



# *Suara Peguam*

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# Editor's Note

## Beginning of a New Dawn

Indeed it has been a “blockbuster” few months as we enter the first half of the year with a surreal feeling. The breeze of hope and excitement has never blown so strongly as we have achieved the unprecedented.

Witnessing the actual full blown force of the term “people’s power” has been but a mere friction of our imagination. The question now would be, so what’s next? Expectation for rigorous evolution in all aspects of economy, finance, law and politics will now be overwhelming . We can’t deny people’s enthusiasm and optimism, can we?

We have all taken the very first step towards this dream and it is only in our hands how our beloved nation shall progress from now onwards. It is pertinent that our minds must surpass the conventional barriers that has long divided us and only then the nation shall and can achieve its ultimate greatness.

Having said that, in this edition we have continued our journey striving to provide you our best. We are, yet again, pleasantly overwhelmed with the enthusiasm shown by our members, who have stepped up to contribute to this edition. Even though we may not be able to accommodate all the contributions received, fret not, we shall nevertheless consider them for our future editions. We extend our heartfelt gratitude for your kind effort and assistance.

In this edition we have continued our regular favourite columns. The highlight includes an exclusive interview with, none other than, our very own Penang Bar Chairman, Mr. T. Tharumarajah, whom I had a gruelling but interesting two hours interview as he shares with us his life journey, illustrious career and insights. In light of the “election fever” we have also included an interesting academic article on constitutional issues on election.

Dear members, when we pursued our editorial journey, the board shared a common goal, that is, to keep on publishing with an “open mind” with limitless creativity and ideas. It is therefore pertinent that you assist us in this journey with your thoughts. Share with us and make this magazine a pleasurable read for all.

To my team, thank you for making this edition happen once again.

Enjoy your read and let’s look forward to the beginning of a new dawn.

**“The power of the people is much stronger than the people in power.”**

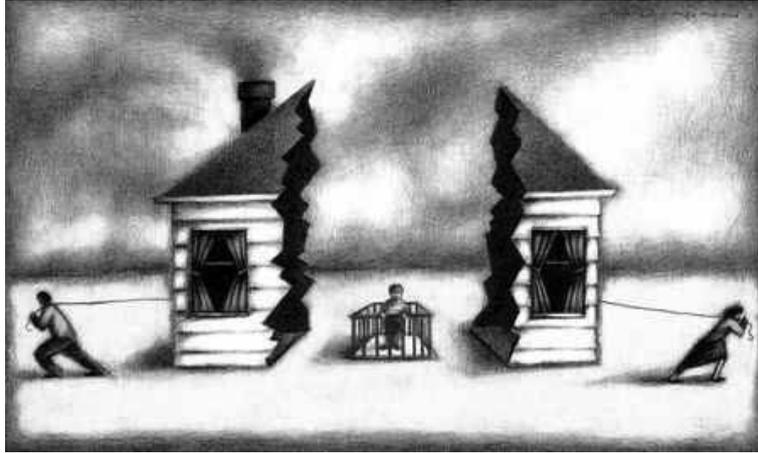
**Wael Ghonim**

Best Wishes,

*Jayakumaran Thiagarajan*

Editor

Suara Peguam



## Review: A Talk on Principles of Division of Matrimonial Assets by Lalitha Menon

By  
*Jesinta Vellu*

We all know that very few lawyers choose to practice family law as their area of speciality. However Madam Lalitha Menon thinks otherwise and has great passion in continuing to be a family practitioner for the last 33 years.

She currently serves as the Vice President of the Women's Centre for Change, Penang and has always been actively engaged in working to eliminate violence against women and children and in promoting gender equality.

In her recent talk, Madam Menon expanded on the Principles of Division of Matrimonial Assets which are mainly governed by Section 76 of the Law Reform (Marriage & Divorce) Act 1976 (hereinafter referred to as Section 76) and its constitution comprises of matrimonial assets which ranges from real property, vehicles, monies, shares, stocks, insurances policies, E.P.F., jewellery to club memberships.

Madam Menon described the court's application of Section 76 to matrimony cases wherein it is essential for the court to first make a finding of facts on whether the said property was acquired by way of joint efforts of the parties or by one party by his/her sole effort and if so, to enforce Section 76(1) and (2) or Section 76(3) and (4) of the Act.

It is thus important for the courts to assess the evidence tendered by both parties to determine the nature and extent of the contributions of each party and thereafter determining each party's share in accordance with Section 76 above.

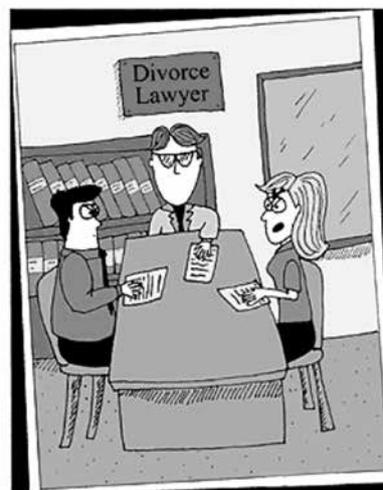
Madam Menon further highlighted the case of *Lim Bee Cheng v Christopher Lee Joo Peng* [1997] 4 MLJ 35, wherein the late Vincent Ng J, had succinctly described the interpretation and application of Section 76. Justice Vincent Ng emphasised the importance of ensuring the supremacy and non-violation of the Section 76 principles when dividing matrimonial assets, when he said: ***'In any event, even if this court accepts the petitioner's assertion that***

***the half (1/2) share of the matrimonial home registered in her name was intended as a wedding gift, it nevertheless cannot displace the discretion of the court, be it under s76 (2) or 76(4) of the Act."***

Further, the following factors are highly considered and appreciated by the courts in solving a dispute concerning division of matrimonial assets:-

- (i) Monetary contribution, time and other relevant contributions made by both husband and wife to procure the matrimonial assets ;
- (ii) the timely contribution of a housewife in safeguarding and maintaining the matrimonial home and adhering to the needs of the children and the family;
- (iii) outstanding loans/debts secured by both parties for the benefit of the family;
- (iv) the party securing a loan/debt is deemed to acquire a larger share;
- (v) the court shall incline towards equality of division where possible;
- (vi) a spouse shall be entitled to claim although name is NOT pre-existent in the title of the matrimonial properties; and
- (vii) proof of contribution is highly important.

In conclusion, it is crucial to note that in view of the specific considerations as provided by Section 76, the division of matrimonial assets is based on the **CONTRIBUTIONS /EFFORT** of the respective parties and not by the **PRE-EXISTING SHARES** stated in the title deed. Thus a spouse whose name is not pre-existent on the title deed can nevertheless be entitled to a share of the said property. The share of an equal share-holder reflected on the title deed can be reduced or increased if the court may deem fit depending on the extent of the contribution/effort by the said party.



"I wish you had tried to screw me this much *while* we were married."



## **UP CLOSE AND PERSONAL**

In this edition of up close and personal we were privileged to interview our very own **Chairman Mr T Tharumarajah** in his second term in office after a much successful first term. Our editor, Mr Jayakumaran T discusses with Mr T Tharumarajah on his personal life journey and experiences. The following are the excerpts of the interview.

**Congratulations on your second term chairing the Penang Bar committee, one of the oldest and respected bars in Malaysia. The expectation that this bar looks upon to its chairman is immense and you have successfully completed a very promising first term.**

**Q: Tell us briefly of your background Mr Tharuma?**

A: I started working in the United Kingdom, initially, before I practised law. At that time I was very keen in politics, however, I realised that there was no “political maturity” in Malaysia for me to pursue the legal field as a career path. Eventually I went on to read law and began practising till to this date. I have two sons, one is a lawyer based in Kuala Lumpur and another is currently reading law.

**Q: I must commend you that I have heard many praises regarding your style of leadership and candour you bring to the Penang Bar. You have been seen as the “most approachable” Chairman in many years. Please share your thoughts.**

A: It’s actually quite simple. I have learned to be approachable from my days in the United Kingdom where I was fortunate to meet many prominent legal figures like Lord Denning, Sir Geoffrey Howe and others who were high standing figures but truly humble and down to earth. This experience left a mark in me to be as humble as I could as we should not draw the line between senior and junior lawyers. I always regarded lawyers as “social scientist” as we meet many people in our daily lives and, therefore, approachability is rather crucial.

**Q: What are your memorable experiences/cases in your many years of practice?**

A: Personally in my many years of legal practice, just like anyone else, I had my share of bad days and the good days. My most memorable case was when I appeared before His Lordship J Edgar; I was a young junior lawyer presenting a civil case where my opponent was a senior counsel who tried his best to sway his arguments and rather intimidate me. Nevertheless keeping my cool I managed to present my case with an “on point” authority that was acknowledged and accepted by the judge in my favour. I was excited to not only win the case but to have convinced a prominent judge like J Edgar who gave me due respect whilst presenting my case.

**Q: How do you see the evolution of the Malaysian Bar taking place over the years? Some might see the Bar facing its biggest threat with the proposal to amend the Legal Profession Act 1976.**

A: I must admit the right word would be “very disturbing.” Since any amendments to take away the independence of the Bar is quite a dreadful thought. I am truly relieved that by the recent change of a new government, this issue perhaps may not be as much of a concern. I must also add that the Prime Minister Tun Dr Mahathir had

never interfered in the Bar Council's legislations and governance during his tenure as Prime Minister. That gives me hope to continue our principles to stand as an Independent Bar.

**Q: What are your aspirations and plans for the Penang Bar?**

A: My priorities shall include getting the Bar to achieve a better relationship with the state government to foster a close working relationship with them. I wish to also bridge the widening 'gap' between the pupils and lawyers as there seems to be a large gap in terms of their relationship. I certainly believe there should be better ties between them for the good of the Bar. Lastly, I sincerely hope that I could revive some of the "classic traditions" of the Penang Bar. It is my greatest aspiration to initiate the "opening of the legal year" ceremony for the 2019 legal year.

**Q: How do you see your committee finding a solution to the delicate financial position of the Penang Bar as presented in its annual financial report recently?**

A: I do acknowledge that the financial situation is rather "unhealthy" due to various financial commitments as mentioned during the recent Penang Bar Annual General Meeting. I also understand the members concerns and members must understand the financial commitments that we are currently facing. The Penang Bar is taking all possible measures in finding the best financial solutions available at this point and be rest assured that we shall do our best. We also welcome all constructive ideas on financial management from our members.

