



SUARA PEGUAM

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SUARA PEGUAM



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Editor's note:

"Rising from the ashes"

It is with great pleasure that my editorial board and I welcome the new dawn and revival of our beloved "Suara Peguam" that had ceased its publications for many years. The valour that this board has taken is indeed admirable and it gives me great honour to be the Editor for the term 2017/2018. Whilst we all felt the absence of the publication, I must say that the new challenge taken by the all "new" editorial board is welcomed with great enthusiasm and energy.

As I commence my editorial journey with my fellow comrades, it is indeed humbling for me to acknowledge that the tasks taken to produce a successful publication is no mean feat and requires much creativity. What makes this Editorial Board more interesting is the blend of Senior lawyers participation with whom some I had personally served together as a Junior lawyer many years ago in the editorial board then.

In this edition we have decided to keep up with the constant demanding pace of society and the editorial team has decided to introduce a more interesting read for all members with a blend of various issues that would undoubtedly be interest to all. In this edition we have not only covered important legal issues but also chartered into areas of interest, for instance food reviews, an intriguing creative story writing and many more. What we wish for is to provide a more resourceful publication to all our members.

Having said that, firstly let me and the editorial board welcome the new Penang Bar Committee members for 2017/2018, we wish you all our very best and look forward for your commitment in uplifting the Penang Bar to greater heights. We look forward to a Committee that serves for all its members without any form of fear and favour.

The legal profession faces numerous challenges today and there are plethora of issues revolving from the standards of practising lawyers, law firm business ethics to controversial legislations that are still debatable, the proposed amendments to the Legal profession Act 1976, "Stateless Children" issue in Malaysia and many more which requires urgent attention and solutions.

I would also like to take this opportunity to thank my editorial board for all their dynamic ideas that made this edition possible. I would also kindly urge for more contributions from our members for our upcoming publications, do share your thoughts and ideas with us.

My dear members, as we march together facing a journey that seems increasingly complex day to day we must always be true to ourselves and be proud of our strong traditions, one that stands by its everlasting beliefs in the rule of law.

Let's us all look forward for a great legal year ahead!

Jayakumaran Thiagarajan

Editor
Suara Peguam

"Be great in act, as you have been in thought."- Shakespeare

The Life and Death of King John, Act 5, Scene 1



What is your purpose in life? What is your purpose in life as a lawyer?

*by T.Tharumarajah
Chairman, Penang Bar 2017*

Let me on the onset say how privileged I am to address all you pupils for you are the first group I am addressing in my capacity as Chairman of the Penang Bar. I could not have asked for any other another audience. I am honoured and humbled to be able to share this time with all of you.

All of you as new entrants to the Bar bring you the richness of your culture, knowledge and experience. We all come from different backgrounds. However we share a common goal, and journey. We may take different routes but we have to stop and meet sometimes. We may share same ideals. We may differ in some or even in many respects. We must respect that difference.

Some of you may become Judges, or move to even better pastures. However I ask you what is your purpose in life, in particular your purpose in life as a lawyer.

“The purpose in live is not to be happy. It is to be useful, to be honorable, to be compassionate, to have some difference that you have lived and lived well”

Ralph Waldon Emerson.

The late Sir David Napley said this of lawyers **“I don’t think you should ever deny people of your experience simply because you don’t like them. There are some crimes I would have hated to defend. If the Moors murderers had come into the office I wouldn’t have enjoyed defending them but I would have put my personal feelings to one side and represented them.”**

Lord Justice Sebag Shaw said to Sir David Napley that the times when you need the greatest protection are in those cases which are the most emotive. If someone is accused of interfering with children, or knocking down an old woman and stealing her purse, blood rises but those are just the cases where because everyone else is emotional, injustice may be done. You must never allow the nature of the matter to obscure the evidence.

Dato Mahadev Shankar JCA retired said this of R. Ramani “Bacon, in one of his short essays had written about the **role of lawyers**. In conclusion he wrote-Do everything and live your live in such a way that you become an ornament to the community in which you are living. What is that? That lawyers should be exemplars- we should conduct our lives in such a way that people look at us and say this is the way it should be.” **Ramani certainly lived his life like that. See Praxis Jan-Jun 2015 page 42-52.**

Raja Aziz Addruse “ You need to keep stepping up to the door and knocking on it in the hope that it will open one day, realizing that very likely it will not open during your time in the front of the door” **See Praxis Jan-Jun 2015 p 39.**

We must lead in Penang as the best bar in Malaysia. I would like us at the Penang Bar to set the barometer for all Bars in Malaysia. Let us serve our communities in their best interests. Let us work with our colleagues, senior or junior with the same courtesy, respect and candor. **Let us work with all courts, Judges, Registrars, and everyone including the office boy at our offices, and courts with the same courtesy anyone deserves.**

Serve the Malaysian Bar with the best we have. We act without fear or favour and upholding what is right and fair. We need to uphold what is fair even in our weakest moments.

Let me end with this story- On January 8, 1956 Missionary Jim Elliot and his four companions were speared to death on the banks of the Curaray River in Ecuador, South America. They tried to make contact with the Huaorani people. The world was shocked and saddened. As reporters began to dig deeper into this story, they came across this October, 28, 1949, entry in Jim’s prayer journal: ***“He is no fool who gives, what he cannot keep to gain that, which he cannot lose”***

My friends let there be more than this one occasion when we can interact. Learning the law is a life time. An Indian CJ once said this of the law- The law is like the rising sun. It rises and sets in the evening. It soon rises the next day. The day never ends. Each day is a new beginning. The law has a new beginning each day.

Pupils and members of the Bar, let this not be the only occasion to share our thoughts, ideas and friendship. We have a journey, let us do it together for a better Malaysian Bar.



Kid vs barber

A young boy enters a barber shop and the barber whispers to his customer. ‘This is the dumbest kid in the world. Watch while I prove it to you.’ The barber puts a dollar bill in one hand and two quarters in the other, then calls the boy over and asks, ‘Which do you want, son?’ The boy takes the quarters and leaves. ‘What did I tell you?’ said the barber. ‘That kid never learns!’ Later, when the customer leaves, he sees the same young boy coming out of the ice cream store. ‘Hey, son! May I ask you a question? Why did you take the quarters instead of the dollar bill?’ The boy licked his cone and replied, ‘Because the day I take the dollar, the game is over!’



ADOPTED

BUT STATELESS
- A CHILD'S PREDICAMENT IN MALAYSIA

by Gowri Subbaiyah

Ruthran was brought to my office when he was just 6 months old in 2010 by his potential adoptive parents seeking my legal opinion on the course of adoption. Being a childless couple for about 7 years, the couple had planned a great future for their soon to be adopted born child. But little did they know the obstacles cropping up their way. Neither did I!

Although Ruthran's adoption proceedings had a happy ending, the celebrations didn't last that very long since the now legal parents of Ruthran received his birth certificate with a non-citizen status, which was pre-determined by me. The reason being for his non-citizen status was a mere fact that Ruthran's natural mother was a Myanmar who failed to register her marriage to her Malaysian spouse.

An appeal by way of an application under Article 15A Federal Constitution was immediately made by which the Federal Government may register anyone below the age of 21 in special circumstances as it deems fit. Such powers are granted to the Home Minister, whose decisions are also not subject to review. We kept our fingers crossed and prayed that the child would be conferred his citizenship although I have heard from other fellow lawyers who had submitted similar applications that such applications are rarely successful.

We had strings of follow-up sessions with the Home Ministry but nothing to our avail. Ruthran's parents eventually started hitting the panic button since they needed to enrol the now 5 years old Ruthran into pre-school and they were in a limbo as to the status of their beloved child. As hopes were mounting for a positive alert, Ruthran's parents were slapped with a contrary reply from the Home Ministry diminishing their hopes. Although Article 15A provides that unlimited submissions could be made till the child attains 21, Ruthran's parents gave up and decided that time shall take its course.

In Malaysia, a child who is born out of wedlock to a Malaysian father and foreigner is considered to take on the biological mother's nationality. The Court of Appeal, in a decided case provided that the child's statelessness was unproven and prevented him from being recognised as a Malaysian citizen. It could be argued however that the NRD should instead use the nationality of the adoptive Malaysian parents when deciding if citizenship should be granted for a stateless child who has been adopted.

However, the NRD's reference to the citizenship of an adopted child's biological parent is wrong and irrelevant, as the child's post-adoption birth certificate has reference only to the adoptive parents. Further, the biological mother no longer plays any part in the child's life and it is not logical for an adoptive child to follow his/her biological mother's citizenship. Otherwise why even bother granting the child an order for

adoption when the child remains stateless. Is it sufficient that a child now has parents but no status of citizenship? The Courts or the NRD were perhaps less heartless before when a stateless child was at least granted a Permanent Residence status but such avenues are completely impossible today.

