

CHAPTER III

THE COURTS' STRUCTURE

The constitution and construction of the Subordinate Courts in West Malaysia are governed by the Subordinate Courts Act, 1948 (Revised 1972) which is applicable to West Malaysia only. On the other hand, Sabah and Sarawak have their own respective Subordinate Courts Ordinance which provide for their Subordinate Court systems. The court systems of West Malaysia, Sabah and Sarawak exist as distinctly separate court structures which are affected by their historical developments to a large extent.

A. The Subordinate Courts Of West Malaysia.

The Subordinate Courts¹ structure consists of five tiers. Each of these courts enjoys different degrees of civil jurisdictions which are determined by the seriousness of money consideration involved in the disputes.

1. The Penghulu's Court

It is the court of lowest jurisdiction in West Malaysia. The Penghulus are appointed by the Ruler or the Governor of each State. He may by any civil dispute for the recovery of a debt or liquidated demand not exceeding fifty dollars.² The parties to the civil proceedings must

¹The Subordinate Courts Act, 1948 (Revised 1972) S. 1(2).

²Ibid, S. 94.

belong to an Asian race and who can speak and understand the Malay language.

Appeals against its decisions lie to the First-Class Magistrate.³ This court has no power of execution of its order the enforcement of which lies in the Magistrates' Courts which enforce the order as if the order is made in the Magistrates' Court itself.⁴ Owing to its limited jurisdiction, this court has little practical purpose as a Court of Law. It is more useful in settling disputes informally and amicably outside the courtroom.

2. The Second-Class Magistrate's Court

This Court is normally presided over by one who is appointed by the State Authority as being fit and proper to hold the office of a Second-Class Magistrate.⁵ Usually, he is not a professionally qualified magistrate but rather he is an administrative officer who is empowered to perform magisterial functions partime. His magisterial functions include the mention of cases, granting bail and the adjudication of traffic offences. He can try civil disputes involving a debt or a liquidated demand in money not exceeding two hundred and fifty dollars.⁶

³ Ibid, S. 91.

⁴ Ibid., S. 97.

⁵ Ibid, S. 79.

⁶ Ibid., S. 92.

3. The First-Class Magistrate's Court

Qualified legal officers normally preside in this court.

The office of a first-class Magistrate is to be held by persons who are appointed by the State Authority on the recommendation of the Chief Justice.⁷ This office can also be held by designated Ex-Officio First-class Magistrates.⁸

A First-class Magistrate can try civil disputes which involves the value of the subject-matter not exceeding two thousand dollars.⁹ He can hear and determine appeals from the Penghulu's Court which is situated within his territorial jurisdiction.¹⁰ Both the First-class and Second-class Magistrates sit alone in presiding over disputes.

4. The Sessions Court

The Sessions Court is presided over by a President sitting alone. The President of the Sessions Court is appointed by the Yang Dipertuan Agong on the recommendation of the Chief Justice.¹¹ Any person who is permanently appointed to this office must be legally qualified and this requirement shall be waived if the person so appointed is to hold

⁷ Ibid., s. 78.

⁸ Ibid., s. 77. Designated Ex-officio First-class Magistrates are specified in the Fourth Schedule of the Subordinate Courts Act, 1948 (Revised 1972).

⁹ Ibid., s. 90

¹⁰ Ibid., s. 91.

¹¹ Ibid., s. 59(3).

the office temporarily.¹² His civil jurisdiction covers disputes where the value of the subject-matter does not exceed five thousand dollars.¹³

Comparatively speaking, the President of the Sessions Court enjoys a higher civil jurisdiction than the Magistrates in terms of monetary value of the subject-matter in dispute. For instance, while the President of the Sessions Court can issue writs or warrants of distress for rents where the amount does not exceed six thousand dollars,¹⁴ the jurisdiction of a First-class Magistrate in this respect is restricted to three thousand dollars.¹⁵ On the other hand, the President of the Sessions Court and the First-class Magistrate are similarly excluded in their civil jurisdictions from civil matters relating to divorce, bankruptcy, probate and administration of estates.¹⁶ This limitation also applies to actions relating to immovable property the title of which is in dispute¹⁷ but the President of the Sessions Court may adjudicate thereon if all parties interested so consent.¹⁸

5. The Special Sessions Court

At the time of writing, there are only two Special Sessions Courts which are officially gazetted to be located in Kuala Lumpur and

¹² Ibid., s. 60.

