



FAKULTI UNDANG – UNDANG
UNIVERSITI MALAYA

KERTAS PROJEK

1976/77

© Fakulti Undang-Undang
Universiti Malaya
Kuala Lumpur

Tidak dibenarkan mana-mana bahagian daripada Kertas Projek ini dipadam, disedut atau digunakan tanpa menyebut sumber yang dipetik darinya.

No part of this Project Paper may be reproduced, extracted or quoted without due acknowledgment.

CIVIL PROCEDURE AND DELAY IN LITIGATION

BY

CHOW MIN YEE

This project paper is submitted to the Faculty of Law,
University of Malaya, in partial fulfilment for the
Degree of Bachelor Of Laws (Honours) in the 1976/1977 Sessions

Faculty of Law,
University of Malaya,
Kuala Lumpur

September 1976

PERAKUAN KEIZINAN

Dalam mengemukakan Kertas Projek ini bagi memenuhi sebahagian dari kehendak-kehendak Peraturan untuk mendapat ijazah Sarjana Muda Undang-Undang, Universiti Malaya, saya yang bertandatangan di bawah, dengan ini mengesahkan bahawa saya telah bersetuju supaya perpustakaan-perpustakaan di Universiti Malaya memberi kebenaran dengan bebasnya kepada sesiapa yang hendak membuat rujukkan dan kajian ataupun untuk rujukkan dan kajian terhad. Seterusnya, saya juga bersetuju bahawasanya kebenaran untuk menyalin, memadan, menyedut atau menggunakan bahan-bahan kajian dalam Kertas Projek ini untuk maksud-maksud akademik bolehlah dibenarkan oleh Dekan, Fakulti Undang-Undang mengikut budibicaranya. Adalah difahamkan bahawa penyalinan atau pencetakan Kertas Projek ini dalam apajua bentuk sekalipun untuk maksud-maksud keuntungan tidaklah dibenarkan, melainkan dengan kebenaran bertulis dari saya.

Fakulti Undang-Undang
Universiti Malaya.

.....
Chow Hin Yee
.....
(CHOW HIN YEE)

September 1976.

TABLE OF CONTENTS

	Page
TABLE OF CONTENTS	i - iv
PREFACE	v
ACKNOWLEDGEMENTS	vi
LIST OF TABLES	vii
LIST OF CASES	viii - ix
LIST OF ABBREVIATIONS	x

CHAPTER

I	INTRODUCTION	1 - 4
	A. Objectives	1
	B. Scope of Study	1 - 2
	C. Methodology	2 - 3
	D. Limitations	3
	E. Hypothesis	3
	F. A Preliminary Review	4
II	THE LOCAL COURT SYSTEM	5 - 8
	A. Origin	5
	B. Development	5 - 6
	C. Jurisdictional Changes	7 - 8
III	THE COURTS' STRUCTURE	9 - 29
	A. The Subordinate Courts of West Malaysia	9 - 14
	1. The Penghulu's Court	
	2. The Second-Class Magistrate's Court	
	3. The First-Class Magistrate's Court	
	4. The Sessions Court.	

CHAPTER

Page

5.	The Special Sessions Court	
6.	The Syariah Court	
B.	The Subordinate Courts of East Malaysia	14 - 16
C.	The Higher Courts Of Law	16 - 22
1.	The High Court	
2.	The Federal Court	
a.	Appellate Jurisdiction	
b.	Exclusive Original Jurisdiction	
c.	Referral Jurisdiction	
d.	Advisory Jurisdiction	
3.	The Privy Council.	
D.	An Evaluation Of The Court Structure	22 - 29
IV	CIVIL PROCEDURE AND DELAY	30 - 59
A.	Introduction	30 - 32
B.	The High Court Procedure	32 - 44
1.	The Writ	
2.	Service of Writ	
a.	Personal Service	
b.	Substituted Service	
3.	Entry of Appearance	
4.	a. Pleadings	
	b. Exchange of Pleadings	
	c. Amendment of Pleadings	
	d. Close of Pleadings	
5.	Discovery And Inspection of Documents	
6.	The Trial	