For a Malaysia-born child lawfully adopted by Malaysian parents, it could be argued that the child should be entitled to citizenship under Section 1(a) of Part II of the Federal Constitution's Second Schedule — which requires at least one of the parents to be a Malaysian citizen.

This is because the adopted child's lawful "parents" would be the adoptive Malaysian parents, owing to the Adoption Act 1952's Sections 25A(5) and (6) where the post-adoption birth certificate which names the adoptive parents as the child's "parents" is to be used to determine who the parents are. The pre-adoption birth certificate is no longer valid and further reference cannot be made to it, even for the purpose of determining the Child's citizenship. Again, reliance on sections 25A(5) and (6) of the Adoption Act 1952 is overlooked.

In order to avoid prejudice to stateless and adopted children arising from the misapplication of the present laws, legislation should also expressly provide that an adopted child is entitled to Malaysian citizenship if the adoptive parents are Malaysian citizens in the best interest of the child which is provided for by Section 9(1) Adoption Act 1952 which provides that an adopted child is to be treated as though born to the adoptive parents in „lawful wedlock" and Section 25A which provides that the birth certificate of the adopted child should not contain the word „adopted" and by extension, the adopted child should have the same citizenship status as his adoptive parents.

What are primary interests of children? A child must have a place of residence or a country which he can reside as home and therefore there should be an amendment of the Federal Constitution provision that currently provides that a child's citizenship follows the biological mother's citizenship status, saying a child should be recognised as citizen as long as either parent is Malaysian. The NRD website names this provision as Section 17 of Part III of the Federal Constitution's Second Schedule.

Article 15 Universal Declaration of Human Rights' also provides that every person has a right to a nationality thus every person who is born in Malaysia should have citizenship. If either one of the parents of the child is Malaysian, that child should also be a citizen automatically.

The Malaysian government and the Malaysian courts are required by the United Nations' Convention of the Rights of the Child's (CRC) under Article 3 to place the "best interests of the child" as the "primary consideration" when making decisions and interpreting laws. Malaysia should give effect to its international obligations under the CRC and remove its reservation to Article 7 of the CRC and to put in place enabling laws to give effect to the right of a child to acquire a nationality, currently denied to the many stateless children in Malaysia.

Among other things, Article 7 states a child shall have the right to acquire a nationality, with countries to ensure the implementation of such rights in accordance with their national law and international obligations, especially when the child would otherwise become stateless. Malaysia ratified the CRC in 1995, but said it

would only apply five of the international treaty's provisions including Article 7 if they conform with the Federal Constitution, national laws and national policies.

Therefore, Malaysia must have the political will to give effect to the CRC since it ratified the international convention, also highlighting the importance of the convention's Articles 7 and 3 that touch on the right to nationality and the best interests of the child to be given primary consideration.

In another classic example of Malaysia-born illegitimate children being denied citizenship despite having a Malaysian biological father, a six-year-old boy lost his bid to be recognised as truly stateless, even when the Thai woman whose nationality he was deemed to have taken on was untraceable. Among other things, the boy had sought for a court order to be declared a citizen via the Federal Constitution's Article 14(1)(b) and section 1(e) of Part II of the Constitution's Second Schedule, which states that every person born in Malaysia and who are not born a citizen of any country is a Malaysian citizen by operation of law.

The constitutional provision of section 1(e) should be read together with Section 2(3) of the same Schedule, which underlines that Malaysia-born children who do not obtain citizenship from any other country within a year of their birth is a Malaysian citizen. Unfortunately, the importance of Section 2(3) in interpreting Section 1(e) of Second Schedule of the Federal Constitution is often overlooked.

Ruthran, a child whose future still remains a question is now 7 years old, he is now enrolled in a public school as a foreigner for which his parent struggles to pay his fees. Sadly despite three unsuccessful submissions under Article 15A, their hope continues...

"I'm a law-abiding citizen who followed the rules. Why are you penalising me?"

**Hartini Zainudin,
Mother of an adopted child**



A woman gets on a bus with her baby. The bus driver says: "Ugh, that's the ugliest baby I've ever seen!" The woman walks to the rear of the bus and sits down, fuming. She says to a man next to her: "The driver just insulted me!" The man says: "You go up there and tell him off. Go on, I'll hold your monkey for you."

Always wondered where to eat?
Looking for the nearest place to eat
after court? Not familiar with the
location? well fret not as our
special edition of Jalan –Jalan
lawyer makan is here to guide you
to the right eateries by our **foodie
guide Marilyn Khoo Mei Lin.**

NASI KANDAR AHMAD - JAWI

Malaysians love their nasi lemak, but Penangites, well... we love our nasi kandar. Given a choice, the aromatic nasi kandar will always win hands down. It appeals to just about everyone, the different curries cleverly mixed to give your plate of rice a flavorful experience that you leave the shop wishing you have the capacity to eat some more!

Most of the more popular nasi kandar joints start at lunch, so imagine my thrill when I found a nasi kandar stall that is open for breakfast. Nasi Kandar Ahmad is open from 7am



to 3pm. Come lunch time, a long, long queue is formed, that patrons had to stand under the scorching sun for their nasi kandar fix!

Price wise, Nasi Kandar Ahmad is considered reasonable. The choice of food is aplenty fish, squid, tofu, chicken, mussels, etc.. Patrons are spoiled for choice. Another plus point is that all the curries and dishes are fresh, it is not



JALAN – JALAN LAWYER MAKAN - “A Penang Lawyer Food Review”



uncommon to see the staff bringing trays of curries to replenish the empty trays at the stall during lunch hour.



If you want to give it a try, be sure to beat the crowd by going earlier. It is usually less busy before 12pm. Or you can pack your lunch before heading for work, since it is open early. Better still, have it for breakfast! As the saying goes, eat like a king for breakfast...

The address :

Nasi Kandar Ahmad

No. 1 Jalan Kasawari 1,

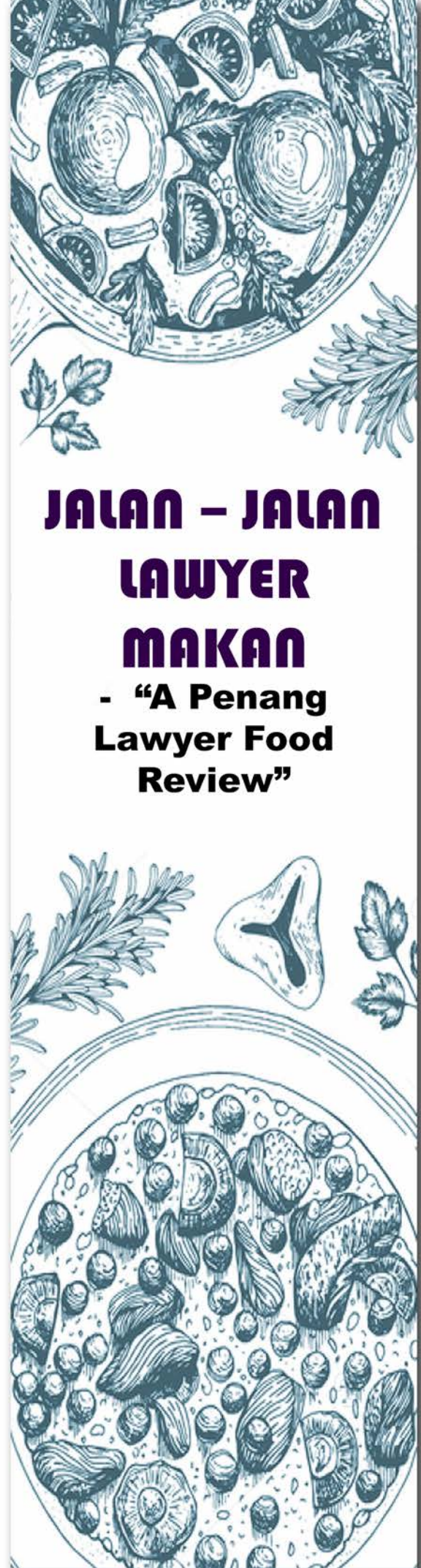
Taman Kasawari, 14100 Simpang Ampat, Penang.

AH TONG HOKKIEN MEE – RAJA UDA BUTTERWORTH

Penang Island is renowned for her transcendent street food, yet not many know about the glorious food that her less popular sister, Butterworth, has to offer. This makes it difficult for non-locals to search for a yummy quick bite especially if they are here for work, and has no time to explore the quaint little town.

Many friends from out of town asked for my two cents' worth of a hearty breakfast in Butterworth that does not cost a bomb, and I usually refer them to Ah Tong Hokkien mee in Raja Uda.

Available for breakfast and lunch, this stall has been operating in Raja Uda for 20 plus years, and despite strong



competition from newer, bigger, trendier hokkien mee contenders, Ah Tong is still the local's favourite joint.

