



# SUARA PEGUAM

*Reminiscing the Past*



*Artist's Impression of the Oldest Court in Malaysia:  
Supreme Court of Penang, Light Street, Georgetown*

**ISSUE 01/2024**

**FOR MEMBERS ONLY**



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## CHAIRMAN'S MESSAGE



Amongst the many other roles which the Penang Bar Committee has, inciting creativity, artfulness and a wondering mind beyond the humdrum of practice is one that is important and that is what the Publications and Member's Welfare Sub-Committee endeavours to do.

A lawyer without words is like a gladiator without a shield or a wielded weapon which are what words can either be. The pieces featured in this edition of Suara Peguam inter alia tell stories and accounts of halcyon days, informs of progressive requirements and hopefully gives an artful respite from the doldrums of everyday routine.

What might seem like a smattering of words is in fact the collective labour of a dedicated crew of wordsmiths and to them as well as to all the contributors (with a special mention to Cecil Rajendra Esq. who kindly agreed to be interviewed regarding the late and revered Lim Kean Chye) I say KUDOS for putting this together and sharing it with us.

Carolyn Oh  
Chairman  
Penang Bar





## FROM THE EDITOR

Welcome to the first edition of Suara Peguam for 2024!

In this edition, we pay tribute to a legendary former member of the Bar, the late Lim Kean Chye, by speaking to another great personality, senior lawyer, author and poet, Cecil Rajendra. We also explore current issues affecting members, showcase the creative (and very often hidden) talent of our fellow professionals and bring you a round up of events that took place in the second half of 2023 right up to the end of April 2024.

We do hope that the content you see in this issue will inspire you to contribute to the next edition. Very often, we keep our talents to ourselves fearing brickbats from others, not knowing that the choice we make to share our capabilities with our contemporaries could actually be the start of something meaningful.

In that vein, we invite our fellow members to submit your thoughts, opinions and events with us at [suarapeguampenangbar@gmail.com](mailto:suarapeguampenangbar@gmail.com). We also welcome your accolades, brickbats and comments on what content you would like to see in the next edition and how we could further improve.

As always, my gratitude to the members of the Editorial Team, without whom this edition would not take flight.

Yours truly,  
***Sharmila Kaur***

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## REMEMBERING LIM KEAN CHYE

**By: Farah Arabi**  
**Additional contribution by Sharmila Kaur**

**“Life is a sum of ALL your choices” – Albert Camus.**

Veteran lawyer and freedom fighter **Lim Kean Chye** breathed his last breath at the incredible age of 103 on 7th June 2023. Lim was the founder of the **Malayan Democratic Union (MDU)** formed on 21<sup>st</sup> December 1945 and fought for Malaya and Singapore’s independence. MDU was Singapore’s first political party and consisted of English educated Malaysians whose main objective was the assertion of the right to self-governance.



Born on 22<sup>nd</sup> December 1919 in Penang, the Straits Settlement, Lim was a politician and lawyer who completed his law degree from Cambridge University. Coming from a family of prominent lawyers, he was called to the **Singapore Bar** in the year **1950** and thereafter to the **Malayan Bar** in **1961**. A truly professional lawyer dedicated to the concept of equal justice for all, it was hardly surprising that Lim also played an important role in the **All Malaya Council of Joint Action (AMCJA)** which

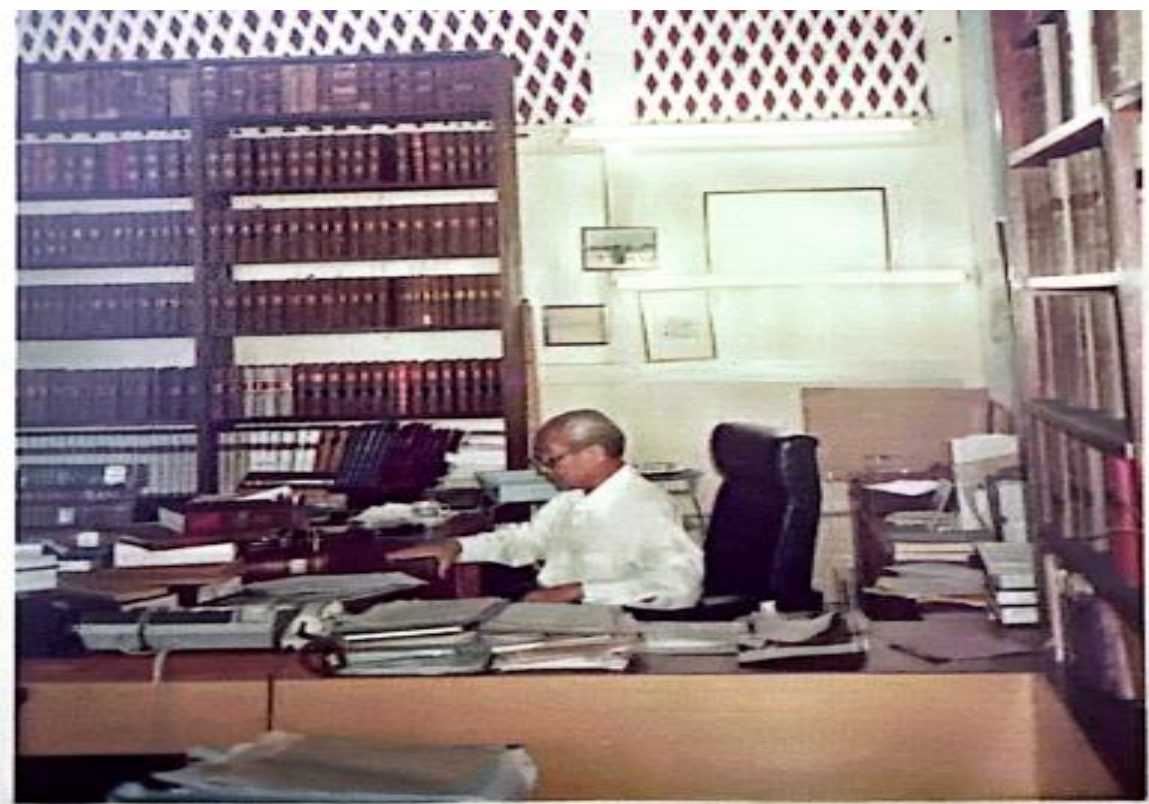
drafted the **Peoples Constitutional Proposals for Malaya in 1947** as the basis for independence.

To give us a sense of the person he really was, these questions were posed to **Cecil Rajendra**, himself a senior lawyer, poet and recipient of the Malaysian Bar Lifetime Achievement Award 2019 and close friend to Lim Kean Chye (“**LKC**”):

**Question (Q)1: Cecil, can you please let us know how you first met LKC and what is your earliest memory of him?**

I was chambering at Messrs Subbiah & Co when my pupil master Dato’ Subbiah informed me that LKC had intimated he would be pleased to move my call. Dato’ Subbiah said that this was a rare honour as LKC was the foremost civil lawyer in the country and rarely moved a call . . .

Subbiah urged me to make an appointment to see the man directly. At that time, LKC had his chambers in Bishop Street.



*Picture of Lim Kean Chye at his office circa 1989*

I duly made the appointment and went to his office. I arrived at 2.20 p.m. for my 2.30 p.m. appointment and was tartly informed by his secretary that LKC was in, but by 2.30 p.m., LKC meant 2.30 p.m.!

At precisely 2.30 p.m., I was ushered into his august chambers where the great man was seated behind a humongous desk reading a Jawi newspaper!

He had this imposing presence; and, quite honestly, scared me shitless!

I was asked a few perfunctory questions – mostly about poetry – then dismissed summarily after 10 minutes.

**Q2: Where did LKC first start his practice – was it in Ipoh or Penang?**

Contrary to popular belief, LKC did not commence his practice in Ipoh or Penang but in Singapore at his uncle's office. LKC read law at Cambridge.



*Photo of Chinese Society at Jesus College-Cambridge.  
Lim Kean Chye was seated in the second row, second from right (no tie).*



*Rowing in Cambridge*

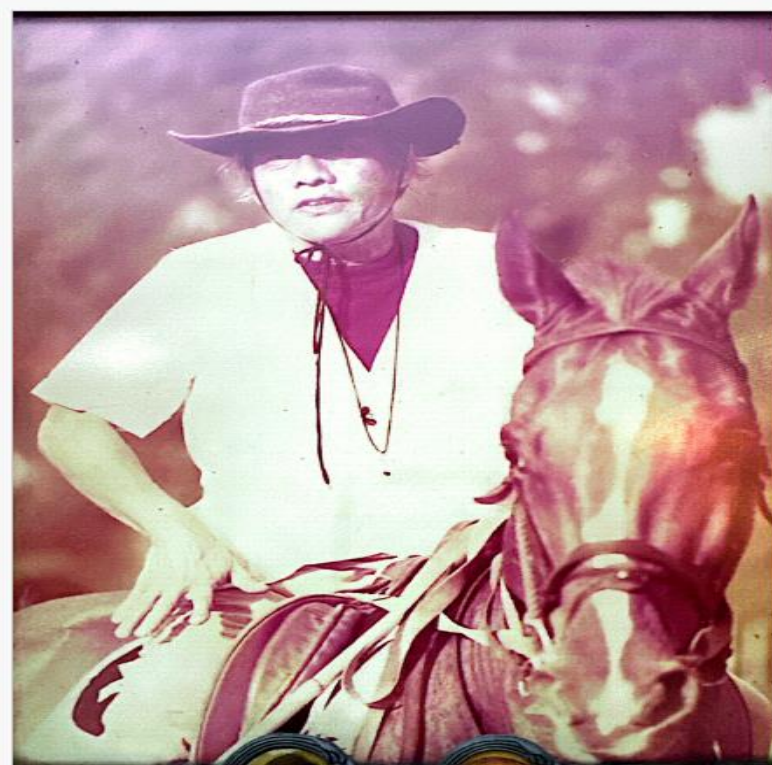


*With his life long friend*

**Q3: How would you describe LKC?**

Though not tall in stature, the man had a giant persona and presence.

I believe his reputation as a fearless freedom fighter, as an implacable opponent of Colonial Rule and peerless lawyer preceded him wherever he went.



Whenever he walked into a concert or conference hall, all eyes turned towards him . . . as if he was some sort of pop star.

I also noticed women found him particularly attractive. I recall sometime in the 90's – when LKC was in his seventies – a stunning T.V anchor lady, who was interviewing LKC, turned to me and remarked that she had never met a more attractive older man.

**Q4: Did he have any nicknames which you could make privy to us?**

You must be joking! Giving LKC a nickname?! Everyone addressed him as “Mr. Lim” or “Sir”. I was a little surprised his wife did not call him “Mister”!

**Q5: Can you recall any particular occasion where LKC was especially jubilant?**

I remember there was this durian ‘King’ tycoon in Balik Pulau who was about the same vintage as LKC . . . . He informed me that LKC was his lawyer in the 60's and had helped secure him vast durian plantations. Now, the man, like LKC, was a fan of popular music. Few people know that LKC was a close friend and drinking buddy of Jimmy Boyle – our country's legendary Jazz pianist and composer of ‘Putera Puteri’.

This durian ‘King’ – I forgot his name – was a keen follower of our Country and Western duo, ‘The Rozells’ (James and Kathy) and when he heard that Yours Truly was close to LKC he immediately invited us all for dinner . . .

The man was a superb cook and threw exclusive dinner parties for special guests at his private kitchen/diner in Balik Pulau town. The ‘King’ asked me what LKC's favourite dish was and I told him “tu-kha” (pork knuckle).

So, one Saturday evening we drove down to Balik Pulau. We also invited Eddy Choong – the badminton legend – who too was a fan of the Rozells and a childhood friend of LKC. Our host's special diner was set in a small house that comprised a kitchen, a dining room and a reception area for pre-prandial drinks. It was the perfect setting for a perfect meal with sparkling conversation over superlative dishes washed down with the finest whisky and wine. I never saw LKC happier or more animated. It was also the most memorable dinner party I've ever attended.

