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Understanding how the Malaysian Legal System Works

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Introduction

Understanding how the Malaysian legal system works is essential for grasping the unique blend of history, culture, and legal principles that shape everyday life in this dynamic Southeast Asian country. Malaysia's legal framework is not only a reflection of its colonial past and the enduring impact of British common law but also embodies the nation's commitment to accommodating a diverse population and multiple legal traditions. Navigating this system requires an appreciation of its federal structure, the dual court system, and the interplay between written laws, judge-made precedents, and customary practices.

The roots of Malaysia's legal system can be traced to its colonial heritage when British administrators introduced new legal concepts and procedures, while also retaining elements pertinent to the local population, such as Islamic law and customary law. Over time, Malaysia has developed its own legislative and judicial structures, carefully balancing these inherited influences with its constitutional principles and indigenous values. The resulting framework is thus a tapestry woven from the threads of common law, Syariah law, and the customs of its many ethnic communities.

The supremacy of the Federal Constitution is central to understanding Malaysia's legal order. It stands as the highest law of the land, underpinning the responsibilities and powers of government while protecting the fundamental liberties of its citizens. Legislative authority is divided between the federal and state governments, and where disputes arise, courts are tasked with interpreting and enforcing the laws in accordance with constitutional provisions. This balance lies at the core of Malaysia's system of government, which is based on the separation of powers among the Executive, Legislature, and Judiciary.

Malaysia's dual court system—comprising both civil and Syariah courts—caters to the legal needs of its multicultural society. Civil courts primarily handle criminal and civil matters, whereas Syariah courts have jurisdiction over the personal and family laws of Muslims. This duality, sometimes complex in practice, allows the legal system to address issues relevant to both secular and religious spheres, while recognizing the diversity of the nation's people.

This book presents a comprehensive guide to the major components and workings of the Malaysian legal system. Through its twenty-five chapters, readers will gain insights into the sources of law, the structure and functions of both the civil and Syariah court systems, the procedures governing criminal and civil cases, and the roles of key legal institutions and persons. Chapters are also devoted to contemporary legal issues, human rights, and prospects for further reform.

By exploring these topics, 'Understanding how the Malaysian Legal System Works' provides not only an informative overview but also a practical guide for students, legal professionals, and anyone interested in the way law operates in Malaysia. Whether you are confronting the system for the first time or seeking to deepen your existing knowledge, this book serves as a valuable resource for understanding the complex yet fascinating landscape of Malaysian law.

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CHAPTER ONE: The Historical Evolution of the Malaysian Legal System

Before delving into the intricacies of Malaysia's legal framework as it stands today, it is crucial to understand the journey it has taken to reach this point. The story of the Malaysian legal system is not one of overnight creation, but rather a long and complex evolution, shaped by indigenous practices, religious influences, colonial imposition, and ultimately, the aspirations of a newly independent nation. It's a fascinating blend, much like the diverse cultures that make up the country itself, and understanding its history provides the essential context for appreciating its current form.

In the centuries preceding the arrival of European powers, the Malay Peninsula and the Borneo territories had their own established systems of law and governance. These systems were primarily based on *adat*, or Malay custom, which varied from state to state and even within different communities. *Adat* was a living law, deeply intertwined with social structure, family relations, land tenure, and dispute resolution. It provided a framework for regulating daily life and maintaining social harmony within the Malay sultanates.

Islamic law also played an increasingly significant role in the Malay states, particularly after the widespread adoption of Islam from the 15th century onwards. While *adat* continued to govern many aspects of life, Islamic principles, particularly in areas like family law, inheritance, and criminal matters, began to be incorporated and applied, often alongside existing customary rules. This created a dynamic interplay between *adat* and *Syariah*, with rulers often issuing laws based on both traditions.

