

Administration of Justice in Malaysia

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In order to appreciate the present judicial system and the administration of justice in Malaysia, one needs to trace the origins and history of the Malaysian Bench. As will be seen, the growth and development of the Malaysian judiciary were directly consequent on the political changes which took place in the country. The historical judicial development reflective of the political changes will therefore constitute the first half of the discussion. The second half will be devoted to a discussion of the present day system and hierarchy of courts with their powers and jurisdiction. This paper will conclude with an attempt to postulate future changes in the Malaysian judiciary consequent upon the creation of the Supreme Court of Malaysia.

The history of the Malaysian judicial system is closely interrelated with the history of British intervention in the Malay Peninsula. It is proposed to divide our study of the Malaysian judicial history into four distinct periods, viz.: (1) British Colonial Rule: 1786-1941 (Pre-war period); (2) Japanese Occupation (World War II): 1942-1945; (3) British Colonial Rule: 1946-1956 (Post-war period); and (4) Independence and thereafter: 1957-1980s.

A. HISTORICAL JUDICIAL DEVELOPMENT

1. *British Colonial Rule: 1786-1941*

Varying degrees of British involvement can be seen in the differing governmental structures in Malaya; the Straits Settlements, the Federated Malay States and the Unfederated Malay States constituted three stages in British intervention. Whilst the first were settled colonies, the latter two were mere protectorates.

(a) Straits Settlements (S.S.)

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. Collectively known as the Straits Settlements, they came directly under the responsibility of the British Colonial Office in 1876.

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The judicial system obtaining in the Crown Colony first evolved when the First Charter of Justice of 1807 established Courts of Judicature in Penang. By the Second Charter of Justice of 1826, united Courts of Judicature were established for the three settlements of Penang, Malacca and Singapore. These Charters of Justice were significant for they heralded the reception of English common law and equity into the Malay Peninsula. As stated by Malkin R in *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 King’s 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.”¹

It is important to note that the Court of Judicature was to administer in the Straits Settlements 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 condition of England, and which are not adapted to the circumstances of a colony, do not become a part of its law, although the general law of England may be introduced into it.”²

A distinct feature of early-days British administration of justice was the lack of separation 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

1. (1835) 2 Ky. Ecc. 8 at pp. 9-10

2. (1875) L.R. 6 P.C. 387, 394 The application of United Kingdom common law, rules of equity and certain statutes in Peninsula Malaysia is now governed by Section 3 of the Civil Law Act, 1956 (Revised – 1972). For easy reference, the provisions are spelt out:

Section 3 (1) reads: “Save so far as other provision has been made or may hereafter be made by any written law in force in Malaysia the court shall –

- (a) in West Malaysia or any part thereof apply the common law of England and the rules of equity as administered in England on the 7th day of April, 1956;
- (b) in Sabah, apply the common law of England and the rules of equity, together with statutes of general application, as administered or in force in England on the 1st day of December, 1951;
- (c) in Sarawak, apply the common law of England and the rules of equity, together with statutes of general application, as administered or in force in England on the 12th day of December 1949, subject however to subsection (3) (ii):

Provided always that the said common law, rules of equity and statutes of general application shall be applied so far only as the circumstances of the States of Malaysia and their respective inhabitants permit and subject to such qualifications as local circumstances render necessary.”

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. 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 reorganized under four judges: the 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 over in Singapore by the Senior Puisne Judge, and in Penang by the Junior Puisne Judge. A Court of Appeal was also established. This was the position in the Straits Settlements until the invasion by Japan of British Malaya.

(b) Federated Malay States (F.M.S.)

The F.M.S. which comprised Perak, Selangor, Negri 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 British Residents whose advice had to be asked and acted upon on all questions other than those touching Malay religion and custom.

Prior to 1895, each of the States had its own State Judiciary for the administration of justice. The then existing judicial institutions consisted of the Magistrate's 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, a common judiciary was introduced when a common form of legislation was passed in each of the four States to establish a common Court of Appeal called the Court of the Judicial Commissioner. It was the highest court in the F.M.S. However, in 1905, it was superseded by the Supreme Court of the F.M.S.

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. Strangely enough, this Supreme Court was not a Federal Court and was established in each State by State legislation and had jurisdiction only as regards the State concerned. However, in 1918, a Federal Supreme Court was created for the F.M.S. by Federal legislation. The F.M.S. remained in existence until the Japanese invasion in December 1941.

(c) The Unfederated Malay States (U.F.M.S.)

The U.F.M.S. consisted of Kedah, Perlis, Kelantan, Trengganu and Johore. The first four States came under British protection beginning from 1909 when the Siamese transferred to the British their rights of suzerainty, 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 that of the F.M.S. advice of the British advisers had to be asked and acted upon by the Rulers of the U.F.M.S. on all questions other than those touching 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. The U.F.M.S. remained outside the Federation until the end of World War II.

2. *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 Courts.

The Special Court was set up to try civilians charged with offences under the Japanese Maintenance of Public Peace and Order Law. 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 S.S., the F.M.S. and the U.F.M.S. 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 Organization Ordinance, a Supreme Court, High Court, District and Magistrates' Courts, Penghulu's Court and Kathis' Courts were established during the Japanese Occupation.

Speaking of the Japanese Occupation, an interesting question has emerged and that is whether the occupation was, in law, an occupation or conquest. The Japanese were in occupation of Malaya from the middle of February, 1942 to September, 1945. Nevertheless, the question remains whether the occupation in fact was a mere occupation or was it a conquest of Malaya by the Japanese? I do not propose to provide the answer but would refer the readers' attention to two articles appearing in Volume 12 of the 1946 *Malayan Law Journal*.³

3. *British Colonial Rule: (1946-1956) (post-war period)*

(a) British Military Administration (B.M.A.)