**Q6: Do you remember any favourite stories that LKC would love to tell?**

LKC's favourite story that he was never tired of retelling was about the time an external music examiner had come down from London to grade our aspiring young pianists. One evening he caught LKC playing the piano at a home dinner party and commented that LKC had the making of a concert pianist. LKC was never more proud of any other accolade. Incidentally, LKC continued playing the piano right up to his 103<sup>rd</sup> Birthday!



*Picture of Lim Kean Chye's piano at home*

**Q7: Did LKC have a signature saying – some words of wisdom perhaps?**

“Forget diets! Eat and drink everything – but in balance . . . the secret of long life is a beer!”

**Q8: What kind of a friend was he?**

If you were one of his chosen friends, you had a friend for life – loyal, supportive and generous to a fault.

There was a constant stream of friends who came visiting from all corners of the globe and not only LKC's contemporaries, but their children and grandchildren as well.

**Q9: What do you think he valued most in life?**

Life itself! Good food, good music, good conversation . . . whisky and wine etc.



**Q10: We are to understand that LKC moved your Call to the Bar. Is there any particular life lesson that you have learned from him that you would like to share for the benefit of all of us?**

LKC did not just move my call but argued and secured it. My call was objected to by both the Bar Council and the Attorney-General's chambers.

When LKC found out that their objections were based on nothing more than a minor typo in my papers, LKC went ballistic. He turned on the representatives from the Council and Chambers and demanded to know if they had nothing better to do with their time!

He charged them with abusing the High Court and wasting its resources . . .

I watched the newly appointed High Court Judge (who went on to be Chief Justice) turn pale as LKC continued his withering attack. The chastised representatives meekly withdrew their objections and sat down.

The lesson I learnt from this watershed episode was to never cower or be intimidated by high authority – be it; the Attorney-General, Bar Council or Judiciary.

Also, to be absolutely meticulous when filing any court papers!



**Q11: Can you share one case he conducted, where you had a chance to assist him, one that impressed the Bench and from which we can all learn from, especially the junior members of the Bar?**

A young engineer had his used car (price: RM3,000-00 only) wrongfully repossessed. Not given any notice, he assumed it was stolen, lodged a police report and left it at that.

Nine months later he received a summons from the insurers claiming unpaid instalments, late payment penalties, towing charges, interest etc, amounting to way over RM 3000-00.

He appealed to the LAC, and Yours Truly appeared for him in the Sessions Court.

I thought it was a slam-dunk matter as we had proof of up-to-date payments whereas the Plaintiffs had flouted every rule on repossession in the book.

However, much to our astonishment, we lost!

The reason given (and this was in the Court's Grounds of Judgement) – the Plaintiffs were a highly reputable International Assurance Company represented by the largest Law firm in the country whereas the Defendant was an indigent Legal Aid client. (It may be pertinent to point out here that in the early days of the LAC, legal aid lawyers were disparagingly referred to as “5 and 10 sen lawyers”; and one High Court Judge even decreed that people who can't afford lawyers should not come to Court!)

Anyway, I approached LKC and inquired if he would do the appeal on behalf of LAC.

He readily agreed.

Now working with LKC, some old-timers will tell you, is tougher than going up against him. He was an incredible taskmaster – extremely meticulous & thorough in his preparation. Assistants had to be at his beck and call at all hours of day or night; leaving no stone unturned, he sent me scurrying for authorities and precedents in multiple Commonwealth Jurisdictions – India, Australia, Canada as well as the UK. The appeal first came up before a judge that had practiced at the Perak Bar.

When our case was called, I rose to inform the Court that Mr. Lim Kean Chye would be leading the Appeal.

The Judge then embarked on a long ramble on how honoured he was to have LKC appear in his court, what a great advocate LKC was etc etc.

LKC tugged on my gown and asked: ‘What is that fellow going on about?’

I answered: “He’s singing your praises . . . saying how much he had learnt from you when he was in practice and that he has too much of respect for you to hear the Appeal without bias.” After his eulogy, the Judge duly recused himself.

Three months later the Appeal was fixed before another judge who also recused himself. Finally, a judge was sent down from KL to hear the Appeal.

LKC had prepared a 12-point appeal. He opened with his first 2 grounds to which the Respondents’ 3 lawyer panel had no answer. Within 10 minutes our Appeal was allowed with costs. The High Judge also delivered a stinging rebuke to the Sessions Court Judge.



*Lim Kean Chye, Catherine Eu & Rebecca at opening of Permatang Clinic, Penang (1997)*

***At the opening of the Permatang Legal Aid Clinic.  
Rebecca is the wife of Cecil Rajendra.***

**Q12: When and why did he withdraw from legal practice?**

The Bar Council had called for an EGM to discuss the state of the Judiciary. A lawyer, beholden to the Government of that era obtained an ex-parte injunction to stop the Bar Council from convening the EGM.

The Bar Council appointed LKC to head a team of lawyers to set the injunction aside. The matter came up before a KL judge who was known to be subservient to the Executive.

After LKC had made his submission, the judge indicated that he had more or less made up his mind and that the Council had no case.

At that juncture, LKC closed his file and walked out saying there was no point in wasting his time. The Judge appealed to LKC to come back but to no avail.

On returning to Penang, LKC decided to shut down his firm saying he had lost all respect and confidence in our Judiciary.

**Q13: What was ‘life after the Bar’ really like for him?**

LKC devoted most of his time to his website called “The Penang File” which focused on the food, people and cultural events in Penang. He received a steady stream of

acolytes and attended concerts, conferences, art exhibitions and hosted several intimate dinner parties. LKC was also a voracious reader receiving books and journals from all over.



*Replanting the bald part of Youth Park*

**Q14: Were there many major changes to his life that affected him in a big way?**  
I believe LKC's most significant life-changing event was when the British put out a "WANTED" poster offering a \$5,000/- dollar reward for information leading to the arrest and capture of LKC – described in the poster as "A stocky London-trained barrister".

**WANTED** 139

SINGAPORE POLICE

**\$10,000  
REWARD**

The above reward will be paid by the Commissioner of Police, Singapore, to any person or divided between the persons giving information leading to the arrest of the two under-mentioned Chinese, or in the event of single arrests at the rate of \$5,000 for each man arrested.

1. **EU CHOOI YIP.** English and Chinese speaking male Cantonese, age about 33 years. Height 5' 5½". Slim Build. Wears spectacles. Born Kuantan. One time translator and sub-editor Nan Chiao Jit Pao.



2. **LIM KIAN CHYE.** English speaking Hokkien, age about 32 years. Height 5' 6½". Strong Build. Born Penang. Barrister-at-law.



The information may be given at any time and at any place, either verbally or in writing to any Police Officer or by letter addressed to P.O. Box 5000. The identity of the informant will not be disclosed.

This offer of reward is valid until 30th October, 1951.

Dated 17th July, 1951  
Ref. Nos. 228(7)4124. 248(P)4124. Reward Notice No. 11-51.

This was ostensibly related to his anti-colonial activities calling for the ouster of the British. LKC was then forced to go into hiding.

**Q15: If he could drop by and visit tomorrow, what would your ideal day spent together look like?**

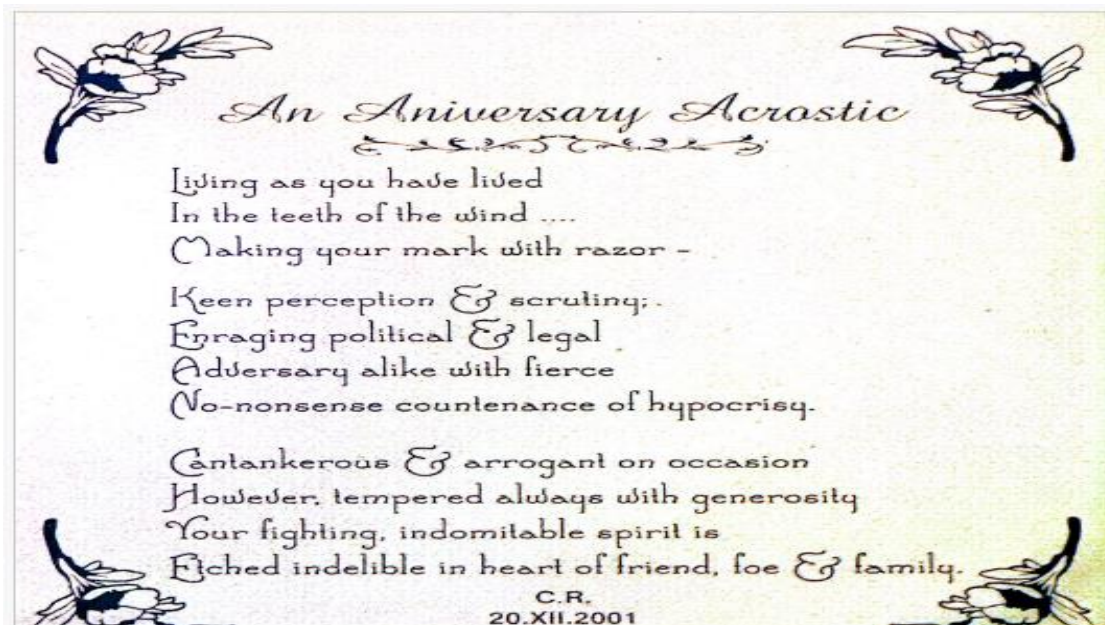
We would meet around 6.30 p.m. at the E&O Hotel for a glass of wine. We would then proceed to the Dewan Sri Pinang for a Jazz or classical concert – of which he would be deeply critical!

After the concert, we would repair for dinner to one of his favourite restaurants in Pulau Tikus or Tanjong Bungah; or, if it was rather late, to Gurney Drive (Song River) for satay and beer. LKC would then insist we go to his home for whisky, chocolates and cigars. And there we would drink, chat, listen to music and his stories till the wee hours of the morning.

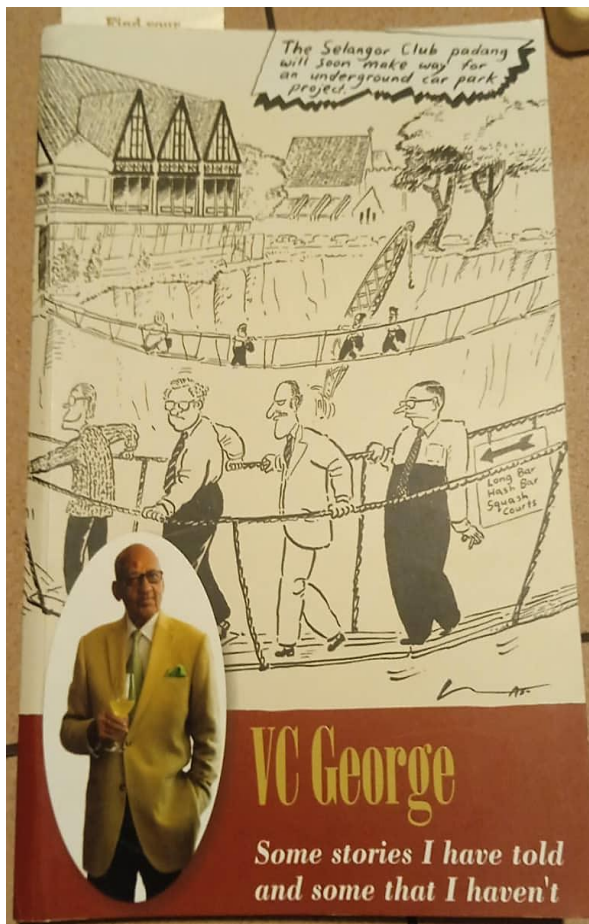
As a postscript, I would like to add that LKC was an exceptional connoisseur of wine, whisky, good food, books and music.

