

CHAPTER ONE

TRACING THE DEVELOPMENT OF THE LEGAL SYSTEM

EARLY MALAYA

The records relating to the administration of justice and the legal system of Malaysia prior to the British colonial rule in Malaya are generally scanty. However, it is clear that in the realm of civil law, more particularly personal laws, the customary laws of a particular area, together with Islamic law were applicable. There was, during this period, no established legal system applicable and as such, the Sultans or their Chiefs invariably resolved all disputes. Records of legal or judicial proceedings were not maintained and there is no evidence to suggest the applicability of the doctrine of precedent.

THE MALACCA SULTANATE

In considering the evolution of the legal system in Malaysia, some reference ought to be made to the development of the Malacca Sultanate. This period was an early landmark in the development of the legal system and the administration of justice. The establishment of Malacca as a port around 1400 A.D. facilitated the spread of Islam and Islamic legal concepts. Historians have recorded that during this period, Malacca embraced Islam and with that Islamic rules and principles, were introduced in the state. The prevailing Hindu Sri Vijaya title, Sri Maharaja, was exchanged for the Sultan who became the shadow of *Allah* upon earth. As Islam became the state religion in Malacca, Islamic law together with Malay customary law was administered in the Sultanate. The fifteenth century and the beginning of the sixteenth century, marked the early history of the introduction of codified laws and the reception of Islamic laws into the country. In the Malacca Sultanate, the laws were under the charge of the *Bendahara* (Chief Minister) who exercised both political and judicial functions. The *Temenggong* (Commander of troops and police) was responsible for apprehending criminals, maintaining

prisons and keeping the peace. The *Shahbandar* (Port Master) was in charge of the traders and the collection of taxes.

The Malacca Sultanate ended when Malacca came under the occupation of the Portuguese from 1511 to 1643, and then by the Dutch from then until 1795. Although the British occupied Malacca for a short period, it was restored to the Dutch rule in 1801. Subsequently there was reoccupation by the British from 1807 till 1818, finally ceded to them under the terms of the Anglo - Dutch Treaty 1824. Under the Portuguese and the Dutch, magistrates were appointed to settle civil disputes and try criminal cases. Although Portuguese and Dutch laws were applied generally, in the cases involving the local people, Muslim law and Malay customs continued to be applied.

In traditional Malay society, there was no distinct separation of powers as is practised today between the judges and executive. The Rulers and their chiefs were responsible for maintaining social unity, law and order. The political hierarchy usually comprised the village headman, the district chiefs, and above them the Sultan or Rajah who was the Supreme Ruler. The headman was usually the leader of the village community assisted by a *mata-mata*. At the village level, the law that was applied was Islamic law, which was modified by Malay customary practises. Generally speaking, there were two or three distinct categories of Malay customary practises or *adat*. The matriarchal *adat perpateh*, which originated in Sumatra, was observed in the area around the present day Negeri Sembilan.

Many other Malay States followed the patriarchal *adat temenggong*, loosely used to describe a variety of customs. Some elements of *adat* still remain a living tradition regulating, sometimes the lives of even the most sophisticated people. As a result, Malaysia has a rich, unique and infinitely varied blend of practices affecting all members of the population whether they are indigenous to the country or the descendants of immigrant settlers.

When the Chinese immigrants arrived, they were left very much to themselves. They had their own *kepala* or headman who settled disputes amongst them. The Chinese were allowed to follow their own customs in succession and family matters. The administration was content with levying tolls and collecting royalties from mines. Similarly in personal matters, the Indian immigrants

followed Indian law and customs as practised in India¹.

BRITISH COLONIAL RULE :1786-1941

British Intervention

The next major landmark in the legal history of Malaysia is the period between 1786 and 1957, the period of British intervention, and that which still has a major impact on the present fabric of the legal system. There are three major stages of British intervention, and whatever the mode it was only in consequence of British intervention that there gradually emerged a modern system of courts, and all the paraphernalia that goes with them-procedure, evidence, court fees and so on. The British policy was aimed at certainty, uniformity, and the emergence of professional lawyers. The transformation at the material time was not an easy task, especially with regard to the role of lawyers.

