉ်း၍ မည်သည့်ကိစ္စအတွက်မဆို၊ အဆိုပါမြေကွက်သို့ဖြစ်စေ၊ အဆိုပါမြေကွက်ပေါ်တွင်ဆောက်လုပ် ဆောက်လုပ်ထားသော အဆောက်အအုံသို့ဖြစ်စေ၊ နှစ်ပေါင်း (၆၀) ကာလ အပိုင်းအခြားတွင်၊ ပြည်ထောင်စုမြန်မာနိုင်ငံတော် အစိုးရ၊ ရန်ကုန်မြို့တော်စည်ပင်သာယာရေးကော်မတီ၊ မြေယာစီမံခန့်ခွဲမှုဌာန၊ ဌာနမှူး၏အမိန့်အရ ဆောင်ရွက်သူများအား နေ့ပိုင်းသင့်လျော်သည့်အချိန်များတွင် ဝင်ရောက်ခွင့်ပြုရန်။

(ဇ) ဤစာချုပ်အရငှားရမ်းသည့် နှစ်ပေါင်း (၆၀) ကာလ အပိုင်းအခြား ကုန်ဆုံးသောအခါ အဆိုပါမြေကွက်တည်ရှိသည့် အဆောက်အအုံနှင့် ယင်းအဆောက်အအုံတွင် ပါဝင်တည်ဆောက်ထားသော ပစ္စည်းများမပါဝင်စေဘဲ အဆိုပါမြေကွက်ကို အငှားချထားသူအားအေးဆေးစွာပြန်လည်ပေးအပ်ရန်၊ သို့ရာတွင်

အငှားချထားသူက အပိုဒ် (၂) အရ၊အဆိုပါမြေကွက်ကိုပြန်လည်သိမ်းယူပြီး စာချုပ်ကိုရပ်စဲလျှင် အဆိုပါမြေကွက်နှင့် ထိုမြေကွက်ပေါ်တွင် တည်ရှိသည့် အဆောက်အအုံနှင့် ယင်း၏အဆောက်အအုံတွင် ပါဝင်တည်ဆောက်ထားသော ပစ္စည်းများကို အငှားစာချုပ်ရသူက အငှားချထားသူအား အေးဆေးစွာပေးအပ်ရန်။

အပိုပဋိညာဉ်ခံချက်များ

ဖော်ပြပါမြေငှားခနှုန်းသည် ယာယီမျှသာဖြစ်၍ ၁၉၉၃ ခုနှစ်အတွင်းတွင်ဖြစ်စေ၊

ထို့နောက်အချိန်ကာလတွင်ဖြစ်စေ၊ ပြန်လည်ပြင်ဆင်သင့်က ပြင်ဆင်စည်းကြပ်ရန်ဖြစ်သည်။

၂။ အဆိုပါမြေငှားခကို တောင်းဆိုသည်ဖြစ်စေ၊ မတောင်းဆိုသည်ဖြစ်စေ၊ ကြိုတင်ပေးဆောင်ရမည့် သုံးလပတ်အတွက် မြေငှားခကို (သို့တည်းမဟုတ်) ၎င်း၏အစိတ်အပိုင်းကို ထိုသုံးလပတ်၏ဒုတိယလဦးပိုင်းတွင် မပေးဆောင်သဖြင့် မြေငှားခ မပြေကျန်ရှိနေလျှင်၊ သို့တည်းမဟုတ် အငှားစာချုပ်ရသူသည် အထက်တွင်ဖော်ပြပါရှိသည့်

