

# *Suara Peguam*

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FOR MEMBERS ONLY • ISSUE 02/18

All men are  
**CREATED**  
★ **EQUAL** ★  
BUT ONLY THE FINEST  
★★★★ **BECOME** ★★★★★  
**LAWYERS**

WHERE THERE IS A WILL  
THERE IS A LAWSUIT



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However, the Penang Bar Committee and the Editorial Board reserve the right not to publish them or to edit those published as regards content, clarity, style and space considerations.

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# Editor's Note

I am indeed at awe! It is officially our 4<sup>th</sup> edition in a blink of an eye.

Just like any other years the Legal fraternity faced its ups and downs with political and corruption cases making the headlines mostly akin to a Hollywood movie. This year also saw the “shake up” and positive changes, notably the Attorney General Chambers with a “new Malaysia” approach taken with much optimism. The emergence of the new e-court system also created history, the beginning of a new chapter and evolution of the fully paperless e-system taking over the conventional Court filing system.

As always, my team faced an unusual daunting task of creating a memorable 4<sup>th</sup> edition. Indeed it was an uphill battle to complete our tasks but our perseverance won the battle once again. I could proudly say that we have created another memorable edition with our regular favourite columns and with some new exciting inclusions such as ask legal, health, legal movie reviews, fashion tips and many more which I hope shall be enjoyed by all members. We have also featured a commentary article on Death Penalty which is now a “hot topic”, a short write up on ethics in practice today and an article on the issues surrounding the controversial “LGBT”.

A point to note that despite the great effort by many members, the editorial board deeply regrets with the level of commitment and participation of young lawyers and pupils in chambers which has been dismal. Apart from a good few participating young lawyers there seems to be neither proactive response nor effort being made from the remaining large. The Board certainly looks forward to a renewed and positive change of attitude from young lawyers and pupils in chambers.

On behalf of the Board, I would also like to congratulate our very own Archana Chandrasekaran for giving birth to a baby boy recently! I must appraise her efforts and perseverance in getting her task done despite her delicate condition. Archana has always been a valuable asset to our team.

Till then, do continue this journey with us as we look forward to all your support.

Wishing you all a Merry Christmas & Happy New Year!

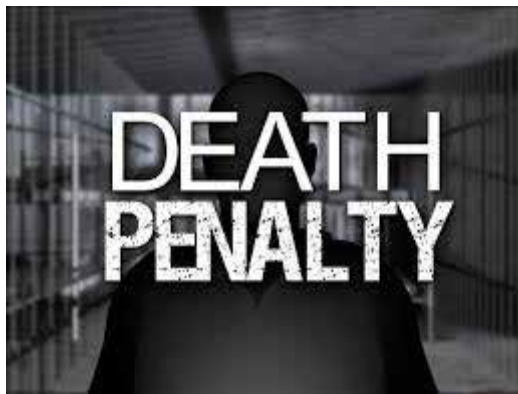
Enjoy your read.

Regards,

*Jayakumaran Thiagarajan*

Editor

Suara Peguam



## **Death Penalty: Crime in the name of justice?**

*By Archana Chandrasekaran*

On 14 July 2017, 29 years old Malaysian, S. Prabakaran from Johor Baru was hanged to death at the Changi Prison at 6am. S.Prabakaran was arrested for possession of 22.24g of heroin, found in a black bundle in the centre armrest console of the car he was driving. However, S.Prabakaran defended that he borrowed the car from a friend to enter Singapore that day because he was afraid that his motorcycle would be repossessed.

His execution was subjected to various criticisms. Many sympathised with the deceased and his family opining that he should not have been sentenced to death and be executed. Others contended that his act of trafficking drugs would have contributed to the destruction of many lives, so he was correctly sentenced and executed.

Similar arguments surfaced when Andrew Chan and Myuran Sukumaran, members of the so-called Bali Nine, were sentenced to death in 2006 after being found guilty of attempting to smuggle more than eight kilograms of heroin into Australia and were shot dead on the prison island of Nusakambangan on 29 April 2015.

Many countries of the world regard death penalty as cruel and serves no justice, most notably all members of the European Union(EU) where death sentence had been abolished in line with Protocol 6 of the European Convention on Human Rights, with Belarus being an exception.

In comparison, most Asian countries find death penalty to be a desirable sentence to curb crimes. China being “the world’s top executioner”, carrying out thousands of judicial killings every year is the best example to quote. However, according to Al Jazeera English, since Beijing classifies most information related to death penalty as state secrets, it is difficult to get a clear statistical number of the judicial killings.

Even after attempting to pause death penalties for a long time, some countries are unable to abolish the capital punishment altogether. For instance, The <sup>1</sup>Philippines has reverted to death penalty as a weapon to fight crimes since Duterte took power in June 2016.

Similarly, Indonesia and Singapore which has stopped executing death penalty for some time have recently carried out execution sentences. This is evident in the case of Myuran Sukumaran and Andrew Chan, where President Joko Widodo refused clemency by strictly holding onto death penalty for convicted criminals in Indonesia.

However, Asian countries like Cambodia, East Timor and South Korea have already abolished death penalty, although executions in Korea are considered to be abolished de facto.

While in the United States, capital punishment is being maintained in 31 states and under federal laws.

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1 <https://www.loyarburok.com/2018/08/03/death-penalty-malaysia-today/>

Like any other Asian country, Malaysia has also been urged to abolish death penalty. At Malaysia's Universal Periodic Review (UPR) in 2009 and 2013, the Human Rights Council recommended on the reduction of number of crimes with capital punishment and on consideration to abolish death penalty. However, all the recommendations for a moratorium or the abolishment of death penalty were rejected. Death penalty continues to be the general rule in Malaysia with life imprisonment being the exception.

Human right organisations and non-governmental organisations such as SUHAKAM, SUARAM, Amnesty International, Human Rights Watch and others have taken up a fight against capital punishment and are working hard to end death penalty, often with the point that everyone has a right to life including those who had committed crimes.

Another common argument is that due to mistakes or flaws of the justice system, somehow innocent people might be sentenced to death and worst, be executed.

Retribution! Death penalty is definitely a retributive sentence. Thus, it is often seen as a form of vengeance. However, its retributory nature is also condemned to be unfair because it is the main point of those in favour of capital punishment that when someone commits murder, it is retributory to take away his life too. How is this considered justice?

The unfairness surrounding the retributory nature of death penalty extends to the vindication that the anticipatory suffering for death penalty outweighs the anticipatory suffering of the victim.

One more frequent argument among others is that there is no evidence of capital punishment being able to deter crimes. <sup>2</sup>Victorian Supreme Court Judge, Justice Lex Lasry, while advocating to reprieve Andrew Chan and Myuran Sukumaran in Bali stated that capital punishments have no deterrent value and find it as just a terrible thing to do.

All those points are cogent arguments when it comes to capital punishment for drug trafficking. The intention of drug trafficking is monetary, not to claim any lives. Although it is arguable that it is a known fact to anyone that drug overdose results in death, the death was not directly caused by the drug traffickers. In fact, most of the times the traffickers have no knowledge on who is going to die, dying or had died from their act. On the other hand, in the case of murder, the murderer will have to have intention to cause death, act directly towards killing the victim and would know who the victim is, which means who is going to die, dying or had died from their act.

In the case of drug trafficking, the points of argument put forward by those supporting the abolishment of death penalty are totally justifiable. The retribution by taking away the life of the criminal for trafficking drugs for money, not knowing for sure if someone's life has actually been taken away, is agreed to be unfair.

In addition, even if there is someone who died of drug overdose, assuming that it is from the drugs trafficked by the said criminal, it must be taken into account that, he did not force the person to ingest himself with the drugs, where most of the time the ingestion is voluntary. Unless the criminal has forcefully ingested the drugs into a person causing it to be overdose, then it would be considered murder.

It could be further argued that drug addiction causes a person to ingest himself with drugs, which could be because drugs are being trafficked, sold and made available. However, the connection is too remote. We can't be sure how a person became addicted to drugs, whether he was forcefully ingested with or voluntarily gave it a try.

Furthermore, this is the type of crime where innocents are most likely to be wrongly sentenced. Often the defence will be that they have no knowledge of the existence of the drugs in their possession,

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<sup>2</sup> <http://www.abc.net.au/news/2015-02-26/fact-check3a-does-the-death-penalty-de-ter3f/6116030>

someone has given them some package, borrowed someone's vehicle or stayed at someone's property. Therefore, it is most desirable to abolish death penalty for drug trafficking offence.