Straits Settlements (SS)²

The first stage in British intervention began when the East India Company, which had created outposts in Penang (1786), Malacca (1824) and Singapore (1819), transferred them to the British Crown and thus making these outposts part of the British Colonies. Collectively known as the Straits Settlements, they came directly under the responsibility of the British Colonial Office in 1876.

The judicial system in the Crown Colony first evolved when the First Charter of Justice of 1807 established the Courts of Judicature in Penang. By the Second Charter of Justice of 1826, a united Courts of Judicature was established for the three settlements of Penang, Malacca and Singapore. These Charters of Justice were significant for they herald the reception of the English common law and equity into the Malay Peninsula. As stated by Malkin R *In the Goods of Abdullah:*

I refer to the case of *Rodyk v Williamson* ...in which I expressed my opinion that I was bound by the uniform course of authority to hold that the

introduction of the Kings Charter into these Settlements had introduced the existing law of England except in some cases where it was modified by express provisions, and had abrogated any law previously existing.³

It is important to note that the Courts of Judicature established in the Straits Settlements were to administer the principles of common law and equity which were then in force in England 'as far as local circumstances will admit'. In *Yeap Cheah Neo v Ong Cheng Neo*, Sir Montague Smith on behalf of the Judicial Committee of the Privy Council said:

In applying this general principle [the applicability of English law to the Straits Settlements], it has been held that statutes relating to matters and exigencies peculiar to the local conditions of England, and which are not adapted to the circumstances of the colony, do not become a part of its law, although the general law of England may be introduced into it.⁴

A distinct feature of the early days of the British administration of justice was the lack of any separation of powers between the judiciary and the executive. Prior to 1867, the courts consisted not only of professional judges called "Recorders", but also of lay judges. The latter comprised the Governor who was the chief executive authority of the State, and members of the Executive Council. It was only when the Straits Settlements came under the control of the British Colonial Office that the judiciary became separate from the executive.

The first specific piece of legislation to be introduced for the establishment of the courts in the Straits Settlements was Ordinance No.5 of 1868. By this Ordinance, the Supreme Court of the Straits Settlements was established, thus abolishing the Courts of Judicature of Penang (for sometime known as the Prince of Wales Island) Singapore and Malacca which were established under the Third Charter of Justice. Though there were some doubts during this period as to whether appeals could be brought from the Supreme Court of the Straits Settlement to the Judicial Committee of the Privy Council, the case of *Ong Cheng Neo v Yap Cheah Neo*⁵ made it clear that the right of appeal was not affected by the repeal of the Third Charter of Justice. In 1868, when the Supreme Court of the Straits Settlements was established, the "recorders" of the former Courts of Judicature became the sole judges.

In 1873, the Supreme Court was reorganised under four judges:

Chief Justice, Judge of Penang, Senior Puisne Judge and Junior Puisne Judge.

A Criminal Court known as the Court of Quarter Sessions was also established and was presided in Singapore by the Junior Puisne Judge. A Court of Appeal was also established.

In 1878, the Courts Ordinance 1878⁶ was introduced to amend the law relating to the constitution of the civil and criminal courts of the Straits Settlements. The following courts were established under this Ordinance:

- (i) the Supreme Court of the Straits Settlement;
- (ii) Courts of Requests at each of the Settlements;
- (iii) Courts of two Magistrates, at each of the Settlements;
- (iv) Magistrates' Court, at each of the Settlements,
- (v) Coroners' Courts, at each of the Settlements; and
- (iv) Justices of the Peace

Like the previous legislation, the Courts Ordinance 1878 also provided for the right of appeal to the Privy Council.

It can be said that the Courts Ordinance 1878 is the forerunner to all subsequent legislation introduced in the country for the establishment of the present system of the courts in the country. The said Ordinance, for the first time contained detailed provisions dealing with the appointment of judges, their qualifications, establishment of the posts of registrar, deputy registrars, clerks and interpreters. The ordinance also provided for the admission and control of advocates and solicitors, and for the judges to make rules and orders for purposes of practice and procedure.