ပဋိညာဉ်ခံချက်များအတိုင်းလိုက်နာဆောင်ရွက်ရန်ပျက်ကွက်လျှင်၊ ရန်ကုန်မြို့တော်စည်ပင်သာယာရေးကော်မတီ၊ မြေယာစီမံခန့်ခွဲမှုဌာန၊ ဌာနမှူးသည် အဆိုပါမြေငှားခကိုရယူရန် ချက်ချင်းအမှုဖွင့်နိုင်သည်။ ထို့ပြင် သို့တည်းမဟုတ် ယခင်က ပဋိညာဉ်ခံချက်ပျက်ကွက်ခြင်းအတွက် အရေးယူပိုင်ခွင့်ကိုဖြစ်စေ၊ အဆိုပါမြေကွက်ပြန်လည်သိမ်းယူနိုင်ခွင့်ကိုဖြစ်စေ၊ စွန့်လွှတ်ခဲ့စေကာမူ ဤစာချုပ်ကိုပယ်ဖျက်၍ အဆိုပါမြေကွက်နှင့် ထိုမြေကွက်ပေါ်တွင်တည်ရှိသော အဆောက်အအုံများ၊ အဆောက်အအုံများနှင့် အမြဲတွယ်ကပ်ထားသော ပစ္စည်းများကိုသိမ်းယူနိုင်သည်။

၃။ အငှားချထားသူသည် အငှားစာချုပ်ရသူအား အောက်ပါအတိုင်း ပဋိညာဉ်ခံချက်ပြုလုပ်သည်....

(က) အပိုဒ် (၂)အရ ဤစာချုပ်ကို ပယ်ဖျက်ကြောင်းနို့တစ်စာကို အငှားချထားသူက မိမိသင့်လျော်သည်ဟု ထင်မြင်သည်နည်းလမ်းအတိုင်း အငှားဂရန်ရသူ၏ နောက်ဆုံးသိရှိရသော လိပ်စာတပ်ပြီး မှတ်ပုံတင်ပြုလုပ်၍ စာပို့တိုက်မှ ပေးပို့နိုင်သည်။ သို့တည်းမဟုတ် ဆိုခဲ့သည့်အတိုင်း လိပ်စာတပ်၍ နို့တစ်စာကိုအဆိုပါမြေကွက်အဆောက်အအုံစသည် ပစ္စည်းများ၏ထင်ရှား၍ လူအများမြင်သာသောနေရာတွင်ကပ်ထားနိုင်သည်။အဆိုပါနို့တစ်စာကိုပြဆိုသည်နည်းလမ်းအတိုင်းပေးပို့ခြင်း၊ ကပ်ထားခြင်းပြုလုပ်ပြီးနောက် ရက်ပေါင်း (၆၀) အတွင်း အငှားစာချုပ်ရသူက အဆိုပါဌာနမှူးအား မပြေကျန်ရှိနေသေးသော မြေငှားခကို ဤစာချုပ်ပယ်ဖျက်ခြင်း သို့တည်းမဟုတ် အဆိုပါမြေကွက်ပြန်လည်သိမ်းယူခြင်း၊ သို့တည်းမဟုတ်အဆိုပါမြေကွက်ကိုပြန်လည်အငှားချထားခြင်းနှင့် စပ်လျဉ်း၍ အငှားချထားသူကကုန်ကျသောစရိတ်အားလုံးနှင့်တစ်ကွ၊ အဆိုပါဌာနမှူးသို့ ပေးဆောင်လျှင်သော်လည်းကောင်း၊ အခြားပဋိညာဉ်ခံချက်တစ်ခုခုနှင့်စပ်လျဉ်း၍ပျက်ကွက်သည့်အတွက်နစ်နာမှုကိုပ ပျောက်စေရန်အဆိုပါဌာနမှူးကြေကပ်လောက်အောင်ဆောင်ရွက်လျှင်သော်လည်းကောင်း၊ အငှားချထားသူက ဤစာချုပ်ပါ ပဋိညာဉ်ခံချက်များအတိုင်း နှစ်ပေါင်း (၆၀) ကာလ အပိုင်းအခြား၏ ကျန်ရှိသေးသောကာလအဖို့အဆိုပါမြေကွက်နှင့်ပြန်လည်သိမ်းယူသည့်အချိန်တွင်၊ ထိုမြေကွက်ပေါ်၌တည်ရှိနေသော အဆောက်အအုံ၊ ထိုအဆောက်အအုံနှင့် အမြဲတွယ်ကပ်ထားသော ပစ္စည်းများကို လက်ရှိထားနိုင်စေခြင်းငှာ အငှားစာချုပ်ရသူအား ပြန်လည်ပေးအပ်ရန်၊ သို့ရာတွင် မီးကြောင့်သော်လည်းကောင်း၊ အခြားအကြောင်းတစ်ခုခုကြောင့်သော်လည်းကောင်း၊ ပျက်စီးရသည့်အဆောက်အအုံ၊ သို့တည်းမဟုတ်၊ ထိုအဆောက်အအုံနှင့်အမြဲတွယ်ကပ်ထားသောပစ္စည်းများကိုပြန်လည်ပေးအပ်ရန်အငှားချထားသူ၌ တာဝန်မရှိသည့်အပြင်၊ ယင်းသို့ပြန်လည်သိမ်းယူသည့်အခါပြည်ထောင်စုမြန်မာနိုင်ငံတော်အစိုးရ၊ ရန်ကုန်မြို့တော်စည်ပင်သာယာရေးကော်မတီ၊ မြေစီမံခန့်ခွဲမှုဌာန၏ အမှုထမ်းများ၊ သို့တည်းမဟုတ်ကိုယ်စားလှယ်များ၏ ဖျက်လိုဖျက်စီးပြုလုပ်မှုကြောင့် ဆုံးရှုံးပျက်စီးခြင်းအတွက်မှတစ်ပါး အဆိုပါမြေကွက်ပေါ်တွင်ဖြစ်စေ၊ အထဲတွင်ဖြစ်စေ၊ တည်ရှိနေသော အဆောက်အအုံနှင့်