He was equally at home in a kopi-tiam having a char koay teow or dining on pheasant in a palace with Sultans.

Few in our profession can boast of that elegance and breeding.



**Poem composed by Cecil Rajendra in honour of Lim Kean Chye's 82<sup>nd</sup> birthday**



Kean Chye and I served on the Bar Council for years. And when the Bar Council acquired its new Bar Council Room at Wisma Central, Jalan Ampang, the members of the Council celebrated the move to the new premises by having lunch at the restaurant at Club Aman, the misnamed Sikh Sports Club, as guests of GTS Sidhu who was also a member of the Council. I drove Kean Chye to Club Aman and while waiting the arrival of the others, both of us moved to the Bar that was at one end of the restaurant. There was on display, on the Bar behind a glass panel, of bottles of some of the better brands of brandies and whiskies.

Now, Kean Chye held himself out, and was widely recognised, as an expert on whiskies. I myself was known to know my whisky. I asked the young Sikh Bar-Keep for two glasses of whisky. The Bar-Keep reached for a bottle of White Label on the shelf behind him. "Not White Label, thank you," I said. "Give us Chivas Regal, a single shot, each with 3 cubes of ice." The young man looked a little lost and so I pointed to the Chivas Regal bottle on display on the Bar. He poured out two singles from that bottle. "Cheers!" said Kean Chye and "Cheers!" said I, as we sipped from our glasses. We took a second sip. "I think he has watered down our whisky with too much ice," complained Kean Chye. I agreed. "Baiya!" I said addressing the Sikh Bar-Keep, "Add one more shot in each of our glasses – too much ice." As the boy was doing that, the manager of the Club restaurant turned up and demanded of the Bar-Keep in English, no doubt for our benefit, "What are you doing, Mundyah? All those bottles on the Bar are for display only and the contents is coloured water, you idiot!". "Sorry, Boss," said the manager, now addressing Kean Chye. "The only whisky we serve

\* FROM "SOME STORIES I HAVE TOLD AND SOME THAT I HAVEN'T" - BY TAN SRI DATO' VC GEORGE  
 to the Judge. The stunned silence was broken by guttural sounds that emanated from the throats of Lim Kean Chye as if in the throes of an apoplectic attack, furious at the impertinent affront to the Judge by his client. PRELIMINARY

The Judge, to his credit, did not lose his cool, but albeit wryly, declined the invitation and proceeded to his motor car accompanied by the Registrar of the Court. As the rest of us were trooping down to the car park of the mill, Sothi was heard to make a vintage Sothi comment, "The man's an idiot. If he was going to serve whisky at a Court proceeding, that would have been a first, and the least he could have done was to provide sufficient glasses for the lawyers as well, to join the Judge in a toast to Justice!"

Query: What happened to the case?

A: Look up the 1982 Malaysian Current Law Journal (CLJ) 129 and [1984] 1CLJ 291.

### 38. Lim Kean Chye

Lim Kean Chye MA Cantab., (apparently in Cambridge if you get a BA, it is converted to an MA after a few years!) is the last of the scions of a distinguished family of lawyers of Penang, father, Lim Cheng Yean MA Cantab., sister PG Lim MA Cantab., and brother Lim Kean Siew MA Cantab. As I am writing this, Lim Kean Chye, in his late nineties, has recently ceased bicycling on the leafy lanes of Penang for exercise, continues to be in complete control of his faculties, continues to be as irascible as ever and continues to have his two shots of whisky each evening.

here is White Label." Kean Chye: "VC, you don't tell this to the others and I won't tell." "Right ho," I said, but alas how could I keep this plum of a story to myself. Kean Chye has never forgiven me for not keeping my mouth shut.

**Excerpts from the book "Some stories I have told and some that I haven't" by VC George (Tan Sri Dato' VC George, former President of the Bar Council [1974-1976]), retired Court of Appeal Judge – pictures of the book and excerpts obtained from Cecil Rajendra and reproduced with permission.**



**PASSION AND PURPOSE**  
***By: Roshunraj Rajendran***

The life of a lawyer is filled with trials (pun intended) and tribulations. The journey to becoming a legal practitioner in itself has its own bumps, cracks and obstacles. It takes years of dedication and sheer will power to accomplish this challenging feat.

The life of a law student alone is an arduous expedition. For some, law school is a walk in the park while for others it is a walk in Jurassic Park. It is a quest that requires plenty of reading, unlocking the memory prowess of an elephant and possibly living a life of solitude that would pull at the heartstrings of a hermit.

After that, there is the vocational element for certain law students who would want to become a "qualified person" as provided under the Legal Profession Act 1976. This includes the Bar Professional Training Course or the Certificate in Legal Practice; both of which come with their own set of challenges.

Moving on, there is the prescribed period of pupillage for qualified persons of nine months where chambering pupils learn about the profession under the supervision of a senior lawyer. At the end of the term, the pupil will be admitted to the High Court of Malaya as an Advocate and Solicitor.

Why then do many choose to be a part of the legal community? Does it stem from the notion that being a lawyer is a fast-track way to amassing wealth or perhaps is it the allure of the courtroom that beckons? Perchance could it emanate from family pressure to become a lawyer? Whatever the reason may be, we should not be quick to judge people for the choices they make as we do not know the options they had to choose from.

The more important question is why do lawyers choose to remain in legal practice? For many, what drives them to practice stems from pure and unadulterated

passion. Passion in its rawest form drives motivation, motivation drives discipline, and discipline drives success.

However, for those who feel that they took upon this profession due to circumstances of life and not one of their own volition, this poem by Stephen King could lend some solace.

We did not ask for this room or this music.  
We were invited in.  
Therefore, because the dark surrounds us,  
let us turn our faces to the light.  
Let us endure hardship to be grateful for plenty.  
We have been given pain to be astounded by joy.  
We have been given life to deny death.  
We did not ask for this room or this music.  
But because we are here,  
let us dance.

It is a fact that not all lawyers chose to be lawyers. Yet because they have become a part of the legal world, a privilege not shared by many, they could breathe a second life into their career by directing their efforts into an area of practice which they are passionate about.

Perhaps looking at the profession from a new perspective could inadvertently imbue them with a sense of purpose. Rhonda Britten has once said that "Purpose directs passion and passion ignites purpose." Passion for law is not a prerequisite to do well as a lawyer. One may be passionate about something other than law yet they still have an opportunity to excel as a lawyer, provided they utilize the law to drive that passion.

The legal profession has exhibited boundless potential for growth and it has come a long way since its origins in ancient Greece and Rome and continues to evolve on a daily basis. As society progresses so does the law.

There are vast numbers of emerging areas of law and it is without a doubt that a neophyte to the legal world, despite not having chosen law as a career path, will be able to nestle into an area of law which they are passionate about being involved in.

Thus, more opportunities have been made available for both newcomers and those who are already in practice to venture out into newfangled areas of law.

### **Privacy and cybersecurity laws**

For a tech wiz, privacy and cybersecurity law would be a perfect fit as they would be able to apply their knowledge and passion in assessing cyber threats that plague the digital world. This is an area of law that is practically future proof as our reliance on technology is increasing. Lawyers practicing in this area of law would contribute immensely in reducing privacy and security risks.

These laws also vary by industry, depending on the parties the lawyer deals with. A good privacy and cybersecurity lawyer needs to understand how existing laws for example, the Personal Data Protection Act 2010, can apply to their clients.

### **Environmental Law**

For those who are passionate about the environment, environmental law is an area of law that would allow them to make a positive impact on the issues relating to the environment and natural resources.

This area of law examines the ways humans interact with and impact the environment. Working in environmental law means your primary objective will be not only to protect the natural world in integral ways but also to maintain and bolster legislation that determines the use of natural resources. Duties of an environmental lawyer include defending clients in areas of practice such as air and water quality, mining, deforestation, pollution and more.

While we often think of environmental lawyers as those who are actively working to protect the environment, there are also many lawyers within this field of law who are employed by businesses and corporations to ensure companies remain compliant with local and state policies and laws. In this instance, these lawyers may have to defend their organizations should they be found in violation of these policies.

## **Entertainment Law**

For a movie buff or music aficionado, the entertainment industry could be an appealing area to practice law. They work with celebrities, their management team or a production company. Entertainment lawyers secure talent releases, advise their clients on jobs and contracts, and negotiate fee arrangements. These details only scratch the surface of all the possible avenues a lawyer could take within this field.

An entertainment lawyer would need to be familiar with the likes of the Copyright Act 1987 and the Communications and Multimedia Act 1998. Applicable laws would differ depending on the entertainment industry with which they are practicing, be it music, publishing or television.

## **Animal Law**

Animal law is well suited for lawyers whose primary objective is to stand for the rights of animals along with the organizations and allies that serve and represent them. Animal law lawyers are deeply involved in defending the legal status of endangered wildlife and domesticated animals as well as exposing inhumane animal facilities and practices with the aid of legislation such as the Animal Welfare Act 2015 and the Wildlife Conservation Act 2010.

The abovementioned areas of law are merely a drop in the vast ocean of promising areas of law for lawyers to consider. It goes to show that regardless of individual interests and passions, there is an area of law for everyone to excel. Equipped with a foundation of purpose and the flame of passion, lawyers, even reluctant ones can contribute in monumental ways to the advancement of the legal profession.



## **PRIORITIZING MENTAL HEALTH IN THE LEGAL PROFESSION**

***By: Tan Jing Xuan, Carina***

For many in the legal profession, the term “lawyer’s mental health” may seem contradictory, due to the prevailing perception of legal practitioners as resilient, stoic figures adept at navigating high-pressure situations. Inherent in this perception is the expectation that legal professionals often possess an incredible ability and capacity to handle stress and difficult situations without undergoing mental health challenges. Consequently, there exists a deeply ingrained cultural ethos within the legal community that prioritizes professional obligations over personal well-being, often relegating discussions surrounding mental health to the periphery of legal discourse.

However, the reality is that the demanding nature of legal work often has detrimental effects on the mental well-being of legal professionals. Although there are many 'wellness' resources and programs available online, many of these are not focused on and tailored to the distinct challenges faced within the legal industry.

### **Mental Demands of Legal Practitioners**

It goes without saying that being a legal practitioner is a highly demanding job, not so much physically as mentally. Legal practitioners often spend significant time conducting thorough research to build strong cases for their clients involving legal precedents, statutes and case law to develop compelling arguments as there are often high expectations placed on legal practitioners by their clients to represent their interests to the best of their ability. This entails striving for favourable outcomes in legal proceedings, whether through negotiations, settlements or litigation. The pursuit of success can create immense pressure and anxiety, especially when faced with challenging cases or high-stakes situations.

Moreover, the traditional setup of some law firms, characterized by competitive environments and the pressure to meet targets, may contribute to a negative perception of mental health issues. In such environments, admitting vulnerability or seeking support can be perceived as weakness or incompetence, potentially damaging a legal practitioner’s reputation within the

firm. Consequently, many legal practitioners may suffer from mental health issues in silence, reluctant to acknowledge their struggles for fear of impacting their career or relationships with colleagues.

It is undeniable that communication is key in the legal profession. Legal practitioners need to maintain regular contact with clients, colleagues and other stakeholders, responding to emails, phone calls and attending meetings. Additionally, managing multiple cases simultaneously demands effective time management and organizational skills to balance competing priorities. While some thrive in this environment, it can be overwhelming for many, leading to stress, anxiety or even burnout.

Throughout their careers, legal practitioners face the challenge of achieving work-life balance. The nature of legal practice often requires long hours and unpredictable workloads, with legal practitioners working late nights, weekends and holidays to meet deadlines, prepare for court appearances, or address urgent client matters. According to research, some legal practitioners feel they're always at the beck and call of their bosses and clients. Many legal practitioners don't take vacations. They fear the negative consequences that might follow: "Will this be counted against me when I'm up for partnership?" they ask themselves. So, they grind away. And this unremitting pressure to perform hurts their mental health. This kind of intense work schedule often encroach upon personal time, making it challenging to maintain a healthy work-life balance.

