



VOIX D'ADVOCAT

Issue 02/2019

THE SAME VOICE, A LAWYER'S VOICE

For members only

ROUNDTABLE DISCUSSION ON "DRAFT CODE OF CONDUCT FOR THE PROMOTION OF EQUAL OPPORTUNITIES THROUGH THE ELIMINATION OF RACIAL DISCRIMINATION"

A roundtable discussion was held in Penang by various organisations pertaining to the drafting of a Code of Conduct that will act as a guideline to eliminate racial and religious discrimination, which is crucial in a multiracial and multireligious Malaysia.

STRATA TRIBUNAL IN MALAYSIA

An excerpt on the Strata Management Act 2013, Strata Tribunal and Maintenance Fees.



Symposium Wakaf Negeri Pulau Pinang: Satu Evolusi 2019

EXCLUSIVE: UP CLOSE AND PERSONAL WITH STEVEN PERIAN QC



Gain an insight into the thoughts, inspiration, and life of Steven Perian QC, the first Queen's Counsel to be called to the Malaysian Bar.

RALAS OUTREACH PROGRAMME

What is RALAS and how is the Penang Bar involved?

MUST READ

"AM I SERIOUSLY GOING TO JAIL FOR ATTEMPTING TO KILL MYSELF?"



Congratulations to the Malaysian Bar team for beating PERADI (Perhimpunan Advokat Indonesia) in the pool tournament during the 6th Edition Friendly Games between Malaysian Bar and PERADI!

PENANG BAR RUN



Read up on the string of events following the Penang Bar Run 2019 covering the route from Esplanade - Queen Victoria Memorial Clock Tower - Light Street - Farquhar Street.

PENANG BAR COMMITTEE 2019 – 2020

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Co-Opted Committee Members	: Leow Tat Fah & Muneer Mohamed Farid
Secretary	: Ravi Chandran Subash Chandran
Bar Council Representative	: T Tharumarajah



The Penang Bar Committee welcomes letters, articles, views and news (including photographs) for possible inclusion in the newsletter. Kindly forward any comments and contributions to voixdadvocat@gmail.com.

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.

Contributions from individuals that are published contain the personal views of the writers concerned and are not necessarily the views of the Penang Bar.

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A WORD FROM THE EDITOR



Dear all,

As we bid farewell to 2019 and prepare to embrace the unveiling New Year with a whole new zest, let us have a peek into the moments and events of our Penang Bar to wrap the year up. These have been beautifully captured in this issue of Voix d'Advocat.

My team and I have also produced a combination of articles encompassing various areas of the law. There is an inclusion of a segment titled 'In Memoriam' to pay homage to our fellow departed brethren. The cynosure of the issue is Steven Perian, our very own Queen's Counsel, who was recently admitted to our Malaysian Bar as an advocate and solicitor. It was an honour to have interviewed him via video call. The icing on the cake indeed!

The Editorial Board warmly welcomes our new members: Sharmila Kaur, Clarie Ann Malar Jochaim, Indranshitan Suppiah and Nurul Hidayah. My sincere thanks to our Penang Bar members who had contributed their articles for this edition. It is notable this issue would not have been possible without my team. Contributing their efforts amidst their tight schedule shows their commitment to bringing the issue alive. Thank you, my beloved team!

On behalf of my team, I would like to congratulate our very own Aniza Sultan, who walked down the aisle recently.

I wish all of you, on behalf of my team, Merry Christmas and a Happy New Year!

I end my note with a quote to ponder in ushering the New Year;

*"Always bear in mind that your own resolution to succeed
is more important than any other."*

Abraham Lincoln

Warm regards,

Krishnaveni Ramasamy

Editor

Dec 2019

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by Shaarmila Rajendran

Violence is not something new within the family unit and has existed since the beginning of society. Wife beating has a lengthy history of over 2000 years dating back to pre-Christian times and beyond, to pre-Biblical times when the law condoned violence to wives. Husbands have had the right to chastise their wives for centuries. Acceptance of brutality against women and wives is a cultural phenomenon that promotes women's position as underdogs and gives the indulgence of male whim or temper a sense of self-righteousness.

Moreover, since this offense occurs between a husband and wife within the walls of a home, it is usually viewed as a private family matter. Sometimes these issues are simply swept under the carpet, and such cases are often never detected or reported.

Conflict in the family institution is inevitable due to goals, values and individual perceptions. However, it can be addressed using appropriate conflict management styles; individual personality influences conflict management style and affect family harmony.

The term domestic violence is commonly used to refer to domestic violence against women. In order to reduce this issue, the Malaysian Parliament adopted the Domestic Violence Act 1994 (Act No. 521) (hereafter referred to as the DVA 1994) in early 1994. The purpose of this Act is to assist victims in cases of domestic violence.

This Act provides protection in the form of protective orders for battered women from the abuser and provides for compensation and counseling to be made available to them. Finally, on 9 February 2012, the DVA 1994 was amended and gazetted.

On 21 September 2017, additional amendments were published, which came into force on 1 January 2018, which answered the outcry of many concerned parties involving domestic violence.

Many crucial issues have been looked into and incorporated into the new amendments of the DVA 1994 such as focusing on the expanded definition of domestic violence, allowing the Act to be read together with the Penal Code or any written law involving offences relating to domestic violence and by making it possible that an Interim Protection Order be made by way of an application to the court. These amendments to the Act, however, seem to suggest a less significant change to the law.

Prior to the amendment, the scope of domestic violence defined by the Act covers primarily, physical injury such as threatening injury, causing physical injury, engaging forcefully in

sexual behaviour, confining or detaining the victim and causing property damage.

The provision did not, however, include psychological, emotional, and economic abuse as an act of domestic violence, despite being one of a partner's most common forms of abuse in a relationship.

The definition after the amendments included psychological, emotional abuse and financial loss due to the concern; as follows:-

1. *Wilfully or knowingly placing or attempting to place the victim in fear of physical injury.*
 2. *Causing physical injury to the victim by such act, which is known or ought to have been known, would result in physical injury;*
 3. *Compelling the victim by force or threatening to engage in any conduct or act, sexual or otherwise, from which the victim has a right to abstain;*
 4. *Confining or detaining the victim against the victim's will;*
 5. *Causing mischief or destruction or damage to property with the intent to cause or knowing that it's likely to cause distress or annoyance to the victim;*
 6. *Causing psychological abuse which includes emotional injury to the victim;*
 7. *Causing the victim to suffer delusions by using any intoxicating substance or any other substance without the victim's consent or if the consent is given, the consent is unlawfully obtained;*
- or*
8. *In the case where the victim is a child, causing the victim to suffer delusions by using any intoxicating substance or any other substance.*

It occurs regardless of social, economic, cultural, or religious values in all countries. According to the World Health Organization (WHO), 10 to 69 percent of women reported being physically assaulted by an intimate partner at some point in their lives, in population studies around the world.

In Malaysia, it was estimated that 39 percent of women over the age of 15 were physically beaten by their partners. A study at the University Malaya Medical Center (UMMC) outpatient clinic revealed that one in seven female patients attending the clinic had a domestic violence background.

Domestic violence's impact is alarming. Fatalities are associated with partner homicides or suicidal women. Morbidity as the effects of domestic violence arises in the form of poor health status, poor quality of life, and high use of health services.

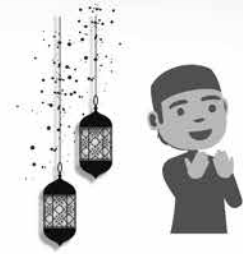
Many women who have been abused suffer acute physical injuries and many other chronic health issues that present as ambiguous symptoms and physical findings. Psychosomatic complaints and chronic pains that are not specific are common. These presentations can be treated without identifying the underlying cause in health care facilities, leaving the patient at risk for subsequent episodes of abuse.

For those who have been subject to domestic abuse, the Women's Aid Organisation ("WAO") recommends the following on their website:-

- ***Because violence could escalate when you leave, here are some things to keep in mind:***
 - *Keep any evidence of physical abuse, such as pictures of injuries.*
 - *Keep a journal of all violent incidents, recording dates, events, and threats made, if possible. Keep your journal in a safe place.*

- *Keep emergency numbers in your phone such as:*
 - *999 and the nearest police station's number*
 - *WAO Hotline (+603 7956 3488)*
 - *WAO SMS/WhatsApp line, TINA (+6018 988 8058)*
 - *trusted family or friend's number*
 - *You may want to save the WAO Hotline and TINA numbers under different names, to prevent your partner from discovering them.*
- *Ensure there is sufficient credit on your phone. If you're using a prepaid phone, keep some top-up cards with you.*
- *Tell someone what is happening to you.*
- *Plan with your children and identify a safe place for them, like a room with a lock or a friend's house where they can go for help. Reassure them that their job is to stay safe, not to protect you.*
- *Pack an emergency bag with important documents (either originals or photocopies), money, clothes, and keep it somewhere safe. You can ask friends or family to hold it for you (avoid mutual family members or friends).*
- ***Make a plan for how and where you will escape quickly. If you have to leave in a hurry, here is a guide to what you need to bring.***
 - *Identification:*
 - *IC, driver's license, birth certificate, and children's birth certificates, financial information, money or credit cards, bank account books.*
 - *Legal Papers:*
 - *A Protection order, passport, copies of any lease or rental agreements, or the deed to your home, car registration and insurance papers, medical records for you and your children. School records, work permit or visa, divorce and custody papers, and marriage license.*
 - *Other:*
 - *Medications, extra set of house and car keys, valuable jewellery, prepaid top-up card, pictures and sentimental items, several sets of clothes for you and your children, emergency money.*
- ***After leaving:-***
 - *Change your locks, phone number, work hours, and route to work or to transport children to school. It is also recommended to change your children's schools. The school authorities should also be alerted to the situation.*
 - *If you have a protection order, keep a copy of it with you at all times, and inform friends, neighbours, and employers that you have a restraining order in effect.*
 - *Consider using the address of a friend for your mail (be aware that addresses are on protection orders and police reports, and be careful to whom you give your new address and phone number).*
 - *Reschedule appointments that the offender is aware of.*
 - *Use different stores and frequent different social spots.*
 - *Alert neighbours and request that they call the police if they feel you may be in danger.*
 - *Install security systems, if possible.*

SYARIAH IN A NUTSHELL



Bidang Kuasa Mahkamah Syariah Di Malaysia

by Muneer Mohamed Farid

Di dalam sistem perundangan Islam, bidang kuasa untuk Mahkamah Syariah disebut sebagai 'Al-Wilayah', iaitu hak dan juga kuasa untuk mendengar dan memutuskan sesuatu pertikaian atau kes. Sekiranya Mahkamah Syariah tidak mempunyai bidang kuasa ini, maka mahkamah tidak boleh membuat sebarang keputusan terhadap mana-mana pertikaian yang membawa kepada perbicaraan di Mahkamah.