အခြားပစ္စည်းများ၏တန်ဖိုးယုတ်လျော့ခြင်း၊ ပြုပြင်မှုကင်းမဲ့ခြင်း၊ သို့တည်းမဟုတ်ပျက်စီးယိုယွင်းခြင်းအတွက်
ပြည်ထောင်စုမြန်မာနိုင်ငံတော်အစိုးရ၊ ရန်ကုန်မြို့တော်စည်ပင်သာယာရေးကော်မတီ၊
မြေစီမံခန့်ခွဲမှုဌာန၌တာဝန်မရှိစေရန်။

(ခ) အပိုဒ် (၂)အရ ဤစာချုပ်ကို ပယ်ဖျက်ပြီးမဟုတ်လျှင်သော်လည်းကောင်း၊ အငှားစာချုပ်ရသူက
နှစ်ပေါင်း(၆၀)ကာလအပိုင်းအခြားကုန်ဆုံးသည်အထိ၊ အဆိုပါမြေငှားခကိုပြေလည်အောင်ပေးဆောင်၍
ဤစာချုပ်ပါမိမိပြုလုပ်သည့် ပဋိညာဉ်ခံချက်များအတိုင်း လိုက်နာဆောင်ရွက်လျှင်လည်းကောင်း၊
အငှားစာချုပ်ရသူသည်၊ အဆိုပါမြေကွက်ပေါ်တွင်တည်ဆောက်တွယ်ကပ်ထားသော အဆောက်အအုံများကို၊ အဆောက်အအုံများနှင့်အမြဲတွယ်ကပ်ထားသောပစ္စည်းများကို၊ အဆိုပါကာလအပိုင်းအခြားမကုန်မှီခြောက်လအတွင်းဖျက်သိမ်းသယ်ယူခန့်ခွဲနိုင်သည်။ သို့ရာတွင် ထိုသို့ သယ်ယူခြင်းကြောင့် အဆိုပါမြေကွက် ပျက်စီးယိုယွင်းခဲ့လျှင် ထိုမြေကွက်ကို မူလအခြေအနေအတိုင်း ရှိအောင်ပြုပြင်ပေးရန်။