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. During that period, the B.M.A. set up a system of courts called the Superior Court

3. See, "Powers and Duties of an Enemy Occupant", (1946) 12 *M.L.J.* i; "British Law and Police Officers during Japanese Occupation", (1946) 12 *M.L.J.* lxx - lxxx; "Occupation or Conquest?", (1946) 12 *M.L.J.* xxvii.

(B.M.A.) and the District Courts (B.M.A.). The administration of justice during this period was in the hands of British Military officers.

As can be seen, 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 jurisdiction of the courts and the objective of their creation may be seen in *In re Lam Weig Chak*.⁴

In that case, the accused was charged on four charges of having voluntarily caused hurt for the purpose of extorting confessions in March 1942, being offences under section 330 of the Penal Code (F.M.S.). At the hearing of the case, a preliminary objection was raised over the jurisdiction of the Ipoh Superior Court (B.M.A.) to take cognizance of offences alleged to have been committed in Malaya during the Japanese Occupation.

In support of the above objection, counsel for the accused pointed out that Proclamation No. 3 which established Military Courts and conferred on them jurisdiction "over persons charged with offences committed either before or after the establishment of such control",⁵ was promulgated by the General Officer Commanding Military Forces Malaya pursuant to Proclamation No. 1. The latter, promulgated by Lord Mountbatten, the Supreme Allied Commander South East Asia Command, provided that the Malay Peninsula (the Straits Settlements and the Malay States) were placed under Military Administration "by reason of military necessity and for the suppression of disorder and the maintenance of public safety."⁶ It was argued that in so far as Proclamation No. 1 did not expressly provide for any retrospective effect of subsequent proclamation made under it, Proclamation No. 3 was therefore *ultra vires* and the Ipoh Superior Court was not competent to try the accused.

This submission was rejected by the President, Lt.-Col. J. G. Adams, who held that the immediate effect of Proclamation No. 1 was to restore the law as it was before the Japanese occupied Malaya in 1942 such as those of the S.S., the F.M.S. and the U.F.M.S. In his view time never ran against the Crown, and the courts, being set up by reason of military necessity for the administration of those laws that existed before the existence of the Japanese Occupation, should have exactly the same jurisdiction as the criminal courts then in existence had before the Japanese Occupation. He summed up by saying that the courts were set up to administer the law that existed prior to the Japanese Occupation and therefore had jurisdiction to try all offences against the Penal Code of the F.M.S. whenever they were committed.

4. Ipoh Criminal Trial No. 61 of 1946. See "Jurisdiction of Military Courts", (1946) 12 *M.L.J.* xxxii.

5 *Ibid.* xxxiii.

6 *Ibid.*

(b) The Malayan Union

The B.M.A. was a brief interlude and was replaced by the British Malayan Union in 1946. The establishment of the Malayan union which comprised the F.M.S., U.F.M.S. and the S.S. 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 jurisdiction, and the Court of Appeal with power to exercise appellate civil and criminal jurisdiction.⁷ The Ordinance also dealt with the establishment, constitution and powers of subordinate civil and criminal courts.

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

(c) Federation of Malaya (1948)

The Malayan Union proved unpopular and amidst intense Malay opposition 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, in place of the Malayan Union Subordinate Courts, a new structure of inferior courts comprising the Sessions Courts, Magistrates' Courts and Penghulus' Courts. This structure is continued up to the present day. 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. The 1948 Agreement further provided that the Chief Justice and Judges of the Supreme Court of the Malayan Union were to be the first Chief Justice and Judges of the Supreme Court of the Federation of Malaya.

4. *Independence – Federal Constitution 1957*

On 31st August, 1957 the Federation of Malaya became an independent sovereign country. However, the Supreme Court of pre-independence was continued. The Supreme Court therefore still consisted of a High Court and a Court of Appeal. The establishment, jurisdiction and powers of all courts,

⁷ It should be noted that by 1946, Singapore had become a separate Crown Colony and was given 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*.

excluding Muslim courts, are matters within the legislative powers of the Federation. Article 121 of the Federal Constitution⁸ provided that "The Judicial power of the Federation shall be vested in a Supreme Court and such inferior courts as may be provided by federal law", and by Article 122 (1),⁹ "The Supreme Court shall consist of a Chief Justice and other Judges."

The Supreme Court of independent Malaya not only retained its previous powers but its jurisdiction was considerably enlarged. Under the Federation of Malaya Agreement, 1948, the Court of Justice was not competent to question the validity of the Courts Ordinance¹⁰ of that year and no Court of Justice, including the Supreme Court itself, had any power to interpret the Federation Agreement.¹¹ As can be seen the function to interpret was vested in an *ad hoc* Interpretation Tribunal. In contrast, under the 1957 Constitution the Supreme Court was not only given the original, appellate and revisional jurisdiction as may be provided by federal law but also, to the exclusion of any other court, the jurisdiction to determine any dispute between States or even between the Federation and any State.¹² In this connection, however, it is to be observed that certain disputes relating to land and those arising under Articles 83 to 87 had to be referred to the Land Tribunal.

The Supreme Court's special jurisdiction to interpret the Constitution was provided by Article 129 which read: "Without prejudice to any appellate or revisional jurisdiction of the Supreme Court, where in any proceedings before another court a question arises as to the effect of any provision of this Constitution, the Supreme Court may, on the application of either party to the proceedings, determine that question and either dispose of the case or remit it to the other court to be disposed of in accordance with the determination."¹³

Its advisory jurisdiction as provided by Article 130 reads:

"The Yang di-Pertuan Agong may refer to the Federal Court for its opinion any question as to the effect of any provision of this Constitution which has arisen or appears to him likely to arise, and the Federal Court shall pronounce in open court its opinion on any question so referred to it."