Price per bowl starts at RM3.70 and foodies get to add sides for a more satisfying meal. I usually add saito fishballs and quail eggs, and it does not cost more than



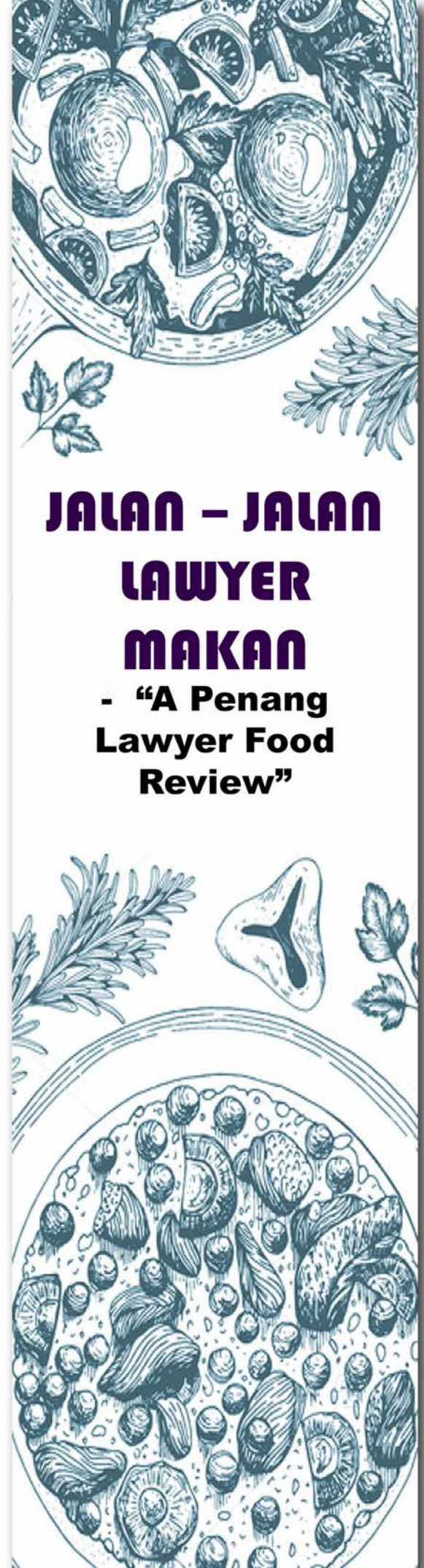
RM5.00 per bowl! Where else in Penang can you find a deal like this?

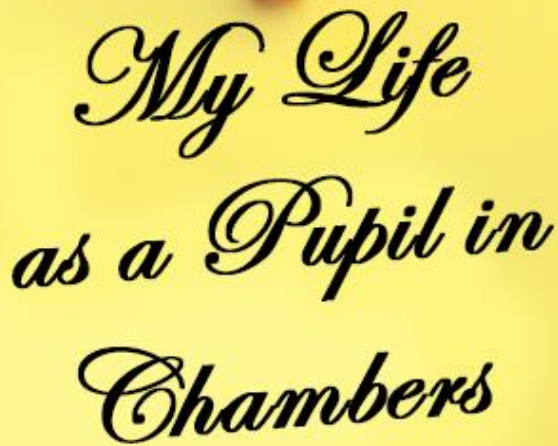
Getting there is a breeze :- For those who are really awful with google maps, you only need to drive along Jalan Raja Uda, until you spot SRJK Kwang Hwa on your left. Once you reach the traffic light, turn right. You will see a little kopitiam on your right.

The Coordinates to the shop;

5.4280454 100.3859341

More foodie reviews in our next edition...





My Life as a Pupil in Chambers

by Justina Lim Yuik Jing

Pupillage is a minefield replete with unending fumbling and horrendous pitfalls. At the same time, it has been both enjoyable and exceptionally instructive.

If you did the Bar Professional Training Course like I did, forget about what you have learnt as you will not be using them anytime soon. Better yet, the internships or vacation schemes that any of you had completed prior to starting are just a mere glimpse of life as a pupil.

I believe all pupils have their humble beginnings and with mine, I would like to share a tip or two that I have chanced up in this nascent period of my pupillage.

Prior to my pupillage, I was fed with the perceptions that large-scale law firms operate with little autonomy and complete routine and mundane tasks. However to my surprise, those are not entirely true. It is up to you to decide how much you wish to learn within these 9 months. Of course you will begin by predominantly shadowing and completing paperwork for your supervisor and as you gain a degree of independence you will begin to build your own practice and increasingly being instructed to act in your own cases in court. So, take one step at a time as you will learn to walk before you run.

At the very beginning of my pupillage, I had two tasks only - proofreading and basic drafting. Although I experienced the mundanity of spending countless hours perusing pleadings, correspondence and key documents, slowly and effectively, I developed punctilious skills in perfecting the tasks given and my work was benignly and helpfully overseen. I find it beneficial to try taking the bull by the horns and always seek for constructive feedbacks on your work from your supervisor. I may be a clueless greenhorn but it helps me to understand the standard they expected of me and how I can exceed that standard itself.

In terms of drafting, I am constantly plagued by this disquieting thought on submission of my work: "I hope I don't mess this up", particularly when it involves translating a piece of draft into Bahasa Malaysia. I remember drafting in a long-winded waffling manner and was told that my style lacks a discernible point and whatever that was sought to be established becomes lost in a maze of unnecessary ink. Fortunately, as mentioned earlier, I understood the standard expected by my supervisor, who has uncompromising demands, so I do not get discouraged when this happens. Be proactive and embrace your mistakes, you will stumble upon the unexpected ones very often while you are still new in this legal fraternity.

As a pupil surviving in this modern era, it is of the imperative that we embrace technology and utilise it to facilitate our every day tasks. We are aware that research is a protracted and bitter process. However, a useful step to begin would be with the right tools - "LexisNexis and CLJ Law". During break time, I would often browse these websites to start scouring through every function available and learn to use them efficiently for my research. We have all experienced rummaging through the entire stretch of the universe and not finding one case which supports your boss' legal arguments but the bitter truth is that an effective legal research requires practise and is an art that must be continuously honed. Also, a tip from our Managing Partner about using technology to outsource human memory is by saving important documents and scanned copy into applications such as Dropbox and Google Drive. As a future legal practitioner, you will be amassing and analysing a large number of cases. That being said, it is my claim that utilising the above tools is necessarily changing what it means to be a successful learner nowadays.

During pupillage, replying to emails is a daily routine which I do first thing in the morning. So email etiquette to me plays a pivotal role in the legal business as it sets a professional tone with my co-workers, clients and it reflects our legal cultural norms. They are used to remind people of their own status within society and rankings within a profession. As soon as I started to attend Case Management in Court, I observed court-room decorum to be the most essential etiquette and it is not something we learn in law school. However, in the United Kingdom despite the occasion being a 'Qualifying Session' and not a trial, reputable

and prestigious senior barristers would still stand up and bow to the judge half of their age to show respect. Hence I would encourage every future advocate, like myself, to uphold that standard and practice of professional etiquette in the Malaysian Bar.

I understand that work is priority but aside from work, networking is fun and essential in this profession. Amidst the frenzied competition, I benefited enormously by meeting different people with different goals in mind. I find myself repeating the same verbiage to every one I meet and thoroughly enjoy the stories these people bring. Especially graduates from local universities whom had gone through different style of courses compared to mine, they are more familiar to the Malaysian Legal System and they do not face language barrier like I do. Therefore, I try to get acquainted with my colleagues and other pupils by inviting them out for a friendly badminton match or a movie. Then, our conversation seamlessly glides from work to our favourite food and hobbies. Bottom line is, have fun networking with your fellow pupils and before you know it, you have developed a few meaningful friendships.

Compared to other countries, the Malaysian Bar is a body of diversified legal practitioners and most practitioners are multilingual. It is always delightful to watch lawyers of different races sitting together chit-chatting and enjoying the strong, brisk and creamy “pulled” tea at a mamak stall. When I do get to meet senior practitioners, I always grab the opportunity to ask them a few questions pertaining to this career and how they managed to get to where they are today. Just recently, I attended an arbitration in KL with a partner and things got a little awkward during our car ride but my fellow pupil and I mustered the courage and started communicating. Our topics ranged from his memorable days back in university to how he gained recognition for the impeccable work he has delivered to date. These snippets of life stories that gets sieved out from experienced practitioners can be such valuable nuggets of wisdom to apply in practice.

If I can summarise my experiences to date, they are really rewarding. Learn as much as you can because law is a profession whereby you have a paramount duty to the Court and to your client. Both hold a standard of expectation which you should always strive to exceed. If you are like me, chambering in the Banking Litigation Department, do not get sucked into the abyss of a repetitive and mundane work pace. Keep your eyes on the bigger picture and know what you ought to achieve at the end of the day.