Oleh kerana perundangan di Malaysia mengamalkan sistem dualisme, maka dengan adanya bidang kuasa ini secara dasarnya tidak akan ada sebarang konflik dalam menentukan kuasa mendengar dan memutuskan sebarang kes. Bidang kuasa yang tertentu juga akan menentukan kes-kes yang boleh dibicarakan di Mahkamah Syariah samada di Mahkamah Rendah Syariah, Mahkamah Tinggi Syariah atau Mahkamah Rayuan Syariah.

Secara umumnya, bidang kuasa yang dimiliki oleh Mahkamah Syariah di Malaysia mengalami perkembangan yang positif dan semakin baik dari aspek status kakitangannya, pentadbiran dan infrastrukturnya.

Hasilnya, Jabatan Kehakiman Syariah Malaysia telah ditubuhkan untuk melicinkan lagi pentadbiran Undang-Undang Syariah di Malaysia serta menyelaraskan penyeragaman Undang-Undang Syariah di setiap negeri.

Untuk pengetahuan para pembaca yang budiman, di dalam Perlembagaan Persekutuan Jadual Sembilan telah memperuntukkan:

Senarai 1 kepada bidang kuasa Persekutuan
Senarai 2 kepada bidang kuasa negeri
Senarai 3 kepada bidang kuasa bersama.

Di dalam konteks Mahkamah Syariah, sumber bidang kuasanya adalah berdasarkan kepada Senarai 2, yakni Senarai Negeri. Jadual Sembilan memberikan kuasa perundangan kepada negeri melainkan dalam soal-soal jenayah. Badan Perundangan Negeri diberikan kuasa oleh Perlembagaan Persekutuan mentadbirkan Undang-Undang Islam dan semua hal-ehwal Islam di negeri masing-masing kecuali Wilayah Persekutuan, yang diletakkan di bawah Persekutuan.

Jadual Kesembilan, Senarai 2 Senarai Negeri, dalam Perlembagaan Persekutuan telah memperuntukkan:

"Kecuali mengenai Wilayah-Wilayah Persekutuan Kuala Lumpur dan Labuan, Hukum Syarak dan undang-undang diri dan keluarga bagi orang yang menganut ugama Islam, termasuk Hukum Syarak berhubung dengan mewarisi harta berwasiat dan tak berwasiat, pertunangan, perkahwinan, perceraian, mas kahwin, nafkah, pengambilan anak angkat, taraf anak, penjagaan anak, pemberian, pembahagian harta dan amanah bukan khairat; Wakaf Islam dan takrif serta peraturan mengenai amanah khairat dan khairat ugama, perlantikan pemegang-pemegang amanah dan perbadanan bagi orang-orang mengenai pemberian ugama Islam

dan Khairat, yayasan, amanah, khairat dan yayasan khairat yang dijalankan kesemuanya sekali dalam Negeri; adat istiadat Melayu; Zakat, Fitrah dan Baitulmal atau hasil ugama yang seumpamanya; masjid atau mana-mana tempat sembahyang awam untuk orang Islam; mengadakan dan menghukum kesalahan-kesalahan yang dilakukan oleh orang-orang yang menganut ugama Islam terhadap rukun-rukun Islam, kecuali mengenai perkara-perkara yang termasuk dalam Senarai Persekutuan; keanggotaan, penyusunan dan cara bagi mahkamah-mahkamah Syariah, yang akan mempunyai bidangkuasa hanya ke atas orang-orang yang menganut ugama Islam dan hanya mengenai mana-mana perkara yang termasuk dalam perenggan ini, tetapi tidak mermpunyai bidang kuasa mengenai kesalahan-kesalahan kecuali setakat yang diberi oleh undang-undang persekutuan; mengawal pengembangan iktikad dan kepercayaan antara orang-orang yang menganut ugama Islam; menentukan perkara-perkara Hukum Syarak dan iktikad dan adat istiadat Melayu.”

Di bawah kuasa Perlembagaan Persekutuan ini juga, pihak berkuasa negeri telah mewujudkan Enakmen Pentadbiran Islam Negeri, dan di bawah enakmen inilah penubuhan Mahkamah Syariah telah dibuat. Serentak dengan ini juga, di bawah enakmen negeri inilah diperuntukkan bidang kuasa dan juga pegawai-pegawai mahkamah yang akan mengendalikannya. Pentadbiran mahkamah ini juga telah diasingkan daripada pentadbiran agama Islam negeri. Oleh sebab itu terdapat Jabatan Kehakiman Syariah Negeri-negeri dan di bawah jabatan ini, diwujudkan mahkamah-mahkamah yang diketuai oleh Yang Amat Arif Ketua Hakim Syarie Negeri masing-masing.

Semoga tulisan yang ringkas ini dapat memberikan pemahaman dan manfaat kepada pembacanya tentang ringkasan punca bidang kuasa Mahkamah Syariah.

Attorney Humour

At a convention of biological scientists, one researcher remarks to another, “Did you know that in our lab we have switched from mice to lawyers for our experiments?”

“Really?” the other replied, “Why did you switch?”

“Well, for three reasons. First we found that lawyers are far more plentiful, second, the lab assistants don’t get so attached to them, and thirdly, there are some things even a rat won’t do.”

Face to Face with...



THE SKY IS THE LIMIT

STEVEN PERIAN

QUEEN'S COUNSEL
2 KING'S BENCH WALK, LONDON
ADVOCATE & SOLICITOR OF MALAYSIA

By Indranshitan Suppiah & Clarie Ann Malar Jochaim

It is our greatest pride to present our very own, Steven Perian, a person who was not born with a silver spoon in his mouth, chased his dreams by taking a bank loan. He left Malaysia in 1983 to read law at the University of London and was subsequently called to the English Bar in 1987.

In 1989, he started his legal career with the Crown Prosecution Service. In 1995 he returned to the independent Bar and in 2016 he was appointed Queen's Counsel. He is recognised in the legal 500 as one of the Leading QC's in crime for London. The 2020 edition of the legal 500 states "He has an analytical mind and an encyclopaedic knowledge of the law." He is a Member of the Panel of Advocates at the International Criminal Court in Hague. He is a Fellow of the Chartered Institute of Arbitrators (UK) dealing with International Arbitration. He is also a Civil Mediation Council Registered Civil and Commercial Mediator. He is an advocacy and Vulnerable Witness Trainer for Lincoln's Inn.

He is constantly instructed in high-level complex criminal work prosecuting and defending amongst others: money laundering, complex frauds, murders, gang violence, and drug cases.

The Malaysian born success was not due to luck but blood, sweat, and tears. He is known for his down to earth personality and a son who went the extra mile to fulfil his parents' last wishes by being called to the Malaysian Bar.

On 31 October 2019, the Publication

Subcommittee of the Penang Bar Committee was fortunate to have a brief interview with him via video call despite his tight schedule.

Q: Why did you choose law?

A: It was better than trying to become an actor. On a serious note: I have a natural ability to see both sides of an argument and to be able to argue them cogently. I believe that everyone is entitled to good legal representation, including the victims.

Q: Who inspired you to study law?

A: Lord Denning- I read every one of his books and most of his judgments. It was such a privilege to sit opposite him on the same table when Lincoln Inn celebrated his 90th birthday.

Q: Please tell us about your family background, early education and your journey in becoming a QC.

A: I came from a socially and financially disadvantaged background. I was born in Brickfields, Kuala Lumpur. My father was a blue-collar worker; mother was a housewife. My working-class background did not deter me from pursuing my eventual chosen career path in Law. In 1983, I got a bank loan and left the country to pursue a law degree with the University of London. Whilst at university I worked part-time to self-finance myself. I graduated in 1986 and my post degree professional qualification in

1987. In 1988, I commenced my pupillage in one of the leading company law chambers in the United Kingdom. My pupil supervisor was later appointed as Queen's Counsel, who went on to become the Chairman of the Bar Council of England and Wales.

In 1989 after completing pupillage, I joined the Crown Prosecution Service as a Crown Prosecutor and was quickly promoted as a Special Case Work Lawyer. I was a part-time law lecturer at Holborn Law Tutors, which merged with the University of Wolverhampton whilst I was employed with the Crown Prosecution Service, and when I returned to the independent Bar.

In 1995, I left the Crown Prosecution Service, which was six years after I joined it, and returned to the independent Bar and in 2016 was appointed as Queen's Counsel.

I am constantly instructed in high-level complex criminal work prosecuting and defending amongst others: money laundering, complex frauds, murders, gang violence, and drug cases. I am recognised in The Legal 500 UK as one of the Leading QC's in crime for London.

I am a member of the Panel of Advocates at the International Criminal Court in Hague, a Fellow of the Chartered Institute of Arbitrators (UK) dealing with International Arbitration and a Civil Mediation Council (UK) registered Civil and Commercial Mediator and an affiliate of the Chartered Society of Forensic Sciences.

Q: What defines you: a case which you've won or lost?

A: No advocate likes losing a case but as an advocate, I am not defined by whether I lose or win a case. I am defined by whether I have properly presented my client's case to the tribunal of fact. If I lose a case, I see it as an opportunity to learn from it and to improve my presentational skill set.

Q: What are the flaws in the Malaysian Legal System that should be rectified immediately if there is any?

A: Currently, I can only speak about the Criminal Justice System. No system is perfect, but that should not stop us from

trying to improve it. I would suggest the following: -

- (i) All operational front-line police officers to be equipped with audio and video recording devices. This will help the police to defend any complaints against them. It will also be the best evidence against them;
- (ii) All police stations to have audio and video recordings. This would provide the best record of what transpired to a suspect when he is brought to a police station;
- (iii) All interviews of suspects to be audio and video recorded. This is the best evidence of what a suspect said or did not say;
- (iv) Maintenance of electronic custody records from the time a suspect is at a police station until he is charged;
- (v) Overhaul the current remand procedure;
- (vi) Introduction of custody time limits to ensure that criminal trials are prosecuted efficiently and fairly so that they are concluded within a reasonable time; and
- (vii) Introduce compulsory disclosure provisions by the prosecution.

Q: What is your view on the state of human rights in this country?

A: I can only speak about the Criminal Justice System, but there is a strong growing voice within the community that there should be a serious review of some of the archaic statutes and provisions that continue to restrict the basic rights of an individual's freedom of speech or writing and detention without due process.

Q: Where do you see yourself 5 years from now?

A: Continuing to develop my international practice and appearing in the cause célèbre cases.

Q: Are you a leader or a follower?

A: The post-nominal QC is only awarded to those who have been recognised as a

leader in their chosen legal field. A good leader is also a follower. A good leader has to demonstrate a willingness to work with others as part of a team. This will involve listening to others who may have ideas and experience which they can contribute towards a solution to a legal challenge. Ultimately the decision will be mine as the leader of the team.

Q: What would have been your alternative career?

A: I love cooking- I always wanted to be a chef.

Q: What are the 3 main attributes for a successful lawyer?

- A: (i) Sound knowledge of the law;
(ii) Excellent communication skills [oral and written]; and
(iii) Preparation, Preparation, Preparation

Q: What is your opinion on the Jury Trial system in Malaysia? Should it be resurrected?