Furthermore, some legal practitioners may face difficult decisions when it comes to prioritizing work commitments over personal responsibilities or vice versa. Balancing professional responsibilities with family obligations demands careful consideration of one's values, priorities and long-term goals. Excessive work hours can strain relationships with family and loved ones and missing important family events due to work commitments can lead to feelings of guilt, resentment and alienation for both the legal practitioners and their family members.

Given these multifaceted demands, it's essential for legal practitioners to prioritize their mental health and well-being. Neglecting one's mental health and well-being can lead to significant challenges that not only jeopardizes the individual's career but also the interests of their clients. Untreated mental health issues can exacerbate stress and impair decision-making abilities, potentially impacting the quality of legal representation provided. Failing to



address mental health concerns may create additional strain on colleagues and loved ones, as the effects of burnout and emotional distress can spill over into personal and professional relationships. Neglecting mental well-being may also result in a loss of passion for the practice of law, causing individuals to forget the reasons they entered the legal profession in the first place.

### Your Mental Health should be a Top Priority

It's crucial to understand that maintaining mental health is not just a personal necessity but also a professional imperative. A sound mind is fundamental to making reasoned decisions, maintaining professional relationships and upholding the ethics of the legal profession.

For legal practitioners, acknowledging the importance of mental health is the first step towards fostering a more sustainable and fulfilling career. By prioritizing mental well-being, legal practitioners can enhance their ability to cope with the pressures of their work, improve their concentration and efficiency and ultimately provide better representation for their clients. There are numerous strategies that legal professionals can adopt to safeguard their mental health such as: -

1. It is essential for legal practitioners to recognize when they are feeling overwhelmed and to take a break from their work. They should make time for activities that relax both the mind and body, which can be extremely beneficial in reducing stress levels and improving overall mental health. This may include taking a walk outside or engaging in physical activities such as yoga or running. According to relevant scientific research by the American Psychological Association, there is an 18% lowered risk of depression among adults who engage in just half the recommended amount of physical activity per week — the equivalent of about 75 minutes of brisk walking — compared with adults who reported no physical activity.
2. Seeking professional help through counselling sessions or participating in support groups can offer valuable assistance in addressing underlying issues contributing to feelings of anxiety or depression. Engaging with a trained therapist or joining a

community of individuals who share similar experiences can provide a supportive environment for exploring emotions, developing coping strategies and gaining insights into managing stress effectively. By actively participating in counselling or support group sessions, legal practitioners can receive personalized guidance and encouragement tailored to their specific needs, fostering a sense of empowerment and resilience in overcoming mental health challenges.

3. Prioritizing adequate, restful sleep is essential for maintaining optimal mental health. Sleep plays a crucial role in replenishing energy levels and enhancing cognitive function during waking hours. Aim for 7 to 9 hours of sleep each night to support overall well-being. Implementing strategies such as establishing a consistent bedtime, practicing meditation or relaxation techniques and creating a conducive sleep environment can promote longer and more restorative sleep patterns. Additionally, minimizing caffeine consumption and refraining from alcohol before bedtime can contribute to improved sleep quality. By incorporating these practices into their routine, legal practitioners can enhance their sleep hygiene and support their mental and emotional resilience.
4. Establishing realistic expectations and setting boundaries is essential in maintaining a healthy work-life balance and protecting mental well-being. Legal practitioners should set limits on their workload and avoid overcommitting themselves to prevent burnout and reduce stress levels. By prioritizing tasks and allocating time for activities they enjoy, legal practitioners can cultivate a sense of fulfilment and enhance their overall mental health and well-being. Remember to make time for hobbies, interests, and relaxation, as engaging in activities that bring them joy can significantly improve their mood and resilience.
5. Seek guidance from experienced senior legal practitioners. Drawing from their wealth of knowledge and years of experience in the legal field, senior legal practitioners can offer valuable insights and specialized advice tailored to the intricacies of legal practice. By engaging in mentorship or seeking informal consultations with seasoned professionals, legal practitioners can gain a deeper understanding of the nuances of the legal profession and learn effective strategies for managing workload, navigating ethical dilemmas and maintaining mental well-being. Senior practitioners can provide



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practical tips for handling challenging cases, negotiating complex legal matters and balancing professional responsibilities with personal life. Their mentorship can also help legal practitioners to develop essential skills such as client communication, case management and advocacy techniques. Additionally, building relationships with senior legal mentors fosters a supportive professional network where a legal practitioner can seek guidance, exchange ideas and receive encouragement during both triumphs and setbacks in their legal career. Embracing mentorship opportunities allows the legal practitioner to tap into the collective wisdom of experienced legal professionals, empowering them to navigate the challenges of the legal profession with confidence and resilience.

### Nurturing Self-Worth and Passion in Law

Amidst the balancing act of professional responsibilities and personal life, legal practitioners must not lose sight of the most crucial element in this equation: themselves. Self-esteem and confidence play pivotal roles in a legal practitioner's career. They not only fuel the perseverance needed to tackle complex cases but also bolster the resilience required to navigate the profession's ups and downs. Moreover, cultivating a passion for the law and finding joy and fulfilment in practice are essential for sustaining motivation and commitment over the long term.

Embracing the beauty of the legal profession involves appreciating the profound impact that diligent legal work can have on society and individuals' lives. It's about recognizing the privilege and responsibility of upholding justice and the rule of law. For many legal practitioners, this sense of purpose and the intellectual stimulation provided by the constantly evolving nature of legal work are what initially drew them to the field. Therefore, nurturing this passion and maintaining a healthy sense of self-worth are just as important as any other aspect of professional development. By doing so, legal professionals can ensure that they not only survive but thrive in their careers, contributing positively to their well-being and the legal community at large.

## Conclusion

In conclusion, the push to prioritize mental health within the legal profession cannot be overstated. The intricate challenges and high demands characteristic of legal work necessitate a robust approach to mental well-being. Legal practitioners are encouraged to adopt proactive strategies, ranging from engaging in physical activity and seeking professional support, to ensuring adequate rest and establishing healthy work-life boundaries. Moreover, the cultivation of self-worth and a passionate engagement with the law itself can serve as foundational pillars for a fulfilling career.

Embracing these practices not only enhances the personal lives of legal professionals but also elevates the quality of service they provide to their clients. It fosters a legal community that is not only adept at navigating the complexities of the law but is also resilient in the face of the profession's inherent stresses. Ultimately, by placing mental health at the forefront of professional priorities, the legal field can cultivate an environment where legal practitioners thrive, underpinned by well-being, balance and a reinvigorated passion for justice. This paradigm shift is essential not just for the benefit of individual practitioners but for the legal profession as a whole, ensuring its integrity, effectiveness and humanity in the pursuit of justice.

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**REPORT ON THE INTERNATIONAL MALAYSIA LAW CONFERENCE [IMLC  
2023]**

***By: Shareena Nair binti Muhammad Ridhwan***

The International Malaysian Law Conference (IMLC 2023) began with a Welcoming Address by Karen Cheah Yee Lynn (“Karen Cheah”), President of the Malaysian Bar, who welcomed the Conference delegates to the resumed physical Conference since the last Conference was held via Zoom due to the Covid-19 pandemic. The theme for the 2023 Conference was “Navigating the Present Exploring the Future”. Karen Cheah highlighted that the objective of this Conference was not only to facilitate local members of the Bar but also international members of other Bars to create a bond while networking. She also warmly welcomed delegates from the government legal services, members of the Judiciary as well as in-house counsels.



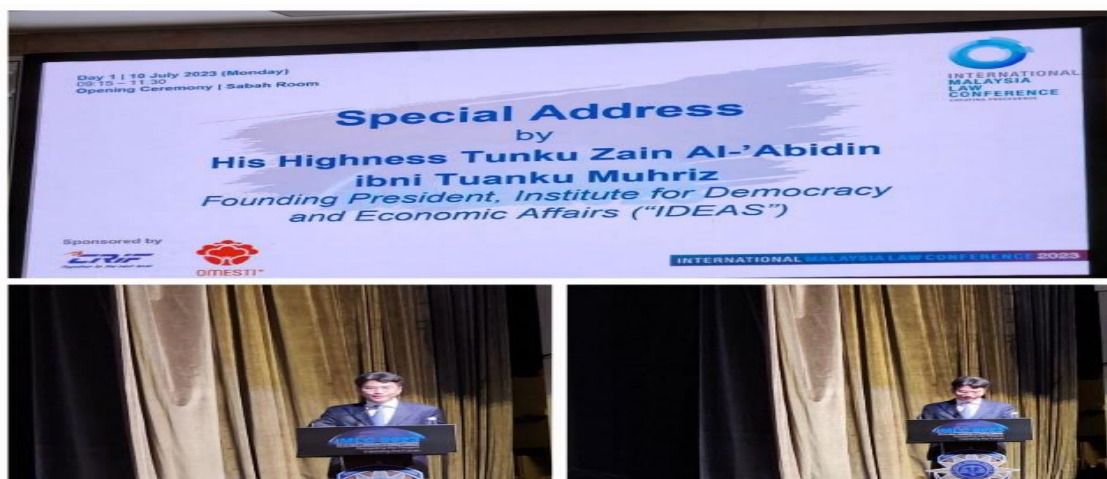
The Malaysian Bar President’s speech was followed by the Opening Speech from The Right Honourable Tun Tengku Maimun Binti Tun Mat, Chief Justice, Federal Court of Malaysia. She acknowledged the vision that brought about the holding of this Conference which strived to uphold the reputation of the Malaysian Legal System by members of the Malaysian Bar. She also reminded the members of the

Malaysian Bar to always prioritize the dignity of the profession and also to advocate truth and justice to the court in their duties as officers of the court first.



There was then a Special Address given by His Highness Tunku Zain Al-'Abidin ibni Tunku Muhriz who is the Founding President of the Institute for Democracy and Economic Affairs ('IDEAS'), the Pro-Chancellor of UCSI University, a Trustee of Yayasan Munarah, Yayasan Chow Kit, The Jeffrey Cheah Foundation and an Honorary Major in the Malaysian Territorial Army. Tunku Zain has been interviewed by numerous television programmes, magazines and newspaper features and is also a regular columnist for *The Star* since 2018.

IDEAS had worked on many occasions hand in hand with the legal fraternity in terms of policy making and lobbying for the policies to be passed in the Dewan Rakyat and Dewan Negara.



The Conference was officiated with a Keynote Address by the Honorable Prime Minister, Dato' Seri Anwar Ibrahim. He extended his heartfelt gratitude to the legal fraternity whom had supported and fought for him during his difficult times and for justice as a whole.



There was also an exclusive and interactive Question and Answer session between Dato; Seri Anwar Ibrahim and Christopher Leong, past President of the Malaysian Bar (2013-2015).



I had the opportunity to meet many senior lawyers such as our very own Ms Petra Onn Beng Ai, the former Selangor Bar Chair, Ms Kokila Vaani Vadiveloo and Madam Latheefa Koya, who spoke on “Exploring Contemporary Issues in Criminal Law: Perspectives and Insights”.



I also met other delegates from the Penang Bar and KL Bar. I was very lucky to have met Justice Vazeer Alam bin Mydin Meera, who was then sitting as a Judge of the Court of Appeal.



I attended an exclusive session titled “CHAMPIONING PRO BONO: Mobilising The Legal Profession to Make a Difference.” The panelists were Rangunath Kesevan, past President of the Malaysian Bar (2009-2011), Commissioner of Human Rights,

SUHAKAM, Ravi Nekoo, former chairperson of the Bar Council National Legal Aid Committee and Petra Onn Beng Ai, former Chairperson of the Bar Council Legal Aid Centre, Penang. The session was moderated by Dato' Abdul Fareed Abdul Gafoor, past President of the Malaysian Bar (2019-2020) and co-Chairperson of the Bar Council National Legal Aid and YGBK Committee.