**Q: The issues revolving Continuing Professional Development (CPD) have been "heatedly" debated for several years now. What is your stand on CPD?**

A: The notion of CPD was brought upon with its constructive intent altogether to enhance the skills and knowledge of fellow practitioners to ensure the quality in our legal practice. However the initial sanction of accumulation of CPD points shall contribute as a condition for the renewal of Sijil Annual.

**Q: Generally, how do you rate the Penang lawyers in terms of ethics?**

A: I regret to note that there is a sharp decline in terms of ethics over the years. I strongly believe that the root cause of this decline is the education system provided by the law schools wherein only the subject matter is given high priority. Ethics as a subject should be made compulsory by law schools to enhance training of lawyers in their practice of ethics. I must credit the English Bar training system which includes ethics training and I am a proud product of it. It is my opinion that a new training academy as a part of pupillage training to be established in Malaysia to overcome this problem the soonest.

**Q: What are your favourite activities? How do you enjoy your favourite activities despite your hectic work schedules and constant travel demands?**

A: I enjoy going for walks to ease my mind in the evenings. I am an active church member involved with the church's activities. I am also the chairperson for the church school which consist 200 students. I enjoy being involved in the church school activities. I intend to find more time to give talks and tutoring students. I also love spending quality time with my friends.

**Q: With your wealth of experience, what advice would you offer to lawyers embarking in their practise today?**

A: I always believe that it is important to acknowledge that a lawyer's duty is first to the court and then only to his client, not otherwise. It is also crucial to be responsible and highly integrated. A responsible lawyer will ensure to know his/her presiding judge before his/her trial to understand the style and manner of the presiding judge. Lawyers MUST shed ethics and seriousness into practice and live up to the honest expectations of clients.





## **CHILD MARRIAGE: DEPRIVATION OF CHILDHOOD**

Sisters in Islam (SIS) and the Association of Women Lawyers (AWL) are outraged that the government considers itself 'powerless' to nullify the 'marriage' between 41-year-old Che Abdul Karim Che Abdul Hamid to his 11-year-old child bride. The Government we voted for must do the correct thing in the best interests of the child which is paramount in all decisions taken involving a child. It is certainly a sad day when our Government washes its hands off and rests on the argument that it is 'powerless'. No Government is powerless unless it chooses to be.

From the Islamic perspective, allowing child marriage is contrary to the Maqasid Syariah and fiqh (human understanding of Sharia) approaches of prevention of harm (dar'u al mafasid muqoddamun ala jalbil masholih). Child marriage not only deprives children of their childhood, but also perpetuates their cycle of poverty by taking them out of school and giving them adult responsibilities. Often married to older husbands, young girls are unable to assert their wishes especially where it comes to sexual expectations. Child brides face higher risks of death in childbirth and pregnancy related issues. Alarmingly, child brides also experience a higher degree of domestic violence. As there is a clear presence of harm as in the case of child marriage, the wellbeing of the child must be prioritised.

It is troubling that the government appears to be dragging its feet in pursuing criminal charges under child grooming and/or statutory rape under Part III of the Sexual Offences Against Children Act (SOAC) 2017 and/or Penal Code, which it is empowered to do. The SOAC was enacted specifically to deal with child sexual abuse and the act of preparing a child for sex. If marriage could be used to circumvent and legalise child sexual abuse then Malaysia has failed in achieving the true purpose of SOAC.

The allegations of sexual grooming has been raised in a police report lodged by child activist, Hartini Zainudin following media reports that the child (then aged seven) had been groomed over a period of years and had gone for holidays with the 41-year-old man and his family. It is also unclear as to whether the child has undergone a full medical examination by the Hospital SCAN Team to ascertain if she has had sexual activity with this man. He must be held accountable and face the full force of the law. The Government must not be complicit in his crime.

The best interests of all children must be at the forefront of the government's agenda as Malaysia is party to the UN Convention on the Rights of the Child (CRC). To compromise the future of even one child means to jeopardise the potential that she has to contribute towards not only towards the country, but also towards getting her family out of poverty.

While the government mulls over its 'study' on how to criminalise child marriage, children like this 11 year old child fall between the cracks. The government cannot simply use the justification of Islamic Laws in order to wash its hands of this and ignore the human rights of this girl child and many others.

**By : Sisters in Islam (SIS) & Association of Women Lawyers (AWL)**



the coastal cliff-edge or a sandy beach. Artichokes and avocados were pretty much in season and the bountiful crop was on sale at roadside honesty-box stalls.

We passed the stunning Half Moon Bay and ninety minutes later (with no stops), we found ourselves in Santa Cruz. Santa Cruz is known for its beach boardwalk which offers an oceanfront amusement park; the oldest in California. For some reason I was compelled to take photos of myself with the backdrop of those roaring roller-coasters! Did I mention that Santa Cruz boasted some 29 miles of beautiful beaches?



After some stretching, we drove towards Carmel; a city within a city, within Monterey Country, which is famous for its natural scenery and one of the most romantic cities in the world. It was a small country by the coast which suited retirees or so I may think. A few miles north of Carmel is the beautiful waterfront community of Monterey where we halted for lunch. While the area is filled with restaurants, art galleries, shops and beach activities, the most popular attraction was the 17 - Mile Drive (pebble beach) and the Monterey Bay Aquarium. We had a quick vegan Mediterranean lunch since it was the best option for vegans.

As we were driving further, the uninterrupted view of the endless open-ended Pacific was a feast to my eyes. I kept a fine look-out for the landmark of our road-trip; the Big Sur and the Bixby Bridge. The cliff- and coast-hugging Big Sur region was roughly the middle point between San Francisco and Los Angeles, with breathtaking views in a hairpin-turn-after-hairpin-turn drive.

Finally about 13 miles south of Carmel, the famous Bixby Bridge emerged; slightly hidden by the cliffs and winding coasts. Big Sur is by far one of the most scenic spots and most photographed along California's coast. The famous Rocky Point Restaurant was unfortunately closed; we planned to halt there for a drink since this restaurant supposedly boasted panoramic views up and down the coastline and of the stylish Bixby Bridge as provided by trip advisor. We stopped for a good 30 minutes gulping ourselves with the beauty of coastal horizons, the cliffs falling in the ocean, the clear blue turquoise waters and the state parks that surround it. As we continued, we found that there were at least half a dozen of bridges on the Big Sur coast but the poser was definitely the Bixby Bridge. It is the longest of the lot and probably the highest too. We were amazed and we stopped almost at every turn to see the views including losing ourselves at one point of time when we stopped in the middle of the road!

We drove further for about almost 100 miles when we had to detour to inland roads due to ongoing highway repairs as a result of a mudslide. We experienced vineyards and oil derricks. Some of the routes were foggy and deserted. These were perhaps the less travelled roads! But still, we were lucky to have adventured the most and best parts of Highway 1.

Stay tuned for my Alaskan adventures in the next edition.





# *Living not just leaving a Will*

By  
Carolyn Oh

## **Introduction**

It is statistical fact and I quote WHO that “...global life expectancy has increased”, people are dying later. However, this does not negate the fact that all of us age and will age further irrespective of what crème de la “magic” and such other miracle broth we lather on.

Personally, my googling of idyllic resorts has recently somehow found its “googley way” to “rainbow homes” aka retirement homes. Now do not laugh, for it is not too far-fetched to believe that it has crossed your mind as to what will happen when you are older, irrespective of whether you are with or without a spouse, partner or children. The fact is, we came into this world solo and that is the way we will depart save in melodramatic cases aka Titanic style exits e.g. you jump, I jump (Leonardo, I think not).

So, from one control freak to another, planning ahead for our old age vis-à-vis

1. assets/funds available and access to it;
2. accommodation/living arrangements; and
3. health, welfare and medical care & decisions

are important considerations (hereinafter referred to as “**the Three Essentials**”).

I have often lamented how people tend to rest on their laurels merely from having made a Will. However, it only takes a deeper ponder to realize that a Will only takes care of your material assets and wishes (as such) but not for you for by such time a Will is applicable, you will not be around.

A sturdier plan is a plan which will allow us to truly take care of ourselves to an older age following our own true wishes and intentions.

## **(I) Physically present but mentally absent**

Obviously, the concern is when one gets older one will inevitably be less coherent and capable and then we have varying degrees of dementia, for some unfortunate souls the onset of

Alzheimer's and in the worst-case fall into a comatose state. The fact is that in any of these varying cases

whilst one may be physically present, one's mind might by then be categorised as being mentally incapacitated. The state of being mentally incapacitated is also to be differentiated from a state of mental disorder as defined under the Mental Health Act, 2001 (Act 615).

A person's lack of capacity is the point of the matter. In such an event, save unless there are pre-determined directives or decisions aka a Living Will reinforced by legally binding documents both acceptable and undeniable by parties such as medical doctors, the person's wishes would be literally lost in the muddled-mind of the mentally incapacitated.

With regards to the Three Essentials *inter alia* ...

- assets – we are looking at how an aged person can dictate usage and have access to funds/monies when he or she is no longer strong or mobile.
- accommodation – having worked hard to live well, having a comfortable and safe environment to live in during ones' older years is of utmost importance
- health & medical decisions – health and medical matters often become an everyday affair and to the very end the "how" and the "when" for one's dignified departure would imaginably be preferred to be at one's own choice.

Hence, it is absolutely vital that before one's mind becomes muddled, the Three Essentials are properly written out and pre-dictated.

## **(II) But How ...? (Legislations available)**

This is the precise reason for this articulation, we Malaysia are lacking.

As mentioned before, *Wills* whilst prudent an instrument only applies when you have passed away.

For decision(s) as important as these Three Essential merely naming a *proxy* seems entirely lackadaisical. Moreover, it is doubtful that banks and medical institutions will take directions from a mere proxy empowered under no particular guiding legislation.

*Powers of attorney* in Malaysia made pursuant to the Powers of Attorney Act, 1949 (Act 424) does allow one ("**the Donor**") to appoint an attorney ("**the Donee**") thereunder and bestowing to the Donee powers therein dictated. However, Section 5 of the 1949 Act clearly states that powers allowed to such Donee are clearly revoked by the Donor's death or should the Donor become of unsound mind or be adjudged to be of unsound mind. Similarly, should a Donor's mental capacity be called into question then a power of attorney created under the 1949 Act will most likely be deemed revoked.