¹³ Ibid., s. 65.

¹⁴ Ibid., s. 72.

¹⁵ Ibid., s. 93(1)(c).

¹⁶ Ibid., s. 69.

¹⁷ Ibid., s. 69(a).

¹⁸ Ibid., s. 71.

in Ipoh respectively.¹⁹ The Special President of the Sessions Court enjoys the highest civil jurisdictions of all the Subordinate Courts. He can try disputes where the value of the subject-matter in dispute does not exceed ten thousand dollars.²⁰ However, his civil jurisdictions are subjected to similar limitations of the President of the Sessions Court and the First-Class Magistrate, as mentioned above.

6. The Syariah Court

By virtue of Article 74 and the Ninth Schedule of the Federal Constitution, the establishment of the Syariah Courts is within the precincts of the State Governments. The State Governments set out the constitution, organisation and civil procedures to be followed in the Syariah Courts which assume jurisdictions to adjudicate over matters relating to Muslim law, religion and custom. These include marriage, divorce maintenance, adoption, legitimacy, guardianship and succession²¹ and anyone who submits to its jurisdiction must be a Muslim.

The Perak Administration of Muslim Law Enactment, 1965 and the Selangor Administration of Muslim Law Enactment, 1962 were accordingly enacted. The other States too enacted similar laws.

¹⁹ This was provided in the Emergency (Essential Powers) Ordinance, No.14 of 1969; this Ordinance was later repealed. The provisions on the jurisdictions of the Subordinate Courts were re-enacted in the Courts (Amendment) Act, 1971, A. 33.

²⁰ The Subordinate Courts Act, 1948 (Revised 1972), s. 65(2).

²¹ Other Muslim matters which can be administered by the Syariah Courts as enumerated in S 1 of the State List, Ninth Schedule, The Federal Constitution.

In Selangor, the Court of the Kadhi Besar or the Court of a Kadhi can hear and determine disputes relating to the above matters. However, the Court of a Kadhi cannot execute any orders given by itself.²² As a result, the Court of a Kadhi may apply to a Magistrate's Court or the Court of the Kadhi Besar to enforce its orders.²³ Any appeal against the orders of the Court of a Kadhi or Kadhi Besar can be made to the President of the Majlis Ugama who will appoint an appeal committee to hear such appeals.²⁴ Further appeals can lie to the High Court.²⁵

B. The Subordinate Courts Of East Malaysia

Briefly, the Subordinate Courts of East Malaysia consists of the First-class Magistrate's Court, the Second-class Magistrate's Court, the Third-class Magistrate's Court and the Native Courts.

The First-class Magistrate's Courts are presided over by legally qualified persons who can hear and determine civil disputes where the value of the subject-matter in dispute does not exceed one thousand dollars. Enhanced civil jurisdictions which cover cases where the value of the subject matter in dispute does not exceed three

²² Selangor Administration of Muslim Law Enactment, 1952, S 84(1).

²³ Ibid., S. 86(3).

²⁴ Ibid., S. 90.

²⁵ The Courts Of Judicature Act, 1964 (Revised 1972) S. 24.

thousand dollars are conferred on Stipendiary Magistrates who are specially appointed by the Chief Justice of Borneo.

On the other hand, the Second-class Magistrate and the Third-class Magistrate can hear and determine civil disputes where the value of the subject-matter does not exceed five hundred dollars and one hundred dollars, respectively.²⁶

Both Sabah and Sarawak have their own system of Native Courts. There are three Native Courts of original jurisdictions which include the District Native Court, the Native Officer's or Chief's Court and the Headmen's Court.²⁷ In Sarawak, the Native Court of Appeal which is presided over by a High Court Judge and the Resident's Native Court constitute the higher courts to which appeals can be brought against decisions of the three Native Courts of original jurisdictions.²⁸ These Native Courts also exercise civil jurisdictions where the value of the subject matter in dispute does not exceed fifty dollars or where the dispute involves land to which a title has been issued.²⁹ The parties to the dispute must be subject to the same native personal law in order to come within the jurisdictions of the Native Courts.