A: The last jury trial that I could recollect before I left Malaysia was the murder of a young Indian woman by a University Professor. There is even a book written about it. I am a strong advocate for jury trials in criminal cases. There is a need to have a public debate or consultation for its resurrection. We seem to have lost the ability to trust the common person to make decisions and, instead, have passed the baton to the judges.

In my personal view, the right of a defendant to be tried by a cross-section of his own peers is so fundamental. A criminal trial is about the liberty of an individual. He has a right to a fair trial. The jury made up by his/her peers would listen to the evidence and will deliver a true verdict on the evidence that they have heard. In England, we have a jury system. It may not be perfect but it has worked for a very long time. In 2003 the fundamental right to a jury trial was amended in cases where there is danger of jury tampering or where jury tampering has taken place. This allows the prosecution to apply for the trial to be conducted without a jury and for a jury to be discharged during

the course of the trial.

The main disadvantage of a non-jury system trial is the mental gymnastics judges have to perform. Judges currently collectively deal with the law and evidence. A judge may hear arguments as to the admissibility of a prejudicial piece of evidence. If that evidence is admitted then everything is fine but what if the prejudicial evidence is excluded. There is a very strong argument to suggest that the judge continuing to hear that trial may not be impartial or may be subconsciously biased towards the defendant thereafter. However, with a jury system, if the evidence is admitted the jury gets to hear about it. If the evidence is excluded, they don't get to hear about it. The judge directs the jury on the law who will apply the law to the facts of the case.

For the avoidance of any doubt, I do acknowledge that the judiciary in Malaysia has been performing the mental gymnastics for some time now. Language barriers or the perception that jurors may be tampered with in high-profile cases may perhaps tilt the scale against a jury trial. It may also be not cost effective. However, that shouldn't stop us from having the debate to resurrect jury trials. If jury trials were good enough in Malaysia before 1995, one can't see any reason why it should not be resurrected subject to exceptions.

There are arguments for and against the resurrection of a jury trial in Malaysia. My personal view, is that there is no such thing as an ideal system. The time may be right for Malaysia to look at the current system again. Thus, I am neither against nor for the jury system in this country.

Q: You have been involved in many high profile cases. Have you or your family received any death threats?

A: There was only one occasion where I felt, something that happened, may have been connected to a case I was prosecuting. My front doorbell got burned. Apart from that one incident, there have been no threats. Defendants who become involved with the Criminal Justice System, as a whole, have a degree of respect for the system and those

who work within it. Defendants know that the Prosecutors and the defence lawyers are only doing their jobs, and there is nothing personal. Prosecutors are not there to secure a conviction at any cost. A Prosecutor's role is to ensure there is a fair trial, politically neutral and human rights are defended. Defence lawyers are not there to secure an acquittal at any cost. Even so, there are times when people become personal in a case, and they lose objectivity, and things start to go wrong.

A good prosecutor will always have 3 criteria in mind: -

- (i) To present the Crown's case (Prosecution);
- (ii) To present it in a fair manner; and
- (iii) To present it in a courteous fashion and that simply means not being a bully, not using harsh language, and being even handed.

If you are courteous and respectful, and everyone knows that you are doing your job, then you will never get death threats. End of the day, I have had defendants saying, "Mr. Perian, thank you very much," and I occasionally get flowers and presents. It feels nice to be respected and appreciated for what you have done.

You can't win all your cases, no matter how good you are and when you lose; if you have given it 110% and your client knows and understands that you have given it your best that is all you can ask for. It is only when you are unprepared and don't do your work, that clients get upset. You are your client's mouthpiece: you are paid to talk on their behalf. They can't present arguments, and they expect their counsel to speak on their behalf. They expect you to present their case on their behalf.

Q: Do you have any intention to become a judge in the future?

A: That's a question that quite a number of you have asked me. I like being in the middle of a battle. As an advocate, you are in the middle of a battle. We have an adversarial system, you decide which arguments to deploy for one side or the other, and you take personal

responsibility for your cases. However, as a judge, you need a different skill set, such as having patience, the ability to listen to arguments without entering the arena, directing juries on the law, summarising the evidence for them to reach a just verdict. The skill set required from an advocate is different to that required from the judiciary.

I know my own limitations: I do not have the patience of Solomon. I can't listen to arguments for too long without interfering. I might turn around and say that you are doing it wrong, and I don't like writing judgements, as they are too long.

In contrast, as an advocate you are making submissions, examining in chief and cross-examining witnesses. You are representing your client's interest and position and persuading the courts as to why they should accept your arguments. In Malaysia where the death penalty exists for certain categories of cases, it requires the judge to make the difficult decision whether to impose the death sentence. I deem that to be a very heavy responsibility something I prefer not to have on my shoulders. I love responsibilities, but I am not ready to take up such heavy responsibilities. Hence, I have no aspirations to be a judge.

Q: Could you share some of your principles in life that you live by every day?

A: First of all, never give up. Secondly, if people say you are not good enough to do something, just look at them in the eye, and say I am going to do it, anyway. Lastly, limitations are what we put on ourselves, and unless, we challenge ourselves, we can never become better.

I have been very grateful and blessed that the Universe has given me an opportunity. It has plucked me from a very humble, socially and financially disadvantaged background, and has taken me somewhere where I am now a role model for a lot of people.

It is an object lesson that It doesn't matter where you come from if you apply certain principles in life and stick to them you are bound to succeed. Those principles amongst others are: always be determined, do what you have to do, never give up, be grateful

for what you have and build on it, be nice to everybody, treat everyone with respect. If you stick to these core principles during your journey you will always get to where you want to be.

Q: Do you have a case in mind that you can NEVER forget in your life?

A: Quite a few actually. A case that springs to mind immediately is the 2.3 trillion US dollars fraud trial. I was prosecuting that case, members from the US Secret Service, officers from the US Treasury and President's Office called to evidence. We heard from one of the leading experts in printing money in America giving evidence in court. It was a steep learning curve.

On the other side of the coin, I have defended some really interesting cases related to murder and money laundering.

Q: What is your opinion on the level of difficulty in admitting the evidence in relation to Cyber Crimes as metaphorically finding a needle in the haystack?

A: There are many statutes in England which cater for cyber criminals. One of the key challenges for the investigation team is the obtaining of the evidence.

As technology grows, the ability of cyber criminals to overcome technology by hacking is significantly high. There are some extremely bright people who deal with computer technology, especially in the West. Law Enforcement Agencies are getting on top of it by working with or seeking assistance from cyber criminals. One of the key challenges in obtaining evidence from end-to-end encryption that we are getting from social media platforms. It is important to have good cyber experts.

An example, I was prosecuting four army officers for importing guns and drugs into the UK from abroad. In that case, we had to obtain evidence from telephone handsets. Due to software upgrades, we had one of the leading experts in telephone technology, being able to break the codes of specific mobile phones. We were then able to obtain the communication between various

defendants, which led them to, pleading guilty.

Q: What made you decide to be admitted to the Malaysian Bar? Do you have plans to come back here?

A: Well, it was the wishes of my parents before they passed away. They wanted to see me called to the Malaysian Bar. It was their dying wish, something that I had to fulfil. It was an item on my bucket list that I had to tick off. When you give the word to your parents, "I will do it", it must be fulfilled.

I had never found the opportunity and time before because I have been really busy, but ever since I became a Queen's Counsel, I have had various opportunities and offers to undertake international work. Since I have a stable practice now that includes an international dimension: I thought this is the right moment and my friends from Malaysia have supported the idea of me being called to the Malaysian Bar.

At the moment, there are 3 Queen's Counsels of Malaysian Heritage in England. I hope, I am not mistaken but, two may have given up their citizenship, despite being of Malaysian by birth. I have always believed that when you are born to a nationality and citizenship, you should end with that nationality and citizenship. You can take the boy from Malaysia but you can't take Malaysia from the boy. It doesn't matter whatever race one comes from or how one is treated in our own country, but abroad, we are all Malaysians.

Currently, I am engaged in prosecuting and defending some challenging and complex cases in England. I have not shut out the idea of practising in Malaysia. If the opportunity does arise to undertake work in Malaysia, I look forward to using the skill set that I have gained from the English Legal system and navigating the challenges that come from appearing in a Malaysian court with its own unique and different challenges and contribute towards, probably, enhancing the system.

Thank you, Mr. Steven Perian. It was an honour to have interviewed you.

Opening, Operating or Closing a Practice?

Why it is Dangerous for a Pupil to be a Sole Proprietor the Minute They Qualify

by Aniza Sultan

“Should I open my own practice?” Has always been a crucial question running on a pupil’s mind let alone that of a full-fledged lawyer. However, for a vast majority of lawyers in private practice, is it considered ‘dangerous’ for pupils to start up their own law firms or to be sole proprietors the minute they qualify as an advocate and solicitor?

While the prospect of opening your own law practice is an exhilarating one, it can also be intimidating. After all, lawyers already have a full range of roles and responsibilities; is it feasible to add running a business to the list? The allure of working for yourself is strong. But is that incentive enough to open your own law firm? It probably is not. Setting up a proper office space, computer systems, defining your area of practice, business structure and registrations, bank accounts, accounting, and other financial issues is not just that simple.

Getting your practicing certificate (“PC”) is no different than getting any other kind of professional license. It gives you the right to practice as a lawyer, and the right to set up your own law firm. Having your own law firm is deeply ingrained into what it means to many people to be successful in our culture, so many lawyers believe that the true route to success and happiness is when and through having their own law firms.

But is starting your own firm the minute you qualify, the right move for you especially when you are considered an infant in the legal fraternity? Starting a law firm is not for the faint-hearted. Doing it right out of pupillage is downright insane. At least that’s what the naysayers would have you believe. But many young lawyers did it in a difficult economy with a difficult fee structure (contingency) and their practice is thriving.

First and foremost, law school does not teach anyone how to practise law. A newly minted law graduate will typically have no idea how to assess a new client’s case, how to decide what the appropriate steps are, not just legally, but economically and how to file the suit, if any, and how to respond to the sudden avalanche of interrogatories, responses, answers, demurrers, requests for admission, and so forth. Law school doesn’t teach you about the myriad forms every court uses which typically vary from court to court nor does it teach you how to operate a practice, or which laws and regulations are most pertinent for your practice.

All of the above was also true in the past, but in the past, it wasn’t as dangerous or risky a proposition. In almost every field of practice, the laws and regulations were much simpler and could be mastered fairly quickly (or so I’d like to believe!). The pace was much slower; without computers or the internet, lawyers were not expected to crank out an infinite number of drafts. The sheer bulk of the law and the paperwork is vastly greater than it was a generation ago. Ask any lawyer who was admitted to the Bar before 1975 or so. Negligence lawsuits against lawyers were rare. Today, with almost every step you take, you are putting yourself and your clients at risk. Even very experienced lawyers get routinely tripped up by the maze of statutes, regulations, case law, rules of court, shifting ethics requirements, continuing education requirements, and, increasingly, malpractice prevention requirements—all of which they are presumed to know exhaustively.