The indigenous communities of Borneo, such as the Dayaks, Kadazan-Dusun, and others, also possessed their own rich traditions of customary law. These laws, passed down through generations, governed social order, communal living, land rights, and the resolution of conflicts within their respective societies. These systems were distinct from Malay *adat* and Islamic law and reflected the unique cultural and environmental contexts of these communities.

The arrival of European colonial powers, first the Portuguese, then the Dutch, and eventually the British, marked a turning point. While the initial European presence was primarily focused on trade, particularly in strategic locations like Malacca, it gradually expanded into political and administrative control. The British East India Company's establishment in Penang in the late 18th century is often cited as the formal beginning of British influence on the legal landscape.

Penang, initially a largely uninhabited island, had no established local legal system to speak of. The early European settlers and traders often relied on a form of "justice" administered by the Superintendent, which was arbitrary and inconsistent. This lack of formal law led to chaos and injustice, prompting calls for a proper legal framework to be introduced to the settlement.

This need culminated in the granting of the First Charter of Justice in 1807 for Penang (then known as Prince of Wales Island). This charter formally introduced English law into the settlement. It established a Court of Judicature with jurisdiction over civil, criminal, and ecclesiastical matters, administering justice "as nearly as the circumstances of the place and the inhabitants will admit." This marked the first official reception of English law into what would become Malaysia.

The "as nearly as the circumstances of the place and the inhabitants will admit" clause within the Charter was significant. It acknowledged that English law could not be applied wholesale without regard for local conditions and the customs of the diverse population. This early recognition of the need for adaptation set a precedent for the future application of English law in the region.

Subsequently, the Second Charter of Justice was granted in 1826, extending the application of English law to the newly formed Strait Settlements, which included Penang, Malacca (ceded by the Dutch), and Singapore. This Charter created a single Supreme Court for the Strait Settlements and reinforced the principle of applying English law, again with the caveat of suitability to local circumstances and inhabitants.

The Third Charter of Justice in 1855 further reorganised the court system within the Strait Settlements but did not fundamentally alter the principle of the reception of English law. These Charters were crucial in establishing a formal, albeit imported, legal system in these British-controlled territories. They laid the foundation for a common law system based on English legal principles and judicial precedent.

While the Strait Settlements were under direct British rule and saw the more immediate and complete reception of English law, the situation in the Malay states on the peninsula was different. These states were initially under the nominal sovereignty of their respective Malay rulers, with the British gradually imposing influence through treaties and the introduction of Resident and Advisor systems.

British influence in the Malay states led to the gradual adoption of English legal and administrative structures. Legislation was enacted, often mirroring English statutes, and courts were established based on the English model. However, unlike the Strait Settlements, the application of English law was not through a Charter but rather through local legislation and the decisions of British judges who often referred to English law.

This piecemeal adoption meant that the extent to which English law was received varied between the states and depended heavily on the discretion of the British advisors and judges. There was also a greater recognition, at least in theory, of existing Malay adat and Islamic law, particularly in matters of personal and religious significance for the Malay population. This led to a more complex interaction between imported English law and existing local laws.

The concept of "reception" of English law was later codified in legislation such as the Civil Law Enactment 1937 for the Federated Malay States (FMS) and later the Civil Law Ordinance 1956, which applied throughout the Federation of Malaya. These laws formally permitted the application of English common law and rules of equity, subject to certain conditions, primarily that they were suitable to local circumstances and that there was no conflicting local legislation.

The Federated Malay States (Perak, Selangor, Negeri Sembilan, and Pahang) came under British protection in the late 19th century and saw a more systematic introduction of British administration and law compared to the Unfederated Malay States. In the FMS, British Residents held significant power, and a more uniform legal system, heavily influenced by English law, was developed through councils and enacted legislation.

The Unfederated Malay States (Kedah, Perlis, Kelantan, Terengganu, and Johor) retained a greater degree of autonomy under their rulers, although British Advisors still wielded considerable influence. The reception of English law and the development of legal institutions were less uniform and proceeded at a slower pace compared to the FMS. Malay rulers and their councils played a more direct role in legislation, and adat and Islamic law retained a more prominent position, particularly in specific domains.