I hope that my experience narrated herein would nonetheless give a tinge of insight on what pupillage might be like. Last but not least, give yourself a pat on the back if you have survived half the pupillage, don't dwell on your laurels but look ahead to your next goal!



<http://TheFunnyPlace.net>



My Life as a Pupil in Chambers

by Nurulsaffa Athirah Bt Mohd Nasri

My journey to become a lawyer started off as I was offered a place to read in the Chambers of Messrs Rosidi Mustafa & Harryzan, a medium sized law firm based in Bertam Kepala Batas. During my first few nervous days at the firm I was getting acquainted to all the Partners, Legal Assistants, Staffs and also fellow chambering pupils. Our priority at that point of time was to file our required pupillage papers the soonest as my Master wanted us to get directly involved in the firm cases the soonest. Being a firm that practiced both mainly Banking Litigation and Conveyancing I was fortunate to be offered the practice of my choice which I somewhat preferred Litigation. I guess all those overloads of watching “Suits” influenced my decision quite a bit even though at the point honestly I really never knew what was I getting myself into.

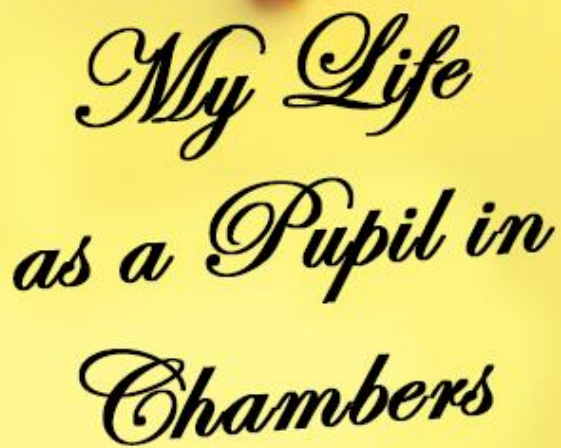
As a Pupil in chambers, we were always expected to be flexible and ever willing to assist in numerous ways. There is no place for the word “NO” whenever a task is designated to me by my master which may vary from research, drafting or even any miscellaneous works. I was fortunate and enjoyed my pupillage as all the staffs and even lawyers are very helpful. The work culture was extremely positive for me. We even had time to socialize, like going out for lunch together and having discussions on social and legal issues which made it a cordial to work with everyone in the firm.

About a week into my pupillage, my master requested me to attend a mention for a case. It took me by surprise since I had not filed the required Forms to enable me to mention a case personally. I was literally forced to “seek assistance from any lawyers attending court on the very day to mention the matter instead. I was so lucky that I managed to find a lawyer who was extremely kind to assist me on that day. It sure was an extreme relief to me to complete my first court task. The subsequent weeks I took advantage to follow the firm lawyers to court to actually observe and gain some experience as to what actual court practices and etiquette is required by a lawyer.

There were many things I had learned during my pupillage period, notably being able to deal with numerous clients. The clients usually were under an impression that a pupil has to know everything! We were required to be on par of a “qualified lawyer” even though there were many things that I was unsure about. I guess these are the times were I was supposed to be “street smart” and bold to clarifying my doubts with the firm lawyers and my master. Being timid and silent will do you no good. As lawyers we need to speak wisely and possess good communication skills which is our most important tool in practice. I also realised that taking time to do proper research for cases is also essential in legal practice.

The opportunity I gathered from my Legal Aid duties was immense. It was also very pleasant to meet and share experiences with fellow pupils and lawyers from different law firms and races. It was indeed a fulfilling task to assist those who couldn’t afford legal services and certainly gave me “a feel good” feeling being able to give back to the society. The legal profession is indeed noble.

Overall I truly enjoyed my pupillage and the best advise I would share is to learn as much as you can and ensure that you have a balanced pupillage training experience.



My Life as a Pupil in Chambers

*by Nur Syahfeenaz Farhanah
Bt Rosman*

“What the h**l is chambering?” This is the usual response I get whenever I tell my relatives or friends (who are not doing law, obviously) that I am chambering right now. To be honest, I don’t even know the exact definition for chambering. The most logical answer I’ve been giving is: “Well, think of it as a second session of legal training, but this time we have to learn as much as we can as we are on our way to get our license to become a practicing lawyer.” I usually end the conversation with an awkward smile or without giving them the chance to respond. I will change the topic immediately.

I made it. I finished law school. I enrolled in a local private university. I did my foundation for a year and continued my degree for four years. I was exempted from doing CLP. Now, a new level of stress kicks in. I am still indecisive on which area of law to practice nine months from now. Since I did my three months of legal attachment at a conveyancing firm, I thought, maybe I should give litigation a try. So I did. The first firm I chose was actively involved in runner and criminal matters. Good Lord! I only lasted for a month.

When I chose the firm, I went through the door with an open mind and the will of putting myself to the test, to see how far I could go in this field. Well it didn’t go far enough. It was neither about the office nor my former boss. Simply it had something to do with my conscience. We are told to separate our personal feelings. True, but it’s a matter of how stiff and emotionless you can be when you are defending a person who you know is truly guilty and should pay for his sins or giving a repeated offender another chance of freedom or a peek to the open air after what he has done. Don’t take this as an insult. Personally, I envy those lawyers who are successful in this field because it takes guts and courage to fight for justice when somebody is about to go to the gallows. It’s not easy to get involved in this field. I salute those lawyers! You have my utmost respect! As for me, I guess my conscience will always tag along into my profession. Hence I chose to give conveyancing a second try.

What do we do as chambering students? Some may say; basically we are doing “*kuli*” (in direct translation; slave) work or despatch work. Are we offended for receiving this kind of treatment from our masters and sometimes even the clerks? Especially when the clerks direct and instruct us to do their work simply because they want to bully us? It is not about the mountain. It is about the climb. We must start somewhere and it has to be from the bottom. I am not denying the fact that I was offended, initially, when these happened. However, it is all about the mindset of an individual. When I decided to change firm, I told myself to always think positive. I take this as a challenge and to learn as much as I can throughout this nine months. Of course, you feel like crying when you get yelled at or your master gives you that ‘look’ if your questions are stupid. Everybody has been there. Not just us. Thus, we should stop sulking.

“How come you only do conveyancing? Many have asked me. Be it from strangers, or lawyers I have met along the way. I agree I have not exposed myself to basic litigation (yet), but I enjoy doing conveyancing. Probably conveyancing is too dry for some but for me it is about detail and precision. It is about time

management, your ways of interaction with other parties, those little proud moments you have when you manage to get the release from your first advice without any discrepancies, etc... These are my joyous moments.

Still having doubts on becoming a practising lawyer? Yes, I do, sometimes. However it is one of the noble professions in the world. It is not about how much you earn per month or your status in society; it is about the profession itself. We lawyers are showing the society, the laymen, there are blacks and whites to everything. We are the voices of the society.

To sum up, how is my life as a chambering student, so far? It has been an amazing journey of exploring what I am capable of doing. As my mama says "Hunn, be it a lawyer or a cleaner, attitude is everything." At the end of the day, good attitude reaps good rewards in the future.

Sincerely,

Lawyering in progress



Dentist: "You need a crown."
Patient: "Finally someone who understands me"



Wife arrives home late at night from a business trip and quietly opens the door to her bedroom.
But she notices four legs instead of two peeking from under the blanket!

Seized by a fit of rage, she reaches for the baseball bat and starts hitting the blanket until the screaming stops.

Still in shock, she lurches to the kitchen to have a drink. As she enters, she sees her husband there, reading a magazine.

"Oh welcome home darling," he says, "my parents came for a visit, so I let them have our bedroom. I hope you said hello."

SOSMA

– A Review

by Guhapria Kumaravellu

Security Offences (Special Measures) Act 2012 (hereinafter referred to as SOSMA) was enacted by the Parliament under Article 149(1) of the Federal Constitution to replace the disrepute 1960 Internal Security Act (Malaysia). SOSMA came into force on 31.07.2012. The Preamble of SOSMA states:

“An Act to provide for special measures relating to security offences for the purpose of maintaining public order and security and for connected matters.”

In short the purpose and objective of SOSMA is to combat terrorism. The speech given by the Minister in the Prime Minister's Department during the second and third reading of SOSMA Bill 2012 was, but not limited to:

“..Kerajaan menggunakan kuasa yang diberikan di bawah Perkara 149, Perlembagaan Persekutuan untuk menggubalnya. Tentu sahaja mukadimahny akan menyerupai ISA kerana setiap Akta yang digubal di bawah Perkara 149 hendaklah diperincikan tindakan yang telah diambil itu. Akta ini adalah untuk membendung keganasan dan memerlukan kuasa Perkara 149.”

