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CHAPTER 01

MALAYSIAN LEGAL SYSTEM: AN INTRODUCTION[1]

1.1 LAW AND LEGAL SYSTEM

Law refers to the body of rules and principles governing the affairs of a community and enforced through a set of establishment put in place which includes the police, the courts and prison systems. Law is established primarily to govern a society and to control the behaviour of its members that is, to maintain the social order and protect persons and property from harm. Article 160(2) of the Federal Constitution defines 'law' as the written law, the common law in so far as it is in operation in the Federation or any part thereof, and any custom or usage having the force of law in the Federation or any part thereof. 'Written law' is defined in s. 3 of the Interpretation Acts 1948 and 1967 (Act 388) (Consolidated and Revised 1989) as:

(1) the Federal Constitution and the Constitutions of the States and subsidiary legislation made thereunder;

(2) Acts of Parliament and subsidiary legislation made thereunder;

(3) Ordinances and Enactments (including any Federal or State law styling itself an Ordinance or Enactment) and subsidiary legislation made thereunder; and

(4) any other legislative enactments or legislative instruments (including Acts of Parliament of the United Kingdom of Great Britain and Northern Ireland and Orders in Council and other subsidiary legislation made thereunder) which are in force in Malaysia or any part.

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1 This Chapter is contributed by Ashgar Ali Ali Mohamed.

Meanwhile, the 'common law', as defined in Osborne's Law Dictionary, is 'the common sense of the community, crystallised and formulated by our forefathers.'[2] It refers to the law developed by judges through decisions of courts or also known as the judge-made law. The common law, which developed in England after the Norman Conquest, was based on the decisions of judges in the royal courts. It evolved into a system of rules based on 'precedent' – a rule that guides subsequent judges in making decision in a similar cases. Pursuant to s. 3 of the Civil Law Act 1956 (Revised 1972) (Act 67), the common law applied in Malaysia is the common law of England.

Finally, 'custom' means a rule of conduct, obligatory on those within its scope, established by long usage. In *Sahrip v. Mitchell & Anor*,[3] Sir Benson Maxwell stated: "In the case of customs, long usage establishes custom, and it is the custom, becomes law, which gives title to a class of persons in a locality and gives it to them at once." A valid custom has the force of law. Custom however is only given effect when it is continuous or preponderant.[4] For a custom to be recognised as a source of law it must be of immemorial antiquity, certain and reasonable, obligatory, not repugnant to state law, though it may derogate from the common law.[5] In *Halsbury's Laws of England*,[6] it was stated that a custom would be enforced if it is of immemorial antiquity which means "as a general rule proof of the existence of the custom as far back as living witnesses can remember is treated, in the absence of any sufficient rebutting evidence, as proving the existence of the custom from time immemorial."

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2 Osborne's Law Dictionary, 7th edn (Sweet & Maxwell, London, 1983), p. 180.

3 (1877) Leic Reports 466, at 468.

4 *Ibid.*

5 See Osborn's Concise Law Dictionary, 7th edn (Sweet & Maxwell, London, 1983), p. 107.

6 *Halsbury's Laws of England* (4th edn) para 422. See also *Nor Anak Nyawai & Ors v. Borneo Pulp Plantations Sdn Bhd & Ors* [2001] 2 CLJ 769, at p. 787.

There are many categories of law that deal with distinct areas of human activities which include:

(1) Contract law: sets rules on a legally enforceable agreement between two or more parties with mutual obligations;

(2) Criminal law: prevents people from violating laws, and punishes those who do violate the law;

(3) Torts law: concerns with civil wrongs which provides, *inter alia*, that one should not harm or threaten the interests of others, and if it does occur, to compensate the injured party for the harm;

(4) Trust law: concerns with how trust assets are managed and distributed, among others;

(5) Property law: states the rights and obligations that a person has when he buys, sells, or rents homes and land;

(6) Constitutional law: deals with the important rights of the government, and its relationship with the people;

(7) Administrative law: used by ordinary citizens who want to challenge decisions made by the Governments;

(8) International law: sets out the rules on how countries can act in areas such as trade, environment, or military action; and

(9) Intellectual property law: involves the right of individuals over things they create, such as art, music, and literature.

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A legal system on the other hand, refers to the framework of rules and institutions within a country that regulates the relationship between the Government and its subjects and between the subjects themselves. The application of legal system varies from country to country and is largely shaped by the unique history of a particular country. Generally, the most widespread legal systems in the world are the Civil Law, the Common Law and the Religious Law. The Civil Law System which has its origin in the Roman law is followed in most parts of Europe, Central and South America, certain parts of Asia and Africa. Under

this system, statutes passed or enacted by legislature form the primary source of law. Generally, a solution to a particular case is based on the comprehensive system of rules which are applied and interpreted by the judges. The Common Law System, on the other hand, emphasised on judicial precedent or *stare decisis* which is derived from the decisions of the courts. The legal precedent is set by the superior courts through interpretation of statutes and previous rulings.

In relation to the Religious Law, which includes the Syariah in Islam, *Halakhah* in Judaism, and Canon law among some Christians, the principles of these laws are derived from the divine wills. For example, the Syariah or Islamic law is the totality of guidance that Allah (s.w.t.) has revealed to the Prophet Muhammad (s.a.w.) as found in the Quran (containing the words of Allah (s.w.t.)) and the *Sunnah* (the sayings and practices of the Prophet Muhammad (s.a.w.), the final messenger of Allah) relating to all aspects of Muslim life. The sources of Syariah are the Quran and *Sunnah*, which are the primary sources of Islamic law, while the secondary sources include consensus of opinion (*Ijma*) and judicial reasoning (*Qiyas*). In the *Sunni* school, in addition to the above, there are certain supplementary sources of Islamic law such as *Istihsan* (derivation), *Istislah* (public interest), as well as customs and usage.

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As stated earlier, the application of a particular type of legal system differs from one country to another. Some countries practise only a particular type of legal system while others follow a mixed or 'dual' legal system, that is, a combination of two or more legal systems. For example, Malaysia practises a mixed legal system namely, the common law system and the Islamic legal system. The Islamic legal rules particularly on matters such as marriage, divorce, family relationships and property are applicable to Muslims and are enforced in the Syariah courts, while the secular law with state courts covers the wider fields of public and commercial law. The dual system of law is provided in art. 121(1A) of the Federal Constitution.

In fact, the application of the common law system in Malaysia can be traced back to the British colonial rule which introduced a constitutional government and the common law. Meanwhile, the application of the

Islamic legal system can be traced back to the Malacca Sultanate which achieved glory in the 15th century. The system was largely influenced by Hindu, Buddhist, and Islamic philosophy. In fact, before the British set its foot in the Malay Peninsula in the late 18th century, a legal order was already in place in the Malay States. Unfortunately, however, with the British administration of the states, the English legal system managed to influence the local legal system to the extent that it became the most influential legal system in these states.

1.2 MALAYSIAN LEGAL HISTORY

In order to understand how the Malaysian legal system has evolved and why it changed, it is necessary to discuss the Malaysian legal history. In fact, knowledge of the legal history provides the foundation from which one can begin to understand and apply the principles of constitutional, administrative, and judicial law, among others. As noted earlier, the legal system of Malaysia is based mainly on the English common law tradition which was a direct result of the British occupation of Malay States and the Borneo States in early 19th century right up to the early 1960s. The early laws of the Malay States are recorded from the time of the Malacca Sultanate in the 15th century.