These 2 pictures below of the Penang Legal Aid Centre were shared by Petra Onn Beng Ai. It is notable that the Penang Legal Aid Centre was first established in 1980.





There was also a session called “Out of the Mouth of the Babes: Interviewing Children in Custody Disputes”. The panelists were the High Court Judge, Puan Evrol Mariette Peters, Dr Diana Lea Baranovich and Judge Ida Malosi. The discussion was moderated by Siew Choon Jern. This session was the most interesting discussion to me especially Justice Mariette’s views on how a child should be treated and how to handle the parents in divorce proceedings.

## Wishes of the child

- Child’s reasoning ability
- Whether Child has been influenced

6



A Main Plenary Agenda session was held titled “Intersection of Rule of Law and Human Rights in Malaysia: Unlocking Opportunities for a Democratic Future”. The topic discussed covered many overriding or pressing issues locally and internationally on breaches of justice and the role of human rights advocates in such cases. The panelists were Dato’ Ambiga Sreenevasan, Past President of the Malaysian Bar (2007-2009), Lim Wei Jiet, Former Co-Deputy Chairperson, Bar Council Constitutional Law Committee and Phil Robertson, Deputy Director, Asia Division, Human Rights Watch.



I also attended a session called “Effective Advocacy: Exploring the Future”. The panelists were Dato’ Mary Lim Thiam Suan, Judge of the Federal Court, Datuk Vazeer Alam bin Mydin Meera, (then) Judge of the Court of Appeal, Raja Eileen Soraya, Chairperson of the Bar Council Advocacy Training Committee, Alan Wong Teik Wie, Partner in Zain, Megat & Murad and Foo Joon Jiang, Partner in Gan Partnership.

This session was conducted via role play by the moderator Raja Eileen Soraya and the panelists Alan Wong and Foo Joon Jiang who demonstrated the DOs and DON’Ts of counsels conducting trials or hearings through Zoom/Video proceedings. Justices Dato’ Mary and Datuk Vazeer also commented and addressed the wrongdoings of counsels exhibited during Zoom hearings where some lawyers have not taken the hearings as seriously as hearings conducted in a physical courtroom.



In conclusion, I extend my heartfelt gratitude to the Penang Bar for sponsoring me as a participant of IMLC 2023. I left the Conference having met the best of people and gained knowledge and experience.



## **ARTIFICIAL INTELLIGENCE LOOKS AT LAW AS DATA AND NOT AS LAW**

***By: Lim Yong Lin***

Artificial intelligence (AI) has revolutionised various industries, and the legal field is no exception. Traditionally, the law has been seen as a set of rules and principles, however, AI sees the law as data. This perspective allows for the analysis and processing of legal information, leading to improvements in the legal domain.

In the ongoing debate on AI there are contrasting viewpoints, while some argue that AI is replacing lawyers, some say that lawyers possess critical thinking skills that AI currently lacks.

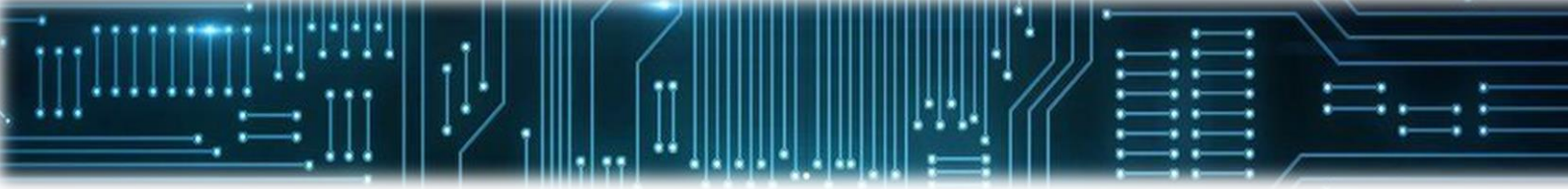
With the current progress on the technology and the introduction of Large Language Model (LLM), such as powerful models like OpenAI's ChatGPT (Generative Pre-trained Transformer), AI has become an integral part of the legal profession. Law is a profession of words, and LLM is simply really good at that. AI's application extends beyond automating tasks, analysing data and generating legal documents. It signifies a paradigm shift in the legal field, introducing a novel approach for integrating AI with the law.

In the legal field, AI is still in its early stages of adoption. It has the potential to identify patterns in legal data, predict case outcomes, identify areas of risk and develop new legal strategies. Today, AI can even generate legal documents. This allows legal professionals to focus on more complex tasks, such as providing strategic legal advice and representing clients in court. Hence, AI will not replace a lawyer – yet!

AI's impact on the legal field can be summarised in three key areas:

### **Automating tasks**

AI excels at automating generic and repetitive tasks. AI-powered software can draft contracts, review documents for relevant information and conduct legal research in a fraction of the time it would otherwise take by a human lawyer. By freeing up time



previously spent on these tasks, AI enables legal professionals to focus on more complex and strategic aspects of their work.

### **Analysing data**

The legal field generates vast amounts of data, including case law, statutes and regulations. AI system can analyse rapidly these data, extract valuable insights, identify patterns and predict outcomes. Let's say a legal team is handling a large volume of documents related to a case. AI software can quickly scan and analyse the documents to identify specific keywords, relevant information or potential evidence, helping lawyers locate the most crucial details without manually reviewing each document individually. By leveraging AI's data analysis capabilities, legal professionals can make more informed decisions, assess risks and develop effective legal strategies. AI's ability to rapidly process and analyse complex legal information provides a powerful tool to enhance legal research and augment human expertise.

### **Generating legal documents**

AI technology offers the capability to generate accurate and tailored legal documents using predefined templates and algorithms. AI can also assist in generating legal briefs by automatically analysing relevant case law, extracting key arguments and creating a structured and coherent document. Lawyers can use these AI-generated briefs as a starting point, allowing them to focus on refining and tailoring the arguments to fit the specific context of their case. This saves time, reduces errors and ensure adherence to legal requirements.

While AI cannot replace human expertise and judgement, it serves as a valuable tool that enhances the capabilities and efficiency of legal professionals in the digital age. The transformation of legal practice is evident through the automation of tasks, data analysis and document generation which are just a few examples of how AI is reshaping legal practice. While the use of AI in the legal field is still in its early stages, however, it has the potential to revolutionise the way the law is practiced. By viewing the law as data, AI can streamline workflows, enable informed decisions and deliver legal services more efficiently and accurately.

### But AI Looks At Law As Data And Not As Law

We explored the significant transformation brought about in the legal industry by AI, perceiving “the law as data”, which has brought about significant transformations in the legal industry. However, it is crucial to fully grasp the phrase “AI sees the Law as data” as “AI sees the Law as data but not as Law”. While AI serves as a valuable tool in the legal field, it is essential to acknowledge the challenges it faces in practical legal applications, particularly in niche areas of law or smaller jurisdictions. Drawing a parallel, let’s consider the example of a knife: while it is an indispensable instrument in culinary settings, it can also pose potential danger if not used appropriately.

While technology has made significant advancements, it still faces challenges when dealing with complex legal knowledge, especially in niche areas of law or smaller jurisdictions. According to Neil Sahota, AI relies on previously acquired knowledge and patterns to make an independent decision. At the same time, cognitive computing collects data, giving humans insights to help them make a decision.<sup>1</sup>

In simple terms, despite being fed with a vast amount of data, AI still lacks critical thinking abilities and a practical understanding of the law. It relies solely on detected patterns and does not possess the same understanding of the law as a human lawyer. This results in a garbage-in-garbage-out<sup>2</sup> scenario, hindering its effectiveness in addressing complex legal matters.

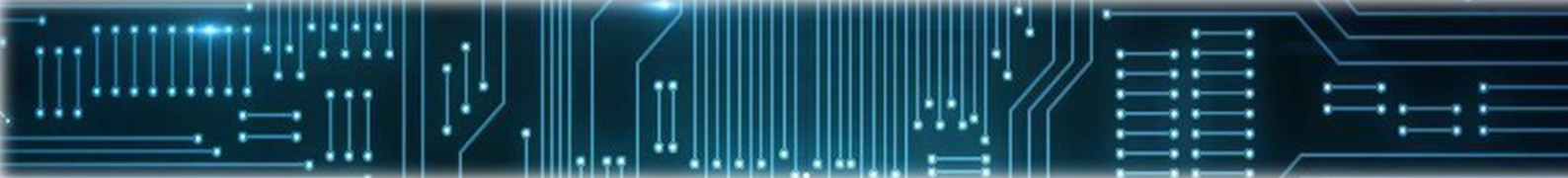
### Accuracy

Acquiring high-quality data for an AI system poses a challenge in the legal field. While diverse sources are used, ensuring accuracy becomes difficult once resources such as published books, Wikipedia articles and a refined “Common Crawl” repository are exhausted. Unlike human lawyers who learn from handpicked reliable sources, AI models are fuelled by both labelled and unlabelled data, potentially leading to erroneous outcomes. Additionally, if trained on inaccurate data, AI models may generate hallucinations or fabricate facts.

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<sup>1</sup> <https://www.neilsahota.com/what-is-artificial-intelligence-how-does-it-work/>

<sup>2</sup> <https://saifr.ai/blog/garbage-in-garbage-out-why-data-quality-is-critical-to-ai>



AI systems are only as good as the data on which they are trained. If the data is inaccurate, the AI system will also be inaccurate. A New York lawyer is facing possible sanctions after citing fake cases generated by OpenAI's ChatGPT in a legal brief filed in federal court<sup>3</sup>. The incident occurred in a personal injury lawsuit against Avianca, where the lawyer used ChatGPT to supplement his legal research. However, the judge discovered that six of the cited cases were bogus, leading to doubts about the reliability of the lawyer's sources. The mistake gained media attention and prompted discussions about the need for verification when using AI-powered tools in legal research. Therefore, one should approach AI as a helpful starting point, rather than a definitive source. Interestingly, the judge wrote in the sanctions order that there is nothing "inherently improper" in lawyers using AI "for assistance," but he said lawyers' ethics rules "impose a gatekeeping role on attorneys to ensure the accuracy of their filings."

AI system may also have limited awareness of different legislation and jurisdictions. In a niche area or a small jurisdiction, AI models might not be effectively trained to address specific needs. Therefore, legal professionals should exercise caution when relying solely on AI-generated content for legal drafting. It is important to consider the limitations and potential inaccuracies of AI models and ensure that human expertise and verification are incorporated into the process.

### **Bias Concerns**

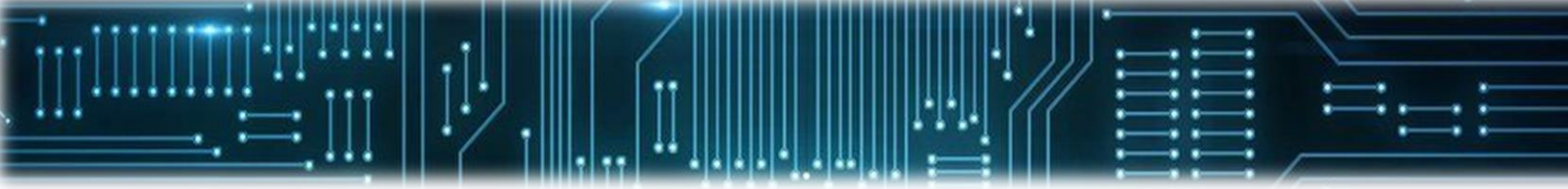
Similar to their human counterparts, AI systems can exhibit biases.<sup>4</sup> Biased training data or algorithms design can result in unfair treatment of certain individuals or groups. Using historical data that reflects past mistakes can lead AI systems to replicate these biases.