It is important also to differentiate that *irrevocable powers of attorney* made under Section 6 of the 1949 Act is not a solution as such powers of attorney is only valid for valuable consideration given in return by the empowered Donee which is usually applicable in an entirely different context.

**In our current deliberation one is looking at a Donee who will be a property and affairs attorney or a personal welfare attorney or both and no valuable consideration will pass for the bestowment of this role but rather a fiduciary duty is imposed.**

As it stands, in Malaysia there are no legal documentation sanctioned by statute which allows the expression of how the Three Essentials are to be handled in circumstances when one is mentally incapacitated. Soft suggestions are for there to be documents termed amongst others “Advance Directives” coupled with powers of attorney drawn up and usually the focus will be on medical matters. However, the enforceability of one’s directives without statutory force will have to be tested with time and its acceptability by the various institutions. It has also to be pointed out that:-

- (a) a person cannot demand a particular treatment in an advance directive; at most one can only cover the types of treatments that one would wish not to be given e.g. DNR;
- (b) such advance directives (statutorily unenforced) often fails in the case of conflicting beliefs amongst family members coupled with conservatism of the medical service providers; and
- (c) Malaysian medical practitioners and institutions alike barring the existence of a legally binding directive would tend to err on the side of caution and take all steps possible in line with their Hippocratic Oath.

### **(III) Enabling those without capacity**

The objective of this article is to shine light on the requirement for legislation in Malaysia to assist those who are mentally incapacitated i.e. cannot make decisions for themselves.

The legislations concerned should encompass ...

- (a) guidelines or possibly even amendments to the Wills Act, 1959 (Act 346) or the Powers of Attorney Act, 1949 (Act 424) to enable the writing of clear and binding advance directives i.e. a Living Will  
*[The Living Will alone has been found to be insufficient for if it is a non-statutory directive it may leave the maker with a document that may not be honoured - hence the advent of the requirement of attorney(s) to carry out the Three Essentials]; AND*
- (b) a new legislation in the form of a “Mental Capacity Act” for Malaysia wherein attorney(s) can be appointed to safeguard the interest of those without mental capacity and in particular those whom have otherwise dictated through an advance directive or decision; the appointment of the attorney(s) can be for property and affairs and/or for personal welfare or both.

### **Conclusion**

“Valar Morghulis” as known to all Game of Throne(r)s but to the uninitiated means all men (and women too) must die but the issue of concern is when we are in that “grey” state of health and without the requisite mental capacity. Malaysia as a growing but aging society is ripe in fact overripe in the need for legislation to take care of the Three Essentials discussed above. I akin this to an “avocado-state” wherein the aged is getting wrinkly and the innards are getting mushy whilst awaiting the realisation that lack in legislature does not bode well for us.

Personally, I have unclenched the portrait of Dorian Gray and those of you Benjamin Button believers better get on with mortal life and accept that we will grow older and be more in need. At most what we can do is to ensure that we have a steady crutch forged from our own will and expressly recorded. We owe ourselves a graceful exit.

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.**

## Ferringhi Garden

Nestled in lush greenery amongst the old, tired shop lots along Batu Ferringhi, Ferringhi Garden is easy to miss unless you are an active foodie seeking for a sense of adventure. Yet, thanks to words of mouth and the power of social media. It is easily the most popular spot for couples or those intending to organize any sort of gathering function to dine in Batu Ferringhi.

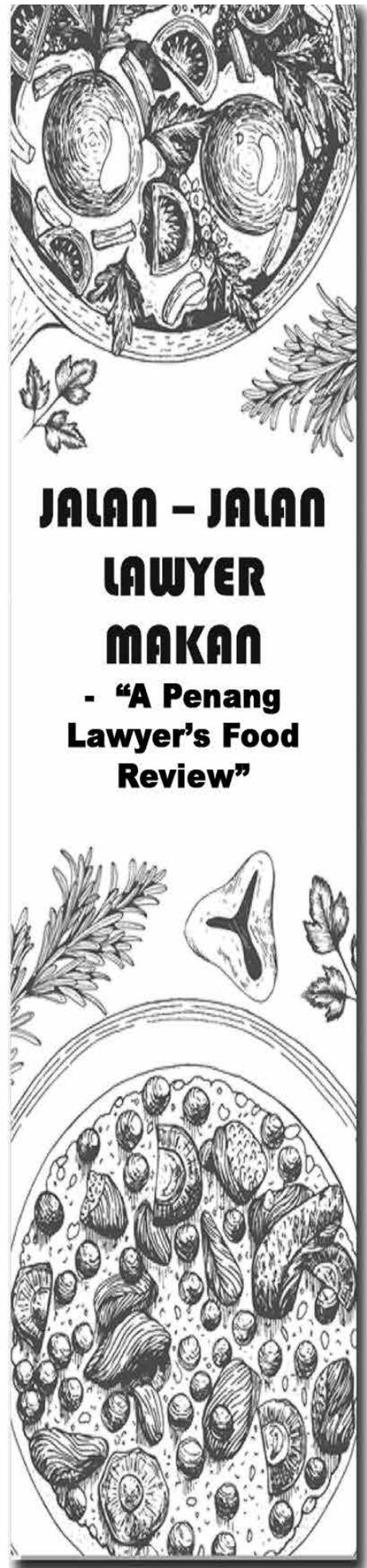
As for me, I decided to try it out one Wednesday night to avoid the weekend crowd, and the moment I arrived at the restaurant itself, began my pleasurable experience. We were ushered to a table with a magnificent view almost immediately, a table right beside a man-made waterfall with water cascading to a tiny stream. It was breathtaking and romantic! Too bad I was dining with a fellow colleague.

The menu is extensive, and I settled for lamb chop while my colleague opted for the grilled salmon and to test our palate, we ordered a glass of wine to go with our main course. As we were sitting outside of the restaurant, the lighting was rather dim (like I said, the setting and ambience of the restaurant is really romantic!) the crew brought a lamp to allow us to go through the menu with ease. Aren't they thoughtful or what!

After we placed our order, we started taking photos of the nicely set table (candlelight with fresh orchid) but before we could start taking pictures of the luscious greenery and tranquil stream, our food was served! It probably took only about 10 minutes of waiting time. I must say, I was impressed.

As for the taste of the food, my lamb chop was really juicy and tender, every bite was flavourful and heavenly. I was never a big fan of carbs, but the mashed potatoes at Ferringhi Garden was the best I ever tasted. You must try it to believe it! The grilled salmon was also well marinated and skillfully grilled to maintain the juiciness of the salmon. It was neither too dry nor too oily, and my friend said it tasted best if eaten together with the sides. After a fulfilling meal, it was already almost closing time, so we decided to explore the rest of the restaurant and take more photos. One of the staff, who had been attending our table, even offered to help us snap photos, and gave suggestions on which part of the restaurant is worthy of photo shoots or perhaps a selfie.

One word of advice, remember to look and wear your best, even if you do not plan to take photos, because Ferringhi Garden does have that classy vibe in spite of its al fresco dining concept.



To sum it up, Ferringhi Garden exceeded my expectations in offering delectable mains, romantic setting and distinctive service at a decent price. Alcohol is served, they accept credit cards, and no request is ever too much work for the ever smiling and accommodating staff.



## Ropewalk Piazza

Growing up, I used to devour Enid Blyton books and I am sure most of us did the same. One thing that we could attest to was her fondness of describing English food to its finest details. Among her character's favourite food was tongue, scones and macarons. Tongue sounded a little... yucky, so back in the 90s, I often wondered how scones and macarons taste like. The two delicacies were almost non-existent in Penang twenty years ago, which is why when desserts and pastries finally hit our shores a few years back, it was truly a childhood dream come true for me!

There is a famous tea room in Jalan Pintal Tali, Georgetown that serves the best scone I have ever tasted in Penang. Mettiser Patisserie is a French inspired tea room and the menu offers only savoury desserts and tea. If you cannot make up your mind on what to order, just settle for an afternoon tea set. It comes with the mouth watering scones that I was rambling about earlier. The afternoon tea set allows patrons to choose two slices of cakes from the display counter. The rest of the items are arranged in a two-tiered tray, and the friendly waiter will advise you on which item you should go first. It is also worthy to note that the cafe's policy allows hot water refill only ONCE.

Do not forget to make a trip to the restroom before checking out, using products from Crabtree & Evelyn, the interior and decor is more suited for a SPA than a mere cafe restroom. Hand lotion is also provided, so patrons can leave the tea room with a full stomach, satiated sweet tooth and smelling like rose petals.

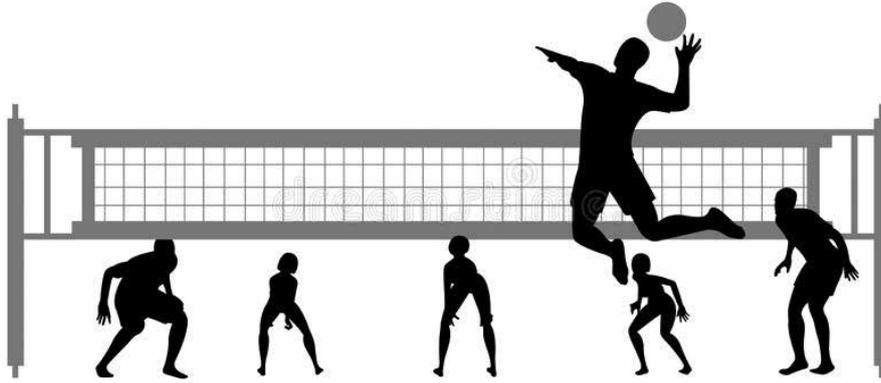
Address: 140 & 142, Ropewalk Piazza, Jalan Pintal Tali,  
10100 Penang

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## JALAN - JALAN LAWYER MAKAN - "A Penang Lawyer's Food Review"





## Volleyball Team Report for Malaysia Singapore Law Games 2018

*By*

*Lee Guan Tong*

Convenor for Malaysian Bar Volleyball Team 2018

**To fight on we must, to win we will.**

Our 2018 training season kick started on 4 January 2018. Having parted our way with Mr. Lim Lok Chuan, our coach for the last 6 years, who transformed us from an amateur team to a team full of serious enthusiasts and to whom we always owe our appreciation, En. Muhammad Hussainy Naim, who trained the KL Bar volleyball team for the 2017 Inter State Games and who is currently playing for the Selangor State Team has come on board as our new coach.