²⁶ The Subordinate Courts Ordinance (Sabah Cap. 29) (Reprinted 1965), S. 7(1); The Subordinate Courts Ordinance (Sarawak Cap. 42) (Reprinted 1965), S. 7(1).

²⁷ The Native Courts Ordinance, (Cap. 43), Sarawak, S. 3.

²⁸ Ibid., S. 8(1) and (2).

²⁹ Ibid., S. 5.

Meanwhile, in Sabah, the Native Courts of original jurisdictions may be presided over by the Native Chiefs or Headmen resident with the territorial jurisdictions of the Native Courts.³⁰ The Native Court of Appeal may determine and hear appeals against decisions of the Native Courts. Generally, the jurisdictions of these Native Courts cover disputes which involve breach of the native law, customs, religion and matrimony.

C. The Higher Courts Of Law

Unlike the Subordinate Courts systems, which differ between East and West Malaysia, there is only one common system for the higher courts of law. The Constitution of the higher courts is provided by the Federal Constitution and the Courts of Judicature Act, 1964.

1. The High Court

There are two High Courts in Malaysia. The High Court in West Malaysia has its principal registry in Kuala Lumpur; while the registry of the High Court in Borneo is at Kuching.³¹ This Court is presided over by a single judge in civil cases³²; except in appeals regarding the compulsory acquisition of land when the judge sits with two assessors.

³⁰ The Native Courts Ordinance (Cap. 86), Sabah, S. 4(1).

³¹ The Federal Constitution, Part IX, Article 121(1).

³² The Courts of Judicature Act, 1964 (Revised 1972) S. 18.

The civil jurisdiction of the High Court is very wide and it covers all civil disputes which do not fall within the jurisdictions of the Subordinate Courts. The High Court's general civil jurisdictions are extended to civil disputes which arise within its territorial jurisdiction wherein the cause of action arose; or where the defendants reside or keep their place of business; or where the facts of the dispute are alleged to occurred, or where the land the ownership of which is disputed is situated.³³ Although the civil dispute does not fall within the territorial jurisdiction of a particular High Court, the latter can assume jurisdiction over the dispute if all parties consent in writing to submit to its jurisdiction.

The specific civil jurisdiction of the High Court includes matters relating to divorce, matrimonial causes, admiralty, bankruptcy, company, appointment and control of guardians of infants and insane persons, and the granting of probates of wills and testaments and letters of administration of estates.³⁴

Its appellate civil jurisdiction consists of hearing appeals from the Subordinate Courts. No appeal shall lie where the value of the subject-matter in dispute is five hundred dollars or less; except the appeal is on a question of law.³⁵ This is to be read subject to any written law.

³³ Ibid., s. 23.

³⁴ Ibid., s. 24.

³⁵ Ibid., s. 28(1).

It has a reversionary power of civil proceedings in the Subordinate Courts.³⁶ This is to ensure that substantial justice is done. Civil decisions of the High Court may be appealed to the Federal Court.

2. The Federal Court

The Federal Court consists of the Lord President, the two Chief Justices and four Federal Judges. This Court shall sit in uneven number as the Lord President may determine in any case. This Court sits in circuit throughout the year in the various High Courts.

It has four kinds of jurisdictions³⁷ :-

a. Appellate Jurisdiction

It can hear and determine appeals from the High Court and this function is exercised subject to any written law which regulates the terms and conditions upon which the appeal is brought.³⁸ Appeals shall be held by way of rehearing³⁹ and no appeal shall lie in respect of non-appealable matters.⁴⁰ It also has full discretionary power to receive further evidence by oral examination in Court, by

³⁶ Ibid., S. 33.

³⁷ Assa Singh v. Mentri Besar of Johore / 1969 / 2 M.L.J. 37.

³⁸ The Courts of Judicature Act, 1964 (Revised 1972) S. 67(1).

³⁹ Ibid., S. 69.