However, death penalty must be maintained for heinous and cruel crimes. The argument of right to life is not applicable here, where the 24 years old Noor Suzaily Mukhtar who was raped and killed in a bus in 2004 and Canny Ong, a mother who was raped and killed in 2003 also deserved the right to life. However both their murderers failed to consider their right to life and were correctly sentenced to death and eventually executed.

For such atrocious and monstrous crimes, retribution is a must! One may advocate that there should be no vengeance and the criminal should be dealt in a way where he will be repentant. However, by stepping into the shoes of victim and the victim's family, whose loss could never be replaced, they would only want justice served on behalf of the victim.

Looking at the gruesome murder of the eight years old Nurin Jazlin Jazimin in 2007, where her naked body was stuffed in a gym bag with brinjal and cucumber brutally stuffed into her genitals, could you imagine the sufferings of a little girl who have not even attained the body of an adult yet. She was all alone. She could have screamed for help, screamed in pain, but still knowing that no one would come to her rescue. She died in vain. Could you imagine the lifelong sufferings that the family will go through? The thought of the torment went through by the child whom the mother carried in her womb for nine months and brought up by the parents for ten years, will haunt them forever. To make it worse, in this case, the killer is still at large. If he is ever caught and convicted, then death penalty will be the right type of sentence.

For such crimes, the anticipatory sufferings of a criminal will not outweigh the suffering of the victim or the family members. Section 183A of the Criminal Procedure Code, for the victim or their family members to share impact statements has been correctly included.

Pertaining the deterrent effect of death penalty, although it was reported in the US, the crime rates of non-penalty states are lower in general, there is no evidence if the lower crime rates are results of non-penalty or any other factors. Further, it is just expert's opinion that death penalty does not deter crimes, there is no research to prove that death penalty increases crime rates or any alternative sentences will lower the crime rates.

<sup>3</sup>When Thailand executed a convict who had killed a teenager while robbing him by stabbing him 24 times with knife, Amnesty International deplored the execution which was Thailand's first after 2009. Amnesty International has come under fire for criticising the execution and stating that there is no evidence the death penalty has any deterrent effect. The Thai netizens condemned Amnesty International for such comments and opined that Amnesty International and other such groups must produce convincing evidence that a lengthy or life imprisonment is an effective method to deter crimes.

Leniency shown to first-time criminals and those who commit criminal offences out of rage or perceived necessity is justifiable. However, when it comes to repeated offenders, seasoned criminals and those who commit cruel and heinous crimes can we really see the possibility of repentance and reform?

Hence, I conclude that the capital punishment for drug trafficking should be abolished while retained for heinous crimes such as murder, rapist causing death, child rapist and acts of terrorism.

# Up Close and Personal

## RUNNING OFF THE OLD TRAIL WITH CHOO HOOI

*By Ramesh Raj*



**Q: Good day, Choo Hooi! Could you tell us a little about yourself and what was practice like for you when you first started?**

I am a local boy and I started practice in 1996. I set up my own practice in 1997 with Jacqueline Joyce Tan. At the beginning stages of my career I was faced with a hectic lifestyle and many challenges which led to poor control in my eating habits and my health, in general. I was never active in sports nor did I exercise much. On a usual day I would be binge eating and binge drinking. By 2010, I weighed a whopping 94 kilos!

**Q: What was the impetus which triggered the change in your lifestyle?**

I was watching my wife playing a match of badminton in March 2010. During the match her partner collapsed, suddenly, and died on the spot. I was in complete shock witnessing such a tragedy. It was the first time I had ever seen something so tragic and that incident, certainly, was a wakeup call for me.

I, thereafter, went for my first ever medical checkup! The results of the medical check-up were not very promising. The doctor warned me that if I did not control my lifestyle and eating habits, I would be jeopardizing my health.



**Q: What were the changes you had to make to convert your lifestyle?**

I had decided to quit drinking and change my eating habits. I also started a fitness plan at the gym. I had lost 20 kilos in 6 months after undergoing training with a personal trainer. I started on the road trainings in year 2011 and maiden full marathon in 2012 in Hong Kong with a timing of 3.25 minutes. I could not believe I had achieved such timing and that was what prompted me to get involved in marathons as a hobby.

**Q: Lawyers in general are often occupied with work, meetings that may extend beyond their usual working hours. What, would you say, is the simplest way for one to maintain some form of fitness?**

The life of a lawyer is obviously stressful and hectic. Every year we see so many lawyers succumb to the stress of their jobs, or suffer from strokes or heart attacks. One has to make a decision to live a healthy lifestyle.

Running is one of the simplest exercises that can be done anytime, be it a proper run or a slow jog. Just bring your shoes with you, find the nearest park and make an effort to sweat it out after office hours.

It is notable to mention his personal achievements which may serve as a motivation to some of us:

**Choo Hooi has attended over 20 marathons including:**

2012: Hong Kong Marathon

2013: Melbourne Marathon, Taipei Marathon

2014: Taipei Marathon

2015: Hong Kong Marathon, Tokyo Marathon, Boston Marathon

2016: New York Marathon, Berlin Marathon

2017: Berlin Marathon, Gold Coast Marathon, Chicago Marathon

2018: Boston Marathon, London Marathon

Choo Hooi's achievement has earned him the 6 Star World Marathon Majors hall of fame, a recognition given to runners who complete all six world majors within a period of 3 years.





*By Gowri Subbaiyah*

## **AN ALASKAN ADVENTURE**

It's always been a tradition for my family to go on a vacation every year and unlike other families, mine always takes a trip to a different place than the year before. When I first brought up Alaska everyone thought I was crazy. They probably pictured Alaska to be a cold, dark place, where no one would take a vacation to. Needless to say my idea was shot down. Then a few months later, I brought it up again and this time everyone seemed to be on board; perhaps only the thought of a vacation mattered!

Needless to say seven days in Alaska have been some of the best days of my life by far, and most definitely one of my favorite trips. Alaska is one of the most beautiful, diverse and undiscovered place in the United States. I decided to write this article to give a little insight of my Alaskan adventure.

We boarded the cruise ship; 'Celebrity Infinity' in Vancouver with a group of, almost, 23 people including family and friends. Everyone excitedly talked about glaciers, fjords, whales and sharks, which were rather a familiar topic amongst us. Although being city dwellers, we indulge in nature bound activities most of the time. As we discussed the particulars of the ship itself, we were shown our cabins; all reserved and booked next to each other in advance. We rushed through lunch since we had to attend a briefing on do's and don'ts in case of an emergency; a compulsory protocol in all cruises.

### **ICY STRAITS**



Our first stop after a full day of sailing was the Icy Straits. Icy Straits is located in the town of Hoonah on Chichagof Island, and is the only private cruise destination in Alaska. It was a cloudy day with light showers but we got on our feet for a short walk into nature. This place is famous for Halibut fishing but since I am a vegetarian and stand strictly against killing of animals, I convinced the rest of my group members against it. We strolled along the coast lines of the little town exploring some real history of Alaska in a little museum.

We did the nature walk but kept it short since the kids were growing cold and tired. I liked the pathway along the water with the occasional seats alongside and fire pits to keep us warm. We watched the people do the zip line which was cool, and I regret skipping it since it was time to re-board the ship.

We rushed back to our cabins. It was formal night and we had to dress our best. My cousins and I pre-decided an Indian theme for our group members and alas I clad myself in a simple leaf green saree. Our butlers were Jamaican and we were immediately shown our vegetarian menus. The butlers organized the kids at their own tables and they were taken care of. By day two they knew our every like and dislike, bringing variety of breads and balsamic and cheese platters and custom cooked pastas for the kids; the entrée of choice!

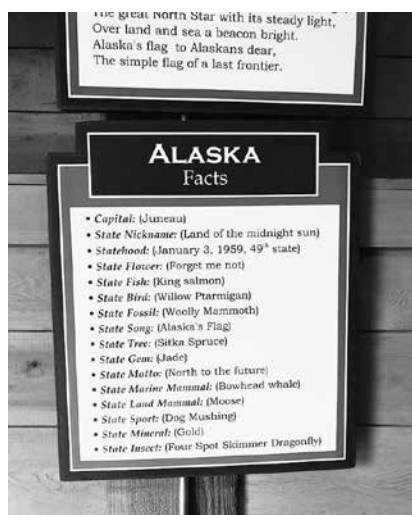
## THE HUBBARD GLACIER



The captain's announcement was heard that we were nearing the Hubbard Glacier in 40 minutes and that all passengers were to assemble at their relevant decks to have a perfect view of the highlight of the Alaskan cruise; the Hubbard Glacier.