By referring to the speech given by Minister every Act of Parliament or law enacted under Article 149 must specify the action that has been taken by the body of persons, which requires the promulgation of such law. The preamble of SOSMA indicates that SOSMA was enacted to deal with four out of six categories of action under Article 149(1) i.e the action under paragraphs (a), (b), (d) and (f) of clause (1) of Article 149 and not the action under paragraphs (c) and (e) of clause (1) of Article 149 of the Federal Constitution.

SOSMA provides for special procedures when it comes to persons arrested and the detention of people who are being investigated for security reasons. It can be used on people who have breached the list of offences listed under Chapter VI (Offences against the State), VIA (Offences Relating to Terrorism), and VIB (Organized Crime) of the Penal Code.

The provisions of SOSMA restrain certain fundamental liberties granted under the Federal Constitution and depart from the procedures laid down under the Criminal Procedure Code. SOSMA does not create the offence but merely regulates the trial of the said offences. The power of arrest granted under Section 4 of SOSMA is tranquil as the police officer can easily arrest any person without warrant by only having a reason to believe that such person is involved in security offence. The detention of the arrested person can be extended up to twenty eight days without trial for the purpose of investigation. During this period the detainees are vulnerable towards mistreatment by the police officer upon attempting to evoke forced confession. Pursuant to Section 5 of SOSMA, the police can prevent the detainee from meeting his family members or access to legal practitioner for first 48 hours. Some detainees may not aware of their rights to consult with legal practitioner. On the other hand, lawyers have limited access to meet detainees and insufficient time to file a habeas corpus or challenge the detention. This scenario burdens and exasperates lawyers to prepare for a case.

Furthermore, a person who is charged and tried under SOSMA will lose his liberty as he will be denied the right to bail. Usually the Court has discretion in allowing bail, however under SOSMA the Court no longer enjoy this discretion in granting bails. A detainee may subject to imprisonment for months or years until the hearing date. The situation is even worst when an innocent person is arrested under this Act as they will be detained for a protracted period for a crime that they never commit. Besides, SOSMA allows statements by an accused whether orally or in writing to be admissible as evidence. In other words, trial can be conducted without having the witnesses but by only having their statements. Such provision does not protect the rights and freedoms laid down under the Federal Constitution.

Case laws have suggested that SOSMA can lead to abuse, yet one need to wait for five years in order for the Parliament to review the detention for twenty eight days without trial. Furthermore, SOSMA has the tendency to be used against an activist, which can be seen in the case Maria Chin Binti Abdullah v Supttham Lai Kuan & Ors.

The Federal Constitution, unlike other laws passed by Parliament is the supreme law of the nation. Article 5 of the Federal Constitution safeguards the right to life and personal liberty in accordance with law. Pursuant to Article 5(3) of the Federal Constitution, soon after an individual is arrested he should be informed the grounds of his arrest and allowed to consult a legal practitioner. Article 8(1) says that “*all person are equal before the law and entitled to the equal protection of the law*”. Another relevant Article is Article 9 which provides freedom of movement to every citizen subject to Article 9(2) and 9(3). Article 10 of the Federal Constitution provides the freedom of speech, assembly and association while Article 13 provides rights to property. In the case of Public Prosecutor v Khairuddin bin Abu Hassan & Anor the Court of Appeal held that:

“The scheme and the provisions of SOSMA were designed to limit the fundamental liberties under Articles 5, 9, 10, and 13 of the Federal Constitution and to depart from the procedures laid down under the Criminal Procedure Code, the law which governs the conduct of criminal cases.”

In conclusion, an act which removes or restrains the fundamental liberties guaranteed under the Federal Constitution is unconstitutional. As such, the Courts upon interpreting SOSMA should be guided by the principles that fully recognize the fundamental rights and freedom of a person.



A woman caught her husband on the weight scale,
sucking in his stomach.

“That won't help you, Joe, you know?”

“Oh! it helps a lot,” says the man, “it's the only way I can
see the numbers!”

GET UP!

- IT'S NOT THE END OF THE WORLD

By Jastina Mohd Junus

Sometimes we face difficulties, stress and obstacles in life. Lost a case, piled up with workload? are you down and feeling demotivated? Whatever the reason may be, always remember we are the master of ourself and we have the option to decide the path that we are going to take.

Here are some tips that might help us along the way:-

1. GET UP AND SEIZE THE DAY !

Frustration is part and parcel of our life, just like when you lose a case that you were having high expectations of winning it, or maybe a business deal has been called off after you have put in so much effort. Don't be down by this negative vibes for long, as the effect will do you more harm than good. Wake up and take a deep breath, have your shower, feel fresh and choose your best attire for the day. Have a hearty breakfast and go seize the day again!

2. GET SOME SLEEP !

Whenever possible (as this is easier said than done for people who are busy parents and those who work long hours), try and get as much sleep as possible. The more tired you are, the less likely you are to remain motivated. Sometimes a short nap will do, and it helps.

3. BREAK THINGS DOWN INTO SMALL STEPS

Instead of looking at the big picture, work out the small things that you need to do now, today. Prepare the case chart to help you to understand the flow and the facts, note down all the details so that nothing will be missed out.

4. ASK FOR HELP

If you are stuck or have no idea about the case/file, ask for help. Asking for opinion, ideas and solutions doesn't make you less a lawyer but it's a normal learning process. Do not feel shy or reluctant to ask your colleague about their experiences in handling matters and I believe there are numbers of seniors and friends who will share their knowledge and skills with you.

5. CREATE THE ULTIMATE STRESS THERAPY

Music can be an integral part of life, sometimes it helps to ease stress. Some people prefer swimming, gardening and we have so much thing to choose from as a therapy to calm ourselves down. A relaxed mind will automatically reduce your stress and frustration. It all depends on the mode you pick to ease your tension.

6. GET EXCITED ABOUT IT!

Try and gain inspiration from other people especially the seniors – talk to them and ask for advice. Sharing is caring. Try and see the benefits that are to be gained from completing something rather than focusing on the negatives. Successful people have also experienced failure and discouragements before they are called "Successful People". Is there any lawyer who has never lost a case? They are not a loser but they instead they have gained a valuable experience and exposure for the future.

7. REMEMBER THAT IT IS OK TO FAIL

Fear of failure is often the reason for not doing something at all. If you fail – stop and start over again. Never give up, being a lawyer bear in mind, practicing the necessary method of legal advocacy and skills are not something you can build up within a few days but instead takes time to be enhanced and developed. If a decision of a case is not in your favour of your client remember, it is beyond your control as you have exhausted every possible ways you can. The main objective was achieved when you dealt with the case the best you could. So don't feel bad.



PHOTOS



Farewell Dinner for YA Tuan Collin Lawrence Sequerah - 24 Jan 2017



An Evening with Gobind Singh Deo - 28 Apr 2017





Back From Left: Syafiq, Lushani, Yeoh Phei Zhuin, Syafeenaz and Miss Ann
Front From Left: Mr Hadi and Miss Foo



Talk on An Introduction to Islamic Finance: Commodity Murabahah - 23 May 2017



THE ANIMAL WELFARE ACT 2015

“A new hope for animal welfare”

By Jayakumaran Thiagarajan



Whilst one can't help to acknowledge the very fact that animal rights is far lacking in our country often relying on archaic implemented laws which has way passed its ambit of protection of the statutory rights of animals in comparison to many countries, the enactment of the Animal Welfare Act 2015 was a breath of fresh air to all animal lovers in Malaysia. The main intention of the Act was to promote animal welfare and responsible ownership of animal, which was way overdue as many would say.

Every single day somewhere these poor innocent souls are being subjected to mankind abuse, experiments and all kind of despicable treatments. Why is this happening, we ask ourselves?

The answer is actually simple. People were simply undeterred with their acts as the offences were not harsh enough to instill fear in them from committing animal abuse. Sad but true.

The only saving grace to this animals were several struggling animal based Non-Governmental Organizations (NGO's) and some kind soul independent rescuers who fought on this crusade despite all the frustrations they had to undergo.

People never really learnt. They usually have a pet for fun and end up not spaying it and when the pet gets pregnant or sick, they simply take the convenient way out to dump them at the nearby garbage disposal area. Simply horrific, I would unreservedly say but that is the actual reality.

So what does the Act bring to the plate to change this? Is it going to make a dramatic change to the lives of all the animals in this country? let us look at the main issues that the act covers that all of us should take cognizance from;

1. Establishment of an Animal Welfare Board

The establishment of the Animal Welfare Board, which among others, will monitor the work of associations and organisations established for the purpose of preventing trauma, pain or suffering to the animals.

2. Requirement of a license to carry out activities involving animals

The Act will require for all individuals and businesses which carry out activities involving animals to obtain a licence. Under the licence requirements, owners also have to ensure animals are free from pain, suffering, injury and disease.