19 sessions (including 4 extra weekday sessions) spanning over 4 months, the new training regime has seen our basic skills corrected/enhanced via new drills and much higher physical strength and level of discipline are now demanded from all the players. Despite all these exciting changes we could not keep up with the average attendance of 14 players per session in 2017 as inevitably and understandably everyone have their own personal commitments. Nevertheless, every player who regularly attended the training sessions improved his/her personal skills, and was able to play with more confidence.

In the meantime, the organizing team being Perak Bar was going through an obstacle course in getting us the ideal venue – we were pin balling among 3 venues right up to 2 weeks before the Games. Just when we thought luck was on our side that we managed to secure the indoor court at Kompleks Belia & Sukan, arguably the best





volleyball court in Ipoh, lightning struck (literally) one week before the Games and the lighting system of the court was partially damaged. Thankfully, we managed (and were allowed by the authority) to temporarily install 4 sets of flood lights around the court with some additional cost added to the organising account. Kudos to Hazril Azam, Kiko, Kenny Lai and everyone who went out of

their ways to pull this feat off in such a short period.

Our game went under way, 10 a.m. sharp, 30 April 2018. We had the first serve.

It was a slow start from both sides, mistakes abound. Luckily, our strong serves and a few timely attacks edged us ahead of our opponents. For Set 1, the Malaysian Bar beat the Law Society of Singapore 25-22.

Perhaps we were a bit complacent with the head start, our attacks and covering moves were below our own standard in Set 2 and LSS took it home 25-20.

The 3<sup>rd</sup> Set was a rather straight forward business, we collected our focus and beat the LSS flat 25-11. Momentum was definitely on our side but the 4<sup>th</sup> Set proved otherwise. It was a bewildering mirror of Set 3 and we somehow only managed to get 12 points. By this time, a clear pattern has emerged: whichever team playing on the side facing the spectators' stand did not win any set. Behind the stand is a landscape size windows with square lattice spanning the whole wall. The net and the window overlap nicely when the players face them. Could this be the X factor?





This eventuality certainly didn't bode well when LSS chose the "winning side" to start the 5<sup>th</sup> Set. Though our morale was down due to the lackluster 4<sup>th</sup> Set, we knew clearly what we had to do. We are the expert come-back kids as history has shown and we are always merciless when it matters.

We had the serve and immediately set the crowd roaring with 2 aces from our top-form setter-turned-spiker Bidi. LSS tailed us closely to 2-2. Few good plays saw us pulling away briefly at 5-2 but LSS was not going to give up just yet and got back even. We pushed ahead with further 2 points and LSS got one back at 7-6. It was time for the star spiker of LSS, Ajit Singh, to serve but his jump floater ended up below the tap at 8-6. At this point of time, I realized we would finish the game on the winning side of the court.

Din had been consistent throughout the day. His 6 consecutive flawless serves coupled with our aggressive team plays saw us pulling away with a big lead of 13-6 just before we made a mistake to end the momentum. LSS managed to salvage 1 more point later to make it 13-8. Chanting of "MB" was already ringing by the courtside by then. Before we had time to further savour the unassailable lead, the game was ended by a decisively spike by Bidi down the 3-metre line. Final score of the 5<sup>th</sup> Set: 15-8.

We have out-played the LSS for 7 years in a row. The cheers of "tujuh tahun" sung by our players reflected our pride in this record. But the LSS team has always been a formidable opponent and exciting side to play against. The fact that it always went down to the rubber set (except last year) spoke much of the close competition. They actually put up a very respectable performance with only 7 players this time.

Our sincerest thanks to all the supporters who have turned up cheering for us in this annual event. To our very own Malaysian Bar team, we shall work harder, elevate our standards and stage up a more convincing performance in Singapore next year!



## **PART 3 : RECENT CHANGES IN MEDICAL LAW - MALAYSIAN CONTEXT**

*By P A Sharon*  
Selangor Bar Member

### **Type of Damages awarded in clinical negligence cases**

In the past our courts were not inclined to award aggravated damages but there seem to be a shift in that approach.

In Malaysia the High Court awarded aggravated damages of RM 1 million in a medical negligence case and that decision was affirmed at the Court of Appeal. The appeal is now pending at the Federal Court in **Hari Krishnan & Mohamed Namazie v Megat Noor Ishak bin Megat Ibrahim & Tun Hussein Onn National Eye Hospital (Federal Court Civil Application No.08 (f) -258-05/2014,** and **The Tun Hussein Onn National Eye Hospital v Megat Noor Ishak bin Megat Ibrahim, Dr Hari**

**Krishnan & Dr Mohamed Namazie (Federal Court Civil Application No.08 (f) 267-05/2014 (W) 17 March 2015.**

The learned author Michael A Jones in his book *Medical Negligence*, London Sweet & Maxwell 2003 stated that court may take into account the manner in which the tort was committed in assessing damages.

“...If it was such to injure the claimant’s proper feelings of dignity and pride then aggravated damages may be awarded” - **Jolliffe v Willmetts & Co [1971] 1 All E.R 478.**

“...The case of **Kralj v McGrath [1986] 1 All ER 54 Woolf J** held that aggravated damages should not be awarded in action for negligence against doctor, notwithstanding that the medical evidence indicated that the claimant’s treatment had been “horrific” ...”

The shift in this approach seems to be in tandem with the Canadian case of **Muir v The Queen in right of Alberta (1996) 132 D.L.R. 4th 695 Alberta QB** which awarded Canadian Dollars 125,000/- as aggravated damages for unlawful sterilization on top of the Canadian Dollars 250,000/- for pain and suffering.

### **Breach of Confidentiality**

Our local medical law jurisprudence saw an interesting development in the area of breach of confidence where the courts awarded damages for the same.

The case of **Lee Ewe Poh v Dr Lim Teik Man & Anor [2011] 1 MLJ 835 Chew Soo Ho JC** (as he then was) relied on the Court of Appeal's decision which accepted the invasion of privacy of a female in relation to her modesty, decency and dignity to be a cause of action and thus actionable.

This case which involved a doctor patient relationship was the first to find a doctor liable for breach of confidence. The Lordship viewed the failure to take consent, prior taking the photographs was fatal to the doctor and the hospital was also found vicariously liable for the doctor's conduct.

The Lordship says the following (emphasis added):-

"...From all the evidence before this court and on a balance of probabilities, I hold that the first defendant must obtain prior consent from the plaintiff or for that matter from any female patients before he can take photographs of her or their intimate parts of the female anatomy. Modesty and decency of the female patients must be respected and not violated. A failure to do so constitute an invasion of the plaintiff's privacy or breach of trust and confidence that the plaintiff as patient had reposed on the first defendant as her treating doctor.

The special position woman have in eyes of law in Malaysia is welcoming but of course patients, immaterial of female or male, ought to be accorded the same protection under the law.

In the case of **Dr Tan Ah Ba v Dr Wong Foot Meow [2012] 7 MLJ 467** the court was prepared to award damages to the patient (a doctor himself) for the disclosure of his confidential information i.e. his dental report and awarded RM25,000/- as compensation.

Her Ladyship, Amelia Tee Abdullah J finds the following:-

"...The court is satisfied in the course of his consultation with the defendant the plaintiff would have revealed to the defendant confidential information about the dental work that had been done on him. The defendant would also have drawn his own conclusions and made his findings as to the state of the plaintiff's oral health, including the nature, extent and seriousness of the plaintiff's pain and suffering. The court is satisfied that these are confidential matters which the doctor in relationship owes to the patient to keep confidential..."

In the case of **Mohd Zairi Rasidi Bin Abd Hadi v Pengarah Pusat Perubatan UKM & 5 Ors- Kuala Lumpur High Court 21NCVC -238-11/2012** the decision which cited the case of **Dato' Vijay Kumar Natarajan v Choy Kok Mun [2010] 5 CLJ 443** where the court applied the principle therein, and found that the patient's medical treatment and medical records are of no doubt confidential in nature and there exist the duty by the hospital and they must be safeguarded.

The fact that hospital failed to guard this was fatal and the court send a warning shot to the medical profession and the tertiary healthcare institution that the failure to do so will not be taken lightly, hence an award of aggravated damages.

Medical professionals and hospital must take this duty of confidentiality very seriously, if not the bedrock of society's belief in the medical profession keeping confidential the patient's information safe from unauthorized disclosure, would be shattered.

### **Access to Medical Records**

In the past the medical records of the patient has been subject to strict 'secrecy'. The ownership of the patient's record vests with the physician or hospital and the doctors insist its role is merely as an 'aide memoir' to him alone.

The patient is not allowed access to the same despite the Malaysian Medical Council's guideline.

The High Court case of **Nurul Husna Muhammad Hafiz & Anor v Kerajaan Malaysia & Ors- Vazeer Alam Mydin Meera J [2015] 1 CLJ** made an unprecedented decision which allows the records to be disclosed to the patient.

“...the physician or hospital must deal with the medical records in the best interest of the patient. The patient has an innominate and qualified right of access to his medical records and there is a corresponding general duty on the part of the physician or hospital to disclose the patient's medical records to the patient, his agents, medical advisers or legal advisers...”

This decision is a welcome addition to our medical law jurisprudence as it allows a patient who suspects some shortcoming on the part of the doctor and the hospital to obtain the records and seek legal and medical opinion prior to initiating a claim against the doctor (if any).

The Lordship also made an obiter observation of the Private Healthcare Facilities and Services (Private Hospital and Other Private Healthcare Facilities) Regulations 2006. (emphasis added)

“...Reliance of private healthcare operators on reg. 44 (2) of the Private Healthcare Facilities and Services...Regulations 2006 to withhold patient's access to medical records until the patient obtains a court order is entirely misconceived. There is no requirement in law that the patient shall first obtain a court order to get access to his medical records.

## **Conclusion**

The short analysis above, shows the changes in medical law are very apparent, the notion 'doctors know best' is now no longer the position and the good doctor and the hospital are exposed to many areas of law and the 'vulnerable' patients have been able to get justice given their particular circumstances of the case.