As we approached the glacier, the number of ice floes increased. They looked rather small from a distance but they weren't! It was a pretty sight watching a group of seals sitting on them and watching us pass by.

We were very lucky with the overcast weather and the captain was able to take the ship within a mile of the glacier. The captain then, very slowly, turned the ship through 360 degrees to enable everyone on the decks to view the glacier. It was so hard to believe that the glacier is 7 miles wide and 600 feet high! The Hubbard Glacier is an advancing glacier considered the largest tidewater glacier in North America. We watched it calve off numerous times and with the engine of the ship turned off there was a thunder-like clap as pieces of ice break off, plunging into the sea; something that doesn't come through the photos! It was the most incredible sight of the cruise. I could have stared at the wall of ice for hours; it was only then I realized that I sat by the deck for almost 3 hours admiring one of God's most magnificent creations whilst my little boy slept on my lap the whole time; how lucky!



I don't know how you get there if not by a cruise but it was worth a million! I have been on glaciers and ice fields before but this was the first time I have ever seen a glacier from the water. You have to realize that the photos, here, were taken from a mile away and yet the glacier gives the amazing blue colour in the photos. We were told in the PA announcements that this is the only glacier in Alaska that isn't receding at this point. I would go back there in a heartbeat and look for more glaciers to experience, given every opportunity.

## JUNEAU



Juneau is Alaska's remote capital, which is accessible only via sea or air. It is impossible to get to Juneau via road due to the dense mountain ranges. We heard the announcement of arrival at Port Juneau and since my junior was still sleeping, I decided to stay back and probably disembark a little later. I sat close to our cabin's super large sealed window admiring the beauty of Juneau faced opposite the docking station.

As my thoughts got carried away, suddenly I saw a large black greyish thing emerged about 10 feet away from my window. It was

a humpback WHALE! I screamed frantically that my junior woke up dazzled. I pointed to the whale. There it was swimming gracefully in the iced waters of Juneau. The whale was at least 40-45 feet long or perhaps longer and probably the size of the Penang hill train! I stared in awe. Junior was totally in silence observing every movement of the whale. "Photos! Where is my phone?" I grabbed my phone and hoped for one last show and there it was; the whale posted for the most beautiful fluke ever! Oh my god! I must have been the luckiest person on the ship and junior, too, to have watched the miracle. It was as though the whale just made its personal show for the both of us whilst the rest of the people were streaming to get off the ship.

I managed to catch up with the rest and related the miracle. To keep up with the excitement, we decided to book a whale watching private tour which was bound to leave some 5 hours later. So we decided to visit the Madenhall Glacier and Nugget Falls for a short hike. After a splendid view and experience of the Hubbard Glacier, the Madenhall Glacier was just a plain sight, although the surroundings were amazingly beautiful. The kids managed a short hike for nice pictures and we turned back to explore the small town of Juneau.

Juneau has rows of heritage buildings and a few dated back to the 19<sup>th</sup> century. The guys decided to check out the Red Dog Saloon; a bar cum restaurant established during the gold rush which was eventually popularized for adult beverages. The ladies browsed through other shops to kill time. Eventually, it was time for the whale watching and we boarded a bus which took us about 30 minutes to another port which houses private yachts. On board 'Jay Ellis' we had the opportunity to see some of the most enchanting views of Juneau. It was just not about the boring town!

We kept our eyes wide open looking out for the monsters of Juneau. Suddenly someone shouted, "Orcas!" Juneau is known to be infested with these killer whales. These, dolphin look alike, creatures usually travel in groups and are said to be the most intelligent in the species of whales. I would believe it since I witnessed the co-ordination and style of swimming of some 6-7 fellas and those Orcas definitely had the style like they were choreographed for some water shows! It was such a great show! We were told that our group was lucky to have seen the Orcas, especially in big groups, since the Orcas are more difficult to sight in comparison to humpbacks. After almost 60 minutes trailing the Orcas, our yacht decided to switch route and head for the area to sight the great whales; the humpbacks.

Everyone was excitedly looking out, again, thinking it was going to be as easy as sighting the Orcas, 30 minutes passed and we were still waiting. Finally one emerged, shyly, but only partially visual. Everyone was disappointed except Junior and I who had our miracles for the day. 60 minutes went by but it was an unlucky day for the rest as the humpback continued to shy away. We returned to our ship for dinner arrangements.

## KETCHIKAN



Ketchikan is an Alaskan city facing the Inside Passage. It is famous for its Native American totem poles on display throughout the town. In a shore excursion to the Saxman Totem Park, just outside Ketchikan, we dwelled into the culture of Native Alaskans who settled in the Inside Passage some 5,000 years ago or so we read. There was no need for us to bring water along since we found water in its purest form there.

The historic Creek Street is one of the most popular streets in Ketchikan. It is also a home to some of the best salmon viewing

areas in Ketchikan. The streets are built over the water because it was too difficult to blast away rocky hills surrounding the creek. It was one of my most photographed places in Ketchikan. The weather is damp, as always, but it didn't prevent us for a walkabout. I loved the pretty sights of the 'creeks' with a brilliant combination of trees, rivers and nature; something which I have fondly read only in novels. Hearing the gushing waters along the creeks kept me close to nature; the bonding was truly overwhelming! The next day, we experienced sailing through some of the most spectacular views; the Inside Passage. Alaska's Inside Passage is a region of pristine water, snow-capped mountains, fjords carved with glaciers and islands before we disembarked at Vancouver after a 8 day Alaskan adventure.

Look out for my dining adventures in the prestigious Michelin star restaurants in London and Paris in our next edition.





## **Emasculating Ethics in the Legal Profession**

**By Jayakumaran Thiagarajan**

What is the meaning of the word Ethics? Is it still definable in the way it should today? Is there fair justice done to this word in legal practice today?

This article looks particularly into the aspects of behavioural and practice ethics of “young lawyers”, it cannot be denied that what was taught as a subject for the bar exams was meant for a reason. Unfortunately, over the years there seems to be a huge decline of ethics by lawyers, especially young lawyers, in which this discussion is mainly upon.

A basic definition of Ethics would mean “as a moral philosophy or code of morals practised by a person or group of people”. This broad definition transcends the limitations of the Code and makes it possible to better prepare lawyers for future practice so that they have the capacity to perceive ethical dilemmas that may call into question professional judgments and possibly threaten professional standards.

The range of concerns may sound surprising from the issues of behaviour aspects to notorious/malicious legal practice and even to the extent of improper court attire. Indeed this is an extremely disturbing situation the profession is facing.

Statistically we can't deny that the decline in ethics is indeed staggering; young lawyers seem to care less of being courteous to senior lawyers in or out of court anymore today. Rare tales of how a senior lawyer was denied a seat in court by a junior lawyer and how a certain quarter of young lawyers who dresses “as they please” to court. There are even many reported cases where young lawyers, hastily, commence upon their private legal practices without going through the learning curve and later in desperation to earn embark in their “dark journey” of unscrupulous and unethical legal practices.

There seem to be many reasons to the emergence of this problem. We just can't squarely blame the juniors as well, can we? If we do dwell deeply of this becoming, one of the major factor would be the failure of the master to nurture their pupils in the right manner. Many were neglected and “picked up” themselves in the name of survival. They were undeniably in a position to “get things done” in any manner possible, ethical or not, simply to survive the battleground.

Is this the end product that this traditional noble profession seems to deliver today? I wonder what would the public's perception be towards the profession if this debacle continues.

Aside from being “neglected”, which commonly happens, not to all of them, there is another group of young lawyers who live in the ultimate fantasy world perceiving that legal practice today is meant to be a “glamorous affair”. What they fail to realise is that being a lawyer is all about being responsible with the highest accountability in performing duties bestowed upon them.

It is pertinent that young lawyers must always remember that being lawyers are integral to the working-out of the law and the Rule of Law itself is founded on principles of justice, fairness and equity. If ethical principles are not adhered then the law will fall into disrepute and people will resort to alternative means of resolving conflict. Ethical responsibility and duty are an inherent part of the legal profession. The legal profession’s most valuable asset is its collective reputation and the confidence which that inspires.

I have encountered scenarios of a young lawyer addressing a senior lawyer when handling a brief without any conscience, neither a dose of manners nor even the sense of being courteous. Instead of learning from a senior lawyer, the junior lawyer reacts in “a mister know all” attitude and spoke no sense at all, shall we classify this as a classic egoistic case or simply being an ignorant fool?