Another major change introduced by the Federal Constitution is the appointment of the Chief Justice and Judges of the Supreme Court. Under the Federation of Malaya Agreement, 1948, the appointment of judges was made by the High Commissioner for and on behalf of His Majesty and the Ruler,¹⁴ whereas under

8 The Federal Constitution as at 31st August, 1957.

9 *Ibid.*

10. Federation of Malaya Agreement 1948, Clause 66.

11. Federation of Malaya Agreement 1948, Clause 153.

12. Federal Constitution 1957, Articles 128 (1) & 128 (2)

13. Article 129 has since been repealed and the power to interpret the Constitution is now enshrined in Article 128 of the Federal Constitution.

14. Federation of Malaya Agreement 1948, Clause 77 (4).

the 1957 Constitution the Chief Justice and other Judges of the Supreme Court were appointed by His Majesty the Yang di-Pertuan Agong.¹⁵

(a) Tenure of office and independence of the judiciary

The Reid Commission Report contained a recommendation on the tenure of office of a judge. Basically the object was to ensure the independence of the Judges. This recommendation was to the effect that:

“Since under the new Constitution the powers of Her Majesty’s Government and the High Commissioner will disappear, it has been necessary to insert the provisions, usual in democratic Constitutions, for the maintenance of the independence of the Supreme Court. Under our proposals (Article 116) a judge cannot be removed except by an order of the Yang di-Pertuan Agong in pursuance of an address passed by a majority of two-thirds of each House of Parliament; and before any such motion is moved there must be proved misconduct or infirmity of mind or body. Subject to this provision, the age of retirement has been at 65.”

With a view to ensuring further the independence of the courts, a provision was also made for the remuneration of Judges of the Supreme Court to be charged to the Consolidated Fund.¹⁶ There was also enshrined in the Constitution a provision to the effect that the remuneration and other terms of office (including pension rights) of the Judges of the Supreme Court should not be altered to his disadvantage after his appointment.¹⁷ One other provision which is significant is contained in Article 127 which provides that:

“The conduct of a judge of the Federal Court or High Court shall not be discussed in either House of Parliament except on a substantive motion of which notice has been given by not less than one quarter of the total numbers of members of that House, and shall not be discussed in the Legislative Assembly of any State.”

As for the subordinate courts their position remained the same and their powers are derived from federal law enacted by virtue of Article 121 of the Federal Constitution.

5. *Malaysia (1963)*

The subsequent developments in our judicial system 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.

15. Federal Constitution 1957, article 122B.

16. Federal Constitution 1957, Article 125 (b).

17. Federal Constitution 1957, Article 125 (7).

Consequent upon the formation of Malaysia, Part IX of the Constitution was amended to effect the restructuring of the courts primarily at the Superior level. The amendment made provision for the judicial power of the Federation to be vested in three High Courts of co-ordinate jurisdiction and status namely the High Court of Malaya, the High Court Borneo States and the High Court Singapore. The amendment also made provision for the establishment of a Federal Court to consist of a President of the Court to be styled Lord President, the Chief Justice of the High courts and other Federal Court Judges.¹⁸ The Federal Court was also vested with original, appellate and advisory jurisdiction. Article 121 of the Federal Constitution provides:

- “(2) The following jurisdiction shall be vested in a court which shall be known as the Federal Court and shall have its principal registry in Kuala Lumpur, that is to say, –
- (a) exclusive jurisdiction to determine appeals from decisions of a High Court or a judge thereof (except decisions of a High Court given by a registrar or other officer of the court and appealable under the federal law to a judge of the Court); and
 - (b) such original or consultative jurisdiction as is specified in Articles 128 and 130.”

Its original jurisdiction as set out in Article 128 reads:

- “(1) The Federal Court shall, to the exclusion of any other court, have jurisdiction to determine –
- (a) any question whether a law made by Parliament or by the Legislature of a State is invalid on the ground that it makes provision with respect to a matter with respect to which Parliament or, as the case may be, the Legislature of the State has no power to make laws; and
 - (b) disputes on any other question between States or between the Federation and any other State.
- (2) Without prejudice to any appellate jurisdiction of the Federal Court, where in any proceedings before another court a question arises as to the effect of any provision of this Constitution, the Federal Court shall have jurisdiction (subject to any rules of court regulating the exercise of that jurisdiction) to determine the question and remit the case to the other court to be disposed of in accordance with the determination.
- (3) The jurisdiction of the Federal Court to determine appeals from a High Court or a Judge thereof shall be such as may be provided by federal law.”

18. Federal Constitution 1957, Article 122.

Article 130 sets out the advisory jurisdiction of the Federal court the provisions of which are similar to Article 130 of the Federal Constitution, 1957. They remain until the present day.

As may be observed, from Malaysia Day, 16th September, 1963, the Supreme Court was replaced and was substituted by a Federal Court. But the Federal Court, unlike the Supreme Court, was not a Court of Record and no longer consisted of a Court of Appeal and a High Court. It stood on its own in the structure of courts. It is also to be observed that the word "power" is used in Article 121 to describe the authority vested in the three High Courts of co-ordinate jurisdiction and status. As for the subordinate courts, there was, however, no change in their structure.

On 9th August, 1965, Singapore broke away from Malaysia leaving therefore the two existing High Courts, namely that of Borneo and Peninsula Malaya, till today.

6. *East Malaysia*

An account of the judicial system and the administration of justice in Malaysia is, it is submitted, incomplete without mentioning briefly the position in East Malaysia.

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 was comprised of 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 Brook as the first Rajah and Governor of Sarawak. His main task was to establish law and order in the country. In 1870 onwards he established a number of courts comprising the Debtor's Courts, Chinese Courts, Courts of Requests, Bankruptcy Courts, Native Courts and Supreme Courts. The present day High Court in East Malaysia can trace its origin from this early set up.