The period leading up to the Second World War saw the British consolidate their control, establishing a framework of courts, police, and administrative systems across the Malay Peninsula and the Straits Settlements, largely based on the British model. While English law became the dominant legal system, especially in commercial law and criminal law, the parallel existence of Islamic law for Muslims in certain matters and customary law for various communities was a persistent feature.

The Japanese occupation during World War II temporarily disrupted British rule and the legal system, but upon the return of the British, the pre-war legal structure was largely reinstated. However, the post-war era brought significant political changes, including growing nationalist movements and the push for independence.

The formation of the Malayan Union in 1946, which sought to centralise power and diminish the sovereignty of the Malay rulers while granting equal rights to all citizens,

regardless of origin, was met with strong Malay opposition. This political turmoil highlighted the need for a legal and constitutional framework that could accommodate the diverse social and political landscape.

The Malayan Union was short-lived and was replaced by the Federation of Malaya in 1948. This Federation structure restored the sovereignty of the Malay rulers and laid the groundwork for eventual self-governance and independence. The legal system continued its evolution within this new federal structure, with federal laws applying across the states while state laws retained authority in specified areas.

The road to independence culminated in 1957 with the Proclamation of Independence for the Federation of Malaya. A critical part of this process was the drafting of a new constitution. The Reid Commission was established to recommend a constitution for the independent Federation, taking into account the existing legal systems, customs, and aspirations of the people.

The resulting Federal Constitution of Malaya, which came into effect upon independence, was a landmark legal document. It established a federal system of government, enshrined fundamental rights, and declared itself the supreme law of the land. While drawing heavily on the Westminster model and principles of constitutionalism familiar from the British system, it also incorporated provisions that reflected the unique circumstances of Malaya, including the position of the Malay rulers, Islam as the religion of the Federation (but with freedom of other religions), and special position for the Malays and indigenous people.

The Constitution effectively provided a new legal foundation, integrating elements of the inherited common law system with provisions acknowledging the place of Islamic law and customary law. It established a hierarchy of laws with the Constitution at the apex, followed by federal and state legislation, and then subsidiary legislation. Judicial decisions continued to be a crucial source of law through the principle of *stare decisis*.

The legal landscape expanded further in 1963 with the formation of Malaysia, which included the states of Sabah and Sarawak (formerly British North Borneo and Sarawak) and Singapore (which later separated in 1965). The entry of Sabah and Sarawak introduced additional layers of complexity to the legal system, particularly with regard to their unique native customary laws.

The Federal Constitution was amended to accommodate the new states, and the legal systems of Sabah and Sarawak were integrated into the federal framework. While English law had also been received in these territories through local legislation, their native customary laws retained a significant role, especially concerning land rights and personal status of the indigenous communities. This further solidified the multi-layered nature of Malaysian law.

Post-independence, the Malaysian legal system has continued to evolve. While English common law remains influential, there has been a conscious effort to develop local jurisprudence and adapt laws to suit Malaysian conditions and values. Legislation passed by the Malaysian Parliament and State Legislative Assemblies has increasingly become the primary source of new law.

The judiciary, initially comprising many expatriate judges, gradually became Malaysianised. The Federal Court replaced the Privy Council in London as the final court of appeal in the 1980s, marking a significant step in establishing judicial independence and developing a uniquely Malaysian body of case law. This move further solidified the local development of legal principles.

Throughout this historical journey, the Malaysian legal system has navigated the complexities of integrating disparate legal traditions. It moved from a collection of indigenous and religiously influenced systems, through colonial imposition of common law, to the creation of a federal, constitutional framework that seeks to balance these diverse elements. The result is the unique legal tapestry that governs Malaysia today – a system that is constantly adapting to the nation's changing needs while retaining the imprints of its layered past.

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