The situation has even worsened as the Judiciary had recently issued a caution regarding the worsening state of ethics among young lawyers. A new unprecedented record achieved by our young lawyers today. Where does this leave us today? Can we now point fingers to others or defend ourselves when the profession is criticised in such manner? I guess not.

I am not attempting to belittle young lawyers; they are here because of their hard work and perseverance. It must be, however, remembered that this is not where the journey ends, being humble and courteous does not in any way make you look small but only makes you a better person and takes you a long way in life. Learn as much as you can and the mistakes you make shall only teach you to become a better person.

Make a change today! Bring back the life to ethics for the sake of our beloved profession.

**In the words of William Shakespeare;  
“Men at some time are masters of their fates.  
The fault, dear Brutus, is not in our stars  
But in ourselves....”  
(Cassius, Act 1 Scene 2)  
Julius Caesar**



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



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.**

## CL Blowwater

I stumbled upon CL Blowwater cafe by chance -- Burma Road was very, very jammed one weekend, I made a turn into Service Road to escape the jam, and saw a little quaint cafe right behind The Penang Chinese Chin Woo Athletic Association. Needing my caffeine fix, I parked my car and decided to check the cafe out.



Stepping into the cafe, modernly furnished with a touch of nostalgia, thanks to the interior architecture of the house. Yes, the row of shop lots that used to be government quarters back in the 50s right up to the 80s or 90s! A very welcoming setting-- we chose the seats near the front, with plenty of pillows for 'huggies' -- but there are other different settees available too. For those who prefer some privacy, there is a little room towards the back for you to enjoy some peace and quiet. No need for reservation, unless the tables are taken by other patrons. There are also bean bags for patrons to sit back and relax, and probably catch forty winks. For big groups and for holding an event, patrons can call the management to reserve the function room upstairs.

The coffee exceeded my expectations. My iced rose latte was so good that I felt sad when I finished it(!) The milk was creamy, and the rose syrup was not overly sweet. It had a tinge of rose flavour, and the barrista added a few rose petals for an added 'oomph' in my drink. My friend, who is only ever fond of iced cafe mocha, said it was one of the best he had ever had. That was a huge compliment, coming from him, as he is pretty 'stingy' with compliments. Readers will have to try it to believe it, as the photos do not do justice to the taste we savoured at the cafe.

We both ordered the bacon aglio olio, and the spaghetti was nicely done with enough bacon and mushroom to go with every bite. The food offered in the menu is mostly western, although when I checked out their FB page, the cafe does offer local food too, such as laksa and tom yam. For those who only intend to chill, there are racks and shelves with books, magazines and board games for you to pass time with family and friends.

I will definitely visit again, for the coffee, for the ambience, and to check out what other food the menu has to offer.



## Pak Mat Western

Gerai Simpang Tiga, located in Juru is hugely popular with the locals. Although the usual Malay fare is offered, the main attraction at the stalls is Pak Mat's Western. We noticed that most tables occupied had ordered Pak Mat's western cuisine. Since I was there with two other friends, we settled for the mixed platter and chicken chop in order to try a little bit of everything.

The mixed platter comes with grilled lamb, grilled chicken, beef meatballs, sausages, coleslaw, garlic bread and mashed potato, topped with a generous amount of black pepper and cheese sauce. The presentation of the platter was so-so, but one bite was all it took to change our minds! The beef meatballs were heavenly - seasoned to taste. Foodies who do not quite enjoy the taste of beef might find Pak Mat's meatballs delectable, as the strong aroma of beef is cleverly masked in the seasonings that they use.

The lamb rack was equally toothsome. It was grilled to perfection, as the meat was juicy and succulent. The portion was generous too -- we were given a whole lamb shoulder!

The grilled chicken that came with the mixed platter was more flavourful than the chicken chop. Although the chicken chop was alright, the grilled chicken coupled with black pepper sauce, will leave diners craving for more. Only the coleslaw, garlic bread and mashed potato were left untouched. The side dishes were cold and soggy. In my opinion, the sides were unnecessary addition and only served to ruin the platter.

In a nutshell, the mixed platter is a MUST ORDER -- at only RM23.90! It is cheap, delicious and has a little bit of everything. So diners need not have to decide on what to eat. The service was speedy too. Despite the crowd, our food arrived in less than 20 minutes. We were impressed!

Pak Mat's Western may be operating at a 'gerai', but the food served is certainly gourmet style at an unbeatable price.





# **JALAN – JALAN LAWYER MAKAN - “A Penang Lawyer’s Food Review”**



## **MQL Steamboat**

Hotpot is a personal favourite of mine. To be honest, I have tried all versions, and fell in love with all. Clear broth? I love! Tom yam soup? Two thumbs up! BBQ steamboat buffet? Count me in! Laksa... prawn noodle soup base... fish head... herbal... vegetarian... the list goes on. The only thing that I dislike about hotpot is the calories it packs in one sitting. The joys of eating with close family and friends during hotpot is greatly diminished for weight watchers who do not wish to pack on the calories, and opt instead to just watch others dig in.

Fret not. I have found a solution in MQL Steamboat, located in Iconic City. MQL offers steamed hotpot that is low in calories. Sounds too good to be true, right? Well, there is a logical explanation as to why their steamed hotpot is low in calories. This version differs from the traditional hotpot, where we dunk all the ingredients into the hotpot broth, and wait for the ingredients to cook. Instead, steamed hotpot is exactly what its name suggests - the ingredients are steamed in a steamer, and once cooked, diners can move the ingredients onto their plates and start steaming the next set of ingredients.

At the restaurant there was a server who guided us through the meal on the cooking time, types of sauces, signature dishes, and so forth. Each table is equipped with a barrel of distilled water. A steamer is placed in the middle of the table, and right underneath the steamer, is a pot of broth that will be served at the end of the meal. Curious? Well, the pot collects the juice and droplets of all the yummy goodness of the ingredients that were placed onto the steamer, hence the need for the distilled water barrel. So, after you have consumed all the ingredients you ordered from the menu, the server will then remove the steamer, and you can tuck in to the tastiest broth you will ever have eaten in your entire life! (Disclaimer: The tastiness of the



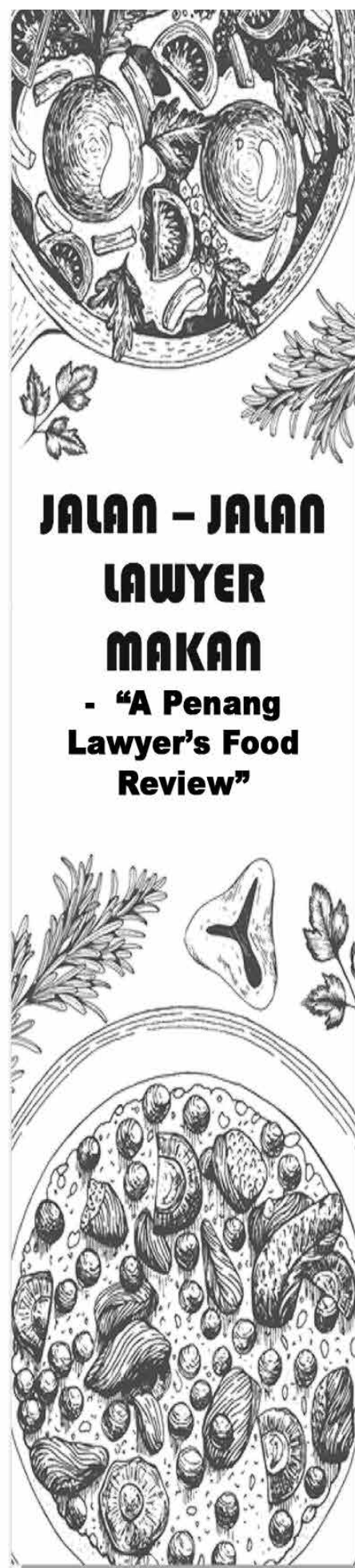
broth is relative to the quantity and tastiness of the ingredients that you select from the menu)

The menu offers selections of set meals, and since I went there with a small group, I ordered a set meal for two and an additional meat and seafood dish from the *ala carte* section. After ordering, I checked out the sauce station, and I was spoilt for choice! The server graciously recommended a few suitable ones based on my order, and taught us how to mix and match the sauces.

When the plates were served, the server advised us on the cooking time, and since we were all hungry, she started with the ingredients with the shortest possible cooking time. The food, once cooked, is mildly marinated to taste, so the sauces do come in handy to enhance the overall flavour. I personally love the steamed custard egg and pork ribs -- both dishes were well seasoned, so no sauce was needed.