Choosing to start your own law firm is a significant decision that will have profound implications for the rest of your career. Starting your own firm might take your career to a new, glorious direction – or not. It might impede your professional advancement and hinder your entire career. You must think through the pros and cons very carefully. Starting a firm is extremely challenging especially when you are inexperienced. You might succeed, but the odds are that you will fail.

Every great law firm and there are tens of thousands of successful law firms out there, started somewhere. You could be the next lawyer to start a great law firm, but that possibility can come only if you think through the process intelligently, logically, and after getting all the information you need to understand whether this is the right decision for you. It is important to recognize that all law firms need a source of regular and ongoing business to succeed. Having built a steady clientele and a strong network before embarking on a journey of entrepreneurship is definitely the right move. Nevertheless, it is important to always have a backup plan.

Any reputable guide to entrepreneurship will tell you that undercapitalization is the single most significant reason that most new law firms fail. Translated into more prosaic language, this means that you need to have a fair amount of money on hand — not just for paying the office rent, bar dues, malpractice insurance, and even for suits, ties, dress, shirts, and leather shoes, and other work-related expenses, but also enough cash on hand to cover at least two years' worth of living expenses. This point cannot be stressed enough.

To top it all, young lawyers need to learn that although they may be lucky enough to have some “real” clients (probably small companies owned by friends and families), the reality of starting your own firm would include having to take undesirable cases to pay the bills. You would practically have no liberty to pick and choose your clients. Starting your own firm can be brutal in terms of the amount of work you have to put in trying to build a client base.

In short, the entire system is arrayed against you, and it isn't simply a matter of bringing more grit and determination to muster. A new lawyer is de facto incompetent. The market is completely saturated. And the startup expenses are considerable. All of these are compounded by the usual stress and misery that law practice entails even under the best of circumstances. If you have someone who will send you a lot of work, starting your own firm is often a great idea. This is especially true when the person sending you work is a family member or a close friend. In some cases, that person might even be your parent. I have seen several young lawyers start law firms because they knew they would have friends or family who could send lots of work.

Without being overly pessimistic, it is important for you to be aware that, like most new businesses, most law firms fail. It is one thing “working inside of a business” as a lawyer and it is another thing entirely to operate a law firm. These are two separate skills—just as being a professional basketball coach is not the same thing as being a professional basketball player. They both may understand the game but that does not mean that they could do each other's job. Sometimes it works, but most of the time it does not work.

Take something as simple as getting clients to pay their bills. Most solo practitioners and lawyers with small law firms will tell you that they rarely collect 80% of what they bill. Clients are “fickle” and when you do not have a large name behind you it is often difficult to get them to pay their bills. Lawyers run the risk of not getting paid all the time and it is even more difficult when you have your own law firm.

However, as a young, ambitious and inspiring pupil, in order to be on your own feet right after pupillage, you need to save up a small nest egg. Depending on the area of law you choose, it

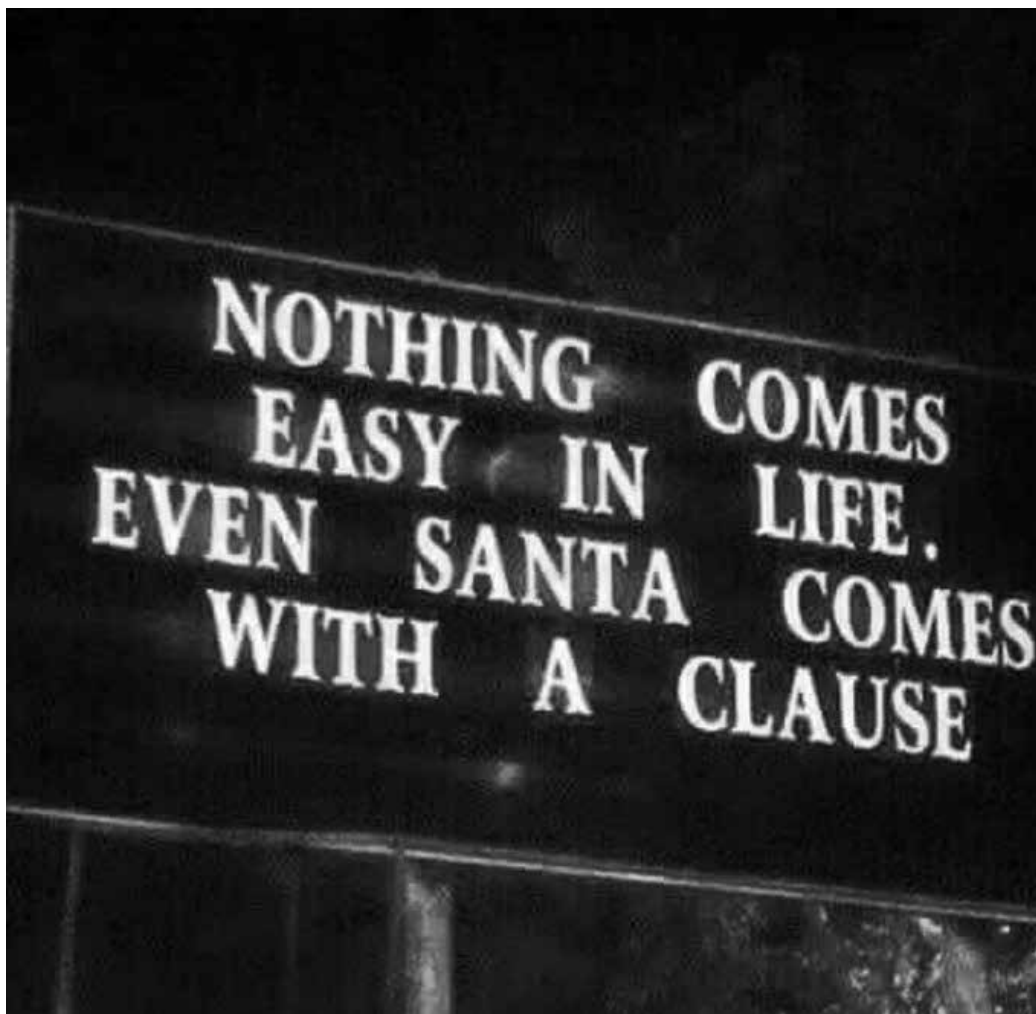
may be 10-12 months before you start seeing any revenues. Find out how long you can work without making a penny before you go broke. That should give you an idea of how quickly you need to make things happen.

It is advisable to pick only one area of law. This is critical. Don't even try to start a "whatever comes in the door" law firm. Those days are long gone. Pick one or two areas of law and focus your practice exclusively on those selected areas. If you try to do everything you won't get good at anything. You'll also look like a competitor to everyone, making it extremely difficult to build a referral network.

Pick the right area of law. Some areas are harder than others to break into. For example, it is difficult to start a solo practice firm and immediately get a Fortune 500 corporate client. To get those clients, you usually have to have a prior history of success, a lot of grey hair, and a great relationship with in-house attorneys. On the other hand, the clientele in the plaintiff's personal injury, criminal defense, bankruptcy, employment law, and family law (to name a few), are, for the most part, individuals who have never worked with a lawyer. They are not extremely picky. They are simply looking for someone who cares, who is competent, and who believes in their case. The moral of this story is that you need to know what your strengths and weaknesses are and whether or not the clients in your chosen area of law will recognize them. If so, they will want to hire you.

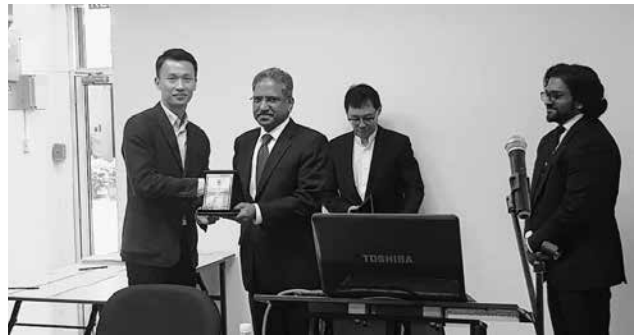
All the best!

Attorney Humour



Medley of Moments

Civil Litigation: Trial & Advocacy (28 June 2019)



Teluk Bahang National Park Hike (29 June 2019)



Jamuan Hari Raya Ke-20: Sandarkan pada Kenangan di Aidilfitri (29 June 2019)



Penang Bar Run (18 Aug 2019)



Convergence of FinTech, LawTech & RegTech (19 Aug 2019)



Workshop on Basics of Drafting: Ancillary Relief in Matrimonial Proceedings (20 & 21 Sept 2019)



Farewell Dinner in honour of YA Dato' Hadhariah binti Syed Ismail and YA Dato' Ahmad Shahrir bin Mohd Salleh (3 Oct 2019)



6th Edition Friendly Games between Malaysian Bar and PERADI (Perhimpunan Advokat Indonesia) (11 & 12 Oct 2019)



10th James Richardson Logan Memorial Lecture (20 Oct 2019)



Thinking IN & OUT of the Conveyancing Box (21 Oct 2019)



The Penang Bar Charity Treasure Hunt 2019 (3 Nov 2019)



Dealing with Children in Matrimonial Proceedings (15 Nov 2019)



Penang Bar 33rd Annual Dinner & Dance (16 Nov 2019)



Tech Invasion! Lawyers be Prepared! (20 Nov 2019)



Simposium Wakaf Negeri Pulau Pinang: Satu Evolusi (25 Nov 2019)





STRATA TRIBUNAL IN MALAYSIA: MAINTENANCE FEE

by Mohamad Ezri Abdul Wahab & Nurul Atikah Asharaf Ali

Introduction

A tribunal is a quasi-judicial institution set up with the authority to judge, adjudicate on, or to determine claims or disputes. It is not to be defined as a court but as a body with limited jurisdiction. The purpose of its establishment is specified in certain ways. As tribunal deals with matters informally, it could resolve a dispute expeditiously in which the involved parties will not incur so much cost. In other words, a tribunal is a justice mechanism, which is almost similar to the court system, especially in case filings, whereby the procedure is simple, more convenient, and the issue at hand is expected to be resolved expeditiously.

Strata Tribunal Jurisdiction and Proceedings

In Malaysia, the main Act, that deals with strata properties, is the Strata Management Act 2013 (“SMA 2013”), which came into operation on 1 June 2015. It is a single legislation enacted to consolidate certain provisions previously in the Strata Titles Act 1985 and the re-enacted provisions of the repealed Building and Common Property (Maintenance and Management) Act 2007. The SMA 2013 governs the maintenance and management of residential strata properties such as condominium and apartments. The main objective of this Act is to ensure that there are proper management and maintenance of the building and common property and is expected to be unbound by irresponsible and illegal developers in order to protect the parcel owners.