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Before the era of European colonial powers in the Malay peninsula, Islamic law was implemented gradually. The Laws of Malacca (*Hukum Kanun Melaka*) which was compiled during the reign of Muzaffar Shah (1446-1459), covers varying degrees and areas ranging from criminal offences, commercial transactions, family matters, evidence and procedure and the conditions of a ruler. For example, *zina* (s. 40:2), *qadhf* (s. 12:3), theft (ss. 7:2 and 11:1), robbery (s. 43), apostasy (s. 36:1), drinking intoxicants (s. 42) and *baghy* (rebellion) (ss. 5 and 42). *Qisas* and *diya* are legislated in s. 5:1, 3; s. 8:2, 3; s. 18:4 and s. 39, causing injury in s. 8:2 and its various types in ss. 16, 17, and 21. Punishment for the abovementioned crimes conform with those of classical Islamic law. Crimes were also punishable with *ta'zir*, i.e., when the crime lacks the conditions for *hadd* penalty (s. 11:1); kissing between a man and a woman (s. 43:5); gambling (s. 42) and giving false testimony (s. 36).

The above laws were also enforced in the states of Pahang, Johor and Kedah. 'In Terengganu there has been found a Stone of Inscription dating to the 12th century which among other things sets out the punishment for Zina, one hundred stripes for the unmarried and lapidation for the married offenders. During the reign of Sultan Zainal Abidin III (1881–1918), Terengganu were administering Islamic Law and the punishments of *hudud*, *qisas*, *diyat* and *ta'zir* were provided for'.[7]

The foreign invasion into the Malay peninsula began in Malacca. Before the arrival of foreign powers, Malacca was already an influential regional power and a thriving trade centre with a busy port city visited by numerous Asian and European traders. The people there were engaged in some form of trade and commercial activities.[8] From 1 July 1511 until 1640, Malacca came under Portuguese control – the trade in the Far East was one of the factors of their invasion into Malacca. From 1641 until 1824, Malacca was occupied by the Dutch and their main reason for the capture was to ensure that their trade rivals, the Portuguese and the English, would not compete with them in Malayan waters.[9] During the Portuguese and Dutch administration of Malacca, Islamic law continued to be the governing law, as these foreign powers never intended to introduce their laws into Malacca.

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In 1795, the Dutch surrendered Malacca to the British without resistance, mainly to avoid the state from falling into the hands of France when the latter captured the Netherlands during the French Revolution. Britain handed back Malacca to the Dutch by virtue of the Treaty of Vienna in 1818. In 1824, the Dutch gave permanent occupation of Malacca

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7 Per Ahmad Mohamad Ibrahim in '*Suitability of the Islamic Punishments in Malaysia*' (1993) 3 IIUM Law Journal 1, 14.

8 See Ismail Noor and Muhammad Azaham, *The Malays par Excellence, warts and all: An Introduction* (Pelanduk publications, Subang Jaya, 2000), p. 7.

9 See MC Sheppard, *Historic Malaya: An Outline History* (Eastern Universities Press Ltd, Singapore, 1959), p. 14.

to Britain in exchange for Bencoolen on the West Coast of Sumatra. Although the Dutch and Portuguese were the earlier colonial powers, the British, who had ruled Malaya for more than 150 years with just one short interruption during World War II, left a much greater impact upon the law of the country.

The legal history of Malay peninsula begins with the acquisition of Penang by Captain Francis Light on behalf of the East India Company in August 1786. In 1824, the British expanded their colonial rule into Singapore and Malacca where the two states were placed under their control and in 1826 the two states together with Penang were grouped together and referred to as the Straits Settlements. In the Straits Settlements, English law became the general law of the land by virtue of the Charters of Justice 1807 and 1826. The Charters set up a judicial system and made English common law applicable to the native inhabitants and other residents in so far as their various religions and customs would permit.

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Subsequently, Perak and Selangor were placed under British protection in 1874, Negeri Sembilan in 1875, and finally Pahang in 1888. In July 1895, the above states were formed into a federation known as the Federated Malay States (FMS) with the capital in Kuala Lumpur. British Residents were appointed in these states, who wielded considerable political and administrative power. The Sultan had to consult the Resident on all state matters, except those pertaining to Islamic administration and customs. Islamic law was isolated and eventually its application was confined only to matrimonial law and inheritance.

Further, by virtue of the Anglo-Siamese Treaty 1909, Siam transferred to the British all rights of suzerainty, protection, administration and control whatsoever which it possessed over Kedah, Perlis, Kelantan and Terengganu. Johor came under British protection in 1914. The above states were grouped together and referred to as the Unfederated Malay States (UFMS). British Advisors were appointed, who only served in a consultative capacity to the Malay Sultans.

English common law and the rules of equity were introduced into the Federated Malay States by virtue of the Civil Law Enactment 1937 (FMS Enactment No. 3 of 1937). The law to be applied is declared in

s. 2 of the Civil Law Enactment, 1937 which reads: 'Save in so far as other provision has been or may hereafter be made by any written law in force in the Federated Malay States the common law of England, and the rule of equity, as administered in England at the commencement of this Enactment, other than any modifications of such law or any such rule enacted by Statute; shall be in force in the Federated Malay States; provided always that the said common law and rule of equity shall be in force in the Federated Malay States so far only as the circumstances of the Federated Malay States and its inhabitants permit and subject to such qualifications as local circumstances render necessary.'

The Enactment was extended in its application to the Unfederated Malay States by virtue of the Civil Law (Extension) Ordinance No. 49 of 1951.[10]

Civil courts were established to deal with all civil and criminal matters except matters pertaining to the personal laws affecting the Muslims which fell under the jurisdiction of the Kathis court. In 1948, the Courts Ordinance 1948 (No 43 of 1948) established a judicial system for the Federation wherein the Kathis Court was omitted from being part

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10 In *Lee Sau Keng (F) v. Yong Hon EA* [1952] 1 LNS 49 Whitton J stated: 'the Civil Law Enactment 1937 of the Federated Malay States (Enactment No. 3 of 1937) which, save in so far as provision was or should be made by local written law and subject to certain other qualifications that do not arise here, applied the common law of England to the Federated Malay States, was extended to the State of Trengganu by the Civil Law (Extension) Ordinance, 1951, (Federation of Malaya Ordinance 49 Of 1951).' '[T]here are three qualifications to the adoption of the English Common Law in the Federated Malay states: (i) It only applies if there is no other statutory provision the F.M.S; (ii) If it applies, it applies unmodified by any English statute; and (iii) It must be applied only so far as the circumstances of the federated Malay States and its inhabitants permit, and subject such qualifications as local circumstances render necessary': per Terrell, Ag CJ (SS) in *Yong Joo Lin Yong Shook Lin And Yong Loo Lin v. Fung Poi Fong* [1941] 1 LNS 102. The Common Law of England is excluded by the opening proviso of s. 2 of the Civil Law Enactment, see *Re Lim Hee Kung; Ex Parte Arthur Oakley Coltma*n [1939] 1 MLJ 51.

of the Federal court system. The significant aspect of the Ordinance is that it made the civil court's jurisdiction general and freed it from the limitations arising from Kathis court's jurisdiction. The Ordinance continued to apply throughout the Federation until it was repealed and replaced by the Courts of Judicature Act 1964 (Act 91) and the Subordinate Courts Act 1948 (Act 55).