After steaming the last plate, the server removed the steamer, and *voila!* The plain and unattractive white broth, we saw when the server was preparing our table at the start of our meal, had magically transformed into golden soupy goodness. Our ever patient server sprinkled some chives into the pot, and after stirring a little, the broth was ready to be served. The broth was heavenly. I never did like broth, but MQL's broth was truly exceptional.

The dining experience at MQL was indeed hearty, and I would not hesitate to rate it five stars for the cleanliness, quality of food served, the attentive staff and comfort of the air-conditioned restaurant. My only complaint was that at Icon City, parking is a headache, and locating the restaurant was quite a task. I will make it easier for you readers though... if you see St. Presso Coffee, MQL Steamboat is located right above it. Now, thank me :)



# SUIT UP

By Phoebe Ng

*"Dressing well is a form of good manners." – Tom Ford*

If any of you, like yours truly, have watched the much-acclaimed American TV series – "Suits" or "The Good Wife", you would find that their wardrobe added pizzazz to the shows as negotiations were done in clean-cut suits and deals were closed in polished shoes and the right shade of ties.

Whilst dressing up is fun, many of the Hollywood glamorised version of court attires might be frowned upon by our local Courts and far from the standards set out in the Bar Council's Circular 004/2012 on "Dress Code for Advocates and Solicitors Attending Court".

How then can we add 'pizzazz' to our court outfits, altogether while, complying the Bar Council's Dress Code?

## [Classic]

The most classic "lawyer look" would be the basic black jacket, white shirt, black bottom and black dress shoes.



## Ladies

A simple trick to add more flavours to our white tops is by donning patterned blouses which would instantly give a boost to a plain white shirt.



## [Traditional]

The Bar Council Dress Code also makes allowance for ladies to don traditional costumes.

A simple over-the-knee black and white qipao or laced *baju melayu* can be an interesting addition to your court wardrobe.



I recently saw a lawyer wearing a beautiful, yet simple, *saree* in court and it made a lasting impression till today.



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## Gentlemen

For gentlemen, you can always go for ties of various colours (except for striking colours) and patterns to spice up your outfit.

Apart from stripes, you can try paisley patterns or polka dots.



A vest may also be a neat addition to your closet. You may also pair it with a patterned or striped black tie to add texture to your look.

## Accessorize!

The easiest way to add a pop of colour to your court outfit is by styling a bright colored handbag or brief.



## DON'Ts of Court Attire

Though the following photos are taken from a fashion blog and are considered trendy and current looks, they are not deemed proper court attire for the following reasons:



low cut top

ankle length pants

open-toe shoes



high slits

bright colored shoes



elaborate head-dresses or tudungs



Bright tan shoes



Bright colored tie

If this lapel pin is associated to a political party or motive, then it would not be allowed. Badges, emblems, buttons, bands or ribbons of the same kind are also disallowed.



Culottes may be in the trend but  $\frac{3}{4}$  length culottes are frowned upon in court.

While you may be tempted to get creative with your ideas to dress up in court, do be mindful of the guidelines provided by the Bar Council's Dress Code. Other than that, have fun and dress up a little!



In quoting Edith Head, "You can have anything you want in life if you dress for it."



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## *Medley of Moments*

### **'Kunjungan Hormat dan Sesi Dialog Antara Pejabat Pengarah Negeri Pulau Pinang dengan Jawatankuasa Peguam Pulau Pinang' - 25 July 2018**



### **Family Law Sub-Committee: Visit to and Donation Drive for School for the Underprivileged - Sekolah Kebangsaan Pendidikan Khas Persekutuan Pulau Pinang - 7 September 2018**



## **Family Law Workshop: Introduction to Drafting Pleadings in Contested Divorce and Judicial Separation Proceedings - 21 & 22 September 2018**



## **Penang Hill Hike - 23 September 2018**



## Farewell Dinner in Honour of YA Dato' Lim Chong Fong - 28 September 2018



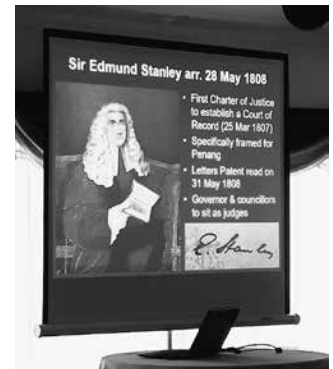
## Technology and Coding Workshop - 4 October 2018



## Penang Bar Gala Dinner 2018 - 20 October 2018



## 9<sup>th</sup> James Richardson Logan Memorial Lecture 2018 - 28 October 2018



## Round Table Discussion 'Women for Change and Empowerment (W4CE)' Penang Perspectives - 17 November 2018



## Penang - Perak Bar Games 2018 - 23 & 24 November 2018





## NON DELEGABLE DUTY - RECENT DEVELOPMENT

*By P A Sharon*

*Barrister at Law Lincoln's Inn*

When a patient admits into a private hospital in Malaysia, he is technically entering into the 2<sup>nd</sup> carriageway of healthcare provider in this country, the 1<sup>st</sup> being the public healthcare provided by the government at the most minimal costs (if any). The facilities provided at these private hospitals can match a 5 star hotel and the advertisements that attract the patient often promises a world-class medical treatment.

It is only when something goes wrong and the patient initiates a suit that he will be explicitly informed by the hospital's lawyer that it was not a 'provider of medical treatment' but merely a 'facility provider' used by the Doctor, hence, it owes the patient no duty of care, to begin with.

Shocked? Well, knowingly or not of that particular strategy the Patient's lawyer usually will plead the concept of vicarious liability on the part of the hospital and, ironically, that notion in Malaysia was accepted in some cases and not in others. It is only recently that the concept of Non-Delegable Duty on the part of the hospital was pursued by the patients against these state of the art hospitals.

Under the ***Private Healthcare Facilities and Services Act 1998*** ('PHFSA') and ***Private Healthcare Facilities and Services (Private Hospitals and Other Private Healthcare Facilities) Regulations 2006*** ('PHFS (PHOPHFR)') the hospital will owe its patients direct duties under a statute.

But over and above that, under common law the hospitals may be liable in the form of direct liability, vicarious liability and/or non-delegable duty.

The recent seismic activity is not only on the earth's tectonic plates but also in our law of tort, where there apparently is a certain readiness amongst judges to provide a remedy for 'victims' of duty-ower in law of negligence.

The learned author, Professor Norchaya Talib, in her book 'Law of Torts in Malaysia', Sweet and Maxwell Kuala Lumpur, 3<sup>rd</sup> edition, have since 2010 raised the question; can a patient claim from the hospital via non-delegable duty, damages for the mistreatment received and the short answer to that in 2018 seems to be yes, if the facts can satisfy the test set down by Lord Sumption in ***Woodland v Swimming Teacher's Association and others*** [2014] AC 537 and only

if the Court thinks it is fair, just and reasonable to do so.

This shift from the traditional concept of fault based liability now, means the hospitals cannot sit back and relax and throw an alleged tortfeasor ('doctor') together with his 'independent contractor agreement' to the aggrieved patient, which in some cases may seem like a 'hand over' of the doctor to the mercy of the 'ferocious plaintiff lawyer'.

The decision in the Federal Court case of ***Dr Kok Choong Seng & Anor v Soo Cheng Lian and Anor (appeal)* [2018] 1 MLJ 685** means the hospital will now have to walk along the doctor for its non-delegable duty towards the patient (if the facts of the case satisfies the test) and it would be fair, just and reasonable for the court to find the hospital liable.

The word non-delegable in Black Law of Dictionary is defined as not capable of being entrusted to another's care. The key words being care and entrusted. Unlike the tortious principle to take care, the principle of non-delegable duty is to ensure 'care is taken'.

The general principle that an independently engaged contractor is liable to his own actions and omission has come under scrutiny, where the courts were not willing to accept that a contract for services alone was sufficient to absolve any liability on the part of the party who engaged the independent contractor.

The archaic view that when a hospital has taken care in selecting professionals to provide the facilities that they render, they then cannot be held liable for the negligence occurred in the course of an operation or treatment calling for the exercise of 'medical skill and knowledge' – of that professional in ***Hillyer v Governors of St Bartholomew's Hospital* [1909] 2 KB 820** is no longer good law.

The hospitals in later years were held liable vicariously for the act or omission of its employees. However it never took away the hospital's own duty owed to the patient to ensure care is taken. Therefore, even in the absence of vicarious liability the author's view is that the hospital will continue to owe a duty to its patients which cannot be delegated to an employee or even an independent contractor.