In 1922, the Courts were reorganized by the Courts Order, 1922. In that year, five courts were constituted *viz.*, the Supreme Court which exercised original and appellate jurisdiction, the Resident's Courts, District Courts, Magistrates' Courts and Native courts. The administration of justice continued to be carried out by these Courts until 1946 when Sarawak (so also Sabah) were ceded to the British Crown. In 1947, two Circuit Courts were constituted which for the first time were presided by legally qualified people.

In 1951, a major change took place in the Borneo States. By the Sarawak, North

Borneo and Brunei (Courts) Order in Council, 1951, a Combined Judiciary was established for the three States in Borneo. The Order in Council established one superior court of record styled the Supreme Court of Sarawak, North Borneo and Brunei consisting of the High Court of Sarawak, North Borneo and Brunei and the Court of Appeal of Sarawak, North Borneo and Brunei. However, this Combined Judiciary disappeared when North Borneo (Sabah) and Sarawak joined the Federation of Malaya to form Malaysia in 1963. The jurisdiction of the High Court in Sarawak and Sabah was retained whilst the appellate jurisdiction of the Court of Appeal was assumed by the Federal Court of Malaysia. With effect from 1st January, 1985 this appellate jurisdiction is now vested in the Supreme Court of Malaysia.

7. *Appeals to the Privy Council*

It is of interest to note that the pre-independence right of appeal to the Privy Council commenced as early as the establishment of the Straits Settlements, the Federated Malay States and the Unfederated Malay States. Penang, for instance, acquired that right in 1807 by virtue of the First Charter of Justice. Malacca and Singapore were next conferred such right in 1827 by the Second Charter of Justice.¹⁹ The F.M.S. acquired such a right when, in 1906, the F.M.S. Appeals Order in Council was passed which provided for appeals from the Court of Appeal of the F.M.S. to be made to the Privy Council. As for the U.F.M.S., no such right existed as the same was not provided for in their respective Courts Enactments. Johore, however, acquired such a right when provision for appeals to the Privy Council was incorporated in her Courts Enactment passed in 1920. However, since each of the component parts of the Malay Peninsula had its own Supreme Court from whose decision an appeal would lie to the Privy Council, there was no uniformity in legislation governing such a right. Uniformity was only achieved in 1948 when Clause 83 of the Federation of Malaya Agreement provided specifically for appeals to be made to His Majesty in Council from the Malayan Supreme Court.

On independence, 31st August, 1957, the right to appeal from the Supreme Court to the Privy Council was retained and embodied in Article 131 of the Malayan Federal Constitution. When Malaysia was formed on 16th September, 1963, the Malaysian Federal Constitution by Article 131 continued to preserve that right. At the same time, the Malaysia Act, 1963, substituted the words 'Federal Court' for the words 'Supreme Court'. Article 131 neatly circumvented the anomaly of appeals coming from an independent country with its own sovereign to another country with a separate sovereign by providing that in law the appeals were addressed not direct to the Privy Council but to His Majesty the Yang di-Pertuan Agong who referred them for advice to the Privy Council and

19. The first reported Privy Council appeal from the Straits Settlements was the case of *Yeap Cheah Neo v. Ong Cheng Neo* (1875) L.R. 6 P.C. 381.

who, in turn, advised His Majesty accordingly. Pursuant to Clause (1) of Article 131, the Courts of Judicature Act 7 of 1964 was enacted to make provisions for the reference of appeals to the Privy Council.

It is undoubtedly clear that the Malaysian Parliament may at any time restrict or abolish altogether appeals to the Privy Council. Such a move was successfully initiated in October, 1975 when P.U.(A) 320/75 made the decision of the Federal Court in criminal cases tried under the Essential (Security Cases) Regulations, 1975 non-appealable to the Privy Council. However, a more serious curtailment was seen in January, 1978 when appeals to the Privy Council in criminal and constitutional matters were abolished altogether by amendments made to S.74 of Act 7 of 1964. Malaysia ultimately witnessed the final abolition of appeals to the Privy Council when Act A566/83 (P.U.(B) 589/84) repealed Article 131 of the Malaysian Federal Constitution with effect from 1st January, 1985. This significant decision not only saw the demise of the Federal Court but also the birth of the Supreme Court of Malaysia which is now the final court of appeal in constitutional, civil and criminal matters. This historic event has thus made appeals to the Privy Council history in Malaysia.

A material feature of the newly-created Supreme Court which needs to be mentioned is that, unlike the Supreme Court which existed under the 1948 Federation of Malaya Agreement and the 1957 Malayan Federal Constitution, the Supreme Court of 1st January, 1985 is not a Court of Record. It does not consist of a Court of Appeal and a High Court but is solely an entity standing on its own.

B. THE MALAYSIAN JUDICIAL SYSTEM – POWERS AND JURISDICTION

As may be discerned from the aforesaid discussion, the Malaysian judiciary, except for Islamic courts, is entirely a federal organization. At the apex of the organization is the Supreme Court which is now the highest court and final appellate body in the country. Next in status and jurisdiction comes the High Court to be followed by the subordinate courts which, in descending order, comprise the Sessions Court and the Magistrate's Court. The Federal Constitution and the courts of Judicature Act, 1964 (Revised – 1972), make provisions for the constitution, powers and jurisdiction of the Supreme and High Courts whilst the powers and jurisdiction of the subordinate courts are spelt out in the Subordinate Courts Act, 1948.

1. Superior Courts

Before embarking on a discussion of the powers and jurisdiction of the Supreme Court and High Courts, it is necessary to mention in brief the appointment of judges in general. By Article 122B of the Federal Constitution, the Lord President, the Chief Justices of the High Court in Malaya and Borneo, the other judges of the Supreme Court and judges of the High Court are all appointed by the Yang di-Pertuan Agong, acting on the advice of the Prime Minister, after consulting the Conference of Rulers.