⁴⁰ Ibid., S. 68.

affidavit, or by deposition taken before an examiner or commissioner.⁴¹ A new trial may be granted in respect of any cause or matter tried by the High Court if in the opinion of the Federal Court some substantial wrong or miscarriage has been thereby occasioned.⁴²

b. Exclusive Original Jurisdiction

It can determine the validity of any law made by Parliament or by any State Legislature. Any law may be invalid when the legislative body made it without the necessary power.⁴³ The Federal Court can decide in matters involving disputes between the States or between the Federation and the State. The nature of the judgment shall be declaratory.⁴⁴

c. Referral Jurisdiction

It has the jurisdiction to resolve constitutional questions referred to it by the High Court. This is spelt out in Article 128(1)(b) of the Federal Constitution. While awaiting for the decision of the Federal Court in respect of the Constitutional matter in question, the High Court

⁴¹ Ibid., s. 69.

⁴² Ibid., s. 71.

⁴³ The Federal Constitution, Part IX, Article 128(1)(a).

⁴⁴ The Courts Of Judicature Act (Revised 1972) s. 46.

judge may on his own Motion or on the application of any party concerned order the proceedings to be stayed.⁴⁵

d. Advisory Jurisdiction

It may exercise its advisory jurisdiction when the Yang DiPertuan Agong refers to it a constitutional problem.⁴⁶ The Federal Court must pronounce its decision in Open Court. This jurisdiction has been evoked only once.⁴⁷

As much as 95% of the work of the Federal Court is done in exercise of its appellate jurisdiction.⁴⁸ This Court is not the final Court of Appeal. The Highest Court of Appeal lies in the Judicial Committee of the Privy Council.

3. The Privy Council

The Judicial Committee of the Privy Council sits in England and its chief function is to hear and determine Appeals on judicial matters from member nations of the Commonwealth which follow the Common Law. At the early stage of the formation of this Committee, it was a body of English superior Judges. Later, membership of the Committee was extended to include Judges from British India and other British

⁴⁵ The Courts Of Judicature Act (Revised 1972) 1964, S. 48.

⁴⁶ The Federal Constitution, Part IX, Article 130.

⁴⁷ Government of Malaya v. Government of the State Of Kelantan [1968] 1 M.L.J. 129.

⁴⁸ The procedure is governed by the Federal Court (Civil Appeals) Transitional Rules, 1963.

Dominions. In 1962, following the decisions of the Conference of Prime Ministers, 9 Commonwealth Judges were appointed which include 6 from Australia, 1 from New Zealand, 1 from Nigeria and 1 from the Federation of Rhodesia and Nyasaland.⁴⁹ Nevertheless much of the judicial strength of the Privy Council is drawn from the House of Lords of England.

It hears Appeals from the Malaysian Federal Court. The Yang DiPertuan Agong can seek its advice on any legal problem.⁵⁰ The Committee's advice must be given effect to once the advice is tendered. The Committee will only entertain Appeals which must involve some important Civil right or claim on property which merits due consideration. The amount involved in civil dispute must be worth twenty-five thousand dollars or more in order to be appealable to this Committee.⁵¹ Leave to appeal must be obtained from the Yang DiPertuan Agong.⁵²

There is a tendency to keep Appeals within one's own judicial system. In this connection, Canada had abolished Appeals to the Judicial Committee of the Privy Council since 1951. Although the Judicial Committee of the Privy Council provides a consistent body of Common Law principles, one may wonder how accessible is this Committee to the ordinary aggrieved litigant in Malaysia.

⁴⁹ R.M. Jackson, The Machinery of Justice in England, Sixth Edition, Brooke Crutchley, University Printer, Cambridge, 1972.

⁵⁰ The Federal Constitution, Part IX, Article 131: This was arranged with Her Majesty, the Queen of England on 4th, March 1958.

⁵¹ The Courts of Judicature Act, 1964 (Revised 1972) S. 74(1)(a).

⁵² Ibid., S. 75.

D. An Evaluation Of The Court Structure

The hierarchy of our Court System is an elaborate one which consists of the Privy Council, the Federal Court, the High Court and the Subordinate Courts. The Subordinate Courts are divided into the Special Sessions Court, the Sessions Court, the First-Class Magistrate's Court, the Second-Class Magistrate's Court and the Penghulu's Court in West Malaysia; while in East Malaysia, there are the First-class Magistrate's Court, Second-class Magistrate's Court and Third-class Magistrate's Court. In addition, in West Malaysia, there is the Syariah Courts which is the equivalence of the Native Courts in East Malaysia.