In the development of case such as ***Gold v. Essex County Council* [1942] 2 KB 293** the Court declined to accept the hospital's duty was confined to administrative matters, which included providing proper facilities and selecting competent staff. The simple example of an employee nurse, the hospital is expected not only to provide a skilful nurse but also to 'nurse' the patient till he gets better. Therein lies the duty to ensure that patient is taken care of and just because the hospital has employed a qualified nurse does not mean it has discharged its duty, what the law expects out of the hospital is more than that.

In the case of ***Cassidy v Ministry of Health* [1951] 2 KB 343** Lord Denning stated:

*...if having accepted a patient for treatment the hospital selected and engaged a surgeon to treat him, the hospital owed a duty to treat the patient with proper care and would be in breach of that duty if the surgeon failed to do so...*

*I take it to be clear law, as well as good sense, that, where a person is himself under a duty to use care, he cannot get rid of his responsibility by delegating the performance of it to someone else, no matter whether the delegation be to a servant under a contract of service or to an independent contractor under a contract for services*

Now the healthcare system in England and Wales is different from the private healthcare system in Malaysia. Accordingly the question posed to the Federal Court in Dr Kok's case was, whether the doctrine of non-delegable duty of care... applies in Malaysia and, if so, whether the doctrine can or should apply to private hospitals...?

The arguments put forward by the Hospital in Dr Kok's case that under **Section 78 of the PHFSA** the Hospital merely provides hospital facilities and not medical services, were shot down by the Federal Court and further stated, read in their entirety, **Regulations 11 (4)** read together with **Regulations 14 (1)** of **PHFS (PHOPHFR)**, that medical practitioners shall be considered as part of the organisation.

Further, 'the legislative scheme clearly envisages that the function of private hospitals includes, generally, the treatment and care of persons, who required medical treatment or suffer from any disease.'

A further attempt of the Hospital in **Dr Hari Krishnan & Anor v Megat Noor Ishak bin Megat Ibrahim & Anor and another appeal [2018] 3 MLJ 281** to suggest that 'private hospitals cannot undertake the provisions of medical services...' as they are in the purview of registered doctors under the Medical Act 1971, was again rightly shot down by the Federal Court.

In quoting Dr Kok's decision: '... the idea that private hospitals are invariably nothing more than just spaces for doctors to operate in, is neither warranted by the legislative scheme as a whole, nor congruent with societal expectations...'

These landmark decisions from our highest court of the land prove law of tort in Malaysia is fluid.

Those in the business of taking care of life and limbs cannot, now, wave a perfectly solid agreement to absolve their liability as the 'soil liquefaction' that the region of Palu, Sulawesi, recently experienced, the court may find these agreements not solid enough to deflect the claim. This finally puts to rest that the aggrieved patient can rightly claim against the hospital and the doctor unlike before where the good doctor alone was to be 'crucified'.

A parting note to my brethren, failing to expressly plead the doctrine is fatal, as warned by our Court of Appeal in **Kee Boon Suan & Ors v Adventist Hospital & Clinical Services (M) Ors [2018] MLJU 617** and may the Force be with you.



## **Evolution of food and your health**

*By Ramesh Rajadurai*

Food processing refers to any deliberate change in a food that occurs before it is made available for us to eat. It can be as simple as freezing or drying food to preserve nutrients and freshness, or as complex as formulating a frozen meal with the right balance of nutrients and ingredients.

Obviously, most foods we eat are processed in some way. Apples are cut from trees, ground beef has been ground in a machine and butter is cream that has been separated from the milk and churned. But there is a difference between mechanical processing and chemical processing.

Real food consists of a single ingredient food with no added chemicals. However, foods that have been chemically processed and made solely from refined ingredients and artificial substances are generally known as processed food.

Evolution provided us with taste buds that are supposed to help us navigate the natural food environment. However our appetites are leaning towards foods that are sweet, salty and fatty.

Today, the competition is fierce. There are many different food manufacturers, all competing with each other. For this reason, massive resources are spent on making foods as desirable as possible. Colouring is added to sweets, pastries, ice creams; to attract children and amino acid is commonly added to food to ensure the food does not rot easily. Monosodium Glutamate or more commonly known as MSG is a food additive used to enhance flavour which will eventually lead to obesity. Keep in mind that processed foods may contain dozens of additional chemicals that aren't even listed on the label but has a particular purpose. Speaking about food labels, the longer the contents the more chemicals it contains.

There are countless articles from doctors and specialists that suggest processed food are harmful to the human body. Research has shown that sugar is the main cause of obesity. Sugar consumption is strongly associated with some of the world's leading killers, including heart disease, diabetes, obesity and cancer including devastating effects on metabolism.

We can start by eliminating all processed food from our diet and start cooking with fresh food and ingredients like fish, meat, fruit and vegetables. Real food is the key to good health, processed food is not.

# NOVELLA

## COCKTAILS WITH CHARACTER

*By*

*Krishnaveni Ramasamy*

"This is an announcement for the passengers travelling on the 10.30 flight LH901 to Rome. The flight is delayed by 2 hours due to bad weather."

Val was walking through the LAX departure lounge to board her flight to Rome when she heard the announcement.

"Darn! The flight is delayed!" Val sighed in vexation.

Each time she published a novel, Val treated herself to a vacation. It helped her unwind and refocus her mind. It was also an opportunity to find inspiration for subsequent novels. Rome was her destination this trip. She had wanted to experience the ancient city for many years. Now seemed a good time to explore the city, meet its people and see if any ideas for a novel would surface.

Preferring one of the comfortable sofas in the foyer, to being cooped up in the departure room, Val took a seat. She loved observing people around her and airports were an ideal place to come across people from many walks of life, and many parts of the world. She lounged on the sofa, with a cup of coffee and the lively tones of Mariah Carey playing through her earphones. The chaotic LAX was filled with a sea of anonymous faces hustling and bustling with their luggage, and some with their children. Val observed the range of emotions on the faces going past, people sobbing at the departure hall and the happy faces at the arrival hall upon the arrival of their loved ones. Indeed a common atmosphere at any airport but it always amused Val. In fact these were always a favourite part of her vacation package minus the wait for delayed flights!

"Is this seat taken?" asked a tall, dark skinned, perfectly groomed man. The owner of the voice beamed with a cosmic, dimpled smile.

"He is DASHING!" thought Val.

"Eerr....n...no, it's not taken," stammered poor Val as she was astonished with his demeanour.

"Hello, I'm Dave," he said as he sat. Val too introduced herself.

Dave was from Toronto. He had come down to Los Angeles for a conference and like Val, was heading to Rome for a vacation. Sheer coincidence or what!

Val and Dave slipped into conversation. Dave was impressed by the cocktail of Val's genteel personality, beauty and mystique. He was absolutely mesmerized with her angelic look, an enchantress, indeed! There was an instant energy between them and the time passed quickly. Their flight number was announced and they proceeded to the departure hall to board their flight. Dave helped Val with her luggage before getting to his seat. The whole time during the journey Dave kept thinking of his encounter with Val, she also thought of him.

Dave didn't want to let this intoxicating woman slip through his fingers and upon arrival at Fiumicino Airport, Dave darted for the exit, moving quickly through the crowd, making sure he didn't lose sight of Val. When they reached the baggage carousel he took his opportunity, offering to help her with her bags and suggesting they share a taxi into the city. During the ride they got to know each other in more depth and the warmth between them grew. They decided to meet the next day.

The warmth grew stronger during their holiday in Rome, the charm and splendour of Rome only adding to the spell. Their relationship blossomed beyond a mere friendship even after their return from the vacation. Soon, despite the distance, it was love.

There was a deep sense of longing for togetherness but the time was not right for either of them to come together – they both had commitments that required their continued separation. Despite this their relationship stayed strong and they cherished every opportunity to be together.

It was New Year's Eve 2015, Val and Dave decided to meet in Minnesota as they planned to celebrate the New Year at Val's parents'. Dave had decided he couldn't wait any longer and had a perfect plan to propose to Val. He was certain in taking Val as his wife. He prearranged everything, fine dining at the Spoon and Stable, thereafter a short walk to a nearby park and at the stroke of midnight the fireworks would explode into the night above them, the whole world would usher in the New Year and Dave would propose to Val serenaded by a live violin rendition of one of Val's favourite songs. A well thought through romantic proposal for the love of his life!

Val was supposed to meet Dave at the restaurant at 7 in the evening but she was delayed. Dave was waiting for her.

"Hey, baby! You are late," Dave spoke in a nervous tone. He was anxious to meet Val. Exasperated further by the anticipation of the planned proposal.

