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AN INTRODUCTION TO THE MALAYSIAN LEGAL SYSTEM

Second Edition

By Wu Min Aun

[Kuala Lumpur: Heinemann Educational Books (Asia) Ltd., 1978;
138pp. Paperback \$5.50]

This is the second edition of the book first issued in 1975 and reviewed in 1975 JMCL 378. The author states that he has made minor corrections to the book and also made a number of additions to take note of recent legislation and to deal with several new topics. Unfortunately there have been significant changes to the law since 1st February 1977 and the book is to that extent already dated.

The author has repeated the statement in the first edition that Islam was brought to Malaysia from India rather than from Arab countries. No authority is given for this statement, which cannot stand in the light of modern research. At page 3 of the book he refers to a number of materials on Malay law but omits to mention Liaw Yock Fang's edition of the Undang-Undang Melaka, 1976. He quotes Hugh Clifford at p. 9 but does not give the source of the quotation.

The author still does not appreciate that the Civil Law Act, 1956 (Act 67) did not repeal the Civil Law Ordinance 1956 – it merely superseded it. On the extent of the reception of the English law in Peninsular Malaysia the author seems to favour the views of Professor Sheridan and Professor Bartholomew but these views were expressed before the revision of the Civil Law Act, 1956 and needs to be reconsidered in the light of such revision. The author does not explain why what was said by Smith J. in *Mokhtar v. Arumugam* (1959) M.L.J. 232 was a *dictum*.

At page 25 the author seems to be too much influenced by Indian decisions when he states that "if the case before him is without precedent, then he (the judge) decides according to justice, equity and good conscience, thereby laying down an original precedent."

The important case of *Lee Kee Chong v. Empat Nombor Ekor (N.S.) Sdn. & others* (1976) 2 M.L.J. 93 is ignored by the author. It would be interesting to know the author's views on this case.

The author relies on the Singapore case of *Re Lee Gee Chong deceased* (1965) 1 M.L.J. 102 to state that the decision in *Young v. British Aeroplane Co. Ltd* has been reaffirmed in Malaysia. Perhaps he feels that *Henry v. De Cruz* (1949) M.L.J. Supp. 25, a Kuala Lumpur decision, is not a Malaysian case.

The author gets into difficulties by relying on the transitional provisions of the Malaysia Act. It is not clear why it is doubtful whether the decisions of the former Federated Malay States and the former Straits Settlements are not binding on the Federal Court in the Malay States and in Singapore, Penang and Malacca respectively. The case of *China Insurance Co. Ltd. v. Loong Moh Co. Ltd.* (1964) MLJ 305 was a Singapore case and the judgment was that of Thompson L.P. (not Thompson C.J.).

In *Adnan bin Khamis v. P.P.* (1972) 1 M.L.J. 274 the Federal Court was clear that it would have been bound by *Cheow Keok v. P.P.* (1940) M.L.J. 163 if it had not been decided, as the Federal Court held, *per incuriam*. Clearly the court did not feel that it was bound by the Brunei decision in *P.P. v. Mills* (1971) M.L.J. 4. Surely it was not part of the decision in *Adnan bin Khamis* that the decision of the F.M.S. Court of Appeal was not binding in the Court of Appeal in Singapore and the Court of Appeal in Borneo! The case of *Mah Kah Yew v. P.P.* (1971) 1 M.L.J. 1, considered the binding nature not of a Malaysian decision but the decision of the Court of Appeal of Sarawak, North Borneo and Brunei.

In the list of law reports given at p. 33 a significant omission is Lee Hun Hoe's *Cases on Native Customary Law in Sabah*. It is probably no longer true that the Muslim law is administered as part of native law in Sabah and Sarawak, as stated in page 37 of the book — see the Administration of Muslim Law, Sabah, 1977 and the Majlis Agama (Incorporation) (Amendment) Ordinance, 1978, of Sarawak.

At page 57 of the book in dealing with the Conference of Rulers the author states that the Conference of Rulers must be consulted and concur in any Bill to amend the Constitution. This is not correct as under Article 159(5) only certain amendments require the consent of the Conference of Rulers.

In dealing with the State Assemblies the author at p. 61f uses the term "Governor", although this has been replaced by "Yang di-Pertua Negeri".

The list of cases dealing with the emergency powers given at page 69 needs to be supplemented by the many cases decided since 1975, although the author must be congratulated on his questioning of the propriety of invoking the Emergency for enacting subsidiary legislation even after the resumption of Parliament. He has in fact anticipated the decision of the Privy Council in *Teh Cheng Poh v. Public Prosecutor* [1979] 1 M.L.J. 50.

Chapter 5 of the book which deals with the Administration of Justice is now out of date so far as the Subordinate Courts are concerned. The sections on the Sessions Courts, Magistrates Courts and Juvenile Court have to be revised in the light of the Subordinate Courts (Amendment) Act, 1978 (Act A434 of 1978). Strangely enough the author has included the Explanatory Note to the Act instead of the amendment Act itself in Appendix F. At page 94 of the book it should be noted that Singapore now has a new edition of Rules of the Supreme Court, 1970; while at p.

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95 it is not clear what is meant by saying that the Rules of the Supreme Court, 1957 are governed by the Courts of Judicature Act, 1964.

The list of cases dealing with fundamental liberties at p. 102 needs to be revised. There are many more cases decided after 1969.

At page 106 it is no longer true that no appeal can be made on an acquittal by a High Court — see the Courts of Judicature (Amendment) Act, 1976 (Act A328). Indeed at p. 82 the author states that in criminal cases an appeal may be made to the Federal Court against an acquittal by the High Court.

At page 107 it is no longer true that in Penang and Malacca all criminal cases triable in the High Court are triable by judge and jury — see the Criminal Procedure Code (Amendment and Extension) Act, 1976 (Act A324).

The book provides a useful introduction to the Malaysian Legal System but it is in important respects out of date and has to be used with caution.

Ahmad Ibrahim

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