The Constitution stipulates that before tendering his advice on the appointment of a judge other than the Lord President, the Prime Minister shall consult the Lord President. Before tendering his advice as to the appointment of the Chief Justice of a High Court, the Prime Minister shall consult the Chief Justices of the two High Courts and, if the appointment is to the High Court in Borneo, he shall also consult the Chief Minister of Sabah and Sarawak.

Lastly, before tendering his advice on the appointment of a judge other than the Lord President or a Chief Justice, the Prime Minister shall consult, if the appointment is to the Supreme Court, the two Chief Justices and, if the appointment is to one of the High Courts, the Chief Justice of that Court.

(a) Supreme Court

The Supreme Court consists of the Lord President, the Chief Justices of the High Court in Malaya and Borneo, and seven Supreme Court Judges.²⁰ If the interests of justice so require, the Lord President may also nominate a High Court judge to sit as a judge of the Supreme Court. Proceedings before the court are usually heard and disposed of by a panel of three judges nominated by the Lord President.²¹ Sometimes, in certain special cases, it sits in a panel of five. In the absence of the Lord President the senior member of the Court shall preside.

The Supreme Court is vested with original, appellate and advisory jurisdiction. Article 121 (2) of the Federal Constitution provides that the Supreme Court shall have –

- (a) exclusive jurisdiction to determine appeals from decisions of a High Court or a judge thereof (except decisions of a High Court given by a registrar or other officer of the court and appealable under federal law to a judge of the High Court);
- (b) such original or consultative jurisdiction as is specified in Articles 128 and 130; and
- (c) such other jurisdiction as may be conferred by or under federal law.

With respect to its appellate jurisdiction, the Supreme court shall hear appeals in criminal matters from a decision of the High Court made in the exercise of its original criminal jurisdiction.²² With respect to the decisions of the High Court made in the exercise of its appellate criminal jurisdiction, the Supreme Court shall only hear references on any question of law of public interest which has arisen in the course of the appeal from the subordinate court and the determination of which by the High Court has affected the event of the appeal.²³ However, in civil matters, the Supreme Court has jurisdiction to hear and determine appeals from

20. Federal Constitution, Article 122 (1); see also P.U. (A) 114, 1982.

21. Courts of Judicature Act, 1964, s.38 (hereafter referred to as "The 1964 Act").

22. The 1964 Act, s.50.

23. The 1964 Act, s.66.

any judgment or order of the High Court whether made in the exercise of its original or appellate jurisdiction.²⁴

The original and advisory jurisdiction of the Supreme Court as provided by Articles 128 and 130 respectively, have earlier been spelt out and will not be repeated here. However, it must be pointed out that in the exercise of its original jurisdiction under Article 128 (1) (b) in respect of a dispute between the States or between the Federation and any state, the Supreme Court shall not pronounce any judgment other than a declaratory judgment.²⁵ Under Article 128 (2), the Supreme Court also has jurisdiction to determine constitutional questions referred to it by the High Court.

An account of the Supreme Court necessitates also a brief mention of the functions and duties of the Lord President. To a certain extent, they have already been stated in the opening paragraphs. As head of the Supreme Court, it is the Lord President who determines the dates and places for sittings of the court. The Supreme Court not only sits regularly in Kuala Lumpur but also travels on circuit to the major state capitals. The Lord President may from time to time give such directions with respect to business in the Supreme Court Registry as he considers necessary.²⁶

By virtue of his position, the Lord President after consultation with the Prime Minister, can initiate the machinery for the removal of a judge of the Supreme Court from office on ground of misbehaviour or of inability from infirmity of body or mind or any other cause, properly to discharge the functions of his office. The Lord President may make representations to the Yang di-Pertuan Agong who shall appoint a tribunal consisting of five judges to be presided by the Lord President himself to report and make recommendations on the matter. Pending the report, His Majesty may on the recommendation of the Prime Minister after consulting the Lord President, suspend a judge of the Supreme Court from the exercise of his functions.²⁷

The Lord President's duty and function may also be seen with reference to the Judicial and Legal Service commission established under Article 138 of the Federal Constitution. The commission's jurisdiction extends to all members of the judicial and legal service and it has the power to appoint, confirm, promote, transfer and discipline officers of the service. It is noteworthy that members of the Commission who are either judges of the Supreme or High Courts are appointed by the Yang di-Pertuan Agong on the recommendation of the Lord President. The Lord President is also the Chairman of the Rules committee established under Section 17 of the Courts of Judicature Act, 1964.

24. The 1964 Act, s.67.

25. The 1964 Act, s.46.

26. Rules of the Supreme Court 1980, r.138.

27. Article 125.

(b) High Court

Since 9th August, 1965, Malaysia has had two High Courts of co-ordinate jurisdiction and status; namely, the High Court in Malaya which has its principal registry in Kuala Lumpur, and the High Court in Borneo which has its principal registry in Kuching, Sarawak. Each consists of a Chief Justice and so many judges of the High Court as may be prescribed by Article 122A of the Federal Constitution.

Proceedings before the High Court are usually heard and disposed of by a judge sitting alone except in certain cases.²⁸ For instance, when hearing land references, *i.e.* appeals in respect of compulsory acquisition of land, a High Court judge sits with two assessors. Likewise, he sits with two assessors when trying offences under the Kidnapping Act, 1961, and with a jury when trying capital cases.