CHAPTER

C.	The Subordinate Court Procedure	45 - 46
D.	A Brief Study Of Some Speedy Methods Of Disposal.	46 - 53.
1.	Summary Judgement under Order 14	
2.	The Short Cause List	
3.	Disposal Of Points Of Law Before Trial	
4.	Settlement And Discontinuance	
5.	Payment in Court	
E.	Probable Delays and Costs	53 - 55
F.	Conclusion	55 - 59
V	DELAY IN LITIGATION	60 - 87
A.	Introduction	60 - 70
B.	The Personnel Involved In Litigation	70 - 82
1.	Judges	
2.	Magistrates/Presidents	
3.	Lawyers	
4.	Litigants	
5.	The Process Server	
6.	The Interpreters	
C.	Priority Is Given To Criminal Matters	82 - 83
D.	The Impact Of Delay In Litigation On Society.	83 - 87

CHAPTER		Page
VI	RECOMMENDATIONS	88 - 105
	A. Introduction	88
	B. The Case For Reorganisation Of Our Court System.	88 - 97
	C. The Case For A Court Or Tribunal Of Motor Accident Claims.	97 - 99
	D. Outlook For Reform And Procedural Changes	100 - 105
VII	CONCLUSION	106 - 107
APPENDIX A		108 - 116
APPENDIX B		117 - 120
BIBLIOGRAPHY		121 - 124

v

PREFACE

The problem of delay in litigation has always been a matter of concern for the public, the Bench and the Bar. In October 1970, one former Honourable Chief Justice¹ came forward to advise the Bench and the Bar to work in co-operation to dispose of cases expeditiously in an effort to prevent delay and a backlog of cases.

Essentially, this paper is a sociological study. The theme of this paper hinges on the nature and impact of delay on the litigation system. The writer wishes to include in this theme the impact of the rules of Civil Procedure and the local Court system on delay in litigation.

It would be an undesirable state of affairs if we allow delay to haunt and hinder our litigation system. This would give rise to expensive and protracted 'Justice' which may not be worth the effort to obtain.

In this paper, the writer tries to spotlight the obstacles that hinder the speedy disposal of cases. It is not the object of this paper to put on any party involved in the litigation process the blame for causing delay. Meanwhile, this paper attempts to focus positively and realistically into the problem of delay so that any undesirable legal practice and outdated procedure may be removed. In doing so, it is hoped that a higher standard of justice can be achieved by exposing the causes of delay. It is the writer's belief that "JUSTICE DELAYED IS JUSTICE DENIED".

May, 1976.
Ipoh.

CHOW MIN YEE

¹Tan Sri Ong Hock Thye, retired as the Chief Justice of Malaya on the 1st November, 1973.

ACKNOWLEDGEMENTS

This paper will not be what it is today if not for the kind help and co-operation extended to the writer by various people whom the writer has the good fortune to encounter.

The writer wishes to thank the lawyers of Maxwell, Kenion, Cowdy and Jones, Solicitors and Advocates Office, Ipoh, for their valuable suggestions and advice. The writer also wishes to thank them for their kind hospitality in granting the writer a free and full use of their law library.

The writer feels indebted to the Senior Assistant Registrars of the Ipoh High Court, the Ipoh Special President of the Sessions Court and their clerical staff for their help and co-operation in providing the writer with all necessary information and materials.

Last but not least, the writer wishes to thank Mr. Mohamed Ariff bin Yusof¹ for his supervision, guidance and friendly encouragement which enable the writer to complete this challenging paper.

The writer benefits a lot from these people above-mentioned in the course of writing this paper.

¹ LL.M (Lond), Barrister-At-Law.