Animals should also be able to exhibit normal behaviour patterns and have suitable environments, diets and housing.

3. A fine of RM100,000 for acts of torturing animals

The Act provides cruelty offences include the act of beating, mutilating, poisoning, confining in area that restrict natural movements of the animals, abandoning or the act the owner of allowing such cruelty against the animal.

A minimum fine of RM20,000 and a maximum penalty of RM100,000 fine and three-year imprisonment will be imposed on the law breaker.

4. Practice of ethical animal testing

Malaysian Animal Welfare Act brings hope for the ethical care and use of animals for research. The act includes guidelines such as only allowing research using animals on schools.

It also prohibits breeding of animals in the name of research, testing or teaching. The health and behavioral needs of the animals to be tested should also comply with the board's regulations.

5. Ban on stray shooting

Dogs would be listed as among those animals that could not be shot by local authorities as one way of controlling their population.

6. Enforcement officers are given the power to relieve an animal from distress if a written letter is given by a certified veterinary surgeon

If an animal is found to be suffering or more likely to not survive and a written letter was given by a veterinary surgeon confirming this, an enforcement officer is given the right to put down the animal.

However, an application to the court needs to be made to notify the owner or the licensee of the animal regarding the action taken on the animal.

7. A warrant is NOT needed to search and seize premises if it could lead to lost of material evidence

Usually, a warrant is needed to obtain evidence or enter a premise to rescue an animal. However, in the event that a delay in obtaining a warrant would risk lost of material evidence, welfare officers are allowed to enter the premise without a warrant.

8. The courts have the power to disqualify or deprive any owner or licensee from owning an animal indefinitely

If a court of law is satisfied that the owner or licensee is unfit to own an animal, the court may deprive he/she of ownership indefinitely. The offence must first be proven beyond reasonable doubt and fall under one of the sections in the act. The court will also forfeit any apparatus used in the process of torturing the animal.

9. Failure to comply with an order from a minister could lead to a fine between RM10,000 to RM50,000 or imprisonment for a term not more than 1 year or both

A minister is given the authority to make any order as may be necessary for the better carrying out the provisions of the act. However a failure to comply with any written order will result in a fine of not less than RM10,000 and not more than RM50,000 or imprisonment for a term not more than 1 year or both.



PENANG - PERAK BAR GAMES 2017

(19 & 20 May 2017)

By the Sports Subcommittee

First played between the 2 State Bars in 1964, these annual games have seen some ups and downs over the last 53 years. The Penang Bar played the host this year to the Perak Bar and there were 6 competitive games played altogether over 2 days, starting from the evening of 19th May. A dinner was also hosted by us at the Penang Sports Club at the end of the event where the challenge trophies were presented and the traditional bar game of boat race played for good fun.

Futsal (Convenor: Muneer)

The Annual Penang-Perak Bar Games this year hosted by Penang Bar kicked-off with Futsal game between our Penang Bar team and Perak Bar team. The event was held at Kinta Futsal Court at Kinta Lane near Burmah Road on 19th of May 2017 at 8.30pm. Both teams played three thirds of 15 minutes each session.

Penang Bar and Perak Bar have faced each other on a regular basis in recent years, with both teams usually evenly matched and the expectation was for another close contest between the two teams.

This year Penang Bar had made major changes especially by recruiting new and young players to play with seniors below 40 years old in order to prepare a well-balanced team taking the game to Perak Bar from the outset, looking in excellent condition and sharper, faster and more precise in their play. Penang Bar opened the scoring with a powerful kick after ten minutes in the first third to send the home crowd into wild raptures and that would carry on and provide an excellent vocal back-drop for the remainder of the game.

Nevertheless, Perak Bar confidence grew and the passion and hunger in the players was evident, so they took the advantage by scoring two quick goals in the third session of the game.

Penang Bar young players were shell-shocked, as they just could not live with the intensity of Perak Bar's play. Nevertheless, this was their first major game and I am very proud of the team's discipline, courage and team play.



Tennis (Convenor: Allen Choong)

The Penang Sports Club was the host venue for the Tennis event of the 2017 edition of the Penang Perak Bar Games which was held on Saturday, the 20th of May 2017.

The Perak Team consisted of Mr Kenny Lai (Convener) and Mr Kiko (Mr Purshotamdas Nathermal) and his wife. As in previous years, the three of them formed the “backbone” of the Perak Tennis Team. The Convener lamented to us that they are facing difficulties in finding “new” tennis players and one wonders whether this is also becoming a common trend in other sports as well.

Only two matches were played, one Men’s Doubles and one Mixed Doubles.

The Men’s Doubles consisted of Kenny and Kiko pairing up for the Perak Team while the Penang Team was represented by Allen and Jeffrey. The Perak Team raced to an unexpected 5-0 lead before Penang clawed back and managed to reduce the deficit before the final score ended at 8-3.

The Mixed Doubles was between Kiko’s wife and his son and Tim Mi and Andrew Lim. The Penang Team also put up a fight but ultimately the Perakians prevailed with the score also at 8-3 in Perak’s favour.



Volleyball (Convenor: GT Lee)

Although volleyball is perceived to be a less popular sport locally as compared to football and badminton, there has always been good response from our members in this sport.

I am glad to report that a few fresh faces have joined our squad this year and all of them attended the 2 training sessions which we managed to hold in a rather impromptu fashion before our games with the Perak Bar. Although some of them had not played volleyball competitively before, the keen interest and focus they displayed was good sign of their potentials.

The games this year was played at the indoor court maintained under the purview of the National Sports Council of Malaysia well hidden in a corner of Kampung Buah Pala.

As requested by the Captain of Perak team, the ever passionate En Hazril Azam, we were agreeable not to be strict about certain formats and rules of the game, as most of their players do not major in this sport and it is always more fun to have a fair and competitive game rather than a one-sided game.

And it was indeed fun for both sides to enjoy. We took the 1st set 25-16 and then let our guests steal a game back 25-23. The 3rd set 25-13 was taken down briskly and momentum brought us to end the best of 5 games with 25-23 with smiles on every face. All players of our 12-strong team were rotated in and had their moments in the games.

My sincere appreciation to the team, Desmond Lee, Simon Tan, Yeap Siew Chieng, Wong Jee Howe, Ng Ai Li, Elson Beh, Yap Mun Loong, Michelle, Peng Kit, Michael and Kenzaly. We are a team with huge potentials and I hope we all can put in some hard work and fulfill them together.

Big thanks as well to the supporters who came through the maze to cheer us on throughout the games.



Badminton (Convenor: Wong Jee Howe)

This year's Annual Penang-Perak Badminton games took place in Penang Sports Club with 6 doubles being played - 4 Men's Doubles, 1 Mixed Doubles and 1 Ladies Doubles, with only two sets being played for each doubles, as opposed to the usual best of three format.

I am proud to say that Penang had yet again kept its record of ensuring a (resounding) win this year with 11 sets won by Penang vs 1 set won by Perak, giving Penang Bar the usual dependable point in the annual event where badminton is considered a core event. The games were again played with much joy, camaraderie and sportsmanship from both ends. I was most pleased of the fact that we finally have new blood in our Penang Bar Badminton Team with four new players joining the team and showing great promise for future tournaments - Ng Kok Chong, Zainal Azhari Bin Zainal Azahar, Justina Lim Yuik Jing and Ho Chi Yuen.

Our usual first pair of KC Ang / Glory Khoo maintained their consistency and won the first two points for us very convincingly. Our second pair of Alan Lim / Ng Kok Chong, who were paired for the first time, won their first game quickly but had a very close second game before finally prevailing, giving us the next two points. Our third ever present veteran pair of Desmond Lee / KJ Soo gave us the next two points. Edmund Hermon / Zainal Azhari, also paired for the first time, were our final men's doubles pair and gave a very good account of themselves, drawing the game with Perak. The mixed doubles team was represented by our previous Sports Chair Ramesh Rajadurai and newbie Justina Lim and they won their 2 games convincingly despite our Ramesh showing many signs of rustiness / leniency in his play, alleging he had not touched a badminton racquet since the last installment of the games in Perak. Our Ladies Doubles were the most impressive of all, represented by the ever committed Kar Kheng and another newbie Chi Yuen, playing against a mixed doubles (ie male and female) pair from Perak Bar, easily winning both sets.

The most important part of the games at the end of the day was to maintain the existing sisterhood / brotherhood shared between both state bars and encouraging our young members to participate in the games, and to this end, I am pleased to say that we have achieved this for this year's event. Our badminton team has always made a mark in the interstate bar badminton competition, without any ex-state players like KL Bar or Selangor Bar, with us making it last year to the semis before losing to Selangor Bar. This year's young new blood have given me renewed hope that we would try to go one better in this year's interstate bar games of making it to the finals.