As shown from the above discussion, English law was not statutorily introduced to the whole of Malaysia at once. On the contrary, its introduction was done in a gradual manner taking into account the legal and administrative status of the component states. In the Strait Settlements, the English law was imposed by the British through the Charters of Justice with the sentiments and wishes of local community being of little significance. On the other hand, in the Malay states (both FMS and UFMS), North Borneo (Sabah) and Sarawak, English law was introduced in a smoother and people-considerate manner through the enactments of the legislation. What is apparent from the above discussion is that the English common law system had direct influence on the Malaysian legal system.

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For an easy reference, the gradual statutory reception of English law in the various states is summarised in the table below:

No.	Year	Statute	Subject Matter
1	1807	First Charter of Justice	Considered as statutory authority for introduction of English law into Penang
2	1826	Second Charter of Justice	Considered as statutory authority for introduction of English law into Penang, Malacca and Singapore
3	1928	Law of Sarawak Ordinance	Statutory authority for introduction of English law into Sarawak
4	1937	Civil Law Enactment (1937 FMS No 3)	Statutory authority for introduction of English law into the Federated Malay States

5	1938	Civil Law Enactment 1938	Statutory authority for introduction of English law into North Borneo (now Sabah)
6	1949	Application of Laws Ordinance 1949	Sarawak
7	1951	Application of Laws Ordinance 1951	North Borneo (now Sabah)
8	1951	Civil Law (Extension) Ordinance 1951	Unfederated Malay States
9	1956	Civil Law Act 1956	Federation of Malaya (including Penang and Malacca)
10	1972	Civil Law Act 1956 (Revised 1972)	Malaysia (including Sabah and Sarawak)

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The current Malaysian legal system is based on several aspects of Syariah and some components of English common law. The application of English law in Malaysia today is sanctioned by the Civil Law Act 1956, ss. 3 and 5. The Act is the statute which provides the legislative authority for the application of English law subject to certain limitations. Although the Act survives until this day, it has not been immune from criticisms and constant calls for its abolishment or amendment.

1.3 COLONY AND A PROTECTORATE OR PROTECTED STATE: THE DISTINCTION

In a historical context, it is necessary to distinguish between colonies from protectorates and protected states. As noted earlier, the Straits Settlements had the status of British colonies while the Malay States, Sabah and Sarawak were legally protectorates of Britain.

Colony	Protectorate state
(i) Colony refers to a territory which is governed by another country. (ii) There is no sovereignty for a colony as it was under the direct rule of another country. For example, the Straits Settlements which was formed in 1826 were under the sovereignty of the British Crown. (iii) Colonies were ruled by a governor appointed by the monarch. The Straits Settlements as the British colonies were ruled by governors appointed by Britain.	(i) Protectorate State or territory is partly controlled by (but not a possession of) a stronger state. It refers to an 'autonomous territory that is protected diplomatically or militarily by a stronger state or entity'.[11] Unlike colony, protectorate states are not in the possession of the stronger state – the protectorate states were not brought formally within the Crown's dominions. (ii) In a protectorate relationship, the protecting state normally assumes control of the foreign relations of the protected state in addition to providing for its defense. Often the protecting state has some control over the internal affairs except on matters pertaining to the religious and customary affairs.

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11 http://www.vocabulary.com/dictionary/protectorate

	(iii) Protectorates are established by a treaty. For example, the Federated Malay States (FMS) is a federation of four protected states in the Malay Peninsula namely, Selangor, Perak, Negeri Sembilan and Pahang. It was established by the British government in 1895. The protectorate of these states was established after the Malay Rulers of the above states agreed to a federation and centralised administration *vide* the Treaty of Federation which was drawn up and signed on 1 July 1896. By virtue of this treaty and the previous acceptance of the British Residents System in Selangor (1875), Perak (1874), Negeri Sembilan (1875) and Pahang (1888), the FMS were officially declared as protectorate states of the Great Britain. The British not only controlled the external matters of the FMS such as the defence and foreign relations, but also established an internal administration. The same goes with the Unfederated Malay States (i.e. Johore, Kedah, Perlis, Kelantan, and Terengganu) and the Borneo States (i.e. Sarawak and the North Borneo (Sabah)), where these states were also declared as British protectorate states. The Malay States ceased to be protectorate states effective from 31 August 1957.

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1.4 MALAYSIAN LEGAL SYSTEM: CHAPTERISATION

This is not the first book about 'the Malaysian legal system'. There are currently more than a dozen different books in print in Malaysia which have the phrase 'the Malaysian legal system' as part of their titles. Be that as it may, although much of the contents of this book mirror the previous works, it has incorporated all the recent updates on legal system in Malaysia. It is a rich source of scholarly discussion on various aspects of the Malaysian legal system, contributed by writers who are experts in their respective fields of research. This book consists of thirty six chapters and the summary contents of the chapters are further explained in the table below.

CHAPTER	TITLE	SUBSTANCE DISCUSSED
1	Malaysian Legal System: An Introduction	This is an introductory chapter that provides an overview of the subject and its chapterisation. It encompasses a brief history of the Straits Settlements, the Malay States and the Borneo States, the distinction between a 'colony' and a 'protectorate or protected' state, and a brief summary of what is discussed in each of the chapters in this book.
2	Legal Theory And Concept Of Law	Law is referred to as the body of rules and principles governing the affairs of a community and enforced through a set of establishments put in place which includes the police, the courts and prison systems. Law is established primarily to govern a society and to control the behaviour of its members i.e., to maintain social order and protect persons and property from harm. There are many categories of law that deal with distinct areas of human activities and this includes *inter alia*, contract law, property law, trust law, tort law, constitutional law, criminal law, administrative law and international law, to name but a few. Further, law is classified into public law and private law, municipal law and international law, each with its distinct characteristics. Accordingly, the legal theory and concept of law are further discussed in this chapter.
3	Major Legal Systems Of The World	The application of legal system varies from country to country and is largely shaped by the unique history of a particular country. Generally, the most widespread legal systems of the world are the Civil Law, the Common Law and the Religious Law. Hence, this chapter discusses the general characteristics of these three major legal systems and also the emergence of mixed legal systems.
4	Doctrine Of Reception	The doctrine of reception refers to a process in which a particular legal system becomes applicable in a particular country *vide* colonisation. 'Reception' means adoption of the colonial legal system in the judicial decisions. In the context of the Malaysian legal system, it refers to the process how English law became applicable to the Straits Settlements, the Malay States and the Borneo States. The Straits Settlements were a British colony,

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		while the Malay States and Borneo States were British protectorates or protected states. This chapter therefore discusses the doctrine of reception from the international law perspective. The issue whether Penang was acquired by settlement or by conquest is discussed in this chapter. In the former, settlers brought with them English law which then became the basic law of the colony, while in the latter, the law of the conquered people continued in force, unless formerly modified by the new sovereign. In *Regina v. Willans*,[12] Sir Peter Benson Maxwell noted that on the cession of Penang in 1786, the island was uninhabited. The British argued that the first occupied land, i.e. Penang island, was a virgin territory with no proper legal and administrative systems in place.[13] They used that as an argument to introduce English law to Penang through the introduction of the First Charter of Justice in 1807 (Letters Patent of 25 March 1807).
5	Doctrine Of *Terra Nullius: A Review Of Mabo & Ors v. Queensland (No. 2) Case*	*Terra Nullius* means 'land that belongs to no-one'. This chapter discusses the notion of 'terra nullius', an issue which had been raised in relation to the Island of Penang, namely, that Penang was acquired under the false belief that it was uninhabited land which belonged to no one. In this chapter, discussion is made with reference to the case of *Mabo & Ors v. State of Queensland & Anor*,[14] a landmark High Court of Australia's

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12 (1858) 3 Ky 16, Leic 66.