LIST OF TABLES

	Page
1. Table A: Jurisdictional Changes of The Subordinate Courts (1948-1972).	7
2. Table B: Returns of Civil Cases in The Subordinate Courts, Ipoh.	63
3. Table C: Returns of Civil Trials in The Ipoh High Court.	65
4. Table D: Classifications of Civil Trials in The Special Sessions Court, Ipoh.	97

LIST OF CASES

	Page
1. <u>Ambroise v. Evelyn</u> [1879]/11 Ch. D. 759	61
2. <u>Assa Singh v. Mentri Besar of Johore</u> [1969]/2 M.L.J. 37	18
3. <u>Battersby v. Anglo-American Oil Co.</u> [1945]/1 K.B. 23.	34
4. <u>Boston v. W.S. Bagshaw And Sons.</u> [1966]/1 W.L.R. 1126.	33
5. <u>Christmas v. Eicke.</u> (1848) 6. D & L. 156.	35
6. <u>Everett v. Ribbands</u> [1952]/2 Q.B. 198.	50
7. <u>Fatinah v. Lam Fatt</u> , unreported Civil Action No. 208/74 of the Ipoh Sessions Court.	76
8. <u>Findlay v. Railway Executive</u> [1950]/ 2 All. E.R. 969.	52
9. <u>Foong Weng Tat v. Vu Siew Chin</u> , unreported High Court Civil Action No. 146 of 1972, Ipoh.	56, 78
10. <u>Fruhauf v. Grosvenor & Co.</u> (1892) 67 L.T. 351.	33
11. <u>Gan Hay Chong v. Siow Kian Yuh</u> [1975]/ M.L.J. 157.	77
12. <u>Gnanasundram v. Public Service Commission</u> [1966]/ M.L.J. 157.	77
13. <u>Government of Malaya v. Government of the State of Kelantan</u> [1968]/1 M.L.J. 129.	20
14. <u>Jacobs v. Booth's Distillery Co.</u> (1901) 85 L.T. 262.	46
15. <u>Jamaluddin bin Ibrahim v. Tan Peng Wong</u> , unreported High Court Civil Action, Ipoh.	56.
16. <u>K. Subramaniam, v. Chan Miew Cheng</u> , unreported Civil Action of the Special Sessions Court, Ipoh.	79
17. <u>McLardy v. Slateum</u> (1890) 24 Q.B.D. 504.	47
18. <u>Poh Cheng Wee v. Partners of Wong Hup Hin Kongsi,</u> <u>Tambun</u> , unreported High Court Civil Action No.269/72, Ipoh.	80

	ix
	Page
19. <u>Re A Judgement Debtor</u> [1937] Ch. D. 137.	35
20. <u>Re Orr Ewing</u> [1882] 22 Ch. D. 463.	37
21. <u>Skidmore v. Baltimore & O.R. Co.</u> , 167 F. 2d 54 (2nd Cir. 1948).	70
22. <u>Tay Choon v. Jeet Kaur</u> [1972] 1 M.L.J. 216.	32
23. <u>Thompson v. Phoney</u> 1 Dowl 443.	35
24. <u>Tractors Malaysia Bhd v. Tio Chee Hing</u> [1975] 2 M.L.J.I.	80
25. <u>Timberline Development Sdn. Bhd. v. Guan Guan Sawmill Sdn. Bhd</u> [1973] 2 M.L.J. xviii.	52
26. <u>Valliammai Achi v. Nachiappa Chettiar</u> [1957] M.L.J. 27.	37
27. <u>William Cable Limited v. Trainer</u> [1957] N.Z.L.R. 337, 345.	60
28. <u>Yeap Cheah Neo v. Ong Cheng Neo</u> (1875) L.R. 6 P.C. 381.	5

LIST OF ABBREVIATIONS

M.L.J.	The Malayan Law Journal
Sdn.	Sendirian
Bhd.	Berhad
S . .	Section
K.B.	King's Bench
Q.B.	Queen's Bench
Ch. D	Chancery Division
L.T.	Law Times
All E.R.	All England Report
P.C.	Privy Council
H.L.	House of Lords
R.S.C.	Rules of Supreme Court, 1957.
S.C.R.	Subordinate Court Rules, 1950.
W.L.R.	Weekly Law Report
O	Order
r.	Rule
N.Z.L.R.	New Zealand Law Report.