The intricate pattern of our Court system may pose a problem to those litigants of limited means. If a persistent litigant wants to pursue his rights to the highest Court of Malaysia, he must be prepared to sacrifice his time and to dig deep into his financial resources. In order to secure an overall binding decision, the litigant is required to go through the different levels in our judicial system.

Furthermore, he will have to file his claim in his action in the Subordinate Court Registry, the High Court Registry, and the Privy Council Registry in England. Needless to say, a lot of time will be taken up in processing the various forms and applications incidental to the institution of an action. Delays in litigation may be brought about if the Court Registries are inefficiently administered. More often than not, the efficient administration of a Court Registry depends on the personality of the administrative officer who is normally the Senior Assistant Registrar in the High Court Registry or the President of the

Special Sessions Court in the Subordinate Courts. They are required to perform administrative as well as judicial functions. Since both of the functions are of a different nature, one cannot rule out the possibility that the efficiency of the officer will be affected in discharging his judicial functions. It is felt that an efficient administrative machinery of the Courts is an important criteria for an expeditious despatch of judicial business and to prevent delay. In consequence, a strict and efficient officer and a co-operative clerical staff will help to expedite the administration of judicial / matters.

It is a frequent occurrence that legal officers are often transferred from one place to another. The reason being that legal officers of certain qualifications and experiences should be sent to fill up vacant posts which require their qualifications. This follows that a vacated post of a Registrar in Ipoh will have to be filled by, say, a legal officer who is deemed to be fit and proper to hold such post although he may not be familiar with the administrative set up there.

There is a possibility that the smooth administration of the Court Registry will be hindered since the newly transferred officer will need some time to familiarize himself with his functions and the nature of his work. This may result in delay in processing the paper work involved in litigation. Furthermore, the clerical staff will have to adjust to the differing administrative style of their new bosses.

In view of the fact that there are 16,539 civil cases and 4,868 criminal cases still pending in our Courts at the time of writing,

one may be tempted to question whether our Court system has achieved a desirable standard of efficiency.⁵³

It is submitted that the capacity of the Subordinate Courts is limited. The Subordinate Courts are unable to cope up with the rate of litigation that has increased in recent years and as a result the Subordinate Courts find it difficult to dispose of all the cases registered within a single year.

The malfunctioning of a judicial system can cause delay in the disposition of civil proceedings. This is found to be true in America where the judicial system tends towards decentralisation to the widest possible extent. This is obvious from the fact that there is a distinct separation of the various State Courts and the Federal Courts in terms of jurisdictions and organisational control. Each State is empowered to establish its own Court system⁵⁴ and there are 50 State Court systems which do not share a co-ordinated administrative structure.⁵⁵ This multiplex organisation of American Courts work against an expeditious despatch of Court business. It also gives rise to confusion in respect of the jurisdictional control of the various State and Federal Courts. Occasionally, there may be doubts as to which Court has jurisdiction over a particular case and there is the possibility that if a wrong Court is chosen much unnecessary expense and delay could result.⁵⁶

⁵³ See "Move to Reduce The Backlog Of Cases", reported in The New Straits Times, 15th July 1976 p. 6 Col. 3.

⁵⁴ United States Constitution, Article I S. 8.

⁵⁵ McWilliams, "Court Integration And Unification in the Model Judicial Article," 47. Journal of American Judicature Society. 13 (1963).

⁵⁶ Lewis Mayers, The American Legal System, First Edition, Harpers and Brothers, 1955.

We do not have separate Federal and State Court Systems, however, we do have separate Subordinate Courts systems of East and West Malaysia in addition to the different Syariah Courts and the Native Courts of Sarawak and Sabah. These Subordinate Courts are governed by their respective Chief Justices who assume territorial jurisdictional control over the administration of these Courts in East and West Malaysia. It is obvious that there is not likely to have any form of efficient co-ordination among the respective Subordinate Courts Systems which are constituted with different features.