AI systems can learn from the data they are trained on. This means that if an AI system is trained on data that is biased, the AI system will also be biased. For example, if an

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<sup>3</sup> <https://www.reuters.com/legal/new-york-lawyers-sanctioned-using-fake-chatgpt-cases-legal-brief-2023-06-22/>

<sup>4</sup> <https://www.bloomberg.com/graphics/2023-generative-ai-bias/?embedded-checkout=true>



AI system is trained on a dataset of legal cases that predominantly favours men, the AI system may be more likely to recommend that men be given lighter sentences than women.

The bias in AI systems can damage public trust in the legal system. For example, if people believe that AI systems are biased against them, they may be less likely to report crimes or cooperate with law enforcement. Addressing this challenge requires mechanisms for detecting, measuring, and mitigating biases in AI systems, ultimately promoting fairness and equity in the legal field.

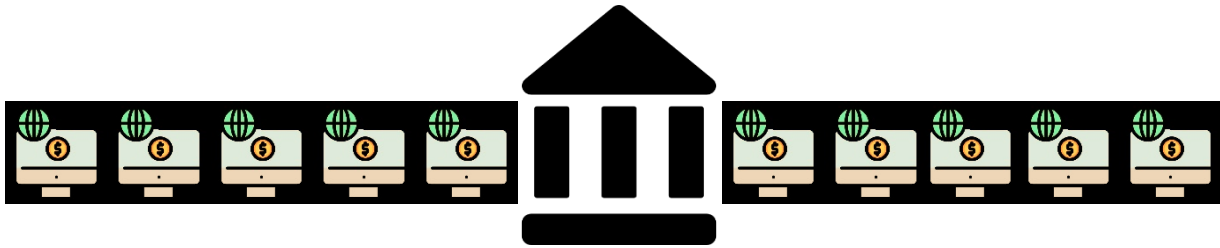
### **Transparency**

Understanding the decision-making process of AI systems is crucial in the legal field. Transparency builds trust among legal practitioners, clients and the public. By providing clear explanations and justifications for AI-generated outcomes, we can ensure ethical and responsible use of AI. Achieving transparency involves explainable AI techniques, documentation of AI processes and external audits of AI systems.

### **Conclusion**

Despite these challenges, the use of AI in the legal field is expected to continue growing. AI has shown us the potential to pave the way towards an “AI Lawyer” but not as a replacement of human expertise and judgement yet. Even though there are many examples online where AI falls short, the reality is that it is very suitable for handling legal tasks under the supervision of a knowledgeable legal expert.

While AI cannot replace human expertise and judgment, it serves as a valuable tool that, when combined with legal technology, enhances the capabilities and efficiency of legal professionals in the digital age.



**THE BANK'S DUTY OF CARE IN INTERNET BANKING IN MALAYSIA - SHOULD  
THE BANK'S DUTY OF CARE BE ELEVATED FROM THE TRADITIONAL BRICK  
AND MORTAR BANKING?**

***By: Sarmila Vani Arumugam***

**1. INTRODUCTION**

The banking industry has been revolutionized around the world with the emergence of new technologies. The traditional brick and mortar banking system have been taken over by the electronic banking system. The first step towards electronic banking was the introduction of Automated Teller Machines (ATM) in the 1980's in Malaysia<sup>1</sup>. Then, the Malaysian Electronic Payment System (MEPS) Sdn Bhd consortium was formed. MEPS enabled customers to operate their banking activities in any ATM machine via a shared network service. Thereafter, in the 1990s telebanking was introduced. Telebanking was a virtual banking system wherein banking services was provided via tele-communication devices using the Automated Voice Response (AVR) technology. Subsequently the evolution of time and revolution in science and technology introduced the internet which was often described as the "Information Superhighway" as it covered limitless destinations<sup>2</sup>. Thus, the banking industry embarked on a new phase with the introduction of internet banking in mid 1990s. Banking transactions were being carried out within seconds with a click of the finger via internet banking. In Malaysia, internet banking was introduced since the year 2000 among the local banks and since the year 2002 among the foreign banks.

Whilst internet banking has been beneficial to the current e-commerce world, it has also verily posed concerns on security issues. Many incidences of losses suffered by

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<sup>1</sup> Guru, Balachandher & Vaithilingam, Santha & Ismail, Norhazlin & Rajendra, Prasad. (2000). Electronic Banking in Malaysia: A Note on Evolution of Services and Consumer Reactions. Journal of Internet Banking and Commerce. 5. 10.1007/978-3-322-86627-1\_15.

<sup>2</sup> Jain, Rohit. "Legal Framework of Internet Banking in India." Issue 1 Int'l JL Mgmt. & Human. 4 (2021): 699.

customers whose funds have been reported missing from their banking accounts have been reported around the world. An example would be in the United States in the year 2005, where a businessman in Miami took legal action against his bank for being negligent by their failure to inform him about a virus that enabled hackers to hack into his personal computer and stole the sum of USD\$90,000 from his account. He alleged that the bank's failure to notify him amounted to the bank's negligence. Investigations revealed that a virus called "coreflood" was present in his computer. The bank denied liability based on the reason that their system was not hacked and the loss occurred due to the hacking of the customer's computer.

In Malaysia, The Star on 17th August 2022 had reported that a contractor lost RM3700.00 from his account as it was transferred out from his account to two other accounts without his knowledge and consent. It was reported that the victim did not receive any One Time Password (OTP) from the bank's server and therefore the transfer was done without his knowledge<sup>3</sup>. Questions can be raised on how the transfer was done via the server without an OTP sent to the customer.

The customers primarily place their funds in the banks with the trust and confidence that their money will be safe from any theft or loss. However, when the customers' funds go missing or are stolen by unscrupulous parties, the issue on the security levels adhered by the banks to protect the funds belonging to their customers are then raised. What would be the duty of care of the bank when a customer's money is transferred out of their account without their knowledge or without the OTP being sent to the customer? Does this amount to a breach of duty of the banks to safeguard the customer's money? Do the customers have a reciprocal duty to safeguard their funds to prevent loss?

Malaysia has been reported to be the sixth country in the world to be vulnerable to cybercrime cases resulting in RM1 billion of losses yearly<sup>4</sup>. Malaysia has also seen an increase of 6.5% in international scams and fraudulent banking cases from 9986 cases in 2012 to 10,636 cases in 2013 (CHAVAN, 2013).

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<sup>3</sup> <https://www.thestar.com.my/news/nation/2022/08/17/contractor-discovers-rm3700-withdrawn-from-bank-account-without-consent>

<sup>4</sup> The Star Online. (2014, September 23)

<https://www.thestar.com.my/news/nation/2014/09/23/cyber-crime-malaysians-sixth-most-vulnerable/>

## 2 DUTY OF CARE IN INTERNET BANKING

### 2.1 The Bank's duty of care to the customers

Financial institutions are put in a situation whereby they need to adapt with the progression of technology in their business and they have been taking steps to expand their use of networking technology in their daily operations<sup>5</sup>. However, new developments always come with new challenges especially in the e-commerce world with the implementation of internet banking which poses a threat to the relationship between bankers and their customers. Privacy and security issues are the main concern of the costumers regardless whether they have experienced cybercrime or not<sup>6</sup>. This new development has posed the question on whether the banks and their customers can still continue to perform their role in internet banking as in traditional banking. This article is mainly focussed on the bank's duty of care in internet banking.

Generally, banks are under a duty to exercise reasonable care towards their customers. In **Hedley Byrne & Co Ltd v Heller & Partners Ltd**<sup>7</sup> it was held that a bank is under a duty to take reasonable care in advising its customers as the bank knows that its advice will be relied upon by the customer. Subsequently, in **Barclays Bank plc v Quincecare Ltd**<sup>8</sup> the Quincecare duty was established. In this case, Steyn J had laid down the following principles:

- i. The bank and the customer have a debtor creditor and agent principal relationship;
- ii. By honouring cheques and carrying out the customer's instructions to transfer money the banker acts as the customer's agent. As the agent to the customer, the banker owes a duty to exercise reasonable skill and care to carry out the principal's instructions; and

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<sup>5</sup> Wenninger, John. "The emerging role of banks in e-commerce." Available at SSRN 716642 (2005).

<sup>6</sup> Mohd Zulkifli Muhammad, Farah Hanan Muhamad, Caturida Meiwanto Doktoralina, Dzulrifli Mukhtar, Mohd Fahmi Ghazali, Muhammad Khalilur Rahman (2021), Internet Banking of Islamic Banks: Issues of Security and Privacy.

<sup>7</sup> [1964] AC 465

<sup>8</sup> [1992] 4 All ER 363

- iii. This duty is a duty in tort and also an implied duty in the contract between the bank and the customer.

A bank must not make payment if it has reasonable grounds to believe that the order for payment was fraudulent or is not authorised by the customer. When a bank is put “on inquiry” it has a duty to investigate the fraudulent instruction in a way a reasonable banker would do. If after being suspicious the bank proceeded with the payment without any effort to clarify its doubt, the bank would be plainly liable. This duty of care of the banks was later referred in many judicial decisions including in the decisions of the Malaysian courts.

The case of **Lipkin Gorman v Karpnale Ltd**<sup>9</sup> had followed this decision and adopted the test of a reasonable banker who when suspicious would consider a possibility of fraud. However, the court elaborated that when a bank does not have reasonable grounds to suspect an act of fraud, it should honour the mandate of the customer by disbursing the payment. The court said mere suspicion would not qualify as reasonable grounds for the bank to refuse payment as banks are not amateur detectives.

In **Singularis Holdings Ltd (In Official Liquidation) v Daiwa Capital Markets Europe Ltd**<sup>10</sup> the court found that there were obvious and glaring signs that the director of the customer company was committing fraud when money was channelled to third party accounts by his instructions to the bank. The bank was aware that the company was in bad financial shape and there might be creditors. The bank was held to be negligent and liable to refund the money to the customer as it had breached its Quincecare duty.

In **Abdul Rahim Abdul Hamid & Ors v Perdana Merchant Bankers Bhd & Ors**<sup>11</sup> the Federal Court held that a bank has reasonable care when executing a customer’s orders. A bank should not carry out an order of a customer when it is put on notice of obvious dishonesty in the order given. When money is transferred from a customer’s account without being authorised by the customer, the bank is held to be negligent. In

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<sup>9</sup> [1989] 1 WLR 1340

<sup>10</sup> [2017] EWHC 257(Ch)

<sup>11</sup> [2006] 5 MLJ 1

## **Malayan Testing Laboratory Sdn Bhd v Standard Chartered Bank Malaysia Bhd**<sup>12</sup>

the court held that the bank should have conducted verification to determine that the payments are made to the right person. The High Court stressed that it is the primary duty of the paying banker to ascertain that the correct person is paid. The High Court in this case had also followed the Singaporean case of **Bank of America National Trust and Savings Association v Herman Iskandar & Anor**<sup>13</sup> where it was held that a bank must make reasonable efforts to contact a customer to get the correct instructions from them.

### **2.2 What is the bank's duty of care in internet banking?**

In internet banking, unauthorised transactions often take place. An unauthorised transaction is when money is transferred out of an account without the customer's knowledge and without the customer receiving the OTP or TAC number from the bank's server. This can happen when the server involved in internet banking is compromised and the OTP or TAC number is not sent to the customer but to the scammer causing an unauthorised transaction.

From the above decisions, an inference can be drawn to the internet banking system which is to what extent is verification done by the banks before approving a transaction. Does the bank system's verify that the OTP or TAC number is sent to a particular customer? Do the banks ensure that the OTP reaches their particular customer? This would be the degree of care relevant to internet banking that differs from traditional banking. In traditional banking, customers are physically present in bank counters to authorise the payments. However, in internet banking it is the practise in most banks that an OTP or TAC number is sent to the customers to identify that the instructions are coming from the customer. Having said that, should the duty to ensure that the said OTP reaches the correct person be imposed on the banks as part of their duty of care? In many scams, the OTP or TAC number does not reach the customer as the server is compromised by the scammers. Hence, transactions take place without the customer's knowledge.