In order to file a claim, it is crucial to recognize the jurisdiction of the Strata Management Tribunal (SMT) in Malaysia, which is divided into two categories, namely pecuniary and subject matters. The pecuniary jurisdiction is to hear and determine any claims where the total amount in respect of which an award of the SMT is sought does not exceed RM 250,000.00 or such other amount as may be prescribed to substitute the total amount.

Also, Section 120 (1) SMA 2013 states that an award of the SMT subject to the relevant operative provision of the SMA will be final and binds all parties to the proceedings. It will be deemed to be an order of the court and can be enforced accordingly by any party to the proceedings.

A tribunal could also be a party in a proceeding. If the parties are discontented with the award or decision given by the tribunal, they could bring the matter to court for a judicial review. The procedure for the judicial review proceedings in the High Court is contained in **Order 53 of the Rules of Court 2012**. The relief that is sought is invariably an order of *certiorari* to quash the award. In a judicial review proceeding, the High Court exercises supervisory jurisdiction over the Tribunal to ensure it has exercised its powers in accordance with the Act. **The disputing party may challenge the award on the ground of serious irregularity, which causes injustice to the said party.**

However, the Tribunal’s award or decision will be registered in the Magistrate Court and will have full effect as if it is a judgment of the Magistrate’s Court for the purpose of execution. This is clearly stated under the provision of SMA 2013. Moreover, Section 123 SMA 2013

provides that the award or decision given by the Tribunal must be complied with by the disputing party and non-compliance of the award or decision given will entitle that person to a criminal penalty of either a fine not exceeding RM 250,000 or imprisonment.

The tribunal proceedings also allow parties to represent themselves at the hearings, unless in the opinion of the tribunal the matter in question involves complex issues of law, or if one party may suffer severe financial hardship, that he is allowed to be excused from being represented by an advocate and solicitor. The members of the tribunal comprised of members of the judicial and legal service or persons who are admitted as advocates and solicitors under the Legal Profession Act 1976, who are of not less than seven years standing.

Why Strata Tribunal?

In Malaysia, a person who purchases a parcel in a strata building development enters into a threefold legal relationship; firstly, he is the individual owner of his parcel, secondly, he is a co-owner with all the other owners of the common property, and thirdly, he automatically becomes a member of the parcel owners' body, in which the management and maintenance of the multi-storey building is entrusted. Therefore, each and every parcel owner shall be responsible and accountable for the maintenance and repair of his parcel, including the accessory parcel.

Consequently, it is significant for the residents of the strata building to understand the functions of strata management bodies such as Joint Management Body (JMB) and Management Corporation (MC), where the various duties and functions of the JMB and MC are set out in the Act. Generally, these bodies are established to provide proper maintenance and management in order to regulate the community and in ensuring a more organized and comfortable environment. The details concerning the functions and powers of the developer, JMB, MC, and their responsibilities in managing the common property for the benefit of all the proprietors are set out in the Third Schedule of the SMA Regulations.

With the enforcement of the SMA, the Strata Management Tribunal ("SMT") is established in accordance with Part XI of the SMA. In theory, the establishment of the SMT will address the stratified property management disputes, particularly with regards to the failure of the parcel owners to pay the maintenance fees and also issues on the election of their committee members.

Before the establishment of the Tribunal, the JMB and MC had to be innovative and creative to be able to collect the maintenance fee. Some management bodies had to resort to increasing maintenance charges to deal with parcel owners who did not pay. If the collection is only from 50% of owners, which is RM100.00 per parcel owner each month, then an additional amount of RM100.00 will be added to cover for the non-payment by the rest of the owners.

This will penalize those who pay and be a hindrance to those who cannot pay, and will never be able to pay at all. All these have been considered and, therefore, the Strata Management Act was gazetted to address all these issues.

Owners' Obligation - Maintenance Fee

Owners in a strata building live in a community, and this means each owner carries a collective responsibility. What are the collective responsibilities stated under the Act?

One of them is owners are to attend AGMs or EGMs. Their attendance will ensure checks and balances and make owners aware of their rights and obligations.

They are obligated to promptly pay the maintenance fee up to date in order for the owners to have a say in the AGM or EGM.

Why was the law drawn in this manner?

It is to ensure that monies are sufficient to manage the Strata Building and to maintain comfortable community living. At the AGM and EGM, owners should monitor and query the most important obligation of JMB and MC that is the collection of the maintenance fee.

The purpose of monies in maintenance account that is held under JMB and MC have been clearly stated under section 23 (3) SMA 2013 to be for the purpose of maintaining the common property in good condition, expenses incurred for cleaning and security service, insurance, etc.

JMB and MC - Maintenance Fee

Strata Management has stated how the JMB or MC should manage the collection of maintenance.

Firstly, they shall send a reminder of payment due and owing to the relevant body. The reminder could be sent in the form of an invoice or statement of accounts. The said reminder should provide a time limit or deadline of when the said payment should be made.

Secondly, on the failure to comply with such a reminder, the relevant body should send a notice of demand that is specified in the Form under the Strata Title Management Act, namely, form 11 for JMB and form 20 for MC.

Thirdly, if the owner still fails to pay and settle the outstanding amount, the JMB or MC should prepare “Borang 1” under the Strata Management Act and file it with the Tribunal.

This is how the JMB or MC should carry out their obligations. Failure to comply with the procedures in carrying out their obligations as provided by the Act is an act of defiance and ignorance of their duties under the Act.

Community Living

As the Tribunal is conducted informally, the President could guide and remind the parties of what community living is. It is not only about the responsibilities of the JMB or MC but also how all owners can foster a harmonious community.

Viewing the Act in total, the spirit of the Strata Management Act 2013 could be seen as educating rather than punishing. The reason for having a Tribunal is so that the education process could continue and to ensure the establishment of healthy community living. Thus, it can be summarized that upon the enactment of the SMA 2013, the establishment of the SMT will be a practical alternative for the parties in dispute to be primarily assisted rather than for the dispute to be resolved in court.

Attorney Humour

A woman and her little girl were visiting the grave of the little girl's grandmother.

On their way through the cemetery back to the car, the little girl asked, “Mummy, do they ever bury two people in the same grave?”

“Of course not, dear,” replied the mother, “Why would you think that?”

“The tombstone back there said... ‘Here lies a lawyer and an honest man.’”



RALAS OUTREACH PROGRAMME – AN OVERVIEW

by Nur Shahidhzul Nagieya Binti Zulkernain



For some, the world is dark and cruel. Having known life mired in turbulence, betrayed by governments and violently oppressed, to risk everything for a slim chance of rebuilding in a land of peace, no matter how foreign, is a chance many are willing to take.

Refugees and asylum seekers that have braved unknown territories to reach Malaysia have learned that their spark of hope may fizzle out as, though Malaysia is peaceful,

we are not a part of the 1951 Refugee Convention. Hence, they are considered as undocumented migrants under our Immigration Act and are at risk of arrest, detention, and deportation. They also face many other risks as they are not granted freedom of movement, the right to work or education, and accessibility to travel documents.

To fan their spark of hope into a fire, the UNHCR has created the RALAS programme, which is a legal aid scheme aimed at refugees and asylum seekers. The UNHCR has approached both the Kuala Lumpur Bar and the Penang Bar (thus far) for help to execute this outreach programme.

On 13 Oct 2019, a few volunteer lawyers had attended the first RALAS programme at a Roghinya community center in Penang. The goal of that first programme was to give a brief seminar on the legal implications of being a refugee in Malaysia. It focused on topics that involve both civil and criminal law.

Most refugees, having reached a foreign land and faced with a life-changing circumstance never before envisioned by them, are mostly





unaware of what to expect and how their new life would be like. They are also mostly unaware of the new limitations in their lives.

As refugees and asylum seekers in Malaysia do not have freedom of movement, the right to work, or to education, amongst other things, every facet of their daily life is a struggle.

The RALAS programme was a gentle introduction to familiarise the refugees with what their rights and obligations are now that they are living in Malaysia. It was a preparation of sorts to provide solutions should they have run-ins with the law while just performing basic, daily tasks.

It was also to enlighten them as to the legal steps they can take to rebuild and fortify their lives and their community, especially, regarding marriages, building a family and ensuring that they are as documented as they can and/or should be, and educating their children.

RALAS also acted as a podium for the refugees to voice out their grievances and afforded them a safe space to shed light on the realities of life as a displaced person. Though grateful for the chance to rebuild, being a refugee in Malaysia is not without its own very different sets of struggles. It was an eye-opening programme for both the community as well as the volunteers.

The overall experience of the first RALAS outreach in Penang was positive. There was a great turn out, and most of the legal questions asked were attended to.

It is clear that RALAS is a helpful tool in not only combating or alleviating the daily struggles faced by refugees and asylum seekers in Malaysia but also in integrating the refugees into the local community in a more inclusive (and legal) way.



AM I SERIOUSLY GOING TO JAIL FOR ATTEMPTING TO KILL MYSELF?

by Lee Jing Yao

Suicides are painful tragedies that should be matters of concern for all Malaysians, especially true for the family and friends of any person who successfully committed suicide. Moreover, news of suicides is, often, accompanied by devastating backgrounds. For instance, the unfortunate suicide of Davia Emelia, 16, which could have been avoided but, sadly, her cry of help, was ignored where 69% of her Instagram pollsters had instead encouraged poor Davia to kill herself. On 19 August 2018, we lost one of our brothers, a lawyer leapt to his death from the Solaris Dutamas building due to financial constraints. While we often hear the stories of those who departed by suicide, what about those who attempted suicide and failed?

Legal position

The Malaysian Penal Code, in particular, Section 309 criminalises attempt to suicide. The Section states:-

“Whoever attempts to commit suicide, and does any act towards the commission of such offence, shall be punished with imprisonment for a term which may extend to one year or with fine or with both.”

In other words, those who perform any act amounting to committing suicide and subsequently fails could very well find themselves on the wrong side of the law.

It sounds absolutely ridiculous considering the fact that people who attempt suicide are arguably not in the best mental state. Suicide, typically the last resort, provides a chance to finally “escape” the difficult predicament or agonising dilemma that plagues the victim’s waking moments. However, with the law as it currently stands not only does the victim has to face the fact they failed to end, they are slapped with a legal punishment to serve as a reminder of their failure, a scenario which literally adds salt to the wound.

Statistics

According to Bukit Aman Criminal Investigation Department (investigation/legal) deputy director, Datuk Mohd Zakaria Ahmad, there were about 625 who attempted suicide and failed from between 2014 to February 2018. Out of these 625 cases, only 68 cases were taken to court and charged. One such unfortunate person would be 24-year-old, Yew Kah Sin, who was charged in court for a fine of RM2,000 or three months imprisonment. This is coupled with the fact that Yew is unemployed, and further carries the burden of caring for her lung cancer-stricken mother; one really has to feel sympathy for her plight.