"Hey, I'm on my way. I'll be there in a bit. I was caught in a massive jam due to an accident, baby," answered Val.

Time together was precious. The opportunity to be in the arms of their lover was something they both intensely desired. It had been almost a year since their last meeting. Val, however had no hint of the impending proposal, nor the way destiny was about to unfold and change the course of her life so drastically.



## The Slippery Slope of Brokeback Mountain

*By Christina Anna Raj*

Rainbows and unicorns, a theme often associated with the LGBT community, but certainly not when it comes to their pursuit of their 'rights'. Keeping up with the numerous terms like 'non-heterosexual', 'non-cisgender', 'demi-sexual', in itself is enough to queer the straight mind!

In our neck of the woods the movement for LGBT rights has heightened in light of the surge in homophobic and transphobic reactions. We have all heard of the school boy who was beaten to death for being 'soft', the brutal death of Sameera Krishnan, a transgender, and the caning of the two women who were said to have been involved in lesbianism.

Section 377A of the Penal Code, a mirror image of Section 377 of the Indian Penal Code, criminalizes homosexuality and condemns it as an unnatural offence. This provision was brought to public attention in a series of cases involving the then Deputy Prime Minister. We continue to hear and witness the law being used to blackmail, harass or shame individuals back into the closet, ultimately reinforcing a culture of homophobia.

The recent decision of the Indian Supreme Court in **Navtej Singh Johar v Union of India Ministry of Law and Justice Secretary** reflects the progessionist approach protracted by India's Jurisprudence. The five Judge Constitution bench comprising of the Chief Justice of India, came to a unanimous decision, quoting Section 377 as "irrational, arbitrary, and incomprehensible as it fetters the right to equality for the LGBT community". The Supreme Court ruled that every individual has a fundamental right to privacy, which is a part of the right to life, and that sex is private.

What then are the so called 'rights' that the community seeks to defend and how far is it acceptable before they are deemed to be pushing the envelope? Our Federal Constitution provides for fundamental rights. Article 5 provides for the right to life or personal liberty of any citizen which cannot be deprived except by law. Of course the term 'personal liberty' in the said Article has been given a rather narrow meaning.

It is therefore the State's role to ensure that this basic human right is extended to every individual regardless of sexual orientation. We are no strangers to the fact that hate crimes against LGBT individuals are very much prevalent. The very least the law should cater to is very basic right.

The heated contention would be whether homosexuality should still be criminalized in our blessed country. With aggressive movements across the globe, there has been a renewed call to challenge Section 377A. As a conservative society, which largely values the traditional notion of a family, it will be quite the battle for these communities.

The religious can only go so far as to advise and counsel LGBT individuals. Anything beyond that would be futile and abominable. Social morality should not violate the rights of even one single individual. We need the devout fringe to appreciate that the Pandora's Box they are opening will go deeper than just matters of sexuality alone.

The corollary of decriminalizing homosexuality is truly what most secretly and outwardly fears. When the issue no longer just involves two consenting adults is when the community at large must take a stance. The corollary complications that will arise are rather unnerving. Public toilets, pat downs at the airport, sharing of rooms at dormitories, the list of consequences that follow are endless. Then we have activists who argue that there are studies to show that children are happier with same sex parents. This is the slippery slope that we caution ourselves could lead to a severe degree of disorder and imbalance in future.

While fear builds civilized societies, the law must have the acceptability of the Constitutional parameters. A section of people or individuals who exercise their choice should never remain in a constant state of fear. At the same time there needs to be comprehension that we do live in a relatively conservative society, and there must be equilibrium between rights of individuals and that of society at large.

The unintended consequence of portraying a nation that is relatively devout and orthodox has been the stunting of the LGBT rights movement in Malaysia. Its opponents have been given the fodder they require in order to malign LGBT rights as a manifestation of Western degeneracy. We lack the intellectual capacity to craft Asian LGBT narratives, and sadly are incapable of using these narratives as a shield against homophobia, which has left a moral vacuum that some unpleasant elements have since filled.

As cautioned by CJ Dipak Misra in **Navtej Singh Johar**, "Section 377 assumes the characteristic of unreasonableness, for it becomes a weapon in the hands of the majority to seclude, exploit and harass the LGBT community. Bigoted and homophobic attitudes dehumanize".

The very least Malaysia can do right now is to contemplate stringent anti-discrimination legislation and repeal the rather archaic provision of the Penal Code that criminalises consensual sexual activity between two adults of the same gender. While same-sex marriage and its effects are profound issues that require collective societal consensus, there is no need for the most basic, fundamental safeguards for LGBT citizens to be voted upon.

The ideal end would be a Malaysia that values the composite meshwork of value systems that make up the Malaysian society, and ensures that everyone gets a seat at the table. Of course, that remains but an ideal.



## Liars, Conmen & Fraudsters

By  
Yeap Su Lynn

*He's a liar  
She's a liar  
They are all deceivers  
But must we fall for their many pretences?*

*He has deceived us  
She has misled us  
They may have conned us  
But must we always be so gullible?*

*He's a fraudster  
She's a con artist  
They may have ripped us off  
But must we be hoodwinked every single time?*

*He may have tricked us  
She may have duped us  
They may have played us out  
But I will not fall for any of their deceptions this time.*



## 'Karnival Brigid Wanita'

*By Teng Wei Hun & Georgina Tan*

### Details of the Event

Date : 30 September 2018 (Sunday)

Time : 8.30am – 8.30pm

Venue : Tesco Alma, Bukit Mertajam, Penang

### Morning Session [8.30 am – 2.30 pm]

Lawyer on duty: Ms Foo Siew Pheng

LAC Staff: Ms Kokila Marthamotho

Pupils in Chambers:

- 1) Ms Nuur Afifah Binti Mohamad Hassan
- 2) Mr Teng Wei Hun

### Afternoon session (2.30pm-8.30pm)

Lawyer on duty: En Abdul Nasir bin Wahid

LAC Staff: Ms Ann Beatrice De Almeida

Pupils in Chambers:

- 1) Ms Zunurajriya Binti Mohamad Zubir
- 2) Ms Georgina Tan Weng Kum
- 3) Mr Sim Chern Yee



‘Karnival Brigid Wanita Machang Bubuk’ was held at Tesco Alma, Bukit Mertajam on 30<sup>th</sup> September 2018. The event was a joint collaboration between the Brigid Wanita KADUN Machang Bubuk, Pusat Khidmat Masyarakat ADUN Machang Bubuk and JKKK Taman Selamat. The main objectives of the event were to highlight physical and mental health and well-being of women in creating happy families and a harmonious society. Women were encouraged to participate in community events as well as to develop self-reliance. This was accomplished by providing a variety of platforms to enhance knowledge and skills among women.

In line with these objectives, The Penang Legal Aid Centre was invited to set up a legal aid booth providing free legal consultation as part of its Law Awareness / Outreach Program. Ms Foo Siew Pheng and Mr Abdul Nasir bin Wahid had graciously volunteered as attending lawyers to address any legal inquiries at the event.

The carnival kicked off to a slow start at 8.30 am and warmed-up by the end of the event at 8.30pm. Brochures were displayed and distributed at the booth to create awareness and provide a general guidance to the public on their legal rights as well as responsibilities. There were a diverse group of patrons at the booth, ranging from home-makers to entrepreneurs. Legal advice was sought on various subject matters ranging from divorce inquiries, domestic abuse, immigration matters, criminal and civil suits, shariah law, and conveyancing matters to other more general inquiries. Potential clients were advised to visit the Penang Legal Aid Centre for further information on their queries.

Majority of members of the public were unaware of the existence of the Penang Legal Aid centre prior to the event and were keen to find out more. These public awareness booths and mobile legal aid clinic are excellent opportunities to create awareness, as well as to educate the public of their legal rights. They provide a forum for them to seek redress on their legal issues, and members of the public who were previously unaware of the legal Aid Centre can be directed to the proper channels accordingly.



# [ask LEGAL]

## 5 points about ICERD that Malaysians are disagreeing over:-

Lately, the latest topic on everyone's lips (and keyboards) is ICERD – the International Convention on the Elimination of All Forms of Racial Discrimination. Briefly put, ICERD is a convention (or treaty) by the United Nations that aims to promote racial equality throughout the international community, which is oddly doing the opposite as both politicians and regular Malaysians argue over whether or not Malaysia should sign it.