Diverging from the trend in the 1990s and 2000s the court today has taken a robust approach to protect the patient's autonomy and right. The development of medical jurisprudence in Malaysia is welcomed given the Right to Life is an entrenched right in Art 5 of our Federal Constitution, be that as it may, every right comes with a responsibility.

The Patients Charter found in many of our Hospital's corridor whether private or public is already in existence, where the Patient has an entrenched right to timely and adequate information, medical treatment, choices, privacy and dignity, safe and clean hospital environment and are allowed to raise their concerns but as a patient they also have their responsibility to provide full and truthful information, adhere to treatment plans, adhere to rules and regulation when they are admitted in a hospital, make timely payment of hospital charges and respect one another and be considerate.

The court's in their adjudication role has to ensure the patients and doctors are treated equally and fairly in the eyes of law for their roles and responsibilities to each other. Failing which over an estimate of 45,000 doctors who are taking care of the healthcare of the nation in the dual healthcare system may feel their profession is inundated with legal requirement.

For it cannot be rebutted that no doctor starts his day with an intention of hurting any of his patient with the exception of Dr Harold Frederick Shipman (the Death Doctor) and Karl Brandt (who never repented till death).

But then again, doctors are dealing with the most precious gift called "LIFE", aren't they?



## The Hermit

*By*  
*Yeap Su Lynn*

There was a little spotted frog called The Hermit  
But unbeknown to those who knew him  
The little spotted frog was no hermit  
He was industrious, energetic and determined

But to those who did not know him  
Whenever he retreated into his cave  
They would berate and disparage him  
But the little spotted frog was in actual fact no hermit

But to those who envied and despised him  
The little spotted frog would forever remain a recluse  
A coward who would seek refuge in his cave  
Whenever the problems of the world made him weary

The little spotted frog's frequent retreats  
Was deemed to be a weakness  
But unbeknown to them it was the contrary  
The little spotted frog was reinvigorated and re-  
energised whenever he emerged from his sanctuary

For the little spotted frog was no hermit  
He was ever ready to take on the world  
But this was unbeknown to his enemies  
As in stealth they lay waiting in anticipation

For the little spotted frog was wise to their wily  
ways He preferred to be known as The Hermit For  
then his enemies would forever be lulled  
Oblivious and uninformed in a deep slumber

# Medley of Moments

## Talk: Insolvency Act 1967 – 19 January 2018



## Talk: Procedure & Pleadings in Medical Negligence Cases – 1 February 2018



## Talk: The New Companies Act 2016 and the Companies Winding Up Petitions – 9 March 2018



**Tribute Honouring the Late Tan Sri Dato Seri Dr Eusoffe Abdoolcader – 23 March 2018**



**Talk: Principles of Division of Matrimonial Assets - 20 April 2018**



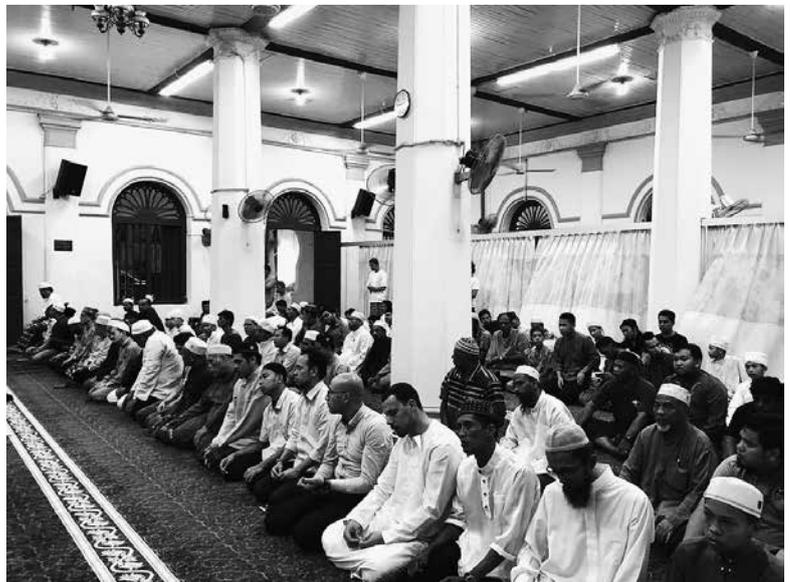
**Talk:  
Basic Conveyancing Practice -  
26 April 2018**



**Donation to the fire victims  
in Butterworth by the  
Family Law Sub-Committee -  
24 May 2018**



**Iftar Ukhuwwah 3 at  
Masjid Melayu, Lebuh Aceh -  
1 June 2018**



**Iftar Mahabbah Bersama Anak Yatim Asnaf  
& Pelajar Tahfiz at Penang Golf Resort Bertam  
7 June 2018**





## A STOLEN FREEDOM?

We as Malaysians just went through a recent election in which a long standing coalition Barisan Nasional, formed in 1973, has been dethroned and replaced by the relatively new Pakatan Harapan coalition founded in 2015. Is this a win for democracy? Maybe. I have always seen democracy as a double edge sword, and here is why I have been sceptical of it as an efficient system in governing the wants and needs of any society.

As beautiful as the term 'democracy' is, it is the bane of modern society the world over. It allows people with less than the cunningness of wily politicians to vote based on the notion that this is their freedom of choice; and yes, people actually are made to believe it with a good eyewash from doctrines such as the rule of law and separation of powers.

Do we allow equal value for the vote of an ordinary labourer on the street or do we differentiate it with the value of the vote cast by a savant with great intellectual acumen or totally disallow it to the ordinary labourer? John Stuart Mill's *On Liberty* suggested the idea of plurality of voting, which is in consonant with the above idea. Also not to forget, he was also the first man who suggested equal voting rights to women in his work *The Subjection of Women*. He was of the view that the higher the intellect, the better informed and wise one would be, and thus the selection of quality leaders for better administration of society.

The origins of democracy can be traced back to the ancient Greeks<sup>1</sup>. The Greeks under Athenian democracy in the fifth century BC did discriminate on who should be allowed to vote, and this did not include women and slaves but only rich elite Greek men which was later extended to all Greek men above the age of 20. Of course, the system of democracy that we have today in many modern States is more inclusive. So, as long as you are given the status of a human being of a certain age in a particular State, you are allowed to vote. This is guaranteed by, for example, the Malaysian Federal Constitution under

Article 119. It is one of our basic and fundamental right.

Ancient Greek philosophers like Socrates, Plato and Aristotle thought that democracy was the root of corruption and tyranny when voting rights are extended to everyone. They considered ordinary people as depraved and have concerns which are not ultimately in line with the long term telos (goal) of different human natures. Plato, for example, believed that there is a natural progression from democracy, to oligarchy to tyranny. Socrates stated in Plato's *The Republic* that, "Tyranny is probably established out of no other regime than democracy". Socrates also stated, "There remains still the finest and the fairest of all men and of all States - tyranny and the tyrant. Tyranny springs from democracy much as democracy springs from oligarchy. Both arise from excess; the one from excess of wealth, the other from excess of freedom. 'The great natural good of life', says the democrat 'is freedom'. And this exclusive love of freedom and regardless of everything else, is the cause of the change from democracy to tyranny".

There you have it, democracy according to the ancient Greek philosophers is a royal road to ultimate tyranny, based on the interactions between the greedy capitalists and a freedom mongering liberalist mob. The problem as perceived is not that voting for leaders in itself is inherently wrong or there are no capable leaders, it is when people are not sufficiently educated in voting skills might vote for a captain of a ship which knows nothing about sailing. Remember, the Titanic, even with an excellent captain at the helm, still sank. The ultimate question is, who should be a leader and who are those who should actually vote for a leader? No matter what, citizens most often are going to get a raw deal under a democratic system.

Democracy therefore is a failed ancient social freedom experiment which was in reality instituted, post feudalism, for the benefit of the capitalist class<sup>2</sup>. It is

<sup>1</sup> The Greeks called it demokratia - "rule of the people".

<sup>2</sup> Note that some may argue that capitalism is a modern construct and has no corollaries in ancient times. But what is capitalism if not the hoarding of wealth? - Yes, capitalism is as old as the notion of wealth.

always and has always been a transference of wealth from the majority to the minority elites in a so-called democratic system. Democracy is simply a convenient tool utilised by the elites to ensure we, the ordinary citizens, have a good feeling of making a choice every five years or so, and then it's right down to business for the capitalists once they win the elections. Is there, then, no good systems other than democracy which may be instituted to give us the utopia which we have been craving for as living, sentient beings?

I have always been an admirer of the monarchical system or at least the rule akin to one. Yes, the Greek philosophers were also keen on a leader who was a philosopher king. Alas, we have no such monarchs today, most monarchies which still exists around the world are constitutional monarchies on the payroll of the politicians voted in by the masses or maintained as some kind of an ancient relic. Thus a monarchical system is out of the question, albeit in its pure form would have been excellent.

There is a system, but modern so-called democratic liberalists are not going to like it, or maybe they might

it's called Marxism. The moment someone hears of Marxism, immediately blurry conjured up ideas of the Bolsheviks and the likes of Lenin and Stalin starts popping up into their minds. Were these leaders not, on the pretext of Marxist ideologies, themselves tyrants? The term has such a negative connotation in the modern world that to mention it alone would lead to the idea that this is a system of oppression instead of freedom and nothing more should be said of it. No, Bolshevik Marxism was a heresy perpetrated from the pure ideas of Marxism and turned into a tyrannical system of socialist repression. So all the varied communist systems which we have today around the world are nothing more than the water trickles of Bolshevism and its tyrannical socialist heresy which ensured the driving in of the final nail into the coffin of living Marxism.

Marxism in its pure form is the collective rule of the many. In other words, it is a world where everyone collectively owns everything and for the benefit of everyone. Imagine a colony of ants or bees<sup>3</sup> and how they live - that's Marxism, right there. Or as the three musketeers would say, "all for one and one for all". Karl Marx himself was no admirer of so-called democracy and its feeble attempt at delivering liberty and equality.

He said, "The oppressed are allowed once every few years to decide which particular representatives of the oppressing class are to represent and repress them". However, as seen from the aftermath of the Bolshevik revolution of 1917 Russia, and the dictatorial regimes which popped up and all, has made us wary that post-revolution Marxism could always be a double-edge sword like democracy. So again we may have a system which would work, which actually will not work, for the intrinsic greed and exploitative nature of some incorrigible humans.