The powers and jurisdiction of the High Court are rather extensive. Subject to the original, appellate and advisory jurisdiction of the Supreme Court, the judicial power of the Federation is vested in the two High Courts which have equal and co-ordinate jurisdiction, and also in the subordinate courts as may be provided by federal law.²⁹

The High Court is vested with original and appellate jurisdiction in criminal and civil matters.³⁰ Its original jurisdiction with respect to both is unlimited as cases outside the jurisdiction of the subordinate courts are brought before it. In addition to its appellate jurisdiction, the High Court also exercises powers of revision in respect of criminal proceedings in the subordinate courts,³¹ and may call for records of civil proceedings so as to satisfy itself of the correctness, legality or propriety of any decisions recorded or passed by the subordinate courts.³² The High Court has general supervisory and revisionary jurisdiction over all subordinate courts.³³

As mentioned earlier, appeals against the decisions of the High Court in criminal matters made in the exercise of its original jurisdiction, and in civil matters made in the exercise of both its original and appellate jurisdiction, lie to the Supreme Court. Whilst no civil appeal from the subordinate courts shall lie to the High Court where the amount in dispute or value of the subject-matter is five thousand dollars (\$5,000/-) or less except on a question of law,³⁴ no civil appeal from the High Court shall lie to the Supreme Court when the amount or value of the subject-matter at the trial is less than one hundred thousand dollars (\$100,000/-), except with leave of the Supreme Court or a Judge of the High Court.³⁵

28. The 1964 Act, s.18.

29. Federal Constitution, Article 121 (1).

30. The 1964 Act, ss.22, 23, 26 & 27.

31. The 1964 Act, s.31.

32. The 1964 Act, s.32.

33. The 1964 Act, s.35; s.325 Criminal Procedure Code (F.M.S. Cap.6).

34. The 1964 Act, s.28 (1).

35. The 1964 Act, s.68 (1) (a). For the old monetary limit of ten thousand dollars (\$10,000/-) there was substituted one hundred thousand dollars (\$100,000/-) by Act A606 with effect from 1st January, 1985. The amendment was introduced consequent upon the creation of the Supreme Court of Malaysia.

As is obvious, an account of the High Court is incomplete without some mention of the functions and duties of the two Chief Justices. By virtue of Article 122A of the Federal Constitution, the Chief Justice, Malaya, and the Chief Justice, Borneo, are the respective heads of the High Court in Malaya and the High Court in Borneo. Furthermore, by virtue of the High Court's general supervisory and revisionary jurisdiction over all subordinate courts, it follows that the Chief Justices are also heads of the subordinate courts in their respective territories.

As head of the High Court, it is the Chief Justice who determines the dates and places for sittings of the Court.³⁶ Directions as to the distribution of business among judges of the High court, whether of a particular or general nature, are also given by the Chief Justice.³⁷ The Chief Justice may also issue directions with respect to the distribution of business in the various departments of the High Court Registry.³⁸ With respect to the subordinate courts, it is also the Chief Justice who is empowered to determine the places where Sessions³⁹ and Magistrates' Courts⁴⁰ shall ordinarily be held.

Perhaps the powers of the Chief Justice may be best appreciated in the area of appointments and/or dismissal of judges, and that of officers in the Judicial and Legal Service. As previously noted, the Prime Minister shall, before tendering his advice on the appointment of a judge to one of the High Courts, consult the Chief Justice of that Court. Likewise, a judge of a High Court may be suspended by the Yang di-Pertuan Agong from the exercise of his functions only after consultation with the Chief Justice of that Court. As for judicial officers, Presidents of Sessions Court and First Class Magistrates for the Federal Territory are appointed by the Yang di-Pertuan Agong on the recommendation of the Chief Justice.⁴¹ First Class Magistrates for States other than the Federal Territory are appointed by the State Authority on the Chief Justice's recommendation.⁴² On the question of dismissal or termination of service of these officers, the matter shall be referred to the Judicial and Legal Service Commission of which the two Chief Justices are members.

It is apparent from the above that the Chief Justice has administrative jurisdiction over judicial officers. The nature of the jurisdiction was described by the Lord President in *Cheak Yoke Thong v. Public Prosecutor* as follows:

“The Magistrate is not appointed by the Attorney-General but appointed by the Ruler of the State (or in the case of Federal Territory by Yang di-Pertuan

36. The 1964 Act, s.19.

37. The 1964 Act, s.20.

38. Rules of the High Court, 1980, O.60r.1.

39. Subordinate Courts Act, 1948, s.59 (hereafter referred to as “The 1948 Act”).

40. The 1948 Act, s.76.

41. The 1948 Act, s.59.

42. The 1948 Act, s.78. See also s.106 which empowers the Chief Justice with the concurrence of the Yang di-Pertuan Agong to appoint so many subordinate officers (e.g. process-servers) as the Chief Justice deems necessary for the due administration of justice.

Agong) on the advice of the Chief Justice to whom the Magistrate is responsible and under whose administrative control he is placed. (See sections 78 and 79 of the Subordinate Court Act). His transfer from one judicial post to another judicial post is completely under the authority of the Chief Justice, and as regards his transfer from a judicial post to a legal post under the aegis of the Attorney-General, this is a matter of consultation and agreement between the Chief Justice and the Attorney-General. Similarly, as regards his promotion and advancement in the service, the confidential report on the Magistrate for this purpose is written by a Judge of the State where the Magistrate is currently or previously posted and this report is subject to the comments or recommendations by the Chief Justice for the ultimate consideration of the Judicial and Legal Service Commission.”⁴³

The Chief Justices, as earlier stated, are, by virtue of their office, members of the Supreme Court. The Chief Justice of the High Court in Malaya, by virtue of his seniority in the Supreme Court, *i.e.* “having precedence next after the Lord President”, is vested with the powers and shall perform the functions of the Lord President whenever the latter, during any period of time, is unable to perform his duties owing to illness or absence from Malaysia.⁴⁴ In this instance, the Chief Justice, Malaya shall be the Acting Lord President.