13 However, this has been contested by many Malaysian legal scholars. Professor Ahmad Ibrahim argued that Penang was inhabited at the time of British occupation. The records found in the register of surveys shows that the Island of Penang was inhabited by the Malay population as early as 1705. The community residing there was governed by the legal system which was based on principles of Islamic law. The British occupation of Penang marked the beginning of a gradual phasing out of Islamic law. The British established their own courts and cases started to be adjudicated by English judges in accordance with English law.

14 (1992) 175 CLR 1.

		decision. In this case, the issue whether Australia was a 'settled' or a 'conquered' colony of British was discussed. It was argued on behalf of the defendant that Australia was a settled territory hence, the law of England became the law of the colony. Five separate judgments were delivered by (i) Justice Brennan, (ii) Justice Deane and Justice Gaudron, (iii) Justice Toohey, (iv) Justice Dawson, and (v) Chief Justice Mason and Justice McHugh. The decision recognised *inter alia*, that the indigenous population's pre-existing system of law would remain in force under the new sovereign except where specifically modified or extinguished by legislative or executive action.
6	Reception Of English Law In Straits Settlements	Introduction of English law into Penang in 1807 *vide* the Charter of Justice 1807 was based on the argument that Penang when occupied by the East India Company was a virgin territory with no proper legal and administrative systems in place. The Charter of Justice 1807 is considered to be the first statutory introduction of English law in the Malay Peninsula. It established a Court of Judicature which had the jurisdiction of the superior courts in England. In 1826, Penang, Singapore and Malacca were incorporated into Strait Settlements. In the same year, the Second Charter of Justice was introduced to the Strait Settlements and it, in essence, reiterated the content of the First Charter of Justice with minor amendments and extended its application to Singapore and Malacca. Its effect was the official and statutory introduction of English law in the Strait Settlements as it existed in England *vide* the Charter of Justice 1807 on 27 November 1826.[15] It also established a new Court of Judicature for Penang, Malacca and Singapore.

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15 English law was statutorily introduced in Penang for the second time and to Melacca and Singapore for the first time. See *Regina v. Willans* [1858] 3 Ky 16 and *Choa Choon Neoh v. Spottiswoode* [1869] 1 Ky 216.

		Nonetheless, it needs to be noted that the English law introduced by the First and Second Charters of Justice did not introduce English law in its entirety. The cases decided in the Strait Settlements throughout that period indicated reluctance by the courts to apply the religious and customary laws of the local people.[16] The religions and customs would only be considered if they were consistent with common law principles and the notion of justice as promulgated by the common law. This attests to the dominance of the common law over the religious and customary laws of the locals at that time. Besides the above, the First and Second Charters of Justice did not manage to secure a smooth and speedy disposal of the cases in a manner in which the common law envisioned it to be done. The administration of justice put in place could not cope with the number of cases which was on a steep increase as a result of the surge in economic and social activities in the Settlements at the time. Hence, the Third Charter of Justice was introduced in 1855 mainly with the intent to restructure the administration of justice. The period that followed witnessed further restructuring of the courts which was necessary after handover of the Strait Settlements by the Indian government to the Colonial Office in London in 1867. The most notable development was the establishment of the Supreme Court of the Strait Settlements, with the Recorders reappointed as judges. In short, this chapter discusses the introduction of the Charters in the Straits Settlements and its effects on the laws of the local inhabitants.
7	Reception Of English Law In Malay States	Unlike the Island of Penang, which according to the British did not have any prior established legal and administrative system, the Malay states, both the Federated Malay States (FMS) and the Unfederated Malay States (UFMS), where Islamic

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16 See for example, *Moraiss & Ors v. de Souza* [1838] 1 Ky 27; *Nonia Cheah Yew v. Othmansaw Merican & Anor* [1861] 1 Ky 160; and *Hawah v. Daud* [1865] Leic 253.

		law and customary laws were applied to the Malays (Muslims), whereas non-Muslims residing in those states were governed by their own personal laws. RJ Wilkinson argued that had English law not been introduced to Malaya the Islamic law would have certainly become the law of Malays.[17] That was the level of respect Islamic law commanded with the local Malay communities. Later on, the importance of Islam for the Malays has been evidenced through its substantive inclusion into the Federal Constitution. The introduction of English law could not have been done by applying the common law principle of reception but rather through a formal endorsement of its application by statute. In 1937, the FMS were the first to accept English law on a voluntary basis by passing of the Civil Law Enactment 1937 which officially introduced English law in the FMS. On 1 February 1948 the Federation of Malaya was established and three years later, the Enactment was extended to the UFMS by the passing of the Civil Law (Extension) Ordinance 1951. By then, English law was officially applied in the whole of Malaya. In 1956, both Enactments in the FMS and UFMS were repealed by the new Civil Law Ordinance 1956 which applied to the whole Federation of Malaya including Penang and Malacca. However, it needs to be noted that unofficially English law was, without any legal basis, applied in the Malay states even before its statutory introduction.[18] This is evidenced from the statement by Terrel AG CJ (SS) when delivering his judgment in *Yong Joo Lin v. Fung Poi Fong*,[19] said: "[p]rinciples of English

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17 See RJ Wilkinson, *Papers on Malay Subjects*, First Series, Law Part 1, (The Government of the Federated Malay States Press, Kuala Lumpur, 1922), p. 49.

18 See Wu Min Aun, *The Malaysian Legal System*, 2nd edn, (Longman, Kuala Lumpur, 1999), pp. 100-101.

19 [1941] 1 LNS 102.

		Law have for many years been accepted in the Federated Malay States where no other provision has been made by statute ... Section 2(i) of the Civil Law Enactment, therefore merely gave statutory recognition to a practice which the Courts had previously followed."[20] The informal application of English law was done through the 'Residential System' in which the Residents, who were supposed to advise the Sultans of the respective states on government matters, *de facto* governed the states on behalf of the Sultans. They possessed greater powers than they were initially envisaged to have. They used their power among other things, to introduce and apply English law in their respective states. This is how a number of legislations, moulded upon Indian legislation which themselves emulated English law, were enacted, such as the Contracts (Malay States) Ordinance and the Penal Code. In addition to this, the natural tendency for newly appointed English judges and those trained in English law would be to apply English law whenever the local circumstances would have allowed them to do so. Thus, the judiciary, in their own way, also contributed towards the unofficial introduction of English law into the Malay states. In light of the above, this chapter discusses the mode of reception of English law into the Federated Malay States and the Unfederated Malay States.
8	Reception Of English Law In Sabah And Sarawak	In so far as Sarawak and North Borneo (now Sabah) is concerned, these British protectorates since 1888, like in the Malay States, could not be automatically imposed the English common law *vide* the doctrine of reception. Statutes were passed to enable the formal application of English law into the states. Amongst the two states, Sarawak was the first to pass such a law in 1928 namely, the Law of Sarawak Ordinance 1928. Soon thereafter,

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20 *Ibid* at p. 64.