The said Ordinance also contained express provisions conferring criminal jurisdiction of the Supreme Court. Section 10 of the Ordinance spelt out the general powers of the Supreme Court to be as follows:

The Supreme Court shall have such jurisdiction and authority as Her Majesty's High Court of Justice in England, and the several Judges thereof,

respectively, have and may lawfully exercise in England, in all Civil and Criminal actions and suits, other than Admiralty actions and suits; and the said Court shall also have and exercise jurisdiction in all matters concerning the revenue, and in the control of all inferior Courts and Jurisdictions, subject in all the above cases to the laws of the Colony.

As pointed out earlier, the Courts ordinance 1878 also provided for the establishment of the inferior civil and criminal courts, viz, the Courts of Requests (presided over by a Magistrate as Commissioner of the Court); the Magistrates' Court (presided over by Magistrates, or Justices of the Peace acting as Magistrates); and the Coroners' Courts. Provisions were also made for appeals to be heard by the Supreme Court as a Court of Appeal.

It may perhaps be of interest to note that a Council of Judges of the Supreme Court was also established for the first time by the Civil Law Ordinance 1878⁷ which was introduced at the same time as the Courts Ordinance 1878. Like the present law contained in the Courts of Judicature Act 1964, it was provided that all judges shall assemble once at least every year on such day or days as shall be fixed by the Chief Justice⁸. The year 1878 also saw the introduction of the first comprehensive piece of legislation dealing with civil procedure¹¹.

The Courts Ordinance of the Straits Settlements as subsequently amended on a number of occasions. The Magistrates' Court was subsequently replaced by the District Court in each of the Settlements, and a newly established Police Court in each of the Settlements was also set up. For the first time also the High Court was established. The Supreme Court was established as a Court of record and consisted of (a) the High Court, which had original and appellate jurisdiction in both criminal and civil matters; and (b) the Court of Appeal which exercised appellate civil jurisdiction. A separate Court of Criminal Appeal was established by Ordinance No.5 of 1931.

For the first time, express provisions were contained in the legislation providing for the High Court and the Court of Appeal to have powers to punish for contempt & court as was possessed by the High Court of Justice and the Court of Appeal in England. The jurisdiction of the High Court in exercise of its original criminal jurisdiction and its original civil jurisdiction was spelt out in detail.

Like its predecessor, the Courts Ordinance 1878 also provided for appeals to the Privy Council. Provisions were also made for the powers and jurisdiction of the inferior courts, namely the District Court and the Police Courts¹⁰.

It was during this period that express provisions were made to provide for the disqualification of judges from holding other offices, except for any unpaid office in any society for charitable purposes, or for the encouragement of science, arts or manufacture¹¹.

The structure of the courts in the Straits Settlements as provided for in Chapters 10 and 11 of the Laws of the Straits Settlement 1936, as stated above continued to be in force until the establishment of the federation of Malaya in 1948. The Straits Settlements Ordinances, relating to the Courts were repealed by Ordinance 43 of 1948¹².

Federated Malay States (FMS)¹³.

The Federated Malay States which comprised Perak, Selangor, Negeri Sembilan and Pahang came into being in 1895. Between 1874 and 1887, each of the four States came under British protection when their rulers, in exchange for British recognition of their claim as Rulers of the respective Malay States, agreed to accept the British Residents whose advice was acted upon on all matters, other than those affecting the Malay religion and custom.

Prior to 1895, each of the States had its own judiciary for the administration of justice. The then existing judicial institutions consisted of the Magistrates' Courts, the Court of Senior Magistrate and lastly, the final court of appeal, the Sultan-in-Council. However, the actual decision-maker in the State Council was the British Resident. There was no separation of the judiciary from the executive.

When the Federation was formed in 1895, with the introduction of a common form of legislation passed in each of the four States, a common Court of Appeal, called the Court of Commissioner was established¹⁴. It was the highest court in the Federated Malay States.

When the Court of the Judicial Commissioner was established in the Federated Malay States, a number of other inferior courts were also established, namely the Courts of the Senior Magistrates; Courts of Magistrates of the First Class; and the Courts of Magistrates of the Second Class.

For the first time, the Courts of Kathis and Assistant Kathis and the Courts of Penghulus were established. It was provided that whenever a Senior magistrate heard an appeal from the decision of a Kathi or an Assistant Kathi, the senior Magistrate, shall summon one or more of the principal Muhammadans of the State to aid him with advice¹⁵.