It was reported in The New Straits Times on 20<sup>th</sup> August 2020 that a nephrologist claimed that she became a victim of online banking fraud after she lost RM13,000.00

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<sup>12</sup> [2010]9 MLJ 94

<sup>13</sup> [1998] 2 SLR 265

from her account in CIMB Bank via three CIMB Clicks transactions carried out from 2.00 am to 2.30 am. The victim did not receive any TAC number from the bank and when she made the complaint to the bank she was told that if the scammer had withdrawn the money out of her account, there is no possibility of the customer recovering it<sup>14</sup>.

Recently, the UK court took a positive approach in an authorised push payment (APP) fraud. APP frauds take place when a customer is tricked to pay into a fraudster's account. In **Fiona Lorraine Phillipp v Barclays Bank UK Plc v, The Consumers' Association**<sup>15</sup>, in March 2018, the customer had transferred most of her and her husband's savings to a fraudster's account in United Arab Emirates. The money went missing and the customer could not recover it. The customer later brought an action against the bank based on the ground that the bank had a duty to exercise reasonable care and skill as identified in the 'Quincecare' duty. The bank denied liability as the customer herself had authorised the payments. The High Court held that there is no 'Quincecare' duty owed by the bank as the customer was deceived by fraudsters. The transfers were performed by the customer herself and not the agents. However, the Court of Appeal found in favour of the customer as the court held that banks must exercise reasonable care and skill to carry out the instructions or mandate given by the customers. Once the bank is put on inquiry, a reasonable banker should have investigated further. The Court of Appeal also held that the issue to be determined is whether a reasonable banker in March 2018 would have been put into inquiry on the nature of the transaction conducted by the customer. In this case the peculiar facts are that the customer transferred all hers and her husband's savings money, there was a high amount of money involved, unusual transactions took place, funds were transferred to United Arab Emirates, the transactions were conducted by the customer in not her usual branch and the transactions were conducted within a short period of time.

This decision has been an eye opening decision which should be considered by the Malaysian courts as well. The 'reasonable banker' marker has to be an evolving one as technology progresses. The primary contractual duty of banks is to act in

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<sup>14</sup><https://www.nst.com.my/news/crime-courts/2022/08/824025/doctor-claims-rm13k-missing-cimb-account-due-unauthorised>

<sup>15</sup> [2022]EWCA Civ 318

accordance with a customer's instructions. However, this primary duty would become impractical if the bank also has an opportunity to "second guess" a customer's instructions which imposes an obligation on them to protect the customer.

The reasonable banker's duties would differ according to the time of the crime considering the new technologies available. Therefore, a bank's duty of care towards its customers would be very much influenced by the development of technology.

### 3. CONCLUSION

To conclude, banks need to be vigilant in their duties especially in internet banking transactions where sophisticated technology is involved and must formulate strategies to form the best practices to protect their customers' interests and the integrity of the industry in compliance with its duty to act with integrity, professionalism and expertise in the conduct of the business, affairs and activities of an institution under **Section 47(1) of the Financial Services Act 2013**. Security measures such as multi layered authentication, biometric authentication, educating the customers, adopting a high technology fraud detection system and blockchain technology and using encrypted OTPs would help the banks to comply with their enhanced duty of care in internet banking. Banks also should have a detection system which stores the general characteristics or patterns of a particular customer's banking behaviour to enable them to detect any abnormal banking patterns such as in the case of **Fiona Lorraine Phillipp (supra)** where the Court of Appeal noted the peculiar facts of the transactions which took place. In the event such technology is adopted the banks would be able to detect fraudulent activities which would put them into inquiry on the authenticity of a transaction.

Traditionally in brick and mortar banking, the bank had the duty of care towards their customers to act according to the customer's instructions but in internet banking money is being transferred out of the banks without the customers' knowledge. Customers' data are also being exposed and exploited by third parties without the customers' knowledge. An unsecured banking environment would deter the customers from adapting to it and tarnish the industry's image. Therefore, the banks having contractual and fiduciary relationship with the customers owe a duty of care to the customers to safeguard their customers' funds. This duty of care today is a higher duty

of care compared with the traditional banking after taking into consideration the vulnerabilities and risks involved in internet banking. As was held by the Court of Appeal in **Fiona Lorraine Phillipp (supra)** the reasonable banker in the year 2018 would have been put into inquiry on the nature of the transaction conducted by the customer. The term 'reasonable banker' has to be an evolving one as technology progresses. Recently the Court of Appeal of Malaysia has held that banks even owe a duty of care towards third parties in **Koperasi Sahabat Amanah Ikhtiar Bhd v RHB Investment Bank Bhd**<sup>16</sup>. The court held that a bank has a duty to prevent its facilities from being used for fraudulent purposes.

Therefore, the banks do have a higher duty of care in internet banking towards their customers. Banks must ensure that they provide a safe, fair and professional banking environment and protect the rights and interests of the customers in the spirit of the **Financial Services Act 2013** and the **Islamic Financial Services Act 2013**.

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<sup>16</sup> [2022] 6 MLJ 722

## **THE INTERNATIONAL MALAYSIA LAW CONFERENCE 2023 (“IMLC”) REPORT**

**Venue:** Shangri-La Hotel, Kuala Lumpur  
**Date:** 10.07.2023 to 13.07.2023 (Mon – Thurs)

**By:** *Ng Giap Seng*

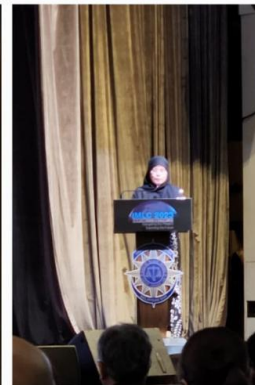
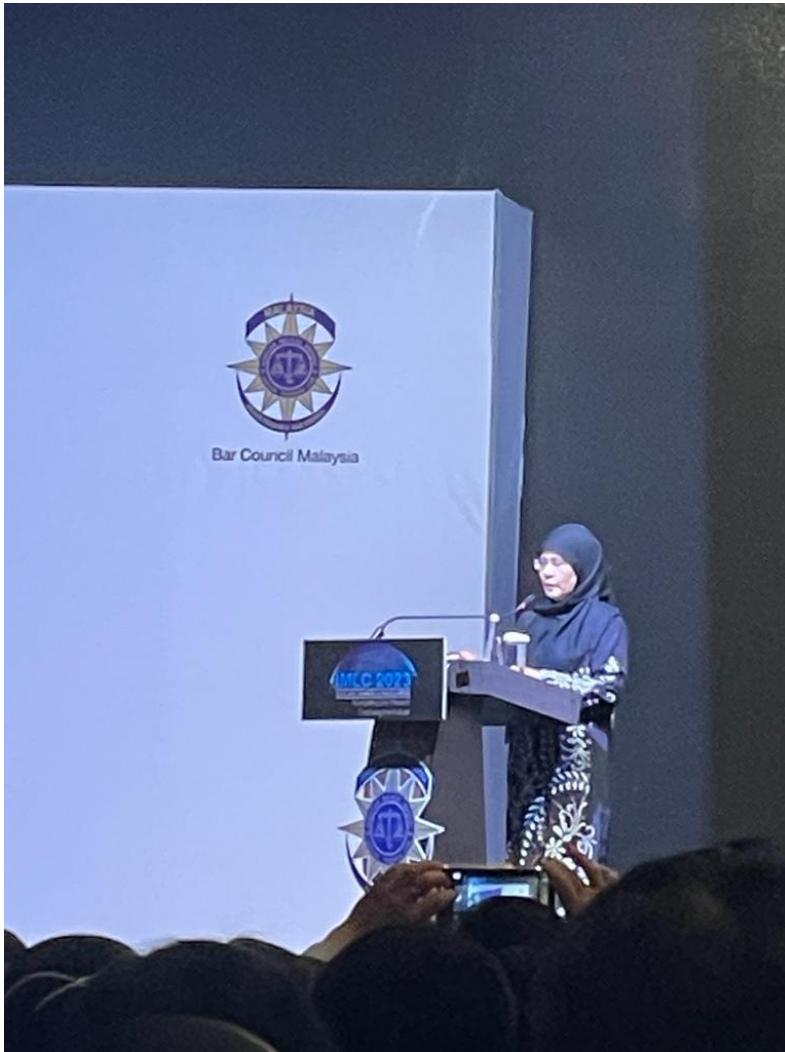
First and foremost, I would like to take this opportunity to thank the Penang Bar for sponsoring my participation in the IMLC event hosted in Kuala Lumpur.

### **Opening Ceremony**

The event kicked off with the welcoming address by the President of the Malaysian Bar, Karen Cheah, who introduced the objectives of the event alongside the keynote speakers. She was followed by our Chief Justice, the Right Honourable Tun Tengku Maimun who stressed about the need for an independent judiciary. Then, it was His Highness Tunku Abidin Muhriz, the son of the reigning Yang di-Pertuan Besar of Negeri Sembilan who gave his speech about the role of democracy. Thereafter, our current Prime Minister, Dato’ Seri Anwar Ibrahim attended as a special guest and spoke about the significance of justice.

These are some photos taken by me during the opening ceremony of the IMLC.









## **Plenary & Breakout Sessions**

All participants of the IMLC were required to attend the 8 Plenary Sessions and choose which of the 10 Breakout Sessions they would like to join. Some of the more interesting topics from the sessions are as below:-

### **Plenary 1 : Intersection of Rule of Law and Human Rights in Malaysia**

This was a talk relating to human rights issues by the leader of the famous Bersih and Bersih 2.0 movement, Dato' Ambiga Sreenevasan together with Lim Wei Jiet and Phil Robertson, discussing about how the new government of Malaysia should implement reforms to various statutes regarding the violation of civil and political rights, including the freedom of expression and association and peaceful public assembly. The panelists also gave their views on why our Prime Minister should take up the issues of human rights even in the face of significant resistance from the political opposition.

### **Plenary 6 : Words that Wound**

This was a talk by Dr. Venkat Iyer, a barrister and former law commissioner for Northern Ireland, about the legal dilemma of regulating hate speech and fake news in the digital age. Dr. Venkat shared about the pros and cons of imposing sweeping legislative measures to tackle hate speech and "fake news" in recent years, which had raised concerns on fears resulting in silencing dissent and discouraging free and frank democratic debate.

### **Breakout Session 1A : Prospect and Viability of Small Firm Practice**

This was a very interesting talk regarding the Group Law Practice "(GLP)", which consisted of opinions from speakers of various countries, i.e. Malaysia, Singapore and Hong Kong. During this session, the speakers had given their views on the pros and cons of having GLP in their respective countries, wherein Isaac Chan from Hong Kong was against the GLP because of some restrictions in the Hong Kong Law Practice, for example the conflict of interest in representing clients.

### **Breakout Session 3B : Sustainable Futures**

Another interesting topic was Environmental, Social and Governance Practices (ESG) hosted by our Penang High Court Judge, Justice Kenneth St James, together

with Edmund Bon, the well-known human rights lawyer from Kuala Lumpur, Lim Koon Huan and Elias Moubarak. In this talk, the speakers shared about the focus on ESG and how the ESG issues today affect the development of the country, the challenges organisations potentially face when looking to implement the ESG targets, as well as what governments can do to incentivize behavioral changes in relation to the ESG agenda.

#### Breakout Session 6A : Effective Advocacy

This was the most interesting topic among all others during the IMLC, in which the turnout rate to this session I believe was also the highest among the others that I joined. This talk included our Federal Court Judge Dato' Mary Lim and (then) Court of Appeal Judge Datuk Vazeer Alam Mydin Meera together with 3 practising lawyers namely Alan Wong, Foo Joon Liang and the moderator Raja Eileen. They had made videos showing a few scenarios on how counsels behaved nowadays during Zoom, how the counsels' behaviors during Zoom hearings affect the judges and what are the appropriate things to be done during a court proceeding.