It should be mentioned also that the Chief Justices are empowered under the Legal Profession Act, 1976 to suspend an advocate and solicitor from practice, and to appoint, on the application of the Bar Council, a Disciplinary Committee to conduct formal inquiry into any complaint made against an advocate and solicitor.⁴⁵ Like the Lord President, the Chief Justices are also members of the Rules Committee and it is pertinent to note that no rules shall be made relating to any High Court without the consent thereto of the Chief Justice of that High Court.

2. *Inferior or Subordinate Courts*

The subordinate courts for the administration of civil and criminal law as established by the Subordinate Courts Act, 1948 comprise the Sessions and Magistrates' Courts. In West Malaysia, the Penghulu's Court is also an inferior court but will not be discussed here as it hardly ever tries cases owing to its minimal jurisdiction.

(a) Sessions Court

A Sessions Court consists of a President who is legally qualified and a member of the Judicial and Legal Service of the Federation. It hears and determines any civil or criminal cause or matter arising within the local limits of its jurisdiction.

43. (1984) 2 *M.L.J.* 119 at p.121.

44. The Federal Constitution, Article 131A. See also the 1964 Act, s.9 (1).

45. The Legal Profession Act, 1976, ss.88A and 99.

In criminal matters, the Sessions Court has jurisdiction to try all offences other than those punishable with death and may pass any sentence allowed by law other than the sentence of death.⁴⁶ In civil matters, subject to certain exceptions, it has jurisdiction to try civil suits where the amount or value of the subject-matter does not exceed twenty-five thousand dollars (\$25,000/-).⁴⁷ Appeals from the criminal and civil decisions of the Sessions Court lie to the High Court.

It is of interest to note that the President of a Sessions Court may call for the civil records of a Magistrate's Court within its local limits of jurisdiction for the purpose of satisfying himself as to the correctness, legality or propriety of any decision recorded or passed, and as to the regularity of any proceedings of that court. However, since the President does not have any revisionary or supervisory jurisdiction and therefore cannot interfere with the decisions so recorded, in the event he considers them illegal or improper, he shall forward the records with his remarks if any to the High Court.⁴⁸ As stated earlier, only the High Court has general supervisory and revisionary jurisdiction over all subordinate courts.

(b) Magistrates Courts

A magistrate's court consists of a magistrate sitting alone. There are two classes of magistrates whose jurisdiction differs: first class magistrate and second class magistrate. The first is often a legally qualified person appointed by the Yang di-Pertuan Agong or the State Authority on the recommendation of the Chief Justice. The second is usually an administrative officer who performs magisterial functions and is appointed by the Yang di-Pertuan Agong or the State Authority. A magistrate's court has jurisdiction to hear and determine any civil or criminal matter arising within the local limits of its assigned jurisdiction.

Briefly, in criminal matters, a first class magistrate has jurisdiction to try offences for which the maximum term of imprisonment does not exceed ten (10) years' imprisonment or which are punishable with fine only.⁴⁹ He may, however, pass any sentence allowed by law not exceeding –

- (a) five (5) years' imprisonment;
- (b) a fine of ten thousand ringgit (\$10,000/-);
- (c) whipping up to twelve (12) strokes; or
- (d) any combination of the above sentences.

The criminal jurisdiction of a second class magistrate on the other hand is very much reduced; a second class magistrate has jurisdiction to try offences for which the maximum term of imprisonment does not exceed twelve (12) months' imprisonment or which are punishable with fine only.⁵⁰ In West Malaysia, he may pass any sentence allowed by law not exceeding –

46. The 1948 Act, ss.63 & 64.

47. The 1948 Act, s.65.

48. The 1948 Act, s.54.

49. The 1948 Act, s.85.

50. The 1948 Act, s.88.

- (a) three (3) months' imprisonment;
- (b) a fine of two hundred and fifty ringgit (\$250/-); or
- (c) any combination of the above,

and in Sabah and Sarawak, he may pass any sentence allowed by law not exceeding

- (a) six (6) months' imprisonment;
- (b) a fine of one thousand ringgit (\$1,000/-); or
- (c) any combination of the aforementioned.

With respect to civil matters, a first class magistrate may try suits where the amount in dispute or value of the subject-matter does not exceed ten thousand ringgit (\$10,000/-). A second class magistrate on the other hand may try civil suits where the plaintiff seeks to recover a debt or liquidated demand in money not exceeding two hundred and fifty ringgit (\$250/-) in West Malaysia and five hundred ringgit (\$500/-) in Sabah and Sarawak.

Appeals from the decisions of a magistrate in criminal and civil matters lie to the High Court.

C. IS THERE A NEED FOR REFORM?

The creation of the Supreme Court brought about a drastic amendment to Section 68 of the Courts of Judicature Act, 1964.⁵¹ The section now provides that no appeal shall be brought to the Supreme Court when the amount or value of the subject-matter at the trial is less than one hundred thousand dollars (\$100,000/-), except with the leave of the Supreme Court or a Judge of the High Court. The old monetary limit was ten thousand dollars (\$10,000/-). One may venture to ask what is the direct effect of the said amendment? In my view, this drastic amendment does not appear to be satisfactory for it deprives a litigant of his automatic right to appeal to the Supreme Court which he would have had under the old provision when the value of the subject-matter is above \$10,000/-. As the amendment stands, he now requires leave of the Court to appeal.

As may be appreciated, Section 68 has posed considerable difficulties in its implementation owing primarily to the ambiguity of its operative words "amount or value of the subject-matter at the trial". In a substantial number of cases, the value of the subject-matter is usually less than \$100,000/-. The problem is compounded when leave to appeal is refused by the High Court and/or the Supreme Court. In other words, there would certainly be a total denial or deprivation of a right to appeal against a decision of the High Court. In this regard it means that there is virtually a one tier system.

