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The Legal System of Malaysia

Bahma Sivasubramaniam

Like many Commonwealth countries, Malaysia inherited its political, legal and administrative systems from England. To a large extent therefore, there are many similarities between the legal systems of both these countries. Malaysia practises a parliamentary democracy and has a constitutional monarchy, just as the United Kingdom. The principal law-making body is Parliament. The Government is comprised of three arms: the Legislature, the Executive and the Judiciary, in common with other parliamentary democracies such as the United Kingdom.

In Chapter 2 and Chapter 3 we explored the Scottish legal system and that of the United Arab Emirates. This chapter will focus on the Malaysian legal system, in particular the sources of law and the structure and the hierarchy of the courts.

Role of history and geography on current legal system

Malaysia became independent in 1957, part of the country, Malaya, having previously been a British protectorate. The law prevalent in Malaysia comprises of local laws and laws of England received into the Malaysian Legal System through the doctrine of reception. This doctrine alludes to the practice whereby a former colony of England consciously and willingly adopts its laws (Rheinstein, M, 1956). Malaysia has also adopted its criminal laws from India and its land laws from Australia, both of which are Commonwealth countries. From this it can be seen that the Malaysian legal system belongs in large part to the common law family of legal systems discussed in Chapter 1.

It should be noted that Malaysia is geographically divided into two. The first part is what is known as the Peninsular Malaysia, comprising of eleven States and two Federal Territories. It is where the capital of the country is and is the seat of the Federal Parliament. East Malaysia, which is in the Borneo subcontinent across the South China Sea, is made up of Sabah, Sarawak and the Federal Territory of Labuan. Although the differences of the legal systems in Peninsular Malaysia and East Malaysia are not substantial, both parts have their own courts. They do however have the Supreme Court and the Court of Appeal in common. For the purposes of this chapter, the focus will be on the system as applied and practised in Peninsular Malaysia unless otherwise stated.

Formal sources of law

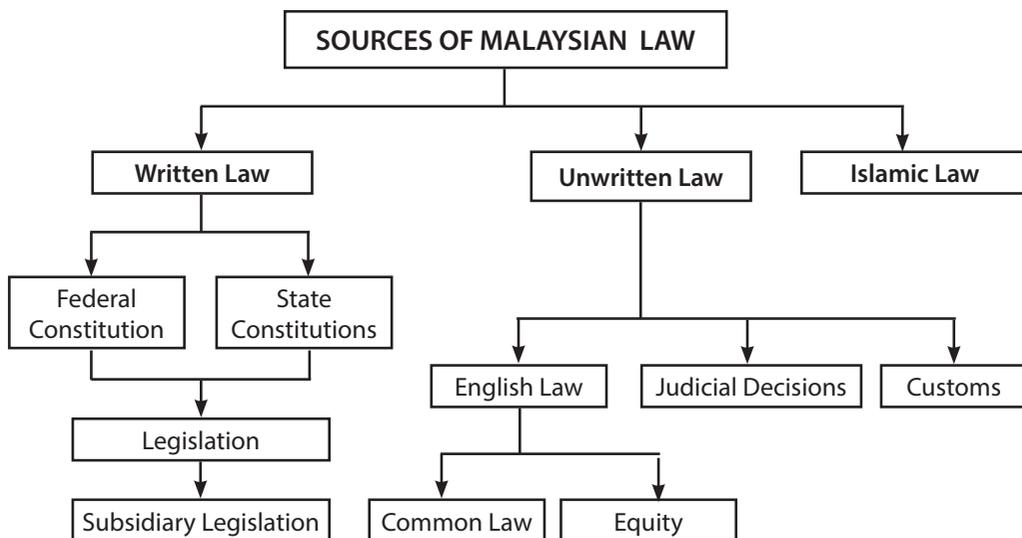


Figure 4.1: Formal sources of law

Sources of law insofar as relevant to this chapter simply mean where law originates from. These include constitutions, legislation, judgments of courts and secondary sources such as practice, customs, and tradition. Islamic Law is another source of law. Thus the laws in Malaysia may be categorised into three main groups: written, unwritten, and Islamic laws.

■ Written Law

Written laws are laws that are contained in formal instruments such as Constitutions and Legislation. The primary source of written law in the country is the Federal Constitution. State Constitutions too are sources of written law in Malaysia.

□ Federal Constitution

The Federal Constitution of Malaysia is the foremost legal instrument and contains 181 provisions, called Articles. These Articles cover a myriad of issues such as the structures of the Federal and State Governments, the legislative powers of Parliament and State Legislative Assemblies, the fundamental rights of the individual, the jurisdiction of the superior courts and many more.

The Federal Constitution is the **supreme law** of the land. Any law passed must be consistent with the Federal Constitution.

Article 4 states:

Supreme Law of the Federation

This Constitution is the supreme law of the Federation and any law passed after Merdeka Day* which is inconsistent with this Constitution, shall to the extent of the inconsistency be void.

*Merdeka Day – Independence Day – 31st August 1957

The powers of Parliament to legislate are contained within the parameters of the Federal Constitution. Its powers to legislate are not unfettered. Should Parliament pass any law that is *ultra vires* (beyond its powers) under the Federal Constitution, it can be challenged in a court of law. Should the court find that the challenged Act is unconstitutional, that Act (or parts of it as the case may be) can be struck down. Unlike the United Kingdom parliament, the doctrine of parliamentary supremacy is not applicable in Malaysia. In the case of *AJ Thian v Government of Malaysia* [1976] 2 M.L.J. 112, 113 the Lord President (as the Head of Judiciary was then known) Tun Suffian had this to say:

“The doctrine of supremacy of Parliament does not apply to Malaysia. Here we have a written constitution. The power of Parliament and State Legislatures in Malaysia is limited by the Constitution and they cannot make any law as they please.”