		the North Borneo passed a similar law known as the Civil Law Ordinance 1938. These laws formally acknowledged the reception of English law into the above states. However, unofficially English law was already being used in the same manner in which it was unofficially applied in the Malay states. Subsequently, new laws were passed, namely the Application of Law Ordinance 1949 and the Application of Law Ordinance 1951 in Sarawak and in North Borneo, respectively. These laws further clarified and expanded the application of English law in both states. This chapter therefore, discusses the mode of reception of English law in the states of Sarawak and North Borneo.
9	Current Application Of English Law: Sections 3, 5 And 6 Of The Civil Law Act 1956	In 1963, Malaysia was formed and, at that time, there were altogether three different legislation which recognised the application of English law in Malaysia, i.e. the Civil Law Ordinance 1956 in West Malaysia, the Application of Law Ordinance 1949 in Sarawak and the Application of Law Ordinance 1951 in North Borneo. Soon after the formation of Malaysia, the Civil Law Ordinance 1956 was extended to Sarawak and Sabah through the Civil Law Ordinance (Extension) Order 1971. Hence, all three statutes were amalgamated into one single statute called the Civil Law Act 1956 (Act 67) which has since applied to the whole of Malaysia. English law is explicitly recognised as part of the Malaysian law. The Federal Constitution includes the 'common law' in the definition of 'law'.[21] A more specific endorsement of English law has been made by the Civil Law Act 1956 (Act 67). Section 3 of the Act dictates that English law applicable in Malaysia means: common law,[22]

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21 Federal Constitution, art. 160.

22 Common law refers to the uncodified law which has been developed through the judicial decisions of the courts. Hence, it is fairly flexible in comparison to the codified laws passed by the Legislature.

		rules of equity[23] and certain statutes. Further, the application of English commercial law is allowed pursuant to s. 5 of the Civil Law Act 1956. It is noted that in Penang, Malacca, Sabah and Sarawak the reception of English commercial law is continuous while in other parts of Peninsular Malaysia the reception is at the coming into force of the Civil Law Act 1956 namely, 7 April 1956. However, this does not mean that all three components of English law mentioned above can be freely used and referred to without any limitations in Malaysia. The extent to which English law is applicable in Malaysia is dealt with in detail in this chapter. In addition, proposal is made for the development of Malaysian common law within the existing legal framework besides the suggestions as to how to improve the existing legal framework in view of fostering the development of the Malaysian common law.
10	Pride And Prejudice of Legal Imperialism With Reference To Preserving English Law In Malaysia: Making Sense The Doctrines Of Reception And Subsequent Attraction	History has shown that all the countries that were once conquered or colonised even as far as the Roman Empire inevitably chose to adopt the laws of the Imperial government and here in Malaysia, the English laws. The triumphant and legitimization of Malaysian law post 1957 and the omnipresence of the English common law to exercise imperium that was an anathema. Today, English laws in the historical epoch of British Empire continues to live on through and in many cases, the Malaysian civil courts frequently quote the past English precedents. Therefore, to speak of the need to reform the CLA must go to the roots of the substance which form the basis of this chapter.

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23 Equity refers to the laws which were initially developed by the Lord Chancellor who was appointed by the King of England. However, later by the end of the 15th century, claims in equity were heard by the Court of Chancery. It is worth noting that the rules of equity were never meant to operate on their own but rather they were developed in order to compliment the common law and to bring fairness and justice to the parties when common law failed to do so.

11	Federal And State Constitutions	The Federal Constitution which was formally adopted on 31 August 1957 is the supreme law of Malaysia and that any law passed after Merdeka (Independence) Day which is inconsistent or in conflict with the Federal Constitution shall, to the extent of the inconsistency, be void.[24] The Federal Constitution is divided into 15 parts and 13 Schedules.[25] Each part and schedule contains relevant articles. There are 183 articles in the 15 parts, including those which have been repealed. It provides the legal framework for the laws, legislation, courts, and other administrative aspects of the law. It also defines the government and monarch, and their powers, as well as the rights of the citizens.The power of Parliament and the State legislatures in Malaysia is limited by the Federal Constitution. The above two legislative bodies cannot make any law they please.[26] The Federal Constitution also establishes a constitutional Monarchy and a Federal System of Government. Meanwhile, all the 13 states in Malaysia have their individual constitutions. By virtue of art. 71(4) of the Federal Constitution,

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24 See Federal Constitution, art. 4(1). For further reading, see Andrew Harding, *The Constitution of Malaysia: A Contextual Analysis*, Hart Publishing, 2012.

25 A schedule is an appendix to an Act of Parliament intended for the purpose of facilitating reference to the Act itself or elaborating on matters already mentioned briefly in the Act. It is convenient to set out in a schedule lists and tables to which references have already been made in the body of the legislation. The insertion in a schedule of matters dealing with details or procedure often makes an Act more readable and simplifies interpretation of the provisions of the Act concerned. It is a firm rule of interpretation to treat a schedule to an Act or subsidiary legislation as forming part of the Act or subsidiary legislation and of construing it as having effect as part of such Act or subsidiary legislation. This principle is enunciated in the Interpretation Acts 1948 and 1967 (Act 388) (Consolidated and Revised 1989) ss. 15 and 69. It was observed by the court in *Attorney General v. Lamplough* (1878) 3 Ex D 214, CA (Eng) that a schedule to an Act is a mere question of drafting or words and that the schedule is as much an enactment as any other part of the Act concerned.

26 See *Ah Thian v. Government of Malaysia* [1976] 1 LNS 3; *Robert Linggi v. The Government of Malaysia* [2011] 1 LNS 258.

		the State Constitution must contain the following essential provisions: (i) Rulers to act on advice; (ii) Executive Council; and (iii) a single-chamber elected State Legislature, among others. Hence, this chapter discusses the important principles of the Federal and State Constitution.
12	Legislation	The power to legislate law is with the legislature, the application of the enacted legislation is on the executive and its subjects and the power to interpret the legislation and of ensuring its compliance lies with the courts.[27] The power of Parliament and the State Legislature in Malaysia is limited by the Federal Constitution. The above two legislative bodies cannot make any law they please. The Parliament as a legislative body at the Federal level is vested with the power to amend or repeal the provisions of the Federal Constitution by way of two third majority votes of both houses of Parliament.[28] A bill is a proposed legislation and it does not become law until it is passed by the legislature. This chapter discusses the different types of bills namely, public bills, private bills and hybrid bills and the law-making process in the Parliament. Further, the discussion is also focused on the merits and the demerits of the subsidiary legislation and the constitutional duty of the courts to ensure that no excessive delegation has taken place.
13	Islamic Law	Islamic law or 'Syariah' is a system of law and ethics based on the divine will of Allah (s.w.t.) that was revealed to the Prophet Muhammad (s.a.w.) over a period of 23 years beginning 610 AD. The Syariah is thus divinely inspired, intimately linked to religious tenets, encompassing in broad principles the whole sphere of human life, and provides the basic moral and legal framework on a wide range

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27 See *Lo Tet Shin v. The Government of the State of Sabah & Anor* [2012] 9 CLJ 780.