It has been suggested that the Subordinate Courts Act, 1948 and the Subordinate Courts Rules, 1950 should be extended to the States of Sabah and Sarawak in East Malaysia so as to achieve uniformity of jurisdiction in the administration of justice in Malaysia as a whole. If the Bill of the Subordinate Courts Act (Extension) Order is passed, certain dissimilar features of these Subordinate Court Systems can be removed. This follows that all Third-class Magistrates in East Malaysia will be equated to similar jurisdictions of the Second-class Magistrates in West Malaysia. Stipendiary Magistrates will be known as Special President of the Sessions Court in East Malaysia.⁵⁷

The Syariah Courts and the Native Courts are an anomaly in our Court System. This is because they do not come within Federal control

⁵⁷ Sim Ewe Kong, "Developments in The Administration of Justice in Malaysia", in INSAF, The Journal of the Bar Council, Volume VIII, No. 1 (April 1975), p. 19.

and they are set up differently and separately by the States. It would be more conducive for an efficient despatch of judicial business if all these Courts are unified under a single control machinery. On the other hand, this would greatly encroach on State rights which the Constitution seeks to protect and preserve. It is felt that for the sake of expedient administration of justice, we should have a unified Court system.

In order to eliminate any form of delay, it is necessary to organise our Court system in such a manner in that speedy despatch of judicial business can be achieved on one hand and just result can be maintained on the other hand.

Judicial time is sometimes not used to its maximum because of the fact that there is a tendency for the Solicitors to request for postponements of hearing. Meanwhile, a backlog of cases may result because of limited judicial time available which is dependent on the judicial strength available in a particular Court.

The Courts must be easily accessible to the litigants. There must be a greatest possible extent of decentralisation of the Courts such that the Courts are located at various districts and towns. At present, although the Penghulu's Court is of easy access to the kampong folks it is not a useful Court of Law because of its limited jurisdiction.

Decentralisation of the Courts must be carried out such that the Courts are equipped with reasonably adequate jurisdictions. At the present moment, we still do not have sufficient First-Class Magistrates' Courts to serve in the smaller towns other than State Capitals. This is why a

backlog of cases exists in Ipoh particularly in the Special Sessions Court which not only adjudicates civil disputes that arise in Ipoh but also includes civil disputes which arise in nearby towns which do not have such Courts of similar jurisdictions.

Extreme decentralisation of the Courts is not desirable and that is why there is a tendency in America to move towards centralisation. A well-balanced, coherent and unified court system is necessary to prevent any delay. Centralisation ensures greater efficiency and the Courts can sit in places where their services are required. This will reduce the possibility of wastage of judicial resources. Centralisation also provides a better career for Court staff who will be given the opportunity to undergo central training. It will also solve the problem of providing additional Court buildings. In the final analysis the public will benefit from an efficient centralised organisation.⁵⁸

A good Court system must also have Courts of specialised expertise in the adjudication of certain disputes. For instance, the Rent Control Tribunal provides specialised expertise for the adjudication of disputes relating to tenancy agreements entered into between the Landlord and tenant within the ambit of the Rent Control Act, 1966. It is submitted that there should be a division of judicial business in the High Court. The Judges in our High Courts are often overburdened with work since they are supposed to be experts in divorce and matrimonial matters, bankruptcy

⁵⁸ Michael Zander, Cases and Materials on the English Legal System, First Edition, Weindenfeld and Nicolson, London, 1973.

matters, and commercial matters in addition to criminal matters. Owing to the enormous scope of a Judge's workload, heavy reliance is placed on the Solicitor who appears before him to guide the Court to the issues in dispute and the law. This may not be desirable if our Judges are to play an effective creative role in the development of our laws. In view of the backlog of cases, it is submitted that the judicial business should be divided into criminal and civil divisions. This will ensure that wide general jurisdiction is administered by the Courts which is likely to function better. At the same time, such a division of workload will help to relieve the Courts which are overburdened with civil and criminal matters.

The highly specialised divisions of judicial business of the English Courts is not desirable. Although the Queens Bench Division, the Chancery Division and the Family Division do provide valuable judicial expertise in their respective fields, there is a tendency for over-centralisation. In such a situation, the specialised Court are apt to adopt the practices and procedures and the administration of the judicial matters to their own needs.⁵⁹ The qualities of uniformity and co-ordination may disappear and this will not benefit the efficient functioning of a Court system.

Evidently, our Court system does not function as smoothly and efficiently as it should be. It is further submitted that we should

⁵⁹ Master I.H. Jacob and Professor G.S.A. Wheatcroft, "Courts and Methods of Administering Justice" in Third Commonwealth and Empire Law Conference, 1966, p. 305-23.

consider a reorganisation of our Court system and to remove any defects inherent therein.