Bowling (Convenor: Simon Tan)

This year's Annual Penang-Perak Bowling event took place in Penang Bowl with 10 person from each team (Penang & Perak) working hard to accumulate and contribute points for their respective teams.

I am proud and honoured to say that Penang had yet again kept its record of ensuring a win this year with 1770 pin falls obtained by Penang vs 1468 pin falls obtained by Perak, giving Penang Bar a dependable point in the annual event. The games were again played with much joy, camaraderie and sportsmanship from both ends.

It is indeed satisfying to see the countless effort put in and the passion shown by the Penang Bar Bowling Team.

Nevertheless, the points accumulated and contributed by the members of the Penang Bar Bowling Team are as follow:-



No.	Name	Pin falls (for 2 games)
1.	Nuar Izwan	370
2.	Simon Tan	347
3.	Kok Leong	322
4.	Muneer	248
5.	Lee Guan Tong	245
6.	Ung Chirt Kye	238
7.	Allen Choong	236
8.	Fadzillah	189
9.	Syed Alfiq	159
10.	Zaly	132

Football (Convenor: David Chen)

Held in the evening on Saturday 20th May, 2017, was our Annual Penang-Perak Bar Football Game at Penang Sports Club, with our geared up team of 18 players captained by our Mr. Simon Tan readily taking on our guests kicked the game off in perfect playing conditions.

The first half started at a rather quick pace with both teams showing their intentions to score and pushing hard for an opening goal. Both teams did get the ball down and passing it crisply on the fantastic PSC turf. It was our guests who took the lead when their newly recruited on form young striker Teeban Kumar shot into the goal to make it 0-1.

Following the goal, while our defence stood firm and our goalkeeper making several excellent saves to keep us in the game, we gradually began to press for an equaliser. With the chances kept coming for our side, we managed to hit back when our attacking midfielder Ahmad Za'im Bin Adbul Rahman scored a long range top-cornered freekick and equalised against our guests (1-1).

However, we went further behind when Teeban Kumar who was on goal-scoring form slid in a furiously fast and low cross from the right flank and bagged his second for Perak Bar to make the score-line 1-2. The referee called half time and a very close game came to a halt.

Subsequent to the half-time break and upon the vital team talks being done, as well as the substitutions being made by both sides, our team restarted the second half brightly. We kept fighting hard to find way into the game, but it was not to be and our guests succeeded to increase their lead to 1-3 with another goal by Fey Aqis Bin Mohd Khairuddin.



That was to be the final effort on goal and the referee's whistle brought the game to an end. The score-line did not entirely reflect how close a contest it had been and we certainly made it hard work for our guests to earn their win.

While we congratulate our guests over their victory and we definitely do honour their 1-3 win, we ourselves are hugely proud of our team's exceptional fighting spirit and great efforts in playing some excellent football.

A massive thank to all our Penang Bar football players who never gave up and made it a well-fought battle throughout. we would also like to say a big thank you to our supporters and spectators who were present at the pitch together with us that evening and made the game such a meaningful one. We shall come back stronger!!!

Final Results

Due to the agreed format (5 core sports i.e. Futsal, Volleyball, Badminton, Netball and Football must be counted), the **Penang Bar retained the Overall Challenge Trophy**. The results are as follows:-

<u>Sports</u>	<u>Penang</u>	<u>Perak</u>
Futsal	1 goal	2 goals
Tennis	0	2 matches
Volleyball	3 sets	1 set
Badminton	11 points	1 point
Bowling	1770 pin falls	1468 pin falls
Football	1 goal	3 goals
Netball	walkover	unrepresented
Overall Points	4	3



Dentist: "This will hurt a little."

Patient: "OK."

Dentist: "I've been having an affair with your wife for a while now."



After cleaning my five-year-old patient's teeth, I accompanied him to the reception area, only to see him struggle with the oak door.

"It's heavy, isn't it?" I asked.

"Yes," he said. "Is that so children can't escape?"



PART 1: RECENT CHANGES IN MEDICAL LAW - MALAYSIAN CONTEXT

[Courtesy of AdRem – “Voice of the Selangor Bar”]

**By P A Sharon
Selangor Publication
Committee**

In the last 10 years medical law in Malaysia has experienced many changes, principles of law, long established has been challenged in the courts and new regulatory frameworks have taken foot amongst the already heavily regulated area of healthcare law.

A number of cases prompted debates on the role of criminal law in cases involving doctors in their day to day care and treatment. The surge in social media has made the action or omission of doctors open to public scrutiny and every netizen who can get hold of a keypad wants to have a say in what may be a very private affair between a doctor patient relationships.

This article intends to highlight few of the recent changes in the law in a general manner rather than specifically indulging the same as each one of the broad areas may easily grow in volume, enough to fill into a book in its own right.

Change of Landscape

Doctors were always thought to know best, today that notion is challenged, the rise in the internet savvy society in Malaysia, the same thought that doctor knows best may easily be redefined ‘doctor knows best if “Google’s search” can confirm that he knows best’. (Author’s own opinion)

With a click of mouse we can access the most intrinsic medical surgeries available in the ‘You Tube’ channel which makes the ‘knowledge of medicine’ in the hands of any person who has enough ‘expertise’ to click and watch what may rightly or wrongly be the procedure.

So what may take many years of ploughing through medical textbooks and literatures to interpret or even understand is now available almost free to an end user who can be patients themselves or even family members of the patients.

With this technological advancement in science which also allow judges sitting in their private chambers to view videos on how birth takes place and what can go wrong and what ought not to have gone wrong, today audio-visual media speaks louder than what doctors say in their testimony in court or in their records (most doctors usually don’t say much on their medical records anyway-Author’s own experience).

Against this landscape the good doctor who has taken an oath to take care of his patient is assessed and scrutinized (sometimes harshly) for his action or omission.

Medical Negligence - Whether Bolam or Rogers should apply in Malaysia

Medical paternalism had to give way to patient autonomy the law of breach of duty of care has undergone massive changes in the way diagnosis, treatment as well as the duty to inform have been interpreted.

What used to be hailed as the Bolam principle established in the case of **Bolam v Friern Hospital Management Committee [1957] 2 All ER 118** today has taken many dents.

Lord Mc Nair J stated

“...I myself would prefer to put it this way, that he is not guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art...”

The principle which lasted for many years was feared to have an inherent danger of self-regulation which disturbed the judicial mind further without doubt it has always been the most difficult hurdle for the plaintiff to establish their case against a medical man.

In the area of duty to inform this became apparent as a doctor can bring evidence that he would not have informed the patient and applying the Bolam’s principle to the case the doctor may not be found negligent.

The departure from Bolam came from down under in an Australian case of **Rogers’s v Whitaker (1992) 175 CLR 479** the High Court decided the Bolam’s test cannot be applied in the realm of Duty to Inform and instead preferred a ‘material risk test’.

The case of **Naxakis v Western General Hospital (1999) 197 CLR 269** the Australian High Court affirmed that Roger’s rejection of Bolam is to be applied to all aspects of a doctors duty to the patient, which includes diagnosis and treatment.

This departure from the good old Bolam’s case was first considered in our Federal Court in the much debated case of **Foo Fio Na v Dr Soo Fook Mun & Anor [2006] 1 CLJ**

The Federal Court had to answer the following question posed to it:

"Whether the ‘Bolam Test’ as enunciated in Bolam v Friern Hospital Management Committee [1957] 2 All ER 118 in the area of medical negligence should apply in relation to all aspects of medical negligence"

The Federal Court returned with an answer as following:-

“...That said, we are of the opinion that the Bolam test has no relevance to the duty and standard of care of a medical practitioner in providing advice to a patient on the inherent and material risks of the proposed treatment. The practitioner is duty bound by law to inform his patient who is capable of understanding and appreciating such information of the risks involved in any proposed treatment so as to enable the patient to make an election of whether to proceed with the proposed treatment with knowledge of the risks involved or decline to be subjected to such treatment...”

"...It is now well recognized that the interest which the law of negligence protects is a person's interest in their own physical and psychiatric integrity, an important feature of which is their autonomy, their freedom to decide what shall or shall not be done with their body..."

Ironically after the Foo Fio Na's case the courts below have gone on two tangents one chose to accept that Bolam was rejected to all aspects of medical negligence and the other chose to accept that Bolam was rejected limited to duty to inform.

Between this two which is law, truthfully the answer is not as simple as one against another as the cases have not been consistent on either side.

The clarification for the above is now before the Federal Court in the case of **Zulhasnimar binti Hasan Basri & Anor v Dr Kuppu Velumani P, Dr Marlik Abu & Puteri Specialist Hospital Sdn Bhd (Federal Court Civil Application No. 08(f) -287-06/2014(W), (29 January 2015)** on whether the Bolam's test or the Rogers as accepted in Foo Fio Na's case will apply in the area of diagnosis and treatment as well. We shall all wait in anticipation for our learned judges' decision on the same.