The origin of the jury system appears to have its early roots in this piece of legislation. The Courts Enactment of the Federated Malay States provided that in the Court of Judicial Commissioner and the Court of the Senior magistrates whenever cases were heard where the punishment of death was authorised by law, the accused should be tried with the aid of assessors¹⁶.

In 1905¹⁷, the Court of the Judicial Commissioner was superseded by the Supreme Court of the Federated Malay States. The Supreme Court consisted of a Court of Appeal and a Court of the Judicial Commissioner. Whilst the former replaced the 1895 Court of Judicial Commissioner, the latter replaced the Senior magistrate's Court. Oddly enough, the Supreme Court that was established was not a federal court. It was established in each State by the respective State legislation and had jurisdiction only as regards the State concerned. The Enactment of 1905 that was introduced in the four States which comprised the Federated Malay States, also contained provisions for the appointment of the registrar of the supreme Court and other assistant registrars and deputy registrars. It further provided that from any judgement or order of the Court of Appeal in any civil matter, an appeal may be made to the judicial Committee of the Privy Council. However, in 1918, by the Courts Enactment 1918¹⁸, a federal Supreme Court was created for the Federated Malay States by federal legislation.

Like its predecessors, the Courts Enactment 1918 only provided for the appointment of judicial commissioners and not judges to hear cases.

However, for the first time, the post of Chief Judicial Commissioner, as the

president of the Supreme Court was appointed. The appointment of the Chief Judicial Commissioner and other judicial commissioners was made by the Chief Secretary to the Government with the approval of the High Commissioner. It was also provided that the puisne judges of the Supreme Court of the Strait Settlements may at the same time act as judicial commissioners of the Supreme Court of the Federated Malay States.

The Court of the judicial commissioner was vested with original and appellate jurisdiction in both civil and criminal matters. Provisions were also made for the powers of the Magistrates, Kathis, Assistant Kathis and Penghulus. It was provided that:

Every Kathi and Assistant Kathi shall have such powers in all matters concerning Muhammadan religion, marriage, and divorce, and all matters regulated by Muhammadan Law, as may be defined in its *kuasa*¹⁹.

Powers were also given to the Chief Judicial Commissioner to admit certain persons as advocates and solicitors of the Supreme Court of the Federated Malay States. Again, provisions were made for the meeting of a Council of the Judicial Commissioners²⁰. It therefore becomes evident that the origin of the present High Court and the High Court judges is based on the Courts Enactment 1918 of the Federated Malay States.

Again it was provided in the Courts Enactment 1918 that in any civil matter, an appeal may be made from the decision of the Court of Appeal to the Privy Council.

The Federated Malay States remained in force until the Japanese invasion in December 1941.

Unfederated Malay States (UFMS)²¹

The Unfederated Malay States consisted of Kedah, Perlis, Kelantan, Terengganu and Johore. The first four States came under British protection beginning

from 1909 when the Siamese transferred to the British their rights of sovereignty, protection, administration and control over the States. A British Adviser was appointed for each State under a series of agreements. Johore accepted a British Adviser in 1914. Like the position prevailing in the Federated Malay States, the advice of the British Advisers had to be sought and acted upon by the Rulers of the Unfederated Malay States on all matters other than those affecting Malay religion and custom.

With respect to the administration of justice, each State had its own state judiciary. Each also had its own Supreme Court, although the constitution of the Courts varied from State to State. Johore, however, was the first State to make provisions for appeals to the Judicial Committee of the Privy Council in 1921²².

The Unfederated Malay States remained outside the Federation until the end of World War II.

Japanese Occupation (World War II): 1942- 1945

The Japanese Occupation of British Malaya commenced in December 1941. Nothing much is known either of the judicial system or the administration of justice in the Malay Peninsula during this period. However, it appears that there were two courts functioning during that time; the Military or Special Courts and the Civil Courts²³.

The Special Court was set up to try civilians charged with offences under the Japanese Maintenance of Public Peace, Law and Order. It was presided by a Japanese judge. With respect to the Civil Courts, their jurisdiction was confined to civil and criminal cases only. In this respect, it appears that the pre-existing laws of the Straits Settlement, the Federated Malay States and the Unfederated Malay States continued in force until changed or repealed by the Japanese Military Administration. The Civil Courts were presided by local judicial officers.