(ဂ) (၂၀၀၈)ခုနှစ် စက်တင်ဘာလ ၂၆ ရက်နေ့မှစ၍၊ ပထမတစ်ဆယ့်ငါးနှစ်ကုန်ဆုံးသောအခါ
ဒုတိယတစ်ဆယ့်ငါးနှစ်အတွက် ရန်ကုန်စည်ပင်သာယာရေးမြေ နည်းဥပဒေ ၂၄
အရစည်းကြပ်သောသုံးလပတ်မြေငှားခကိုလည်းကောင်း၊ ဒုတိယတစ်ဆယ့်ငါးနှစ်ကုန်ဆုံးသောအခါ
တတိယတစ်ဆယ့်ငါးနှစ်အတွက်အဆိုပါနည်းဥပဒေ ၂၄၊ အရစည်းကြပ်သောသုံးလပတ်မြေငှားခကိုလည်းကောင်း၊
တတိယတစ်ဆယ့်ငါးနှစ်ကုန်ဆုံးသောအခါ စတုတ္ထတစ်ဆယ့်ငါးနှစ်အတွက် အဆိုပါ
နည်းဥပဒေ ၂၄၊ အရစည်းကြပ်သောသုံးလပတ်မြေငှားခကိုလည်းကောင်း၊ အငှားစာချုပ်ရသူက၊ အငှားချထားသူအားပေးဆောင်ရန်၊ အကယ်၍ အထက်ပါနည်းဥပဒေအတိုင်းမြေငှားခကိုပြန်လည်စည်းကြပ်ခြင်းမပြုလျှင်
အငှားစာချုပ်ရသူသည် ဤအပိုဒ်ခွဲတွင်ပြဌာန်းထားသည့် နည်းဥပဒေအတိုင်း မြေငှားခကို
ပြောင်းလဲခြင်းမပြုမီ၊ သတ်မှတ်ထားသည့်စည်းကြပ်ဆဲသုံးလပတ်မြေငှားခကိုဆက်လက်ပေးဆောင်ရန်။

(ဃ) ဤစာချုပ်ပါအခြားပြဌာန်းချက်များတွင် ဆန့်ကျင်လျက် မည်သို့ပင်ပါရှိစေကာမူ ဤစာချုပ်ချုပ်ဆိုသည့်နေ့မှ ပထမနှစ်ပေါင်း သုံးဆယ်အတွင်း သတ်မှတ်ထားသော သို့တည်းမဟုတ် ပြန်လည်စည်းကြပ်သောမြေငှားခကို ပြေလည်အောင်ပေးဆောင်ခဲ့သောကြောင့်လည်းကောင်း၊

ပြုလုပ်ထားသောပဋိညာဉ်ခံချက်များကိုမပျက်မကွက်လိုက်နာဆောင်ရွက်ခဲ့သောကြောင့်လည်းကောင်း၊ သတ်မှတ်ထားသော သို့တည်းမဟုတ် ပြန်လည်စည်းကြပ်သော သုံးလပတ်မြေငှားခဖြင့်၊ နောက်ထပ်နှစ်ပေါင်းသုံးဆယ်အတွက်၊ ဆက်လက်၍ အဆိုပါမြေကွက်ကို ငှားရမ်းမြေငှားစာချုပ်အသစ်ချုပ်ဆိုရန် သဘောတူကြောင်း၊ အဆိုပါပထမနှစ်ပေါင်းသုံးဆယ်မပြည့်မှီ အနည်းဆုံးခြောက်လကြိုတင်၍ အငှားရသူက အငှားချထားသူအား စာဖြင့်အကြောင်းကြားရမည်။ အကြောင်းကြားစာနှင့်အတူ ပထမမြေငှားစာချုပ်ကိုပေးအပ်လျှင် ထိုအကြောင်းကြားစာရရှိသည့်နေ့မှ ခြောက်လအတွင်း နောက်နှစ်ပေါင်းသုံးဆယ်အတွက် ပထမမြေငှားစာချုပ်ပါ ပဋိညာဉ်ခံချက်များနှင့် ဖြစ်နိုင်သမျှတူညီသည့် ပဋိညာဉ်ခံချက်များပါရှိသည့် မြေငှားစာချုပ်အသစ်ကို အငှားစာချုပ်ရသူ၏စရိတ်ဖြင့်၊ အငှားချထားသူကထုတ်ပေးရန်၊ အကယ်၍မြေငှားခကိုသတ်မှတ်ခြင်းမရှိသေးလျှင် ပထမမြေငှားစာချုပ်အရ နောက်ဆုံးပေးဆောင်ခဲ့ရသော သုံးလပတ်မြေငှားခကို အငှားစာချုပ်ရသူကပေးဆောင်ရန်။