Ultimately, the best we are left with is still 'democracy: a stolen freedom'. The reason is that currently this is the most viable system we have at our disposal. Though by habit the elites will always find ways or means to cheat the masses, only the masses who wish to be cheated can actually be cheated. Thus it is important, as stated by Plato, in *The Republic*, that the masses' essential quality in their voting inclination would only improve if they are well educated in voting skills. This would mean people, if they are naturally ethical and moral, would without an iota of a doubt be endowed with similar quality leaders. Abraham Lincoln, at the Gettysburg Address given in 1863 stated, "the government of the people, by the people, for the people shall not perish from the earth". From this I read that you, the people, deserve the leaders in parliament and government that you get - for they are of you, by you, for you. So, it is a matter of degree, you either get a government which takes everything from you and give little in return or takes less and leaves more for you. Thus no matter what, 'democracy: a stolen freedom' is all we have, if you don't like it, that's just too bad. Perhaps someone will think of a better system once we get to Mars.

Thus in Malaysia, we have recently practised our democratic rights, now what? Well, we have to wait. Rome was not built in a day. My desire is only one: that the new Pakatan Harapan government would hopefully practise the higher end of democracy for the betterment of the Malaysian people, better than that achieved by its predecessor Barisan Nasional. No, I am not asking for perfection, democracy itself is a flawed system, but the best you can do under an ancient Greek system being a relic gifted to us by the British.

By : **Sanjay Kumar Kanchanlal**

Senior Lecturer, Advance Tertiary College Penang.

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3 The ants and the bees have queens, but mind you, these queens are for the propagation of the species. So, I would be glad if these queens and their roles are not equated to the human monarch. What I wish to portray is the cooperative and sharing nature of these insect species which is akin to the collective rule of the proletariat in a Marxist system.

# NOVELLA

## COCKTAILS WITH CHARACTER

*By*  
**Krishnaveni Ramasamy**

Val saw a car veering to the right, in an attempt to avoid her. The street was a glazed sheet of ice and the screeching sound of the car brake was deafening for her. She felt a force pulling her from behind. Val fell to the ground, hitting her head on the pavement. The view around her swayed as she lay on the ground. Her heart raced and her chest tightened, black clouds pressed their way into her vision. The last thing that she saw before the darkness consumed her was his face, those familiar wide eyes and the smile. Val passed out...

Rueben got out from behind the wheel. He was uninjured. He rushed to Val's aid. Seeing her lying motionless on the ground, a feeling of panic shot from his stomach and he clumsily checked her pulse.

"She's alive!" Reuben sighed with relief. He quickly called for an ambulance.

The siren of the ambulance whizzed down the street interrupting the calmness and joy of Christmas Eve. A dozen or so people from the neighbourhood had gathered at the scene and they recognized Val. An anxious, uncertain murmuring spread between them. The paramedics alighted from the ambulance and examined Val with motions of practised familiarity. With protocols followed and decisions made, a neck brace was fastened around Val's neck before they carefully lifted her onto a waiting stretcher. They slid her into the ambulance and with one of the paramedics beside Val, the other closed the doors. With the surreal strobe of the ambulance lights reflecting off the surrounding scene, the ambulance was gone. Reuben followed. He had no heart to leave her and an overwhelming feeling of responsibility set in.

At the hospital, Val was treated by the doctor on call. She was confirmed to have had a minor concussion due to the impact of her fall. She was admitted for observation. Before long she regained consciousness. The moment Val opened her eyes, she found herself in an entirely unfamiliar place with the neck brace. The walls were bathed in white with wallpapers running horizontally in the middle with an angel design pressed onto it. There were three abstract paintings hung on the walls that only added to her confusion. The curtains were brilliant white matching the blanket and the bed sheet. Just as she was

wondering where she was, the door creaked open. A tall, tanned man with peppered stubble and a friendly smile walked in.

“Hello, I’m Reuben,” he introduced himself.

“I nearly hit you. You were so close, gosh! I guess you didn’t notice my car,” Reuben went on explaining what had happened and how Val ended up in the hospital. He was very apologetic too. Val gave him a perplexed look as she was quite unable to recollect the incident; she had a momentary memory loss.

“You need to rest, Valentina. I’ll excuse myself,” he paused, “....this is my mobile number.

Please buzz me if you need anything. I’m sorry once again,” Reuben handed Val the piece of notepaper with his mobile number written on it.

Val, weakly, replied, “Thank you, Reuben.”

As Reuben left, Val’s thoughts shifted to what had happened. She lay on the hard, stiff hospital bed, trying to recall the incident narrated by him. She jumped hearing the sound of the door swinging open. It was Deborah and Paul dashing into the room.

“What happened, Val? How do you feel now? You shouldn’t have gone for a walk.....”

Deborah was frantic with worry.

“Mom, Mom!” interjected Val, “I’m perfectly fine. There’s nothing to worry about,” Val assured her mom.

Paul being the reserved, taciturn person just held Val’s hand. There was a blanket of silence in the room.

Deborah looked at Val and she seemed deep into her mind. With a considered tone Deborah said, “Val, it’s time to move on, my dear. You are still holding on to your past...See where it has landed you. I’m pretty sure you were not in the right state of mind walking down that lane.”

Rather than saying anything Val looked at Deborah for a moment, suppressed her emotion and gave her a weary smile. Sensing it was not the right time to discuss this, and seeing the fatigue in Val’s eyes, Paul signaled to his wife to leave, allowing Val to rest. Deborah hesitantly abided.

Lying there alone, Val’s mind continued trying to recall the incident. But to no avail as her memory was still blurred. The harder she tried, the more devastated she became. The crinkling sound made by the plastic on the mattress, at the slightest move, kept Val awake. Val was alone accompanied only by the corridor light seeping under her room door, the crinkling sound of the bed and the occasional footsteps in the corridor outside as the nurses on duty walked up and down the length of it.

Just then, she saw him again, standing right beside her, smiling at her. Val recognised him, instantly. The captivating dimpled smile that can never be forgotten.

“Dave....,” whispered Val with teary eyes as she reached out to touch him and.....

## OPINION: CONTINUING PROFESSIONAL DEVELOPMENT

***Continuing Professional Development (CPD) has been living in the controversial limelight since it was mooted by the Bar Council. Many theories and conception have been perceived over its role in the practitioners circle. The recent CPD imposed mandatorily on Junior Practitioners has raised many questions on how it will be holistically accepted. Suara Peguam in uncovering this has obtained feedbacks from a number of Junior Practitioners and Pupils who gave their thoughts to this. The following are excerpts from the feedbacks received.***

“ At the initial stage of pupillage, I was against CPD points as I regarded them as burdensome to pupils and junior lawyers. I wondered how we could find time to attend talks and seminars. However, since I have to collect CPD points, I attended a few seminars and I was totally amazed on how much I learned in such a short period. Before I start reading a book on a particular topic, I have a basic idea on what it is about. On the idea of attending talks without CPD points, I don't think it would work efficiently. We are working for ourselves and rarely we share our expertise with others except for some reasons. Therefore, I strongly support CPD points for professional development. ”

*Archana Devgan*

“ CPD stands for Continuing Professional Development. As the term suggests, it is a scheme introduced to ensure competency in legal profession. The ongoing process throughout a professional's career allows legal professionals to keep abreast with the latest legal knowledge and eventually can be applied and beneficial to the public as a whole. ”

*Ivan Tan Kit Wei  
(Pupil in Chamber)*

*Messrs Presgrave & Matthews*

“ I am of the opinion that CPD points' requirement is useful in the sense that it compels fellow lawyers to attend seminars or talks and participate in Bar activities. This in turn helps in not only the legal practice but also to widen their social circle as they meet other lawyers, as well. If CPD points are not in effect (although non-compliance with CPD points does not affect the renewal of Sijil Annual) lawyers may not find any reason to go to talks that are outside their field of practice. As a pupil we are required to attain 8 CPD points in 9 months, so in my opinion, 16 CPD points in a cycle (2 years) are not too burdensome for a lawyer. ”

*Anonymous*

“ The human that could solve all of my legal problems is likely to run in the minds of most lay people... If you thought of a lawyer being the core of that perception, then you either face or caused the plight. However, the nature of a lawyer to be curious, to want to be a know-it-all is also undeniable. No lawyer would aspire to appear equally helpless to the person requesting legal assistance. The various programmes organised with the promise of CPD points deem the programmes to be of higher value, unfortunately. However, it also creates a mandatory avenue for lawyers, possibly of various areas of practice to participate in the knowledge trade that leads us all to be capable of appearing as a know-it-all. I recognise a strong need for the expansion of not only knowledge but also networking which is fostered through the platform strengthened by means of CPD points. The scheme of CPD points is certainly acting as an effective catalyst to drive (some) lawyers out of their busy schedules and into rooms full of other lawyers and so, I am all for it. ”

*Saraspathy Thevi a/p Ramachandran Pillay  
Messrs Phee, Chen & Ung*

“ The law must stride with the pace of the society. For assurance that young lawyers are on the same page with the society throughout the developments and changes, I am of the humble opinion that CPD scheme should be strictly enforced to ensure young lawyers glean knowledge through attending seminars or writing articles on regular basis. CPD scheme will, at the very least, when made mandatory, streamline the competency and abridge the gaps between the senior practitioners and young lawyers. ”

*Leow Min Shiuan  
Messrs TF Leow & Associates*

“ I support the CPD points system. This is because I believe that until we construct a more effective system to regulate lawyers and ensure their competency, the CPD points system remains the most viable option and hence, it should prevail. However, I am of the opinion that senior lawyers should be subjected to the CPD points system as well, as I believe that all lawyers are obliged to maintain and develop their legal knowledge throughout their career so as to ensure that they retain their capacity to practise effectively within the ever evolving scope of legal practice. ”

*Anonymous*

“ CPD may, in some pupils’ or even lawyers’ opinions, be an impractical scheme in which it burdens and becomes time-consuming. I am of the opinion that CPD system serves a great purpose, especially, allowing advocates and solicitors to be continuously and progressively aware of personal duty or responsibility of his/her professional career. CPD system ensures that the standards of advocates and solicitors who are practising in Malaysia are of the highest quality and expose to vast variety of practising experience from senior learned lawyers. Therefore, CPD system should be appreciated among the legal practitioners. ”