An interesting change in the landscape in United Kingdom shows the position there where in the case of **Montgomery v Lanarkshire Health Board [2015] UKSC 11 at [108]** the change in the law is seen as below:-

"... The correct position, in relation to the risks of injury involved in treatment, can now be seen to be substantially that adopted in Sidaway by Lord Scarman, and by Lord Woolf MR in Pearce, subject to the refinement made by the High Court of Australia in Rogers v Whitaker, ...An adult person of sound mind is entitled to decide which, if any, of the available forms of treatment to undergo, and her consent must be obtained before treatment interfering with her bodily integrity is undertaken. The doctor is therefore under a duty to take reasonable care to ensure that he patient is aware of any material risks involved in any treatment, and of any reasonable alternative or variant treatments. The test of materiality is whether, in the circumstances of the particular case, a reasonable person in the patient's position would be likely to attach significance to the risk, or the doctor is or should reasonably be aware that the particular patient would be likely to attach significance to it..."

Whether the Federal Court will clarify its decision in Foo Fia Na where, in the realm of duty to inform the test to be applied is the Rogers and in the realm of duty to diagnose and treatment the Bolam/Bolitho test to be retained, remains to be seen.



I should have known better than to take my four-year-old son shopping with me. I spent the entire time in the mall chasing after him. Finally, I'd had it. "Do you want a stranger to take you?!" I scolded.

Thrilled, he yelled back, "Will he take me to the zoo?"

Companies Act 2016



(1) Filing of Annual Return

The new act now requires the filing of the annual return not later than 30 days from the anniversary of the incorporation date. Previously, the annual return would be filed after the Annual General Meeting (AGM). So while companies may have just filed their annual return a short while ago, it would be prudent to track the anniversary of your incorporation date to see if you need to file the annual return again.

(2) Upcoming Annual General Meeting

Companies may already be preparing for the issuance of the notice of its AGM. For private companies, there is now no longer a need to hold your AGM.

For public companies, your AGM may now need to take into account new matters. For example, one significant new matter is where the fees to the directors and the benefits payable to the directors must be approved in a general meeting of the shareholders.

(3) Audited accounts

The new law will also bring about changes to the audited accounts. Firstly, the audited accounts can now be circulated to the members of the private company since there is no longer the requirement for an AGM. However, the audited accounts must still be placed before the AGM of a public company.

There will be changes to the contents of the company's audited accounts. For example, the directors' report enclosed in the audited accounts can include the new business review section. Further, there must be details of any indemnity given to, or insurance effected for, any officer or auditor of the company.

(4) Dividends – Directors be Aware of Solvency

When the directors declare dividends, they must now be aware of the new solvency requirement. The company must be able to meet its debts for 12 months after the pay-out of the dividends. If there is a breach of this new solvency requirement, the directors then face the risk of personal liability, both under criminal action and civil action.

(5) No-Par Value Comes into Effect

The no-par value comes into effect. Firstly, this means that the issuance of all shares no longer carries a par value. That also means that there is no more concept of prohibiting the issuance of shares at a discount. The directors now have the discretion and the duty to determine the appropriate value for the shares when issued.

Secondly, the company's share premium account and capital redemption reserve account will now be merged with the company's share capital. There is a transitional period of 24 months to utilise the amounts in the share premium account and the capital redemption reserve account. However, there will only be very limited options to utilise these amounts, especially for the share premium account.

(6) M&A Deemed to be the Constitution

Effective 31 January 2017, your Memorandum & Articles of Association (M&A) will now be deemed to be the Constitution. There may be some conflict or uncertainty in the provisions of your M&A with that of the sections under the Companies Act 2016. Companies can decide to review their M&A and to make appropriate amendments, adopt a new Constitution, or (for companies limited by shares) choose to not have its M&A / Constitution.

(7) Shareholder Resolutions – Comply with the Written Resolutions Procedure

For private companies, there is the new written shareholder resolutions procedure. This will be different from the previous procedure of procuring the Members Circular Resolution where all the shareholders signed on the resolution. There is also an impact on wholly-owned subsidiaries which will have to comply with the new written resolution procedure.

(8) Execution of Documents

Companies will have to be aware that there is a provision providing that the valid execution of documents will need to meet certain signatory requirements, in particular, where a director must sign on that document. It is not clear whether this provision will be interpreted as meaning this is the only way you can validly execute a document or this is merely one way you can carry out such a valid execution. This would have a significant operational impact on all companies if all documents must also require the signature of a director.

(9) New Regulations and New Forms

The new Companies Regulations 2017 have also been gazetted. The new Regulations set out some changes and also sets out the Schedule of Fees. The new Forms are not contained within the new Regulations and they should be up on the Companies Commission website very shortly. Some of the forms can be lodged through the electronic filing system while the other forms will have to be printed out and then manually lodged over the counter. The Form numbers have been removed and they only refer to the specific section number in the Companies Act 2016.

(10) Winding up Notice – New RM10,000.00 Threshold

The notice has been gazetted confirming that the new threshold for the issuance of the winding up notice is now RM10,000.00. This is a significant increase compared with the existing RM500.00 threshold under section 218 of the Companies Act 1965.

THE NOVELLA SERIES

by Krishnaveni Ramasamy

‘Pop, pop, pop’.....The sound of the fire popping from the fireplace broke the pin drop silence of the cold winter night, its jig of joy held Val under a spell. Hmmm.....a momentary relief for her muddled mind. Her living room was a sanctuary of warmth for her. The aromatic smell of the freshly brewed coffee filled her nostrils, enticed her to keep sipping it as she continued working on her new novel after a long gap. Val is a famous novelist known for her articulate writings which had won her numerous awards. An immaculate woman too. Her arched eyebrows stretching gently to her black, Barbie like eyelashes, complimenting her alluring big brown eyes. Her enchanting smile showing off pearl white teeth, lighting up her whole face. Her tresses cascading, like a waterfall, down her back. Owning the qualities of a model but fate had made her a novelist. A true beauty beyond words. A beauty with brains.

Having barely managed a sentence, Val looked around her living room for some inspiration. To her dismay, sky blue walls stared at her, accompanied by the eerie ticking of the clock. She sighed. Her mind was a dense puzzle trying to connect all its pieces. She rose and walked to the window. Gazing out, gentle snow was falling from the pitch dark sky, transforming the landscape into a white, magical land, covering the trees with a blanket of cottony snow while the glistening street lights accentuated the serenity of the scene providing a feast for her eyes. The cold winter breeze whistling through spaces around the closed window gently kissed Val. She felt she was being kissed by a toddler. Chilly, though! Mesmerised with God’s creation and its therapeutic effects. She stood by the window with her arms crossed.

Val came to her senses; “The novel!! What an unproductive night!! It’s taking a million years to get inspiration!!!” she thought to herself.

This is so unlike her. Since her university days, she had been known to be meticulous and prompt. She had produced umpteen novels, never once encountering problems. The old, confident Val is lost in the midst of disarray.

Disappointed, she decided to wrap up for the night. She dashed to her bedroom and prepared to sleep. She tugged herself into a warm and cosy blanket and snuggled into it, willing herself to be enveloped by the night. She tossed and turned and she tossed and turned, her eyes refusing, despite her willing to stay shut. It was a futile attempt indeed to put herself to sleep. A navy blue diary that laid amongst a pile of books on her bed panel caught her attention. She reached for it. As she opened it to read, something fell out. Her heart sank as she picked the item up for closer inspection. Her eyes welled up with tears.

to be continued...

Penang Bar



DATE	EVENT	VENUE / TIME
6 July 2017	Movie Night – Spiderman: Homecoming	GSC Gurney Plaza @ 8:00pm
15 July 2017	Hari Raya Dinner	The Light Hotel @ 8:00pm
21 July 2017	Reference	Penang High Court @ 10:00am
27 July 2017	A Talk on Companies Act 2016 – Moving Forward	Royale Chulan, Penang @ 9:00am- 5:00pm
4 Aug 2017	Medical Negligence Talk	Penang Bar Committee Auditorium @ 2:30pm – 4:30pm
6 Aug 2017	Penang Bar Run	Penang Court Complex vicinity @ 7:00am – 9:00am
16 Aug 2017	A Talk on Matrimonial Assets' Fate After Divorce	Penang Bar Committee Auditorium @ 2:30pm – 4:30pm
9 Sept 2017	Penang Bar Dinner & Dance	St Giles Wembley @ 7:00pm
16 Sept 2017	Quadrangular Games	tbc @ 8:30am – 2:30pm
29 Oct 2017	James Logan Memorial Lecture 2017	Penang Club @ Time tbc
19 Nov 2017	The Charity Treasure Hunt	Heritage Trail @ 8:00am – 1:00pm