ဤစာချုပ်ပါစကားရပ်များကိုသိရှိနားလည်ကြပြီးဖြစ်သဖြင့်၊ ပြည်ထောင်စုမြန်မာနိုင်ငံတော်အစိုးရ၊ ရန်ကုန်မြို့တော်စည်ပင်သာယာရေးကော်မတီ၊ မြေယာစီမံခန့်ခွဲမှုဌာန၊ ဌာနမှူးနှင့် ဒုတိယဌာနမှူးတို့ရှေ့တွင် ဤကော်မတီတံဆိပ်ကိုခပ်နှိပ်၍ အဆိုပါဌာနမှူးနှင့် အဆိုပါ သည် ဤစာချုပ်ကို အထက်၌ဖော်ပြခဲ့သည့်နေ့ရက်တွင်လက်မှတ်ရေးထိုးကြပါသည်။

ရန်ကုန်မြို့တော် စည်ပင်သာယာရေးကော်မတီ

မြေယာစီမံခန့်ခွဲမှုဌာန

တံဆိပ်ကိုမြေစီမံခန့်ခွဲမှုဌာန၊ ဌာနမှူးနှင့် ဒုတိယဌာနမှူးတို့ရှေ့မှောက်၌ခပ်နှိပ်၍ အဆိုပါဌာနမှူးနှင့်
ဒုတိယဌာနမှူးတို့လက်မှတ်ရေးထိုးသည်။

ဌာနမှူး

ဒုတိယဌာနမှူး

အသိသက်သေ

ဌာနခွဲမှူး

အငှားစာချုပ်ရသူ ကလက်မှတ်ရေးထိုးသည်။

အသိသက်သေ

၁။

၂။

ခွင့်ပြုပြီးမြေပုံဖြစ်သောလူနေရပ်ကွက်အမှတ် ၇၊ မြေတိုင်းရပ်ကွက်အမှတ် ၇၊ ရန်ကုန်မြို့ သာကေတမြို့နယ်အတွင်းရှိ
..... တန်းစား၊ မြေကွက်အမှတ် ၁၂၁/က ဖြစ်သည့် ပူးတွဲပါမြေပုံ၌မူရင်းနိမ့်မြေပြထားသောအလျား ၂၀ ပေ၊ အနံ ၆၀

ပေ ခန့်ရှိသောအလားအလာ

အရှေ့လားသော်လမ်း

အနောက်လားသော် နောက်ဖေးလမ်းကြား

တောင်လားသော် မြေကွက် ၁၂၂-က

မြောက်လားသော် မြေကွက် ၁၂၁-က

အတွင်းရှိ မြေအားလုံးဧရိယာ ၀.၀၂၇ ဧက၊ (စတုရန်းပေ ၁၂၀၀)

APPENDIX III

EXAMPLE OF CONVEYANCING FORM IN ENGLAND

The Conveyance

Precedent of a Conveyance

THIS CONVEYANCE is made the 1st day of June, 1984,

BETWEEN Victor Vendor of No.1 Smith Street Dorking in the County of Surrey Clerk (hereinafter called “the vendor”) of the one part and Percy Purchaser of No.2 Brown Street Lewes in the County of Sussex Auctioneer (hereinafter called “the purchaser”) of the other part

WHEREAS –

- (1) The vendor is the estate owner in respect of the fee simple of the property hereby assured for his own use and benefit absolutely free from incumbrances
- (2) The vendor has agreed with the purchaser to sell to him the said property free from incumbrances for the price of £ 50,000

NOW THIS CONVEYANCE WITNESSTH that in consideration of the sum of £ 50,000 now paid by the purchaser to the vendor (the receipt whereof the vendor hereby acknowledges) the vendor As Beneficial Owner hereby conveys to the purchaser.

ALL THAT messuage or dwelling house with the yard gardens office and outbuildings thereto belonging known as No. 703 Robinson Street Ashford in the County of Kent which premises are more particularly delineated and coloured pink on the plan annexed to these presents

TO HOLD the same unto the purchaser in fee simple

IN WITNESS WHEREOF the parties to these presents have hereunto set their hands and seals the day and year first above written

Signed sealed and delivered by the vendor in the presence of Charles Brown clerk to Benham and Gambling solicitors VICTOR VENDOR (Seal)

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