It is also worth noting that the World Health Organisation (WHO) has found that close to 800,000 people die to suicide every year. It is also submitted that for every suicide, there are many more people who attempt suicide. WHO further states that suicide is the leading cause of death among 15-29-year-olds. This is supported by Malaysian’s National Health and Morbidity Survey 2017. From 2012-2017, there is an increasing trend in suicidal behaviour among adolescents. The survey has particularly identified Form 1 students as the most vulnerable, being the group with the highest suicidal behaviour.

Moving Towards Decriminalisation

The criminalisation of attempted suicide is a piece of archaic law as the Malaysian Penal Code is in pari materia with the Indian Penal Code, which reflected the old common law approach from a more brutal age. Today, Malaysia is one of the few remaining countries that criminalise suicide, whereby both Britain and India had long reviewed their stance.

On 13 June 2019, the Deputy Prime Minister Datuk Seri Dr. Wan Azizah Wan Ismail had in her statement provided that the Attorney General's Chambers has been instructed to study a suggestion to decriminalise attempted suicide.

The decision is widely celebrated and hailed as the right direction towards removing the stigma surrounding suicide and its closely-linked mental health issues.

Mental Health Promotion Advisory Council member and Malaysia Crime Prevention Foundation (MCPF) senior vice-chairman, Tan Sri Lee Lam Thye, said that those who had attempted suicide should not be treated as criminals but as victims suffering in silence from mental health problems. He is in favour of those who had attempted suicide be given psychiatric treatment and rehabilitation and finds the thought of criminalising depressed or mentally ill person as inhumane, unthinkable and unacceptable.

Befrienders KL secretary, Victor Tan, had also urged the Malaysian Government to take heed of WHO's proposal and abolish the criminalisation of attempted suicide. He believes such a move will encourage effective and open public discussion about suicide and dispel the myths and stigma associated with it. The public will then be equipped to foster effective communication, and hopefully, those who are vulnerable will ideally be empowered to seek help and guidance.

Conclusion

Criminalising suicide is an added unnecessary burden on those who are in serious need of mental and emotional support. Rather than deterring people from attempting suicide, criminalisation deters them from seeking treatment, which only exacerbates the situation. As a society, we need to recognise that these people need help, especially help that is easily accessible. In the words of Malaysian Bar President, Abdul Fareed Abdul Gafoor, "attempted suicide victims need help and counselling, not incarceration and a warder's supervision."

"Life to be loved and lived come what may. Let's celebrate it!"

Attorney Humour

The lawyer's son wanted to follow his father's footsteps, so he went to law school and graduated with honours. Then, he went home to join his father's firm.

At the end of his first day at work, he rushed into his father's office and said,

"Father! In one day, I broke the Smith case that you've been working on for so long!"

His father yelled, "You idiot! We've been living on the funding of that case for ten years!"

PENANG BAR RUN 2019

by Guhapria Kumaravellu



The inaugural Penang Bar Run took place in 2017 and received enormous support from members of the Bar and sponsors. The total number of participants in the year 2017 was 171 participants, forming 57 teams. This year, the Penang Bar Run was held on 18 Aug 2019. A total of 267 people participated

in this event forming 89 teams altogether. Certainly, the number of participants has increased compared to the preceding year. Each team was made up of 3 runners. The Run was divided into three categories namely:

Category 1: Members of the Bar, Pupils in Chambers, law graduates, full-time employees of law firms.

Category 2: Penang Court Judges and Officers, Penang Court Staff, Legal Officers from Penang State Legal Advisor's Office, Attorney-General's Chambers, Jabatan Bantuan Guaman.

Category 3: Invited Sponsors.

The race route began at Georgetown Subordinate Court, stretching out to **Esplanade - Queen Victoria Memorial Clock Tower - Light Street - Farquhar Street** and finally back to the starting point which measured a total distance of **3.2 km**. Each runner had to complete a loop of 3.2 km before passing the baton to the next team member at the starting point.

The registration began at 6:30 am and all the participants gathered at the foyer of the Sessions and Magistrates Court building to register and collect their respective team's bib number. Before the runners headed out to the starting line, a warm-up session led by a trainer from Warrior Fitness and Adventure ignited an all-round real party atmosphere, with blaring music and dancing warm-ups. The Penang Bar Run 2019 was flagged-off by the Sessions Court Judge, Puan Zaharah binti Hussain at 7:00 am.

Volunteers were placed at a few stations throughout the race route to control and direct the traffic. Participants from other state Bars too had expressed their support by participating in this run. As the participants approached the finishing line, we could witness the transformation of their facial expression from absolute exhaustion to a big goofy grin while receiving thundering cheers from the crowd.

All the runners took home goodie bags along with a custom-made finisher's medal and a t-shirt. Trophies and prizes were presented to teams and individual runners in the following categories:

Top 3 Judiciary & Legal Services teams

1. TURTLE RUNNER (Mohd Felani Bin Yusof, Puan Nurul Aini Binti Yahya, Mohd Faiz Bin Ahmad Nadzri)
2. JUST RUN (Puan Norhayati Binti Mohamad Yunus, Khairul Azlan Bin Zainol, Mohd Hillmy Bin Abdullah)
3. SAJA-SAJA RUN (Tuan Lau Eric, Norsiha Abd Mutalib, Muzammir Bin Mohd Rodzat)

Top 10 Fastest Teams

1. THE SLOWPOKE (Eunice Ong Huey Shen, Law How Chong, Neo Chi Chyn)
2. SPEEDY GONZALES (Lim Choo Hooi, Ng Ai Li, Lee Guan Tong)
3. RUN, PIERRE, RUN (Pierre Chuah Lee Yan, Lim Etheng, Ryan Soong Li Yih)
4. TEAM BSG PROPERTY 1 (Choo Gim Chuan, Lui Lee Lien, Jimmy Lim Wen Qing)
5. COOL MOVING TROOP (Moirra Toh Siew Ling, Hoon Wen Tze, Tan Loon Cheang)
6. WE'RE TOO OLD FOR THIS (Shanmuka Thasan, Pua Shea Erl, Ravindran Nekoo)
7. FIREBOLT (Ong Beow Chieh, Lim Hock Siang, Khoo Ching Chiat)
8. TEAM STSP (Muhammad Zarqali Bin Mohd Noor, Tania Kat-Lin Edward, Nadeem Bin Muhd Rafiq Thangaraj)
9. BSG PROPERTY 2 (Tan Kai Ying, Goh Pei Shan, Ng Heng Loy)
10. CATCH US IF YOU CAN (Glory Khoo Ern Zhi, Yeoh Wei Ting, James Lee Chun Shen)

Top 10 Fastest Men

1. Lim Choo Hooi
2. Tan Loon Cheang
3. Neo Chi Chyn
4. Ravindran Nekoo
5. Mohd Felani Bin Yusof
6. Choo Gim Chuan
7. Ryan Soong Li Yih
8. Shanmuka Thasan
9. Lee Guan Tong
10. Law How Chong



Top 10 Fastest Women

1. Eunice Ong Huey Shen
2. Ng Ai Li
3. Ong Beow Chieh
4. Moirra Toh Siew Ling
5. Lui Lee Lien
6. Soo Siew Mei
7. Lim Etheng
8. Oi Seok Khiang
9. Nathalee Annette Kee Xuan Li
10. Goh Pei Shan





This event would not have been possible without the sponsors.

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- Straits International School Penang
- Mr. Khoo Choon Aun

Penang Bar Run 2019 had served as an ice-breaker among the lawyers, judges and their staff, not forgetting the Penang Bar Run 2019 committee who took time out of their busy schedules to organise and make this event successful.

Penang Bar Run 2019 Organising Team

Organising Chairman: Lee Guan Tong

Members: Moira Toh Siew Ling, Lim Choo Hooi, Jo-Anne De Vries, David Chen Wooi Teong, Edmund Anthony Hermon, Elson Beh Hong Shien & Selvi Neelakandan.



CRIMINAL JUSTICE



Mysteries excite any individual, regardless of age. Our own land has her fair share of age-old unsolved murders, which warrants a Sherlockian detective to solve it. In this edition, we present to you a mystifying murder in the history of the Malaysian criminal cases, the slain of a young lady, which rocked the nation a good thirteen years ago!

THE MURDER OF NORITTA

by Nurul Hidayah



Noritta Samsudin, a 22-year old woman, who lived a normal life in the city of Kuala Lumpur, was found dead in the early morning of 5 December 2003. Her body was found face down on the mattress in her room. Her head was inside a pillowcase, both her hands were tied together with an electric iron cord behind her back, and her legs were also tied with an electrical cord and a bra. She was completely naked, but the body was covered with a comforter when she was first seen with no sign of abuse what-so-ever.

The chronology of the case started with the finding of Noritta's body by her roommates, Kenneth and Azora. In their witness statements, Azora and Kenneth stated that both of them smelled a strong body odour at the main entrance and the corridor leading to the dining area the moment they both entered the house.

Azora revealed that she noticed a glimpse of a person next to her room on the night of the murder. She thought at first, it was just one of Noritta's visitors.

Kenneth, on the other hand, stated that he had locked the entrance door before

he and Azora went into their rooms. Later, they noticed that the door was unlocked, which made both of them wary of their surroundings, subsequently calling out for Noritta. Azora later went into her roommate's room, and the first thing that Azora noticed was that the room was dark, and she immediately turned the lights on before noticing a figure on the bed, covered in a blanket. There was Noritta, all tied up, not making a single movement. That was when Azora knew something was wrong.

Upon finding that the main door was unlocked, Kenneth immediately went to the guard posts for assistance to enquire if any of them had seen anyone exiting the apartment compound. It was at that moment when Azora shouted from their bedroom window and asked Kenneth to come up.

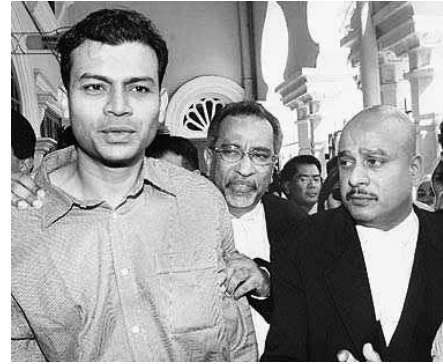
Seeing Noritta's body tied up with no movements, a panicked Kenneth, immediately untied the pillowcase covering her head. He found a bolster case tied around her face, covering her mouth and untied the knot at the back of her head. When that was done, a piece of face towel crumpled into a ball fell out of the deceased's mouth. Kenneth proceeded to cut off the cord tied around Noritta's hands while he kept calling out her name to see if she was still alive. Kenneth noticed that her lips had turned blue, at that point of time, he initiated CPR on her. Unfortunately, none of them knew how it was supposed to be conducted, although Kenneth did try once but failed to revive her.

The case got even more complicated the moment one of the two suspects turned himself in. Being the lover of Noritta, constantly seen with her, Hanif Basree, was definitely the easy target, especially when there had been a rumor that she was going to get married to another man ignited Haniff's jealousy, and thus leading him to commit the murder.