In 1943, pursuant to the Judicial Organisation Ordinance, a Supreme Court, High Court, District and Magistrates' Courts, Penghulu's Court and Kathi's Court were established during the Japanese Occupation.

Post-war Period : 1946-1956

British Military Administration (BMA)²⁴

The surrender of the Japanese forces in 1945 saw, once again, the reinstatement of British Colonial rule in the Malay Peninsula. From September 1945 to April 1946, the Peninsula was placed under the British Military Administration (BMA) and the District Courts (BMA). The administration of justice during this period was in the hands of British Military Officers.

The British Military Administration was a transitional phase prior to the introduction of civilian rule. Towards this end, the British Military Courts played a crucial role in converting chaos, which was prevalent during the Japanese Occupation, to orderly government.

The Malayan Union²⁵

The British Military Administration was a brief interlude and was replaced by the British Malayan Union in 1946. The establishment of the Malayan Union which comprised the Federated Malay States, Unfederated Malay States and the Straits Settlements witnessed the unification of the three separate judicial systems mentioned earlier. Under section 85 of the Malayan Union Order in Council 1946, the Malayan Union Ordinance 3/46 was enacted whereby a Supreme Court (a Court of Record) was established, comprising the High Court having jurisdiction throughout the Malay Peninsula with power to exercise original and appellate civil and criminal jurisdiction²⁶. The Ordinance also dealt with the establishment, constitution and powers of subordinate civil and criminal courts.

The subordinate courts consisted of the District Courts and the Magistrates' Courts. Authority was vested in the Governor of the Malayan Union to constitute by order in each State and Settlement as many courts as he thought fit and to assign local limits of jurisdiction. Where he deemed necessary, the Governor had the power to extend the jurisdiction beyond the boundary of such State or Settlement.

Federation of Malaya (1948)²⁷

The Malayan Union proved unpopular and amidst intense Malay opposition and was superseded by the Federation of Malaya on 1st February 1948. Under the Federation of Malaya Agreement 1948, each State and Settlement was to retain its own individuality but all were to be united under a strong central government.

The demise of the Malayan Union saw the restructuring of the courts particularly at the subordinate level. The Courts Ordinance 1948 established a new structure of subordinate courts comprising the Sessions Court, Magistrates' Courts and Penghulus' Courts.

With respect to the superior courts, the Federation of Malaya Agreement continued the pre-existing structure, i.e. the Malayan Union Supreme Court which consisted of the Court of Appeal and a High Court under a Chief Justice and the existing Chief Justice and judges were to be the first Chief Justice and Judges of the Supreme Court of the Federation of Malaya.

THE PERIOD FROM INDEPENDENCE TO THE FORMATION OF MALAYSIA

Independence : Federal Constitution 1957

While preparatory negotiations leading to independence were being held, landmark changes relating to cessation of English Law took place. One consequence of British intervention was the reception of English Law and the rules of equity to local circumstances. Several statutes provided the authority for the reception of the law of England into this country. By virtue of the Civil Law Ordinance 1956 (later revised in 1972) in West Malaysia or any part thereof, it was provided that the courts apply the common law of England and rules of equity as administered in England on the 7th April 1956. In Sabah, the effective date of change was 1st December 1951 and in Sarawak, 12th December 1949. In the application of the English commercial law, there is some difference arising from historical reasons between the former nine Malay States, on the one hand, and Penang, Malacca, Sabah and Sarawak, on the other. In view of the current position, however, this topic is not of sufficient importance to merit any further discussion in

this chapter.

On 31st August 1957, the Federation of Malaya became an independent and sovereign nation.

Malaysia : 1963

The subsequent developments came about in 1963 when Malaysia was formed on 16th September 1963 with Sabah, Sarawak and Singapore as the three new component States of the Federation of Malaysia.

Consequent upon the formation of Malaysia, the Constitution was amended to effect the restructuring of the legislative, judicial, executive and administrative powers to reflect the new Federation formed.

On 9th August 1965, Singapore broke away from Malaysia leaving therefore certain consequential amendments were again made to the Constitution of Malaysia to accommodate the changes to the administrative system brought about by the separation of Singapore from the Federation. Of principle importance was the separation of the judicial systems between the two nations.