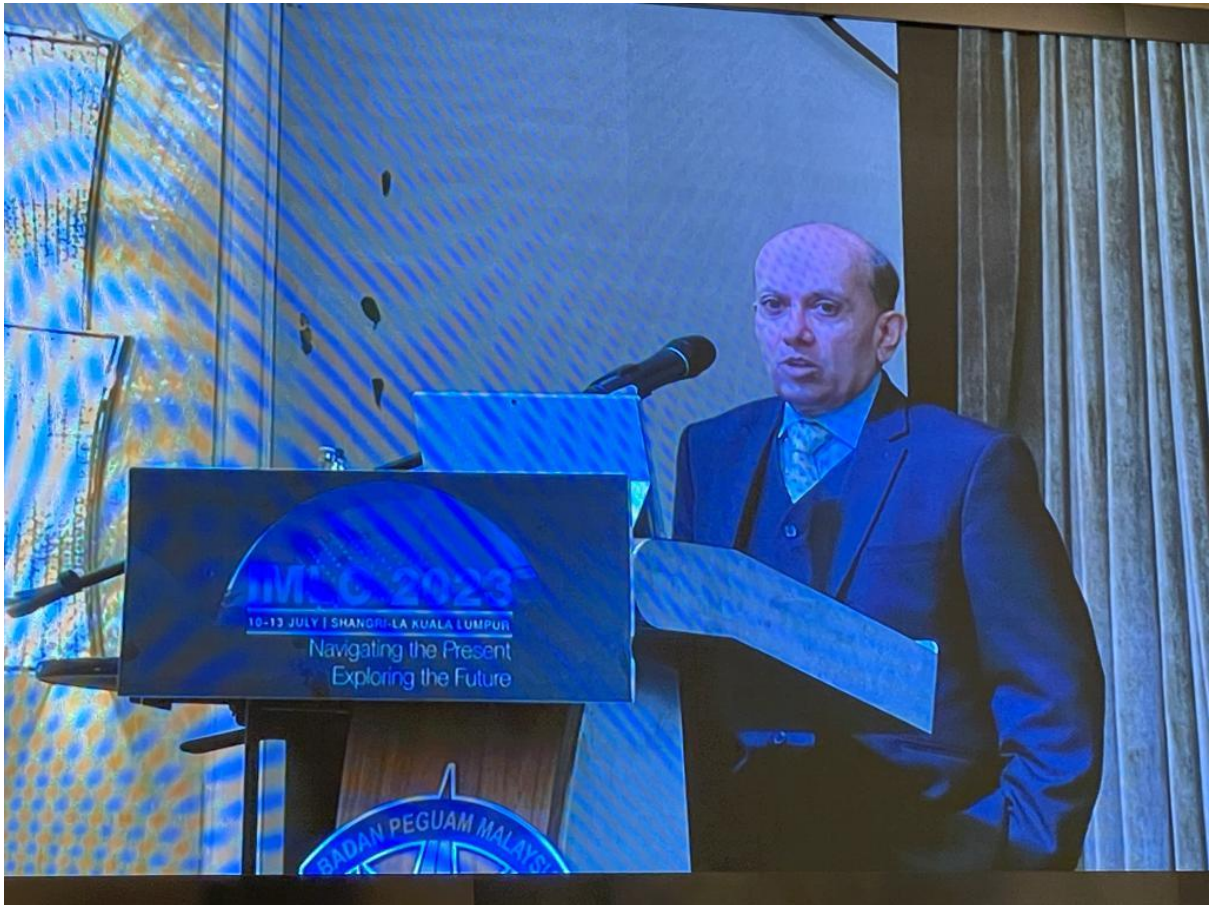
#### Breakout Session 8B : Contemporary Working Norms

This session was attended by our Penang High Court Judge, Justice Anand Ponnudurai with other practitioners. In this talk, the focus was on the recent raft of amendments to employment related laws which have inched Malaysia towards achieving present-day norms, but there still exists a chasm between where we are and the workplace of the future. What made this more interesting was the small debate about women's period sick leave entitlement which had been implemented in various other countries but not in Malaysia. Selvamalar gave her thoughts on why women should be given such additional leave but Mayank Francis from India did not agree to it. They then left it to Justice Anand to decide on which side to favour and the Judge "ruled" in favour of the gentleman, given his concern that human beings would most probably abuse the sick leave given to them.

Here are some photos that I took during the various sessions of the IMLC.









### **Closing Remarks**

After 4 days of talks and food in the IMLC, the event came to an end with Desmond Ho the Chairman of the organizing committee giving his speech appreciating all the parties and his team in organizing this successful event which had stopped during the Covid-19 Pandemic.

I am very grateful to be part of this event as well and would like to once again, thank the Penang Bar Committee for giving me this opportunity to join this law related conference.

# Conveyancing Practice: Hi-Tea and Engagement Session

Date: 09/05/2023

Venue: Royal Chulan Hotel, Penang











# Certificate in Fundamental Islamic Financing Documentation Seminar

Date: 21/06/23

Venue: Royale Chulan Hotel, Penang

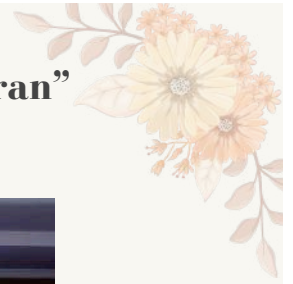
Speakers: Mr Lukman Sheriff bin Alias & Pn Sharifah Shafika Alsagoff



# Jamuan Hari Raya Kali Ke-22: “Nostalgia Lebaran”

Date: 13/05/23

Venue: Penang Golf Resort, Kepala Batas



## Iftar Ukhuwwah 8

Date: 27/03/2024 (Wednesday) 5:30p.m. - 10:00p.m.

Venue: Masjid Melayu Lebuah Aceh Pulau Pinang





# Penang-Perak Bar Games 2023

Date: 24/11/2023 & 25/11/2023

Penang

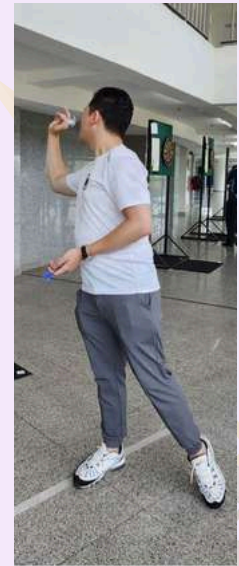
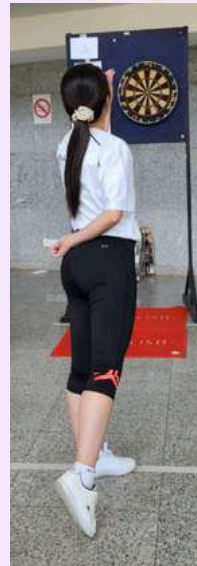




# Interstate Bar Games 2023

Date: 16/06/2023 & 17/06/2023

Terengganu







# Penang Bar Dinner

Date: 28/10/2023 (Saturday)  
Venue: St. Giles Wembley Penang



# Meet, Mix & Mingle

Date: 26/04/2024 (Friday)

Venue: Bailey's Penang









## **DO ME A FAVOUR**

**Do me a favour  
Don't lose your individuality  
When you walk on stormy seas  
You're much more than all these  
You will very soon see.**

**Do me a favour  
Never believe a prediction  
That does not empower you  
This is a pertinent condition  
For me and you.**

**Do me a favour  
Believe you're a soulful person  
With an extraordinary mind  
Don't let what anyone does  
Eclipse what you are.**

**Do me a favour  
Confide in me  
When your heart and mind are at war  
For I will be  
The wind beneath your wings.**



**YOU ARE LIKE..**

**A plain canvas  
You're open to ideas  
Like a paint brush  
You're willing to manoeuvre  
Like a painting  
You're filled with colours.**

**Like music  
Your laughter is melodious  
Like a musical instrument  
You're filled with serenade  
Like a love ballad  
You are expressive.**

**Like a poet  
You're deep, imaginative  
Like a writer  
You're articulate, eloquent  
Like an artist  
You're a dreamer, yet grounded.**

**Like gentle breeze  
You're filled with calm  
Like the wind  
You never escape me  
Like air  
You are to me.**

**Like the sun  
You're filled with magnetic charm  
Like the sky  
Your intellect is vast  
Like nature  
You go with the flow.**

**Like a shooting star  
You are rare, exceptional  
Burning brightly  
In the core of my heart  
My first born, my son  
You are just like... ME !!!**

## REMINISCING LAWYER (A SHORT STORY)

By: Anonymous

An old lawyer who had free time was seated at his office table. He had just woken up from after catching forty winks. Since he was free, he started to look around his office leisurely.

He stared at his big office room and reminisced about his first office where he started off his firm long ago, which was a small room he had rented cheaply. He snickered as he thought back upon his brazenness back then to start a firm with only little money on him.

He looked at his old signing pens that no longer have ink and fiddled with one of them. Each of those old signing pens had their own stories. They were either gifted to him by close friends, his family members or his higher-ups before he started his own firm. The old signing pens were once precious items he held close to his chest for his eventful days. Since some were so old the ink refills can no longer be found, they now merely serve as mementos which the old lawyer refused to throw.

As he put back the pen he was fiddling with, he looked at his wrinkly and shrivelled hands. He remembered the old days where he wrote and typed countless documents, amongst them some life-saving and well, some with nasty contents too. The advancement of technology that changed the legal field's method of preparing documents had taken him some time to get used to and now, he was adept at typing in his laptop instead of the typewriter.

He gazed at his old faded black robe hung at a corner of his room, and recalled the trials and hearings he did in court while wearing this robe, the first time he wore his robe being the day he was called to the Bar. His robe was of such good quality it was able to be preserved for decades and despite the faded black colour, it still looked so majestic to him.

His eyes wandered to his little library section with some law books either torn or coffee-stained. He had a slight flashback of the days he accidentally tore or stained the books when he speedily skimmed through them for caselaw and references. Some of the books he damaged were expensive and despite the big thick blotches of coffee marks that sipped through the pages, he continued to keep the books.

He stood up and walked to the storeroom where he placed his files. Looking at the room stacked with files, he remembered his toughest and kindest opponent lawyers, the best comrades he worked with either as a counsel or a solicitor and also the days he worked so hard for his matters that he forgot to sleep and sometimes even forgot to eat. All thanks to those files of cases as well that sustained the firm to date.

He walked around and looked from outside his partners' rooms. There had been several changes of partners throughout his life. Amongst the partners still around was his bestie who stood by his side through thick and thin and remained in the firm with him to date. He also reminisced on his ex-partners who despite having had good days with him, had left after constant or big conflicts that split them apart.

He paced along looking at his legal associates, pupils, interns and clerks' tables. The legal associates, pupils, interns and the clerks in the firm were always changing hence he had already lost count on how many of them he had in his firm but what was most important now were those that were still around. They certainly played such crucial parts to building up the firm besides his partners. He thought to himself that he should hold an appreciation dinner soon to thank his hardworking employees for the good work done this year.

He then walked back to his office room and decided to look into the big mirror hanging on the other corner of his room, the mirror he loved to hog, either to groom himself or to enjoy his charming self in court attire that always earned the gazes of ladies when he passed by. To his surprise, he saw no reflection of himself in the mirror. By then, he had realised that he had lived out his life.

When he looked back to his seat, there stood a man who looked like him but was not him. His son had taken over his firm after the old lawyer's demise and had decided to leave everything as it was in memory of the old lawyer. The proud old lawyer smiled looking at his son and slowly faded away. Before he disappeared, he said to his son despite his son being unable to see or hear him, "I'll be watching you from above, take care of this firm, my dear son. Good luck."



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