While everyone was pointing fingers at Haniff Basree, being the main accused, surprisingly, the courts found otherwise. From the first day of the trial, the defence team managed to convince the court that this

was just - a bedroom scene went wrong. Also, all of the scientific evidence adduced by the prosecution team seemed to suggest that there was another party present at the time of the murder.

The court's evaluation of the scientific evidence was that the deceased indeed died of asphyxia due to choking, though there was no sign of struggle found on the deceased's body. The court also evaluated that Haniff Basree and an 'Unknown Male 1' had had sexual intercourse with the deceased within 72 hours of her death, and the deceased died after the act of sexual intercourse. Anal intercourse was also performed on the deceased by the 'Unknown Male 1' based on the fresh tear and bleeding of the deceased's anus. The DNA profile of the 'Unknown Male 1' was found on the electrical cord, and the bra used to tie up the deceased on the night of her death. The court concluded that the act of tying the deceased's legs was done after her death, and the hair recovered from the deceased's bed sheet and comforter matched the DNA of the same 'Unknown Male 1'.



The court later concluded that based on all the scientific evidence being presented during the trial, the prosecution had not established a prima facie case considering the fact that they could not prove to the court that Haniff Basree was, in fact, the last person to have been with the deceased.

From the beginning of the case, the prosecution team had adduced circumstantial evidence to raise a prima facie case against the accused, and it gave no other choice to the court, but to scrutinize that evidence on a maximum evaluation yardstick, in order to determine if that evidence has satisfied the legal requirements to support a finding of a prima facie case, which then, led to the finding that the prosecution case was tainted with doubts, gaps, and inferences favourable to the accused, thus, leading to the acquittal and discharge of the accused.

The prosecution team tried to convince the court that jealousy could be the motive for the murder based on the submission that the deceased had two lovers simultaneously. However, upon bringing in another witness, Lim Sin Kean, at the end of the trial, the court found that Noritta and Lim's relationship was platonic. This was based on Lim's statement where he stood firm as he had done earlier when he was asked a similar question, whether he had a sexual relationship with the deceased, but he denied it. Whereas for Haniff Basree, Noritta did keep his photo in her handphone to suggest that she had regarded him as her special boyfriend compared to Lim.

The case has sparked interest among the public as to the identity of the murderer, since there had been rumours about Noritta being a mistress to politicians and that her death was concluded as a 'warning' to those politicians to not get involved in big projects. This was also highlighted in the defence's submission where the defence team brought out the fact that the police seemed to have concealed certain information regarding the case, as Noritta's handphone was missing from the crime scene and that the Prosecution team had never brought in Noritta's phone conversations record as well the first two policemen that were present at the crime scene to be the witnesses for the Prosecution.

Whatever the truth might be, one thing we know for sure is that the murderer is still on the loose and that the 'Unknown Male 1' was neither found nor identified.

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Experts Roundtable Discussion on “Draft Code of Conduct for the Promotion of Equal Opportunities Through the Elimination of Racial Discrimination”

by Archana Chandrasekaran



On 23 Aug 2019, I represented Penang Bar to the Experts Roundtable Discussion on the “Draft Code of Conduct for the Promotion of Equal Opportunities Through the Elimination of Racial Discrimination” organised by SUHAKAM, Pusat Komus and Penang Institute with the Penang State Government, held in Cititel Hotel Penang.

The panel members were Penang Deputy Chief Minister I, YB Dato IR. Haji Ahmad Zakiyuddin Bin Abdul Rahman, Penang Deputy Chief

Minister II, YB Prof. Dr. Ramasamy a/l Palanisamy, Commissioners of SUHAKAM, Mr. Jerald Joseph and Datuk Lok Yim Pheng and the Executive Director of Penang Institute, Dato’ Dr. Ooi Kee Beng.

The objective of the discussion was to engage different stakeholders in Penang to finalise the proposed “Draft Code of Conduct”, which was drafted earlier through a series of workshops and discussions between the organisers and the Penang State Government before the 14th General Election. Penang has taken the honour as the first state to commit to such a proposed Code of Conduct. This was mentioned by Datuk Lok Yim Pheng in her welcome speech in which she took the opportunity to thank the Penang State Government for the support and commitment given.

The welcome speech was followed by an opening address by YB Prof. Dr. Ramasamy. He proudly proclaimed, “Anything significant always starts at Penang”. He complimented the organisers for taking the significant step which shall be a guideline to eliminate racial and religious discrimination, which is crucial in the multiracial and multireligious Malaysia. However, he also stressed on the importance of steps that would ensure the effectiveness and enforceability of the finalised Code of Conduct. The effort would be in vain if the code merely existed without being enforced.

The Code of Conduct does not impose any legal obligations nor is it an authoritative statement of the law; however, the drafted code stated that an applicant or staff should be informed of the right to complain to SUHAKAM. During the question and answer session, I questioned SUHAKAM’s powers to act on such complaints. Mr. Jerald Joseph explained that SUHAKAM holds an investigation on any relevant and reasonable complaints made. SUHAKAM usually holds mediation between the two parties and/or submits the outcome of the investigation to relevant governmental bodies. There were also questions from other guests as to whether the discrimination in the draft code of conduct only relates to race or includes religion. In cases where race and religion are closely related, then the code of conduct shall apply to both. For example, the Sikhs wearing Turbans and the Muslims of any race wearing hijabs.



We were then given the opportunity to present our suggestions and recommendations to improve the draft code of conduct. I suggested that a complaint lodged by an employee to the employer regarding the racial discrimination faced should be in writing in order to help SUHAKAM with the investigations and mediation, and if the matter proceeds to the court of law. For instance, if an employee writes a

letter, a copy of it must be acknowledged and given to the said employee. If the complaint has been recorded in a computerized system, the print out must be handed to the said employee. Often, when an employer learns that an employee has been lodging complaints and dissatisfactions, the employer would terminate the employee on the grounds of a dissatisfactory working attitude. At



this point, the employee would struggle to show that he or she has made numerous complaints to the employer, which could have possibly led him or her to be terminated. Therefore, evidence of complaints made would prove the frequency of the complaints lodged and be in favour of the employee in case of any victimization.

Pertaining to the questions on making the Code of Conduct effective, suggestions have been made to the state government to a government stamp or logo to be displayed on the profiles of the business enterprises which agree to implement the code. A further suggestion was to introduce the code to business enterprises during any licence applications at the local councils. However, whether to accept and implement the code would still be optional. Similarly, there was also a suggestion to discuss with Suruhanjaya Syarikat Malaysia to introduce the code to new business enterprises and companies.

A councillor at the Penang Island City Council suggested that the code should also be included in the letter of offer of any business enterprise which implements the code. With this step, every new employee would be aware that the employer is against racial discrimination, and action would be taken against anyone who practices such discrimination.

Mr. Muhammad Faiz from SUHAKAM shared the complaints from two female job applicants, one wearing hijab and another was pregnant. Both were convinced that they were rejected due to their attire and condition, but the employer gave no reason for rejecting their application. A recent survey, by Centre of Governance and Political Studies, conducted by submitting resumes of fictitious Malays, Chinese and Indians of both genders, and Muslim women with and without hijabs, clearly showed that racial and cultural discriminations exist in accepting and rejecting the applicants, although, they are of similar qualifications. Since no reason for rejection is required, employers may continue to practice such discriminations indirectly. To prevent this, employers are encouraged to inform the reasons for rejection in writing to the applicants. This is to limit the power of the employers to reject the applicants based on racial or any other discrimination when they have proper qualifications. Although the law does not require an employer to do so, this will encourage the employer to maintain the company's good reputation and professionalism. If this suggestion is encouraged and practised, then it would, in the long run, become a practice and would eventually discard racial discrimination in accepting and rejecting applicants.

Pertaining to the cultural and religious needs that conflict with existing work requirements, I strongly suggested that the employers should explain to the job applicants on the conflict before the appointment, and the employee should notify any special cultural and religious needs, also whether both parties are agreeable to the terms. I brought to their attention the case of *Nurul Shamimi Zainul Ariffin v University Pertahanan Nasional Malaysia & Anor* [2017] 1 LNS 1740, which stated that individuals have the choice to walk away from agreements which infringe his or her constitutional right. Agreeing on such terms, the individual should not be allowed to seek justice at the court of law.

The discussion ended with a sumptuous lunch. Further discussions to finalise the code of conduct were held among the organisers after lunch. The finalised code of conduct shall be presented in another discussion.

This roundtable discussion was very beneficial and useful to me. I would like to express my heartfelt gratitude to the Penang Bar Committee for the splendid opportunity given to me.

AN INTRODUCTION TO THE CONCEPT OF GOOD FAITH IN NEGOTIABLE INSTRUMENTS LAW

by Siti Azizah Binti Mulian & Saidatul Muzalina Mustapa

A negotiable instrument is a document guaranteeing the payment of a specific amount of money, either on demand or at a set time, with the payer usually named on the document. It is a document contemplated by or consisting of a contract, which promises the payment of money without condition, which may be paid either on demand or at a future date.

Further, negotiable instruments are a class of documents used in commercial and financial transactions. They are used in both domestic transactions and international trade. A negotiable instrument is a formal legal document, which contains a legal obligation to pay money, and which possesses the attributes of negotiability.

The documents that are categorized as negotiable instruments include cheques, bills of exchange, promissory estoppels, and other documents normally used in banking and financial transactions.

Good faith is an abstract and comprehensive term that encompasses a sincere belief or motive without any malice or the desire to defraud others. It derives from the Latin term, *bona fide*. Good faith is also central to the Commercial Paper (negotiable instruments) concept of a holder in due course. A holder is a person who takes an instrument such as a cheque, subject to the reasonable belief that it will be paid and that there are no legal reasons why payment will not occur. If the holder has taken the cheque for value and in good faith believing the cheque to be good, he or she is a holder in due course, with the sole right to recover payment. If, on the other hand, the holder accepts a cheque that has been dishonored, with the knowledge that something is wrong with the cheque, then the holder cannot allege that the cheque was accepted in good faith believing that it was valid.

To make the transfer of a negotiable instrument valid, it should be done in good faith. Specifically, the concept of good faith in negotiable instruments refers to a holder in due course. The Negotiable Instrument is governed by the Bill Of Exchange Act 1949.

Historical Background

Historically, common prototypes of bills of exchange and promissory notes originated in China, where special instruments called ‘feistyan’ were used to safely transfer money over long distances during the reign of the Tang Dynasty in the 8th Century.

In the mid-13 century, the Ilkhanid rulers of Persia printed the “cha” or “chap” which was used as paper money for limited usage for transactions between the court and the merchants for about three years before it collapsed. The collapse was caused by the court accepting the “cha” only at a progressive discount.

Later, such documents were used for money transfer by the Middle East merchants, who had used the prototypes of the bill of exchanges ‘suftadja/softa’ from the 8th century to present. Such prototypes came to be used later by the Iberian and Italian merchants in the 12th century. In Italy in the 13-15th centuries, bill of exchange and promissory notes obtained their main features, while further phases of their development have been associated with France (16-18th centuries, where the endorsement had appeared) and Germany (19th century, formalization of Exchange Law). The first mention of the use of bills of exchange in English statutes dates from 1381, under Richard II.