Sabah and Sarawak

An account of the legal system and the administration of justice in Malaysia would be incomplete without any reference being made to the position in East Malaysia²⁸.

North Borneo (now Sabah) and Sarawak became British protected States as early as 1888 by virtue of an agreement made between the local rulers and the British North Borneo (Chartered) Company. Like their counterparts in the Malay Peninsula, the Company was to administer justice with due regard to native customs and laws and not to interfere with the religion of the inhabitants.

With respect to the administration of justice, North Borneo was divided into sessional and magisterial divisions. The former was executively administered by the British Residents, and the latter by District Officers.

The Chief Court comprised the Governor, the Judicial Commissioner and other judges temporarily appointed by the Governor.

As for Sarawak, its momentous legal history began with the proclamation of James Brooke as the first Rajah and Governor of Sarawak. His main task was to establish law and order in the territory. The first sets of written laws published in Malay were introduced in 1843. Subsequent developments of laws were primarily derived from laws in force in the Malay States, Singapore and India.

THE BASIC CONSTITUTIONAL FRAMEWORK

The Malaysian Federal Constitution is a written document and represents the supreme law of the land. The approach adopted by the framers of the constitution was to incorporate some basic English constitutional principles in this written document and infuse these with a Malaysian flavour.

The fundamental features of the constitution are the creation of the nation as a Federation with the Yang DiPertuan Agung as the Supreme Head functioning as a constitutional monarch.²⁹ The constitution established a system of parliamentary democracy and establishes Islam as the religion of

the Federation.³⁰ Further, it declares the Constitution to be the supreme law of the Federation.³¹ By virtue of Article 44, a bicameral Parliament is established with the Yang DiPertuan Agung at the apex of this Westminster model. The status of the national language (Malay) is enshrined in Article 152. However, there is no restriction on an individual to teach or learn any other language.

It is pertinent to note that while the Federal Constitution is the supreme law of the land, certain provisions can be amended by an ordinary Act of Parliament. Provisions governing the prerogatives of the State Rulers although would require a two-thirds majority coupled with a concurrence of the Conference of Rulers. However in the main, most articles can only be amended by securing a two-thirds majority in each House. Thus while the constitution is fairly entrenched, given the executive dominance of Parliament, amendments to the constitution can be achieved relatively easily.

Being a Federation, each of the 13 states retains its own constitution and State Assemblies and there has been occasion where conflicts have arisen between state laws and federal laws. However, by virtue of Article 75, federal law would prevail over state laws in the event of a conflict between the two.³²

Further limits are placed on states in relation to its territorial legislative authority by virtue of Article 73(a) and by virtue of Article 74, which in turn places limits on the subject matter that States may legislate upon.

While it appears that the Malaysian Parliament does have some measure of supremacy in relation to the states, it is not supreme in the context of its legislative capabilities. Hence, unlike its British counterpart, any law passed by Parliament that is inconsistent with the Constitution shall to the extent of that inconsistency be void.³³

This legislative limitation would of course have some bearing when

considering certain fundamental liberties as guaranteed by the constitution. Chapter II of the constitution sets out certain fundamental liberties that include the following:

- i. That no person shall be deprived of his life or personal liberty save in accordance with the law
- ii. the right to be informed as soon as is possible of the grounds of arrest and the right to legal representation - Article 5(3)
- iii. the right to be brought before a court without reasonable delay and, in any case, within 24 hours - Article 5(4)
- iv. equality before the law and equal protection from the law - Article 8
- v. freedom of speech and expression, peaceful assembly and formation of associations - Article 10(1)
- vi. freedom to profess, practise and propagate religion - Article 11

While these liberties are guaranteed by the Constitution, it is pertinent to note that these rights are not absolute and hence are to be read in line with Articles 149 and 150.

