

## CHAPTER III

## THE SUBORDINATE COURTS - WEST MALAYSIA.

The Subordinate Courts of West Malaysia include the Magistrates' Court, the Sessions Court, the Special Sessions Court and the Penghulu's Court<sup>1</sup>. It is proposed to deal only with the first three types of courts. Hence, further references to the Subordinate Courts in this paper include only these courts.

There are one hundred and six (106) Subordinate Courts in West Malaysia. As stated earlier, they deal with the majority of the criminal cases in the country<sup>2</sup>. This being so, it is highly relevant to society that there are sufficient safeguards in the administration of criminal justice especially with regard to such an important matter as sentencing. It is proposed to deal with the criminal jurisdiction of the Subordinate Courts so as to give the reader an insight into the kinds of criminal cases the magistrates hear and the maximum sentences they may impose.

The Magistrates' Court.

There are two kinds of magistrates. The exact jurisdiction of a magistrate depends on whether he is a First Class Magistrate, or a Second Class Magistrate.

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<sup>1</sup>Subordinate Courts Act, 1948. s.3.

<sup>2</sup>Supra. p.5. See also Table II, Supra. p.5.

### First Class Magistrates.

First Class Magistrates are appointed by the State Authority on the recommendation of the Chief Justice<sup>3</sup>. Certain holders of public posts such as Assistant District Officers are ex-officio First Class Magistrates<sup>4</sup>. A First Class Magistrate has power to try all offences punishable by not more than five years imprisonment, or by fine only, and offences which are punishable under sections 325, 380, 381, 407, 408, 429, 431, 432, 435, 451, 452, 454 and 457 of the Penal Code<sup>5</sup>. He may impose a maximum sentence of two years imprisonment, or a fine of five thousand dollars, (\$5,000) or whipping of six strokes, or a combination of any of these sentences<sup>6</sup>. A First Class Magistrate may however, pass a higher sentence if the offender's record calls for it, provided it does not exceed the legal maximum laid down by law for that offence, and he records the grounds for doing so<sup>7</sup>.

### Second Class Magistrates.

A Second Class Magistrate is also appointed by the State Authority on the recommendation of the

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<sup>3</sup>Subordinate Courts Act, 1948. s.78.

<sup>4</sup>Ibid. s.77. Also, Schedule 4 (See Appendix 5, Post. p.103).

<sup>5</sup>Ibid. s.85.

<sup>6</sup>Ibid. s.87 (1).

<sup>7</sup>Ibid. s.87 (2).

Chief Justice<sup>8</sup>. He may try offences punishable by a maximum of twelve months imprisonment or by fine only<sup>9</sup>. He may impose a maximum sentence of not more than three months imprisonment or a fine of two hundred and fifty dollars (\$250), or a combination of both<sup>10</sup>.

If a magistrate is of the opinion that based on the facts of the case, or the circumstances of the case, should there be a conviction, the powers of punishment he possesses are inadequate, he shall transfer the case to the Sessions Court<sup>11</sup>. A magistrate of any class may preside in a Magistrates' Court<sup>12</sup>. Appeals from the decisions of the Magistrates' Court go to the High Court<sup>13</sup>.

#### The Sessions Court.

The Sessions Court has jurisdiction to try all offences punishable by a term of imprisonment not exceeding ten years, or by fine only, and offences under sections 409, 454, 457 of the Penal Code<sup>14</sup>. A Sessions Court President may try any offence other than an offence punishable by death, or life imprisonment, on the application of the Public Prosecutor, with the consent of the accused<sup>15</sup>. The maximum punishment a Sessions Court

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<sup>8</sup>Subordinate Courts Act, 1948. s.79.

<sup>9</sup>Ibid. s.88.

<sup>10</sup>Ibid. s.89

<sup>11</sup>Ibid. s.85 and 88.

<sup>12</sup>Ibid. s.81

<sup>13</sup>Courts of Judicature Act, 1964. s.26-28

<sup>14</sup>Subordinate Courts Act, 1948. s.63 (1).

<sup>15</sup>Ibid. s.63 (2).

President may impose should not exceed five years, or a fine of ten thousand dollars (\$10,000), or twelve strokes of whipping, or a combination of these sentences<sup>16</sup>. Again, if the accused's record shows that he deserves a more severe sentence, the President may impose a higher sentence which should not exceed the legal maximum for that offence<sup>17</sup>.

#### The Special Sessions Court.

The Yang di-Pertuan Agong may, on the advice of the Chief Justice confer special jurisdiction upon any President of a Sessions Court to try offences punishable by a maximum of fourteen years imprisonment, and offences under sections 326, 329, 376, 377 of the Penal Code, and section 30 of the Arms Act, 1960<sup>18</sup>. This must be gazetted. When this is done, the court is known as the Special Sessions Court.

The Special Sessions Court may pass any sentence allowed by law not exceeding seven years imprisonment, or a fine of not more than twenty thousand dollars (\$20,000), or whipping of twelve strokes, or a combination of any of these sentences<sup>19</sup>. Appeals against the decisions of this court also go to the High Court<sup>20</sup>.

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<sup>16</sup>Subordinate Courts Act, 1948. s.64 (1).

<sup>17</sup>Ibid. s.64 (2).

<sup>18</sup>Ibid. s.63(3).

<sup>19</sup>Ibid. s.63(2).

<sup>20</sup>Courts of Judicature Act, 1964. s.26-28.