The statute mandates the use of such instruments in England and prohibits the future export of gold and silver specie, in any form, to settle foreign commercial transactions. English exchange law was different than continental European Law because of different legal systems. The English system was adopted later in the United States.

Based on the above, it can be presumed that negotiable instruments were first used and introduced in Asia and later on followed by the EU countries and English law.

Good Faith And Holder In Due Course

The rights of a holder in due course of a negotiable instrument are qualitatively, as a matter of law, superior to those provided by ordinary species of contracts. The rights to payment are not subject to set-off and do not rely on the validity of the underlying contract giving rise to the debt (if a cheque was drawn for payment for goods delivered but defective, the drawer is still liable on the cheque). No notice needs to be given to any party liable on the instrument for the transfer of the rights under the instruments by negotiation. However, payment by the party liable to the person previously entitled to enforce the instruments “counts” as payment on the note until adequate notice has been received by the liable party that a different party is to receive payments from thereon. Transfer free of equities which means the holder in due course can hold a better title than the party he obtains it from (as in the instance of negotiation of the instrument from a mere holder to a holder in due course).

Under the general rule of law, the rule that no one can give a better title than he possesses, which is also known as ‘Nemo dat quod non habet’ rule, is not applicable in cases of negotiable instruments because the holder in due course holds a better title than the drawer. Thus, negotiable instruments are an exception to the ‘Nemo dat quod non habet’ rule.

Pursuant to Section 29 (1) (b) of the Bill of Exchange Act 1949, a holder in due course is one who takes a bill or note, complete and regular on the face of it, in good faith for value before it is overdue and without notice of its previous dishonour or of any defect in the title of the person who negotiated with him.

Negotiable instruments possess an important characteristic that is bona fide transferee for value, which is known as a holder in due course, where the instrument must satisfy the condition that it must be transferred in good faith before overdue, even though, there was fraud elements which rendered the instruments invalid.

Based on the case of *Ng Kim Lek v Wee Hock Chye* [1971] 1 MLJ 148, the court decided that the Plaintiff was a holder in due course of the cheque and on the facts had paid value for them and had taken them in good faith and without notice of any defect in the title of the defendant.

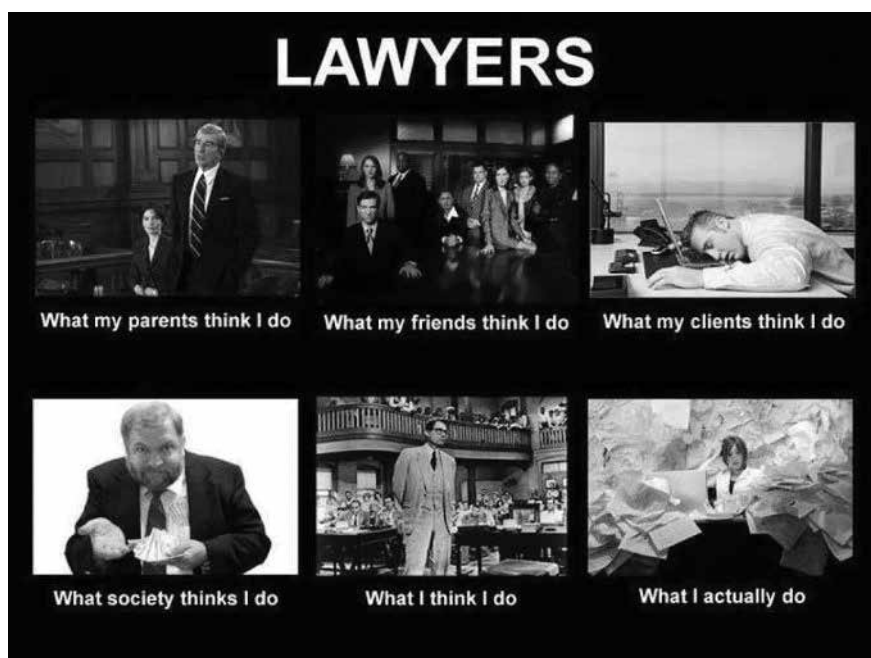
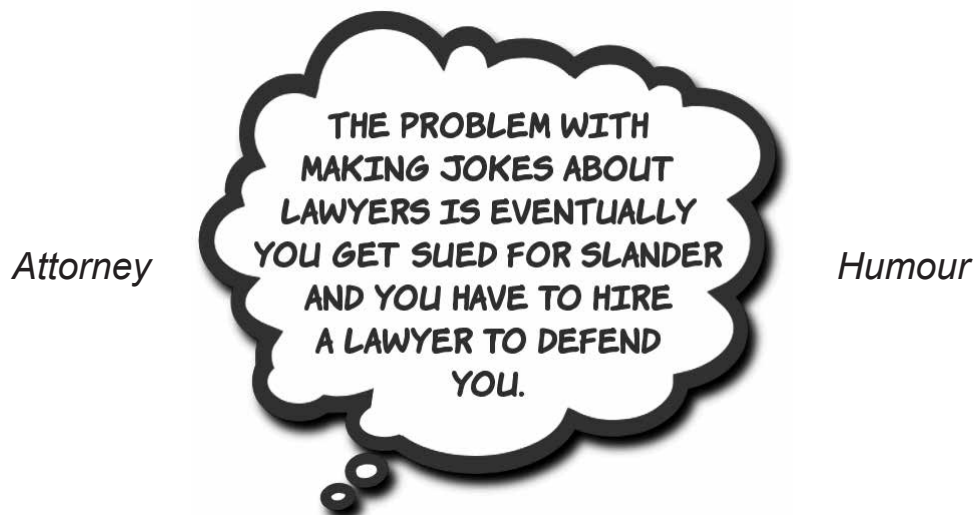
In the case of *Yee Chow Fah v Multihorizon Sdn Bhd* [1999] 6 MLJ, the court held that in the absence of any allegation of fraud or illegality being committed in respect of the cheque, the court must presume that the appellant was the holder in due course who took the cheque complete and regular on the face of it. In this case, the appellant became the holder of the cheque before it was overdue and without notice of the countermand. There was no evidence that at the time the cheque was negotiated to her, she had any notice of any defect in the title of Yee Teck Fah. Thus, in the absence of such notice, the appellant must have taken the cheque in good faith and for value. The court further elaborated that by virtue of Section 38 of the Bill of Exchange Act 1949, the appellant being a holder in due course, even though she was the fourth party, holds the cheque free from any defect of title of prior parties as well as from mere personal defences available to the prior parties among themselves, provided that the holder obtains it in good faith without any notice of its defects.

The Concept Of Good Faith In Negotiable Instruments

The concept of good faith in negotiable instruments can be presumed when during the transaction and the transfer of the instruments there was no dispute by any party, as can be found in the case of Forstar Frozen Foods Pvt Ltd v Lakudang (M) Sdn Bhd & Anor [2013] 5 AMR 178, where the court held that it is noted that the bills of exchange were duly presented to and accepted by the defendants respectively. In relation to this, there was no evidence to show that the defendants have disputed or challenged the authenticity of the bills of exchange. Hence the plaintiff's contention that by accepting the bills of exchange, the defendants have both unequivocally accepted and undertaken the obligation to pay the amount due under the bills of exchange within the period stated on the said bills of exchange was merited. Thus, the defendants are liable to pay the sum due under the respective bills of exchange. Further, the defendants are also liable to pay interest by way of damages on the amounts due under the respective bills of exchange from their maturity date pursuant to Section 57 of the Bills of Exchange Act 1949.

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Legal Movie Review

A FEW GOOD MEN (1992)

by Ramesh Rajadurai

Lieutenant Daniel Kaffee is a U.S. Navy lawyer. He graduated from Harvard law school and joined the Navy because he thought his father, an Ex Attorney General of the United States, would want him to do that. In the initial period of his practice, all he did successfully was undertaking plea-bargaining for low profile cases. He is not a passionate lawyer. When he was assigned a marine murder case, all he did was to enter into a plea bargain with the State. But when his conscience was rattled by the accused and a fellow US navy lawyer, he decided for the first time to fight for his client.

Say what you will about Tom Cruise, but he is high-octane as a reluctant Navy JAG litigator in Rob Reiner's suspenseful film iteration of this military courtroom drama by Aaron Sorkin (creator of The West Wing).

All the right ingredients were there to produce this performance, including a formidable courtroom opponent played brilliantly by Kevin Bacon, and the unforgettable Jack Nicholson as Colonel Jessup



IN MEMORIAM

We will miss our learned friends

by Munes Geetha Munyadi

Ahgoram Rajadurai s/o Ahgoram

- It is our greatest loss that Ahgoram Rajadurai s/o Ahgoram, who was a very senior member of the Malaysian Bar and the managing partner of Messrs A. Rajadurai P. Kuppusamy & Co. in Nibong Tebal, Penang, passed away on 11 June 2019.
- Late Ahgoram Rajadurai s/o Ahgoram was admitted as an advocate and solicitor of the High Court of Malaya in 1968.
- He is widely known throughout the country.
- Losing a veteran member is a great loss not only to his family and loved ones but to the legal fraternity too.

Zuraini Binti Zulkifli

- It is our greatest loss that one of our members, Zuraini Binti Zulkifli, passed away on 31 July 2019.
- Late Zuraini Binti Zulkifli was admitted as an advocate and solicitor of the High Court of Malaya in 2006.
- She was a well-known lawyer who had been practising for almost thirteen years.
- She was practising at Messrs Badruzzaman & Kamal, Bukit Mertajam, Penang at the time of her demise.
- We appreciate her hard work and cherish her efforts in the law of practice.

The publication team of Voix D'Advocat extends its heartfelt condolences and sympathies to their families and loved ones. May their souls rest in peace. We appreciate their contributions to upholding and maintaining the administration of justice.



AN INTRODUCTION TO THE CONCEPT OF GOOD FAITH IN NEGOTIABLE INSTRUMENTS LAW



✓ Tech Invasion! Lawyers be Prepared!



✓ Workshop on Basics of Drafting: Ancillary Relief in Matrimonial Proceedings

MOVIE HIGHLIGHT: "A FEW GOOD MEN"



The Penang Bar Committee welcomes submission of letters, articles, views, news and photographs for possible inclusion in the newsletter.

WRITE TO:

"The Editor of Voix d'Advocat" at voixdadvocat@gmail.com to forward your comments and contributions!

JURISDICTION OF THE MALAYSIAN SYARIAH COURTS

How much do you know about the jurisdiction of our Syariah Courts? Read more to find out.

MYSTERY READ: THE MURDER OF NORITTA



How much do we know?

✓ Teluk Bahang National Park Hike



OPENING, OPERATING OR CLOSING A PRACTICE



"Should I open my own practice?" Read more to find out!