28 See art. 159 of the Federal Constitution.

		of transactions. As noted earlier, during the era of European colonial powers in the Malay Peninsula, Islamic law was implemented gradually. However, due to the colonisation of the Straits Settlements and the establishment of British administrations in the Malay States, the relevancy of Islamic law was gradually limited to certain personal matters affecting the Muslims. Hence, this chapter discusses the status and position of Islamic law before and during the British administrations of the Malay Peninsula. Apart from the above, the status and position of Islamic law in the Federal Constitution, the supreme law of the Federation, is also covered in this chapter. Further, the chapter also covered the Syariah court's jurisdiction. The recognition of the Syariah courts was largely due to art. 121(1A) of the Federal Constitution which excludes the jurisdiction of the civil courts in respect of any matter that comes within the jurisdiction of the Syariah courts.[29] It must be added that the Syariah court's jurisdiction is only over persons professing the religion of Islam[30] and further, only in respect of any of the matters enumerated in list II of the State List of the Ninth Schedule to the Federal Constitution.[31]

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29 See *Subashini a/p Rajasingam v. Saravanan a/l Thangathoray and other appeals* [2008] 1 CLJ (SYA) 9, [2008] 2 MLJ 147, FC, at 170.

30 In *Kaliammal a/p Sinnasamy v. Majlis Agama Islam Wilayah Persekutuan (JAWI) & Ors* [2011] 2 CLJ 165, CA, Abdul Wahab Patail JCA stated: "The fact that a person who seeks relief in a Syariah Court may not be a person who is subject to the compulsive authority of the Syariah Court would not, in our view, preclude such person from going to the Syariah Court to try to obtain relief. In this case the appellant is not prevented from applying to the Syariah Court to try to set aside the *ex parte* Order made by it, giving the said court occasion to address the relevant issue concerned and deliver a fair and just decision in accordance with the religion of Islam and Islamic law."

31 See *Latifah bte Mat Zin v. Rosmawati Sharibun & Anor* [2007] 5 CLJ 253, FC.

14	Customary Law	Custom is an important source of unwritten law. Every race has its own customs. Customs acquired the force of law when they became the undisputed rule by which certain rights, entitlements, and obligations were regulated between members of a community. There is no customary law of general application in Malaysia as each ethnic group is governed by their own customary law. For example, the Malay customary law applies to the Malays, the Chinese customary law applies to the Chinese, Hindu customary law applies to the followers of Hinduism, the aboriginal customary law is applicable to the aborigines of Peninsular Malaysia and the Native customary law is applicable to the indigenous of Sabah and Sarawak. Of these customary laws, the aboriginal and native customary laws and, to some extent, Malay customary laws have continued to be of significance in matters of family law and customary land tenure.[32] The customary laws of the natives of Sarawak and Sabah remain an important source of law particularly, in the matters such as administration of estates, family law, property, and customary land rights. Hence, this chapter discussed the customary laws of the various ethnic groups in Malaysia and the extent of its current application in light of the numerous statutes adopted and enforced in this country.
15	The Law Reform (Marriage And Divorce) Act 1976 And Its Effects On Non-Muslim Customary Laws On Family Matters	The Chinese and Hindu customary laws which were initially recognised as an important source of unwritten law in Straits Settlements and the Malay States particularly in relation to family law matters, however, had been repealed in 1982 *vide* the Law Reform (Marriage and Divorce) Act 1976.[33] For example, the polygamous union

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32 See Bulan, Ramy, '*Native Title in Malaysia: A 'Complementary' Sui Generis Right Protected by the Federal Constitution*' [2007] 11(1) Australian Indigenous Law Review 54.

33 See for example, *Por Boon Lan v. Hong Sie Kit & Anor* [2010] 1 LNS 1266; *Chia Siew Li v. Liew Khey Cheong & Anor* [2010] 4 CLJ 36, CA.

		among the non-Muslims which was recognised by the courts in the Straits Settlements and the Malay States has been prohibited by the said Act. This chapter discusses firstly, the non-Muslim customary law on family matters prevalent and recognised during the British administration of the Straits Settlements and the Malay States, and secondly, the selected relevant provisions of the said Act that abrogated such customary practices.
16	Statutory Interpretation	Courts are constantly involved in the interpretation of statutes. Statutory interpretation refers to the process by which a court looks at a statute and determines what it means. Obviously, when the words of a statute are plain and straightforward the courts will apply its natural and ordinary meaning. But in many cases however, there may be some ambiguity or vagueness in the words of the statute that must be resolved by the judge. Judges have to decide what parliament meant by a particular piece of legislation. To find the meanings of the statute, judges use various tools and methods of statutory interpretation. Generally, there are four methods used: (i) common law rules of interpretation namely, Literal rule, Golden rule, Mischief rule and the Purposive approach; (ii) intrinsic (internal) aids and extrinsic (external) aids to statutory interpretation; (iii) maxims of statutory interpretation and (iv) the legal presumptions. This chapter discusses the above rules or canons of interpretation and construction of a statute.
17	Jurisdiction And Powers Of The Civil Courts	The Courts of Justice in Malaysia comprises the superior courts and the subordinate courts. The superior courts are composed of the Federal Court (the apex court), the Court of Appeal, and the two High Courts of coordinate jurisdiction and status, namely the High Court of Malaya for Peninsular Malaysia and the High Court of Sabah and Sarawak, for the States of Sabah, Sarawak and Labuan. The jurisdiction and powers of these courts are provided in the Courts of Judicature Act 1964. Meanwhile, the subordinate courts consist of the Sessions Court and the Magistrates' Court. The jurisdiction and powers of these courts are provided in the Subordinate Courts Act 1948.

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		This chapter discusses the jurisdiction and powers of the ordinary courts of law or civil courts in Malaysia. Further, the Court For Children constituted under the Child Act 2001 which hears cases on charges pressed against children is also discussed in this chapter. It is noteworthy that if the accused person falls under the definition of a 'child' in s. 2 of the Child Act 2001, which in general is between the age of 12 to 18, he/she will be tried for offences under the Penal Code in accordance with the Child Act 2001.
18	Specific Courts And Tribunal	Apart from the ordinary courts of law there are many courts with limited and specialised jurisdiction in Malaysia. Special courts usually do not follow the same procedural rules as in the courts of general jurisdiction. Further, special courts often proceed without the benefit or expense of legal representation. The judges who serve in the special courts are as varied as the special courts themselves. More importantly, cases are more likely to be disposed of speedily than in a court of general jurisdiction. Apart from the special courts, there are also many tribunals established in Malaysia. Although tribunals may resemble courts as they decide on a particular dispute, they are not part of the court system but run parallel to the court system. This chapter discusses the jurisdiction and powers of the selected special courts namely, the Syariah Court, Industrial Court, 'Labour Court' and Native Courts. Besides the special court, the chapter also includes the discussion of the selected tribunals namely, the Tribunal for Consumer Claims and the Tribunal for Homebuyer Claims.
19	*Stare Decisis* And *Ratio Decidendi*	The doctrine of *stare decisis* or the rule of judicial precedent dictates that it is necessary for each lower tier to accept loyally the decision of the higher tiers. Thus, a court other than the highest court is obliged generally to follow the decision of the court at a higher or the same level in the court structure subject to certain exceptions. The application of the doctrine from a higher court to a lower court is called the vertical *stare decisis*. Whereas, the notion that a judge is bound to follow or respect the decision of an earlier judge

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		of similar or coordinate jurisdiction is called horizontal *stare decisis*.[34] Further, the rule of judicial precedent shall apply whenever the relevant facts of an earlier case is similar to the facts of a subsequent case,[35] i.e., the relevant facts of the two cases are similar. However, if the facts are not similar then the earlier decision would be distinguished and as such would not be binding on the subsequent case. In light of the above, this chapter discusses the merits and demerits of this doctrine, the working of this doctrine with reference to its application in England and Malaysia, the powers of the Federal Court to review its own earlier decision, the definition of *ratio decidendi* and *obiter dicta* and its application.
20	*Stare Decisis* In Syariah	Under the Syariah, the doctrine of judicial precedent is not binding. However, judges are allowed to take guidance from previous decisions and, thus, the earlier decisions may merely be considered as guidance for future decisions. This position is still being maintained by some countries such as Malaysia and Saudi Arabia among others. In Pakistan, however, it is quite the opposite as the doctrine of judicial precedent is followed.[36] In Nigeria, the Syariah Court of Appeal is competent in deciding cases before it and its eventual decision binds all the courts below. The court's decision also has an impact on the country's legal system. Due to this conflicting subject under the Syariah legal system in various countries as noted above, a question arises relating to the feasibility of the application of the doctrine of judicial precedent in Syariah Courts. It is contended that the doctrine of judicial precedent can be applied in the Syariah

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34 See *Pengurusan Danaharta Nasional Berhad v. Yong Wan Hoi & Anor* [2007] 1 LNS 188.