*Kevin Tan Soon Qi  
Messrs Zaid Ibrahim & Co*

“ As a young practitioner, it is paramount for us to hone our skills and equip ourselves with legal knowledge from various practices. The commencement of the CPD scheme fits the purpose as it impels us to take part in courses or programs that may help us to refine our skills and legal knowledge. Having said so, the Bar Council did not take into consideration that the range of courses are limited for the lawyers outside of the Klang Valley. The situation is different in Kuala Lumpur and Selangor where the practitioners have plethora of choices to choose from. While the introduction of the CPD scheme may have far-reaching benefits for the practitioners in the long-run, the lack of choices in the courses available render the CPD scheme cumbersome for the practitioners as they have to resort to courses that are not of their interest in order to accumulate the required CPD points. ”

*Lee Kok Hao  
(Pupil in Chamber)  
Messrs Ong and Manecksha*

“ CPD is indeed necessary and beneficial for chambering students & young lawyers, alike. However, the main concern is the cost involved; particularly for chambering students with our limited financial resources. Overall, it is understandable to impose CPD point requirements for chambering Students (so as to compel some masters to allow Students to attend). A suggestion is to have basic courses priced more affordably; the cost for meals may be excluded. However, I would recommend that CPD points remain as an elective and not made mandatory for practising lawyers. For example, some practices are focused on a specific area of law. Hence, it would not be necessary as they are already knowledgeable and keep abreast with the latest developments in their practice. To further require them to collect CPD points may be redundant. ”

*Georgina Tan Weng Kum  
Messrs C.L. Teh & Lim*

“ I feel called to highlight my opinion on CPD points, for me CPD point is a good initiative but rather burdensome to some. The price for a talk can be unreasonably expensive. Perhaps a senior lawyer, who has reached a lucrative salary, would not feel the burden. But for a chambee like us, this has become a burden. ”

*Huda Syamilah bt Zainal Alaudin  
Messrs Tawfeek Badjenid and Partners*

“ Since its implementation most young lawyers have shifted from resistance to a somewhat pensive phase with regards to the CPD scheme.

The main concerns when the CPD motion was opposed were that most courses are conducted in K.L., and courses which are “more beneficial” are thwacked at ridiculous prices. If the CPD scheme is employed for its genuine object and purpose, then that is precisely what it must strive to achieve. Yet lawyers are given the convenient option of paying a penalty and forego entirely the need for any points.

The models employed by other professions can easily be adopted in creating a proper structure for the scheme. In the medical and pharmaceutical fields, committees are set up to not only ensure, but also to attenuate compliance for its members. In the abovementioned fields there is no distinction between “juniors” and “seniors”; all are imposed with one standard.

Then comes the question of how many seminars can one attend, including ones that are irrelevant to one’s interest. One other aspect we could adopt from the other professions is the multifariousness in which points are gained; be it through seminars, practical learning, pro-bono services, or knowledge sharing. Yes, we have these options in place, but there is no requisite for one to participate in the manifold of activities.

It is therefore pertinent that the scheme itself be tweaked before it is able to effectively tweak the profession which it purports to. ”

*Anonymous*



## **Anti Fake News Act 2018**

### **I'm on my way (I'm really not)**

*By  
Ranjini Suppiah*

You know that one friend in the Whatsapp group chat that always claims to be “on the way”, and then ends up being at least 30 minutes late? More often than not, I am “that one friend”. Let me acknowledge it for what it is, it is a white lie. Or, if recent laws mean anything, then I’m basically a disseminator of fake news, guys. I mean, think about it. My lie has affected four of my friends, all of whom are Malaysians. Granted 2 of them will be late because punctuality simply isn’t part of their DNA makeup, but still, what about the remaining two friends?

With all the recent buzz surrounding fake news, our Malaysian legislators have decided to jump on the bandwagon and so now we have, hot off the oven, the Anti-Fake News Act 2018. As Malaysians, we do not always get to beat Singapore in...well, in most things, but here we have outdone ourselves. While Singapore has decided to think things through by tabling a Green Paper on the topic in Parliament, forming the Parliamentary Select Committee to carry out hearings and initiating dialogues relating to fake news, Malaysia has decided to just go for it. Because Malaysia Boleh.

Two weeks ago, I took my first MRT ride from Bukit Bintang to Surian. Did I enjoy the ride? Absolutely! But something about the MRT Station made me feel a tinge of sadness. Well, a momentary tinge of sadness, at least, since I got distracted by yet another Air Asia survey promising to give me 2 free tickets to Luang Prabang (turns out the survey was fake news, guys). Now back to the real source for sadness. The entire, and I truly mean entire, stretch of waiting area for the train was basically an overflowing cornucopia of advertisements, all reminding me that sharing a lie, makes me a liar. These advertisements, depicting ordinary Malaysian citizens engrossed in their smartphones, are all courtesy of Telekom Malaysia (TM). Of course, from one point of view, these advertisements serve as a good reminder since that “I’m on my way” lie is uttered on a bi-weekly basis. The advertisements promote good values, and I’m all for good values. Having said that, these advertisements are

troubling. For one thing, the advertisements display a hashtag, “fitnet”, combining the words “fitnah” and “internet”. “Fitnet” reminds me of the current spew of new-age fitness trackers, like Fitbit. Not for one second did I ever associate “fitnet” with the spreading of fake news. But I digress. These advertisements carry an overwhelmingly Orwellian vibe, and it is this very vibe that underlies the new Anti-Fake News Act. More than the misplaced hashtag, this is what is troubling. It is sad that such aggressive displays in favour of the new Act were thought to be necessary. The advertisements seem designed to plant the seed of fear in citizens from all walks of life.

As illustrated by those advertisements, for the first time, it appears that this new anti-fake news law targets ordinary citizens, and not just the usual suspects, ie activists, journalists, politicians (to be precise, politicians from the opposition parties), lawyers, musicians and cartoonists (yes, cartoonists too, because it has been deemed “justified” to jail a person for depicting *a certain person* to be an evil clown).

This means, technically speaking, my two punctual friends have grounds to report me for lying. Whether or not such a report would be justified is a whole other issue, which brings me to a whole slew of pressing questions. Who stands to draw the demarcation line between what is true and what is false, and going a little further, who determines if a particular falsity should attract the full force of the law? And more than anything else, do we actually **need** this new law?

### **A situation of Simon Says**

De facto law minister, Azalina Othman Said has said, “The courts will have the power to rule on the disposal of any publication deemed to contain fake news”. However, recent comments by the Deputy Communications and Multimedia Minister, Jailani Johari, that any 1MBD-related information which is unverified by the government will be considered as fake, reflect that the government is the deciding body. So, if the government of the day determines that any dialogue or analysis on a financial scandal that threatens to topple the country’s economy needs to be verified by that same government before dissemination, it begs the question, wherein lies the authority of the Courts?

The government has essentially positioned itself to sift news into two categories, news with which it agrees from news with which it disagrees. We currently rank below Cambodia and Myanmar in the World Press Freedom Index (just so you know, we rank 144 out of 180 countries). One would think that we would be working harder to ensure that a healthy dialogue remains possible between the government and dissenting voices. Instead, ours is a nation where the coming into force of the Anti-Fake News Act 2018 was announced during the inaugural National Journalists’ Day. The irony.

To make matters worse, the new Act has an extra-territorial reach to it (see Section 3 of the Act), meaning it effectively serves as an impingement on free speech on an unlimited, undefined basis. Our government has basically imposed a burden on anyone and everyone in the world to not utter or spread anything “fake” that concerns Malaysia or a Malaysian citizen, with the same government determining what is “fake”. If at all, a current piece of

legislation that should have contained this transnational element would be the Personal Data Protection Act 2010 (PDPA 2010)!

### **Legal parrot-ing?**

The Sedition Act 1948, the Printing Presses and Publications Act 1984, the Communications and Multimedia Act 1998, the Penal Code, and of course, the infamous Security Offences (Special Measures) Act 2012. As is crystal clear from this list, there is already a multitude of laws in existence to combat against false information and incitement. As such, with regards to the new Act, legislation overkill is what it is, as rightly said by the Malaysian Bar Council President, George Varughese.

It almost appears as if a sense of fear has brought about the need for this current Act. Beyond that, it is hard to see why the government has found the Anti-Fake News Act 2018 to be a necessary addition to existing laws. According to de facto law minister, Azalina Othman Said, fake news threatens national security, and hence the government has prioritized the new Act. This only serves to add to the puzzlement because, let's face it, we do not have any real and immediate threat to our national security to precipitate and thereby justify the speedy passing of such an invasive piece of legislation.

France is making efforts to tackle fake news, and rightly so, considering the fact that fake news spread mostly by the Russian media threatened to ruin President Macron's chances of winning the elections in 2017. Germany has passed an anti-fake news law, with the view of combating hate speech, considering the rise of fake news designed to incite hatred against migrants and asylum seekers, amongst other issues. Now let us consider Malaysia. No international threats posed to us. No international interference in our elections (we do that perfectly well ourselves). Where then are these supposed threats to national security? It is starting to look like our Anti-Fake News Act has been passed on the basis of... fake news. There is no point in mimicking the actions of other nations when it comes to laws, especially in the current instance, whereby there is no serious need for the new Act.

### **How now brown cow?**

So to recap, the foundation that underlies the new Act appears to be considerably shaky, ie the reasoning behind it hardly makes sense, and the complete lack of dialogue surrounding its creation makes a mockery of democracy. The term fake news is in itself ill-defined, with the government appearing to be the deciding body as to what is deemed true and what is fake. And of course, not to forget, the category of people that come under the ambits of the Act is literally anyone and everyone in the world, which is frankly, ridiculous.

If our government truly wishes to deal with the issue of fake news, then input from the public and various stakeholders are necessary. There needs to be a national dialogue at least, to determine if we require further red tape on free speech. Until then, it would do the nation good for the government to perhaps call off this current piece of legislation.



