

THE APPLICATION OF ENGLISH LAW IN WEST MALAYSIA
- SECTION 3 AND 5 OF THE CIVIL LAW ACT 1956 (REVISED 1972)

by

ZAHARAH BT. HUSSAIN NASER

Submitted in Partial Fulfilment
of the Requirements for the
Diploma in Law at The
Mara Institute of Technology
SHAH ALAM.

May 1987

"Truly speaking, there is only one Lord and that is "god" himself, who is omnipresent and who is the Fountain of Justice. When you are addressing a Judge as Your Lordship, you are really addressing god who is seated within his heart and whose agent the Judge is".

Tun Dr. Mohd. Suffian
(Former Lord President)

The writer Cik Zaharah Hussain Naser would like to express her deepest appreciation and gratitude to the following persons:

1. Encik Khalid Yusoff (Course Tutor of ADIL) for his patience in tolerating her in the beginning when she couldn't decide what topic to take and which supervisor to work with.

2. Puan Sue Valquis Mohd. Mashhor for supervising this paper. Her advice, encouragement and patience without which the ideas and contents of this paper would not have been possible, is very much appreciated.

3. (i) Encik Mohd. Bazain Hj. Idris - DPP Penang.
(ii) Encik Omar Salleh - Legal Assistant, Legal Aid Bureau Penang.
(iii) Encik Mohd. Tawfeek Hassan Badjened.
(iv) Cik Aida Mohd Yusof.
(v) Cik Catherine Ridu
(vi) Cik Dayangku Intan Mohd. Rosli
- for their guidance and moral support.

And lastly to Puan Faridah bt. Abu Bakar who had indeed been of great service in the typing and completion of this paper.

CHAPTER I

INTRODUCTION

An interesting question which has given rise to a certain amount of discussion in the extent to which Malaysian Courts can adopt English law. Sections 3 and 5 of the Civil Law Act (Revised 1972) allow the courts to apply English law in certain circumstances but the exact scope of the provisions is far from clear.

The main objectives of this project paper is to study how far English law is applicable in West Malaysia as stated under Sections 3 and 5 of the Civil Law Act, 1956 (Revised 1972). Hopefully this project paper will make the readers understand that the English law is not totally applicable in the Malaysian Courts. There are certain limitations to the reception of English law which will be explored on this paper.

According to the schematic outline of the study, Chapter 2 will discuss the English occupation and the introduction of English law in West Malaysia before 1956. This chapter mentions the history of the Straits Settlements and the Malays States before 1956 and how the British had introduced the English laws in these territories. A discussion of section 3 and 5 of the Civil Law Act, 1956 (Revised 1972) will be in Chapter 3. It includes the argument of Professor G.W. Bartholomew and Joseph Chia.

In Chapter 4, the application of section 3 in West Malaysia will be further indulged. Here, certain provisions of several Acts which apply the English law will be look into along with relevant cases. The application of section 5 (which is on the Mercantile Law) will be considered in Chapter 5.

Lastly, Chapter 6 will be the conclusion on the effect of post - 1956 namely, whether the decisions of the courts in England after 1956 is accepted in West Malaysia. It will discuss the possible method of filling the lacunae in the Malaysian law other than the English law.