While reading *the comments in a local news article* would give you an idea of the arguments in support and in opposition to ICERD, perhaps the best summary of the concerns are in regards to the status of Article 153 of the Federal Constitution and the status of Islam as Malaysia's state religion. Coupled with news report about PM Tun Mahathir stating that implementation in Malaysia would be impossible, plans for an Anti-ICERD rally in KL on December 8<sup>th</sup>, and other news links that would confuse anyone who's late to the party; we're going to scale things back a little and start from the basics – What ICERD is, and what it's meant to do (on paper).

### 1. Laws are introduced or changed

As mentioned earlier, ICERD is an international treaty; it provides a framework of conditions for countries to follow if they choose to sign it. This means that the provisions (the "laws" within ICERD) can only apply to Malaysia after the government signs it and ratifies it. After a country signs, they must then review their existing laws and policies to meet the requirements set by ICERD which, as evidenced in the name itself, is to eliminate racial discrimination.

Article 2(1)(c) of the International Convention on the Elimination of All Forms of Racial Discrimination  
*Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;*

The main responsibilities of a signatory country (referred to as State Party in the document) can be found in Article 2 of ICERD, summarised as:

- Not supporting or defending discrimination by any person or party
- Change or remove existing laws that create or support racial discrimination
- Introduce laws or take actions to end racial discrimination
- Encourage or introduce measures that bring races together
- Take special measures to develop and/or protect some racial groups with the purpose of guaranteeing them equality

## **2. Every citizen will have equal rights to education (and other things)**

Part of ending discrimination is to ensure that everyone is guaranteed equal rights. This essentially means that certain “basic” rights need to be available to every citizen on an equal basis.

Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (in part):

*In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights...*

Article 5 then outlines a whole bunch of these rights, including

- 5(d)(vii) – The right to freedom of thought, conscience and religion
- 5(d)(v) – The right to own property alone as well as in association with others
- 5(e)(v) – The right to education and training

This is perhaps the main focus of contention regarding Malaysia’s signing of ICERD.

## **3. Hate speech will be criminalised**

Hate speech is generally defined as speech that attacks someone for being different, whether by race, religion, ethnicity, or other factors. For ICERD, hate speech is mostly confined to the context of race. So, in addition to encouraging nations to do away with racially discriminatory laws, ICERD also requires signatory countries to adapt or adopt laws that would make it a crime to create, share, or support hate speech.

Article 4(a) of the International Convention on the Elimination of All Forms of Racial Discrimination  
*Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;*

This also extends to making groups or gatherings that promote racial hatred illegal... and participation a criminal offence, of course. However, certain countries had a tough time balancing freedom of speech and the prohibition of hate speech. For example, when Norwegian courts acquitted a known Neo-Nazi for a racially charged speech against the Jewish community on the grounds of freedom of speech – it was later decided that this action violated the provisions of ICERD. But wait, who decided this? Well, that brings us to the next point...

## **4. An independent organization keeps signatory countries in check**

Okay, this is going to be a little confusing. The implementation of ICERD is governed by the Committee on the Elimination of Racial Discrimination, or CERD. Basically, CERD is made up of a group of independent experts that monitor the implementation of policies by signatory countries and reviews complaints by individuals or groups against their countries.

Article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination (in part):

*There shall be established a Committee on the Elimination of Racial Discrimination (hereinafter referred to as the Committee) consisting of eighteen experts of high moral standing and acknowledged impartiality elected by States Parties from among their nationals...*

In essence, signatory countries are required to submit a report to CERD one year after signing, then every two years or when requested. If a certain racial group or individual feels their rights have been infringed and not properly addressed by their nation's government (or authorities), they can also make an appeal to CERD – but this can only happen if they've exhausted all local avenues.

So what are the consequences if CERD finds a violation? In general, CERD will issue a report outlining their reasons and provide recommendations to fix the problem. However, in certain cases such as unresolved disputes between two countries, the International Court of Justice may get involved (Article 22) and consider CERD's findings in deciding the case.

For the most part though, signing ICERD puts a country at a higher level of standards and scrutiny, which may affect certain international objectives such as membership to UN agencies or councils. As an example, Amnesty International suggested that Australia's agreement to meet CERD was related to the country's inclusion into the United Nations Human Rights Council.

## **5. Countries don't have to follow ICERD 100%**

While it's logical to assume that signing ICERD means that a country will have to follow each provision to the letter, it's not actually the case. The treaty provides some leeway for signatory countries to state reservations that prevent them from adopting it on a full scale, as long as these reservations don't violate the objectives in the first place.

In the local context, The Malaysian Bar pointed out that Article 1(4) allows "special measures" for certain groups to be given additional protection for the purpose of putting them on an equal playing field. However, this should be discontinued once that objective has been achieved:

*Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.*

This is again mentioned in Article 2(2) (in part) :

*States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms...*

However, whether or not this will play a role in addressing the concern of parties who are opposing ICERD remains to be seen.

# ATTORNEY HUMOUR

## Divorce Petition:

Judge: So you want a divorce from your husband for attacking you with a deadly weapon?



Wife: No. I want a divorce for attacking me every night with a dead weapon!

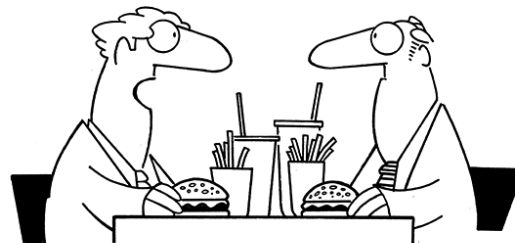
"These new Terms and Conditions you've drafted for us are extremely long and overly complex - our customers are never going to be able to understand them. Well done Jones!"



Children, let's settle this like adults.



LUNCHING WITH LAWYERS...



"They gave you 17 sesame seeds on your bun and I only got 16!"



"I'm going to a lawyer today to have myself legally declared young and sexy."



# Legal Movie Review

By Ramesh Rajadurai

The Alcatraz Federal Penitentiary or United States Penitentiary, Alcatraz Island (often just referred to as Alcatraz or The Rock) is a maximum high-security federal prison.

Alcatraz gained notoriety from its inception as the toughest prison in America and considered by many to be the world's most fearsome prison of the time and former prisoners would frequently report acts of brutality and inhumane conditions.

As a 17-year-old orphan, Henri Young desperate and hungry decides to steal \$5.00 from a grocery store to feed himself and his little sister. He was caught stealing and because the grocery store also housed a U.S. Post Office his crime, hence, became a federal offence. Henri Young was found guilty and sentenced to Leavenworth Penitentiary, Kansas while his little sister was sent to an orphanage.


Henri Young eventually gets transferred to Alcatraz prison due to lack of prisoners. Knowing that he doesn't belong in such a brutal prison, Henri Young plans an escape but unfortunately his plan fails due to the betrayal of a fellow inmate, Rufus McCain.

His escape attempt was seen as a betrayal and a humiliation to the prison officials. As a result of it, Henri Young spends nearly 3 years in solitary confinement for his punishment where he was tortured and beaten with no day light except for 30 minutes on Christmas day in a year. After 3 years Henri Young was released to the general inmate population where on December 3, 1940, Henri Young murders fellow inmate Rufus McCain the same man who betrayed him by stabbing him to death with a spoon in full view of the prison staff and other inmates. Young is put on trial in San Francisco for first degree murder in what the prosecutors and the public-defender's office believe is an open-and-shut case. If found guilty he would be sentenced to death by gas.

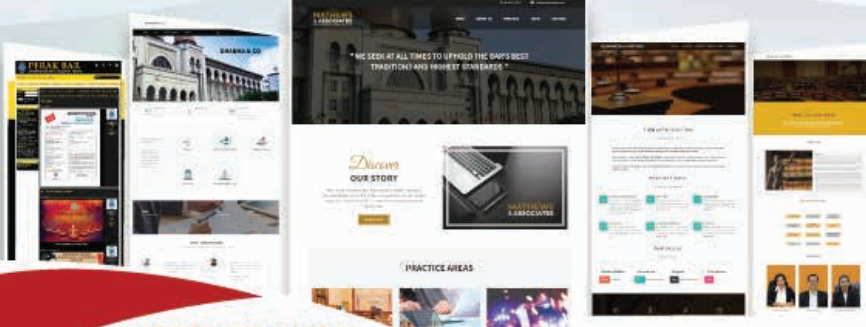
Henri Young is represented by a public defender James Stamphill a recent graduate of Harvard Law School and would be his first case as a public defender. The entire trial became highly politicised and opens the eye of the public about the actual story behind the walls of the notorious prison. Alcatraz was officially closed on March 21, 1963, after 29 years in operation.

I personally found this movie being one of the best court room dramas based on a true story. It is one of those hidden gems that not many would have heard and a must watch for all.






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