35 See *Chai Kok Choi v. Ketua Polis Negara & Ors* [2008] 1 CLJ 113.

36 *Ibid.*

		Courts system as a guiding precedent but not a binding one as there is no express prohibition to do so and it is allowed in Islam to use previous decisions as guidance in adjudicating cases. In addition, having guiding precedents rather than binding ones would alleviate some shortcomings therein and generally benefit the Syariah Courts system. Notably among them are assurance of the judicial consistency, certainty and reliability in the Syariah legal system.
21	The Judiciary And The Bar (Civil)	The Judiciary besides hearing and determining civil and criminal matters, is empowered to decide the legality of any legislative or executive acts. The members of judiciary are appointed by the Yang di-Pertuan Agong, acting on the advice of the Prime Minister and after consultation with the Conference of Rulers. Considering the above, this chapter discusses the legal profession and practice in the civil courts in Malaysia. It begins with identifying the role and functions of judges, their appointments, conduct and etiquette; the qualifications and requirements for admission to the Bar in Malaysia as an Advocate and Solicitor. Further, the discussion encompasses the bodies that regulate professional practice and etiquette in Malaysia such as the Bar Council and the State Bar Committee. The discussion will also encompass the functions of the Legal Profession Qualifying Board Malaysia. Further, judicial immunity from civil proceedings for act done or words spoken in the exercise of his judicial office is also covered in this chapter.
22	The Judiciary And The Bar (Syariah)	A person entrusted with the administration and enforcement of Syariah must be competent according to the criteria laid down by Allah (s.w.t.). Justice may only be realised through competent and just judges, accurate proof and strong evidence. Allah (s.w.t.) commands that the parties who are involved in a dispute, to act honestly while giving evidence in order to secure or deny a claim. Such persons must consider themselves as witnesses on behalf of Allah (s.w.t.)

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		and His Messenger (s.a.w.) because Islam requires the parties to render justice to those who are entitled to it. There may be instances where the lawyer's eloquence of argument and speech may influence the adjudicator's findings in favour of their client but nevertheless justice and righteousness is not on his side. In such a situation, the lawyer had only managed to do evil; what he had won is nothing more than sin, falsehood and hell fire. Hence, this chapter discusses the Syariah judicial, powers of the Chief Syariah Prosecutor, the admission and qualification of *Peguam Syarie* (*Syarie* lawyer) and issue of legal representation of a non-Muslim in the Syariah Courts, among others.
23	Basic Structure Doctrine And Its Application In Malaysia: With Reference To Decided Cases	The Constitution provides for the three main organs of the government namely, the executive, legislature and the judiciary pursuant to arts. 39, 44 and 121, respectively where they are 'co-equal and all are subject to the Constitution which is supreme'.[37] The greatest challenge in any democratic state is to balance the might of the state with the rights of citizens and hence, the doctrine of separation of power vested the judiciary with the power to check against encroachment and overstepping of power by the Parliament and the executive. The judiciary is entrusted *inter alia*, to preserve, protect and defend the Constitution[38] and the judges are expected to conduct their duty in accordance with their oath of office.[39] This chapter discussed the judicial power of the superior courts with special focus on the basic structure doctrine and its application in Malaysia which is illustrated with reference to decided cases.

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37 Per Lee Swee Seng J in *Kerajaan Malaysia v. Shimizu Corporation & Ors* [2018] 1 LNS 202.

38 See art. 124 of the Constitution.

39 See *Pembinaan BLT Sdn Bhd v. Debessa Development Sdn Bhd* [2015] 1 LNS 788.

24	Attorney General: Role And Powers	The Attorney General of Malaysia (AG) is the principal legal adviser to the Government of Malaysia. Section 376(1) of the Criminal Procedure Code provides that the Attorney General shall be the Public Prosecutor and shall have the control and direction of all criminal prosecution and proceeding under the code. The powers with regards to prosecution are contained in art. 145(3) of the Federal Constitution. The Attorney General can be regarded as the chief law officer of the Executive Council. The responsibilities stemming from this role are unlike those of any other Cabinet member. The role has been referred to as 'judicial-like' and as the 'guardian of the public interest'. There are various components of the Attorney General's role. The Attorney General has unique responsibilities to the State, the courts, the legislature as well as towards the executive branch of government. While there are different emphases and nuances attached to these there is a general theme throughout all the various aspects of the Attorney General's responsibilities that the office has a constitutional and traditional responsibility beyond that of a political minister. The role and functions of the AG including the various divisions or departments under the AG's chambers are discussed in this chapter.
25	Royal Commission Of Inquiry	It is a feature of modern democratic governments that inquiries are from time to time conducted into matters of public importance. Such inquiries are not judicial proceedings but are in the nature of fact finding exercises. Commissions are ordinarily appointed at times of grave public disquiet about some aspects of government conduct or some problems of widespread public concern. In times of such crises, the normal investigatory procedures and judicial inquiries may seem inexpedient and inappropriate. This is so particularly where there are political ramifications and where the conduct of public officials is at issue. Commissions of Inquiry have the power to take evidence upon oath and to call for persons and documents. Their authority is protected by rules regarding contempt. However, they do not make conclusive or binding

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		decisions. Usually, they would report on facts found in investigations and make recommendations for remedial actions. The scope of their inquiries would be determined by the specific terms of reference. The finding and reports are meant to assist the appropriate organs of government to take further action under the law. Parliament, in consequence of Commission recommendations, may enact legislation to remedy the problems uncovered. If offences are disclosed, the law officers may decide to institute regular criminal proceedings against the individuals. Hence, this chapter discusses the nature and functions of the Commissions of Inquiry.
26	Selected Complaint Resolution Bodies In Malaysia	This chapter discusses the role and powers of the specific bodies involved in the resolution of specific disputes with reference to bodies such as Human Rights Commission of Malaysia, Malaysian Anti-Corruption Commission, Public Complaints Bureau and institution of Ombudsman. Further, this chapter also discuss on the holding an inquiry of death of any person in the custody of an appropriate authority. A Magistrate is empowered to hold an inquiry to discover when, where, how and after what manner the deceased came by his death and also whether any person is criminally concerned in the cause of the death.
27	Civil Procedure	Civil procedure prescribes methods of seeking redress for the violation of individual rights. It is important because it allows parties in dispute to claim and enforce their rights under the laws. Civil procedure also regulates procedural rules and proceedings as well as ensuring the parties involved follow the correct court rules and procedures. Prior to filing a civil suit, a person or any corporate body has to ensure that several requirements are fulfilled in order to avoid any irregularities in the proceedings. These requirements are also known as preliminary matters which among others include identifying the cause of action, the appropriate court that has jurisdiction to hear the case, the time limit to file the claim, the parties to be named in the proceedings and other relevant proceedings. The primary purpose of procedural