In view of the above, one may consider the soundness of having a Court of Appeal to replace the Federal Court with jurisdiction to hear appeals as provided

51. Amendment effected by Act A606/84 with effect from 1st January, 1985.

for under the unamended provision of Section 68, *viz.* the retention of the monetary limit of \$10,000/-. Thus, if the value of the subject-matter is less than \$100,000/-, an appeal would lie to the Supreme Court only with leave. This therefore means that the Supreme Court would take the place of the Privy Council. However, the idea of a three tier system is not new and had in fact been rejected by the relevant authority. The rejection being a policy decision of the government, it appears unlikely that this proposal will be entertained. What then is the alternative?

A practical solution to the problem, I believe, could be achieved by the enlargement of the jurisdiction of the Sessions Court in both criminal and civil matters. Section 65 of the Subordinate Courts Act, 1948 may be amended to confer jurisdiction on Sessions court to hear cases (except certain specific cases as mentioned in the Act), where the amount in dispute or the value of the subject-matter does not exceed \$100,000/- instead of the monetary limit of \$25,000/- as presently provided. In the light of this, other relevant provisions as contained in Sections 69, 70 and 71 will have to be reviewed.⁵²

By reason of the enlargement in jurisdiction, a litigant, where the amount in dispute or the value of the subject-matter is less than \$100,000/- and therefore within the jurisdiction of the Sessions Court, may file his claim in the Sessions Court. By doing so, he automatically has a right of appeal to the High Court, for under Section 28 of Act 7 of 1964 the High Court has jurisdiction to hear appeals from a Subordinate Court where the amount in dispute or the value of the subject-matter exceeds five thousand dollars. And with leave either from the High Court or the Supreme Court as required under the present law, the litigant may go further and appeal to the Supreme Court from a decision of the High Court. From this, it is submitted that one may discern a three tier system.

The administration of justice in Malaysia may also be adequately served by a Small Claims Court which, as its name suggests, would deal basically with small claims. Under Article 121 of the Federal Constitution, federal law may be passed to constitute such court an inferior court and therefore part of the Judicial System.

The need for a small claims court is obvious. Owing to the depreciation in money value, small claims of litigants may be such that recourse to the ordinary courts of law with attendant legal representation may prove extremely costly. For example, the fees to counsel for legal representation alone may far exceed the amount in dispute or value of the subject matter in the claim. It is suggested that a Small Claims Court be established with jurisdiction to try civil cases where the amount in dispute or value of the subject-matter does not exceed, say for instance, three thousand dollars (\$3,000/-). The Court should be manned by experienced officers not necessarily legally qualified and legal representation, by the nature of

52. Section 69 deals with the exceptions to the jurisdictions of the Sessions Court; Section 70 talks about its jurisdiction to hear matters pertaining to the recovery of immovable property and Section 71, its jurisdiction to adjudicate on title to immovable property with the consent of the parties.

the claim, may not be necessary. In this way, not only would the costs of litigation be minimal, there would also be a speedy disposal of cases. The proposed establishment of the Small Claims Court is now under active consideration by a Committee appointed to submit all necessary recommendations.

POSTSCRIPT

Courts of Judicature (Amendment) Bill 1986

Subordinate Courts (Amendment) Bill 1986

In Part C of my paper entitled "Is there a need for Reform?", mention was made of the difficulties posed by and the resultant problems encountered with in the operation of Section 68 (1) (a) of the Courts of Judicature Act, 1964. As also stated; the prescribed ceiling of one hundred thousand dollars (\$100,000/-) has rendered most civil appeals from the High Court non-appealable to the Supreme Court unless prior leave to appeal was obtained either from the High Court or the Supreme Court. Implicit in the suggestion put forward for an enhanced civil jurisdiction of the Sessions court is an attempt to introduce into the existing structure a three tier system in the Malaysian administration of justice.

I am pleased to say that the aforesaid suggestion will soon see the light of day and its objective attained. At the time of writing this Postscript, the Courts of Judicature (Amendment) Bill 1986 and the Subordinate Courts (Amendment) Bill 1986, which seek to amend Section 68 (1) (a) and enhance the civil jurisdiction of the Sessions Court respectively, have been tabled before the Malaysian Parliament.⁵³ They have since gone through the First Reading at the Dewan Rakyat and are expected to become law by early 1987.

By section 3 of the Subordinate Courts (Amendment) Bill 1986, section 65 of the Subordinate Courts Act, 1948 will be amended by substituting the words "twenty-five" the words "one hundred" appearing therein. The new section 65 which refers to the civil jurisdiction of Sessions Court will therefore read:

"... a Sessions Court shall have jurisdiction to try all actions and suits of a civil nature where the amount in dispute or value of the subject-matter does not exceed one hundred thousand ringgit."

In line with this enhanced jurisdiction, by Section 2 of the Bill, the designation of "President of Sessions Court" will be substituted for "Sessions Court Judge".

The proposed amendment to section 68 (1) (a) of the Courts of Judicature Act, 1964 by section 4 of the Courts of Judicature (Amendment) Bill 1986, reads as follows:

68. (1) No appeal shall be brought to the Supreme Court in any of the following cases:

53. The First Meeting of the First Session of the Seventh Parliament of Malaysia which had already commenced will proceed as follows: Dewan Rakyat (House of Representatives) – 6 October to 8 December, 1986; Dewan Negara (Senate) – 7 October, and 1 December to 19 December, 1986.

- (a) when the amount or value of the subject-matter of the claim (exclusive of interest) is less than one hundred thousand ringgit, except with the leave of the Supreme Court of a Judge of the High court.

It is to be observed that the words “amount or value of the subject-matter at the trial” in the unamended section 68 (1) (a) which had caused considerable difficulties in interpretation, have been deleted in the proposed amendment.*

* I express my thanks to Miss Soo Ai Lin, LL.B. (Hons.) (Mal.), LL.M (Monash), Senior Assistant Registrar, Supreme Court, Malaysia, for the valuable assistance rendered in putting up this paper.