Thus by virtue of Article 149, Parliament may make laws against subversion, irrespective if whether an emergency is proclaimed. It is a necessary consequence therefore that such a law if passed, may be inconsistent with some of the liberties mentioned. Perhaps no other statute has elicited so much controversy on this issue as the Internal Security Act 1960. Originally enacted to thwart the threat of terrorism, it empowered the executive with wide discretionary powers to detain individuals without trial for a period of up to two years. This then has the consequential effect of causing an individual so detained to file for an order of *habeas corpus*.³⁴

A similar provision exists under Article 150 which states that the Yang DiPertuan Agung if satisfied that a grave emergency exists whereby the security, or the economic life, or public order in the Federation or any part thereof is threatened, he may issue a proclamation of emergency and make a declaration to that effect. In the constitutional history of the nation this provision has been invoked on four occasions.³⁵

Notes

1. For an account of the legal system prevailing before the British intervention, see generally Hickling, RH, "The origins of the Malaysian Bench", in *Essays in Malaysian Law*, 1991; Buss-tjen, "Malay Study" in (1958) 7 *American Journal of Comparative Study* 248 and the references cited there; and the bibliography in Ahmad Ibrahim and Ahilemah Joned, *Sistem Undang-undang Di Malaysia* (1985) and Wu Min Aun, *Malaysian Legal System*; 1981.
2. See generally Bradell, *The Laws of The Straits Settlement*, (1915); and Kyshe, 'Judicial History of the Straits Settlements, 1786-1890', reprinted in (1969)11 *Malaya Law Review*.
3. (1835)2 Ky Ecc 8, at pages 9-10.
4. (1875) LR 6 PC 381, 394. See now section 3 of the Civil Law Act 1956, Act 67 Revised 1972.
5. (1874)LR 5 PC 89.
6. No 111 of 1878.
7. 1V of 1878-NO?
8. Section 5 of the Civil law Ordinance No IV of 1878. As to the present position see section 17A of the Courts of Judicature Act 1964, Act 91 revised 1972.
9. Civil Procedure Ordinance No V of 1878.
10. See the Courts Ordinance as consolidated in Chapter 10 of the *Laws of the Straits Settlements 1936*.
11. Sections 81 and 82.
12. See discussion below.
13. Terrel, AK, *Jurisdiction of the Courts in the Federated Malay States*, 1936, Government Printer, London.
14. See Orders in Council Nos 11 of 1890 and 10 of 1894 and the Courts Enactment 1900, Enactment No 5 of 1900.
15. Courts Enactment 1900, Enactment No 5 of 1900, section 5 (viii).
16. Above, section (viii).
17. See Enactment No 13 of 1905 the State of Perak. Each of the other States of the FMS had similar legislation.

18. No 14 of 1918 of the *Laws of the Federated Malay States 1877-1920*, volume 111, published in 1921.
19. Section 65 of FMS Enactment No 14 of 1918.
20. Section 76 of FMS Enactment No A 4 of 1918.
21. As to the legal status of the States of the UFMS, see *Mighell v Sultan of Johore* (1894) IQB 147; and *Duff Development Co v Government of Kelantan* (1924) AC 797.
22. Johore Appeals Order in Council 1921. See also Courts Enactment (Johore) 1920.
23. See generally 'Powers and Duties of an Enemy Occupant [1946] MU I; 'British Law and Police Officers during Japanese Occupation' [1946] MU lxxv-l xix; 'Occupation or Conquest?' [1946] MU xxvii.
24. See 'Jurisdiction of the Military Courts' [1946] MU xxxii.
25. See generally Suffian, *An Introduction to the Constitution of Malaysia*, (1976), pages 7-10.
26. By 1946, Singapore had become a separate Crown Colony and had a separate Supreme Court. However, in practice, judges of the Supreme Court, Malayan Union, could preside as judges of the Supreme Court, Singapore and vice-versa.
27. See the Federation of Malaya Order in Council 1948, and the *Federation of Malaya Agreement 1948*.
28. See generally, Sheridan, *Malaya, Singapore and the Borneo Territories*, 1961, Stevens, London.
29. See Articles 1, 32(1) and 40
30. Chapter 4 part IV and Article 3
31. Article 34
32. See *City Council of Georgetown and Another v The Government of the State of Penang and Another* [1967] 1 MLJ 169
33. Article 4(1)
34. Per Abdoolcader J in *Yeop Hock Seng v Minister of Home Affairs Malaysia* [1975] 2 MLJ at 281
35. In 1964, 1966, 1969 and 1977