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		rules is to promote the ends of justice. Adherence to the rules of the court will ensure a speedy and efficient administration of justice. The Rules of Court 2012 came into effect on 1 August 2012. It combines the Rules of Subordinate Courts 1980 and the Rules of High Court 1980, streamlining procedures in civil cases in the Subordinate Courts and the High Courts. This chapter discusses the application of the procedural rules in civil causes or matters with reference to the Rules of Court 2012.
28	Criminal Procedure	The criminal procedures shall apply to all the Penal Code offences but subject to any written law which provides to the contrary.[40] Before the Criminal Procedure Code[41] was adopted throughout the country, the criminal procedure was governed by four separate codes, namely the Criminal Procedure of the Federated Malay States, the Criminal Procedure of the Straits Settlements, the Criminal Procedure of Sabah and the Criminal Procedure of Sarawak. In criminal trials, the phrase 'procedural due process' refers to the aspects of the due process clause that apply to the procedure of arresting and trying persons who have been accused of crimes and to any other government action that deprives an individual of life, liberty, or property. Procedural due process limits the exercise of power by the State and Federal Governments by requiring that they follow certain procedures in criminal matters. The protection in criminal proceedings include freedom from double jeopardy or being tried more than once for the same crime, freedom from self-incrimination, or testifying against oneself, the right to be told of the crime being charged and the right to demand that the state prove any charges beyond a reasonable doubt. Hence, this chapter discusses the criminal trials with reference to, *inter alia*, the powers of the police, investigation of criminal offences, arrest of the accused, criminal charges and the principles and guidelines in sentencing.

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40 Criminal Procedure Code, s. 3.

41 Act 593.

29	Evidence	The law of evidence determines the admissibility of the evidence in court. According to s. 136 of the Evidence Act 1950, the court shall admit evidence if it thinks that the fact, if proved, would be relevant, and not otherwise. Admissibility therefore is subject to relevancy and proof. The law of evidence determines, *inter alia*, the admissibility of evidence in court in terms of relevancy and proof; to provide for the mode of production of evidence and to enable the smooth production of material evidence in court. Hence, this chapter discusses some salient features of the law of evidence with particular reference to the Evidence Act 1950. The Malaysian Evidence Act 1950 is largely similar to the Indian Evidence Act 1872 drafted by Sir James Fitzjames Stephen, which was adopted and enforced in the courts in the Straits Settlements and the Malay States during the British administration of these States.
30	Legal Aid And Legal Advice Services	The legal aid service in Malaysia is regulated by the Legal Aid Act 1972. Legal aid is necessary as to ensure that those who do not have financial resources are given equal opportunity to access the justice system. The Act fixed a certain amount of income before a person can be considered eligible for legal aid provided by the Legal Aid Department of Malaysia. Against that backdrop, this chapter discusses the scope for legal aid services and the eligibility for legal aid, among others. Further, the discussion also encompasses the free legal advice provided by the Bar Council through its Legal Aid Centre. The funding of the Centre is contributed solely by members of the Bar and cases are taken on a voluntary basis by dedicated lawyers. Besides the above, the chapter also discussed the Syariah provisions in relations to the duty of a Muslim lawyer to assist the needy clients.

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31	Alternative Dispute Resolution	Litigating disputes in the ordinary courts of law is costly, time-consuming with unpredictable outcome and above all, the 'winner takes all' and this, inevitably, would damage irreparably the relationships between the disputants. In the administration of justice, the courts are often busy with an accumulated backlog of cases. The undue delay affects the disputants tremendously in terms of reputation, time and costs. There has been dissatisfaction expressed by the public for the inordinate and inexcusable delay in the disposal of cases in the courts in Malaysian and often blame has been leveled against the courts, when in fact there are other factors that have equally contributed to the delay. Lengthy and convoluted court procedures have been identified as the main reason for the delay in the disposal of cases in the courts. These are apart from the shortage of manpower in courts and unnecessary requests for adjournment among others. Hence, this chapter highlights firstly the constrains of the traditional mode of dispute settlement, and thereafter discusses the alternative modes of dispute resolutions with special reference to mediation and arbitration.
32	Technology And Delivery Of Justice	It is undisputable that public confidence in the Judiciary and in the judicial decision-making process is crucial for preserving the rule of law. The public has every right to know how a court arrived at its decision. To increase efficiency and transparency in the judicial system, all courts in this country have been equipped with state-of-the-art computerised system and digital recording system. Given the technological advancements, electronic filing, tracking of cases, monitoring of trials and SMS alerts for interlocutory hearings, among others, have been implemented in the courts. The courtrooms are also equipped with audio-visual recordings with cameras focusing on the judge, witness and counsel. Hence, this chapter discuss the technology in the courtrooms and the delivery of justice with special reference to Court Recording Transcription.

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33	Artificial Intelligence, Technologies And The Future Of Law	This chapter first introduce the relevant technology developed by concerned bodies for the benefit of legal search and advice, acceptance and active participation of law experts in its development. It further explains its usefulness in the discipline and then make recommendations on the prospects of Artificial Intelligence in legal profession. As legal technology has evolved and continues to improve the workplace of lawyers and legal fraternity, this chapter then proposed that the law schools in Malaysia have a moral obligation to training their student in legal and technological skills.
34	Legal Education In Malaysia: Paradigm Shift In The Era Of Fourth Industrial Revolution (IR4.0)	This chapter discusses on the importance of Higher Education Providers to consider the future of the legal education whether remaining *status quo* would be enough for the future law graduates or whether a transformation in the legal education is needed in order to ride along the waves of the IR4.0 and stay relevant to the industry. The discussion therein proposes a well-designed online legal education model that would be practical and functional for any university, college and any other higher learning institute in transforming legal education to be in line with the IR4.0.
35	Future Of Legal Education In Malaysia: Towards A Common Bar Course	The main concern on the current scenario of the legal education is that reading law is more of scientific in nature as compared to the current needs of it being practical in nature. This is aside from the declining standards of legal education as evident from the performance of the young graduated. It cannot be doubted that the law schools should, besides focusing on doctrinal theory, take heed of the comments from the stakeholders of the legal profession, perhaps by also emphasising on professional training. Hence, this chapter discuss on the proposed Common Bar Course (CBC) as the single entry point for all law graduates into the legal profession. CBC is aimed at raising the standards of the legal services, ensuring that all individuals seeking to enter the legal profession were subject to uniform standards of knowledge and skills, regardless of the origin of their undergraduate legal qualifications.

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36	Legal Research And Legal Citation	Legal research is important so as to find relevant authorities that will aid in solving a particular legal problem. It involves finding primary and secondary sources of law such as statutes, regulations, cases, government documents, treaties, and scholarly writing, among others. Since finding legal authority can sometimes be tedious and complicated, knowledge on how to conduct an effective legal research is therefore necessary. Apart from the above, accurate legal citation would enable the reader to locate the law or find the cited authority. In light of the above, this chapter provides a step-by-step guideline on how to conduct an effective legal research. It also provides an introduction to the citation of cases, statutes and regulations, books and journal articles and electronic sources, among others.

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