## REPORT ON THE LAW AWARENESS PROGRAMME



### INTRODUCTION:

A legal awareness programme was organized by the Bar Council Legal Aid Centre on 27 April 2018 (Friday). The programme consisted of a talk by Mr. Sukhindarpal Singh on topics such as theft, statutory rape, drugs, and gangsterism. The talk was given to all Form 4 students of SMK Bukit Gambir from 10:30 a.m. to 12:00 p.m. Kevin Tan Soon Qi and Ooi Vi-Ven from Messrs. Zaid Ibrahim and Co. assisted the speaker in the talk.



### SPEAKER:

Mr. Sukhindarpal focused on explaining the consequences of breaching the law as opposed to the legal technicalities in relation to the various offences. His reasoning was that the students need to be aware of the impact of breaching the law so that it can deter them

from committing the offences discussed. Furthermore, he also encouraged students to refrain from being a silent victim, and urged them to seek help if they are subject to any form of abuse. Most importantly, Mr. Sukhindarpal enlightened the students to respect and care for each other and to always think about the consequences of their words and actions beforehand.



#### **OPEN DISCUSSION:**

After presenting his talk, Mr. Sukhindarpal conducted a Q&A session, whereby students were given the opportunity to clarify their doubts in relation to the issues that were discussed. The speaker utilised the opportunity to ensure that the students were paying attention to the talk and understood what was being presented to them. The response by the students was positive. They were even able to answer questions thrown to them by the speaker. The overall engagement was good, with one student volunteering to share what she learned from the talk.



#### **OUTCOME:**

- (a) Students were more aware of what constitutes a criminal offence and its consequences.
- (b) During the Q&A session, the students expressed that they will now think twice in their actions and will not hesitate to report any bullying incident to the counsellor.

# INQUEST

## *Unravelling the Veil*

By

*Archana Chandrasekaran*

On the 8 April 2018, the Bar Council National Young Lawyers and Pupils Committee (“NYPLC”) and Eliminating Deaths and Abuse in Custody Together (“EDICT”) jointly organised a workshop on how to handle inquest in court. Despite being a Sunday, Mr. M. Visvanathan, being the main speaker had kept the workshop intriguing.

Mr. M. Visvanathan has been working notably, in matters involving deaths in police custody, police shootings and police ill-treatment. He has conducted various workshops on inquest for Bar Council and Bar Council Legal Aid Centres.

He started with the basic question of “What is an inquest?”. It is not a criminal trial. There will neither be any prosecution nor defence. No accused will be tried by the court. It is an investigation. It is inquisitorial.

In holding an inquiry, Section 337 of the Criminal Procedure Code provides that, the Magistrate shall inquire, when, where, how and the manner the deceased died and whether any person is criminally concerned in the cause of the death.

The cause of death must not be limited to the cause reported in the post mortem but every circumstance that eventually led to the person’s death, including any negligence or involvement of any other person. The standard of proof of inquest is on the balance of probability.

Mr. M. Visvanathan further referred to Section 334 of the Criminal Procedure Code to explain when an inquiry into cause of death shall be held. When a person dies while in the custody of the police or in mental hospital or prison, when immediate intimation is given to the nearest Magistrate, the said Magistrate or some other Magistrate shall hold an inquiry into the cause of death. However, he pointed out that there are also cases where a person dies in places other than the abovementioned, perhaps in his house. For example, the case of **Vasanthapriya**, a 14 year old student who committed suicide in her house. In such cases, if the Magistrate thinks that it is expedient, then an inquiry should also be held to look into the cause of death.

However, following the Practice Direction 2 Year 2014, a Magistrate is no longer allowed to handle inquest and therefore an inquest shall only be handled by Sessions Court Judges.

He kept it enthralling by sharing some of the prevailing cases he was involved in. He was

deeply saddened with the case of **Chandran Perumal**, the deceased, who was arrested on 6 September 2012. Despite being informed by the family members that he was a hypertension patient and was on medication, the police officers denied permission for the family members to hand him his medicine. This led to his abnormal behaviour of constant ravings and shouting. Due to this, he was placed in an isolated cell without a toilet and a place to sleep. Eventually, Chandran Perumal died, where the expert confirmed that in the event he was given proper medication, his death could be prevented. Besides that, the CCTV footage showed that he had stopped moving by 7.48 a.m on 10 September 2018 but the report made by the police recorded his death at about 7.00 p.m on 6 September 2018. From all the evidence given, the Court opined that the police, not only displayed lack of empathy and negligence, but also inability to give proper and precise details.

Moving on to the case of **Cheah Chin Lee**, who was found hanging from the lock-up bar with his own shirt, minutes after being sent into the lock up. Creating doubt as to whether it was a suicide, in addition to the family who vehemently denied that he was suicidal and had no reason to do so, the deceased was found holding onto the bar. Besides that, the prison entry form was poorly filled and someone signed on behalf of the deceased with none of his possession details being stated. The deceased possessions were only returned when the family reported that the deceased's car keys, wallet and handphone were missing.

Interestingly, Mr. M. Visvanathan also pointed out that in an inquest any evidence deemed fit is admissible, including hearsay evidence, as held in **In Re Loh Kah Kheng**, Mr M. Visvanathan pointed out some of the difficulties faced in conducting inquest. Photographs taken by the police officers, which are deemed to be important evidences, be it the scene of incident or the body of the deceased, will be taken in a distance and not in close ups, making it almost impossible to spot any additional clues. Secondly, by the time second post-mortem is conducted on the deceased, the body would be badly deteriorated, as in the case of **Sugumar**.

To ensure that second post mortems are conducted as earliest as possible, he reminded lawyers that in order to perform a second post-mortem, they should immediately apply to the court for an order and to proceed with a civil action. Further Letter of Administration shall be obtained and filed within 36 months, following Section 2 of the Public Authorities Protection Act 1948.

With breaks for breakfast, lunch and tea, where delicious food was also provided, the workshop ended around 5.00p.m. with some exciting group activities, where members of each group acted as lawyers for death in custody cases being consulted by Mr. M. Visvanathan, himself and his assistant, Mr. Yohendra Nadarajan, who on the other hand acted as the family members of the deceased. Besides having a good laugh at the drama staged, it gave a good exposure of the patience and skills a lawyer should possess while interviewing clients.

The workshop was almost never ending as questions continued to be asked, doubts being cleared and participants showed interest in joining EDICT. In conclusion, the workshop was remarkably beneficial and advantageous.

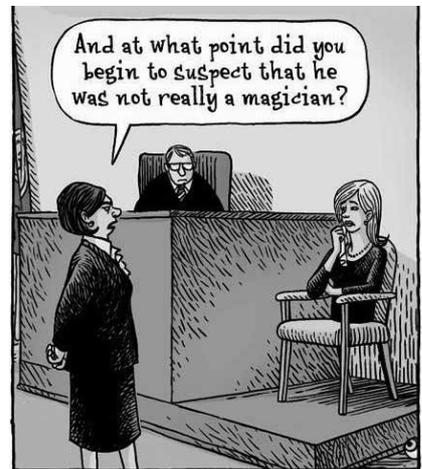
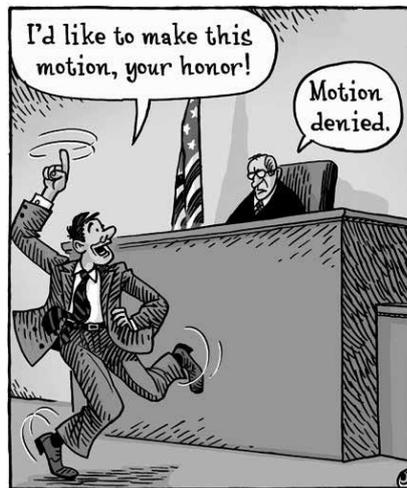
# ATTORNEY HUMOUR



*"If it please the court, I'd like to act as my own plucky young female attorney."*



*"You know, it would be encouraging if, as my lawyer, you weren't also doing that."*



***"The woman whose medical malpractice suit you lost, called. She's suing you for malpractice."***



***"Your honor, my age is irrelevant and immaterial!"***

# Penang Bar



DATE	EVENT	CIRCULAR NO	VENUE	SPEAKERS/ TRAINER (where applicable)
19 July 2018	Risk Management for Staff	MBar 154/2018	Bayview Georgetown Hotel	
20 July 2018	Ethics Face-to-Face Training Course for Pupils in Chambers		PB Auditorium	
21 & 22 July 2018	Criminal Trial Advocacy Course	MBar 117/2018	Penang High Court	
3 Aug 2018	Insolvency Seminar		PB Auditorium	Khoo Kay Ping
29 Aug 2018	CPD Camp: Introduction to the Constitutional Law in Malaysia & Basics of Family Law		PB Auditorium	Srimurugan Alagan Honey Tan Lay Ean
21 & 22 Sept 2018	Family Law Workshop: Drafting Initial Cause Papers in a Contested Divorce including Injunctions			Honey Tan Lay Ean
23 Sept 2018	Hike to Penang Hill and Visit to Habitat		Penang Hill	
28 Sept 2018	Reference Proceedings		Penang High Court	
20 Oct 2018	Penang Bar Dinner & Dance		Traders Hotel	

# “CRISPY” Chicken Rendang



While the idea of cooking “crispy” chicken rendang may have seem preposterous, our very own committee member, Jastina Mohd Junus, has gone out of her way to invent her version of “crispy chicken rendang”, which the committee had a chance to “dig in” during one of our meetings and it was “finger lickin good”.

## **Ingredients**

1 whole chicken; chopped into pieces (marinated with “crispy flour” and some salt)  
410 ml coconut milk  
4 kaffir lime leaves  
1 lemongrass stalk. Sliced lengthways  
Oil

## **Rendang Spice Paste**

10 red chillies, deseeded  
15 dried chillies, softened in warm water then drained  
10 candlenuts  
5 garlic cloves  
3 red onions  
2 lemongrass stalks, sliced  
2cm fresh turmeric  
2cm ginger  
3 kaffir lime leaves  
1 tsp sugar

## **Instructions**

Blend the spice paste ingredients.

Fry the marinated chicken with some oil and set it aside.

Add some oil and add the spice paste and sauté till the paste becomes aromatic. Add coconut milk.

Cover and simmer for 20 minutes till paste thickens. Add the pre-fried chicken, lemongrass stalk and kaffir lime leaves for a final quick simmer and remove immediately (prolonged simmering of the chicken would lessen the “crispiness.”)

Serve with steamed rice.

Enjoy!

