

MALAYSIAN LEGAL SYSTEM

TOPIC 1



Objectives

- Understand the Malaysian Legal System
- Definition of Law
- Distinguish the various classification of law
- Describe the sources of Malaysian law
- Explain the jurisdiction of Malaysian Courts

Definition of Law

Various definition:

- i. Layman – general rule of conduct.
- ii. Salmond in *Jurisprudence* :
 - The body of principles recognized and applied by the State in the administration of justice.
- iii. Austin in *The Province of Jurisprudence Determined* :
 - A command set by a superior being to an inferior being and enforced by sanctions (punishments).

Why need to study Law

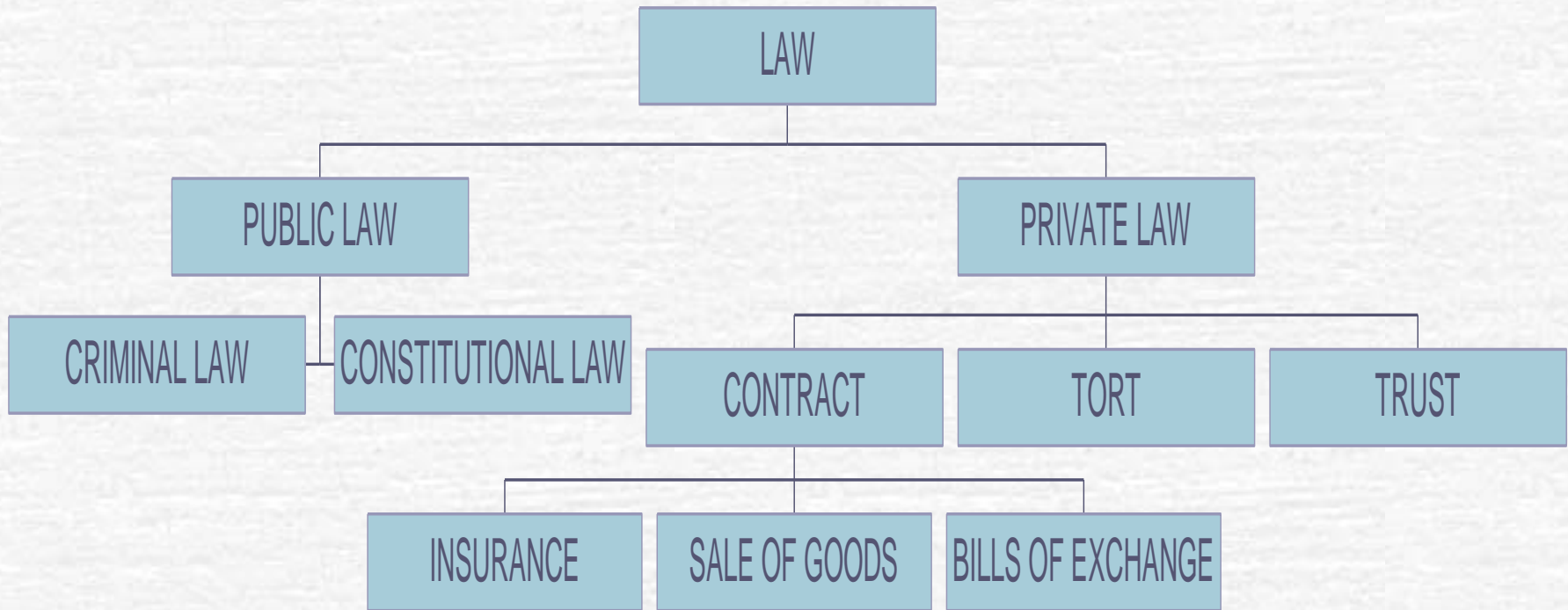
☞ Latin Maxim :

- ignorantia juris non excusat
- "ignorance of law is not an excuse"

- ## ☞ It is wise to have basic knowledge of law especially relating to business.



Classification of Law (contd)



Classification of Law

- ☞ Law can be classified in many ways.
- ☞ The most common classification is public & private law.
- ☞ Public law :
 - Governs the relationship between individuals and state.
 - Mainly consists of criminal & constitutional law.

Classification of Law (contd)

☛ Constitutional law :

- governs the rights of individuals in the state (under the government).
 - e.g. rights to be represented, freedom of movement, freedom of speech etc.

☛ Criminal law :

- offences against the state.
 - theft, murder, rape etc.

Classification of Law (contd)

Private law (civil law) :

- governs the rights and duties of individuals *inter se* (among themselves).
- mainly consists of law of contract, tort and trust.

Classification of Law (contd)

Contract :

- based on agreement.
- governs the rights and obligations of the parties to the contract.

Tort :

- based on obligation imposed by law.
- It is a civil wrong i.e offences vs individuals.
- Leading case : **Donogue vs. Stevenson**

Donoghue vs. Stevenson

Facts:

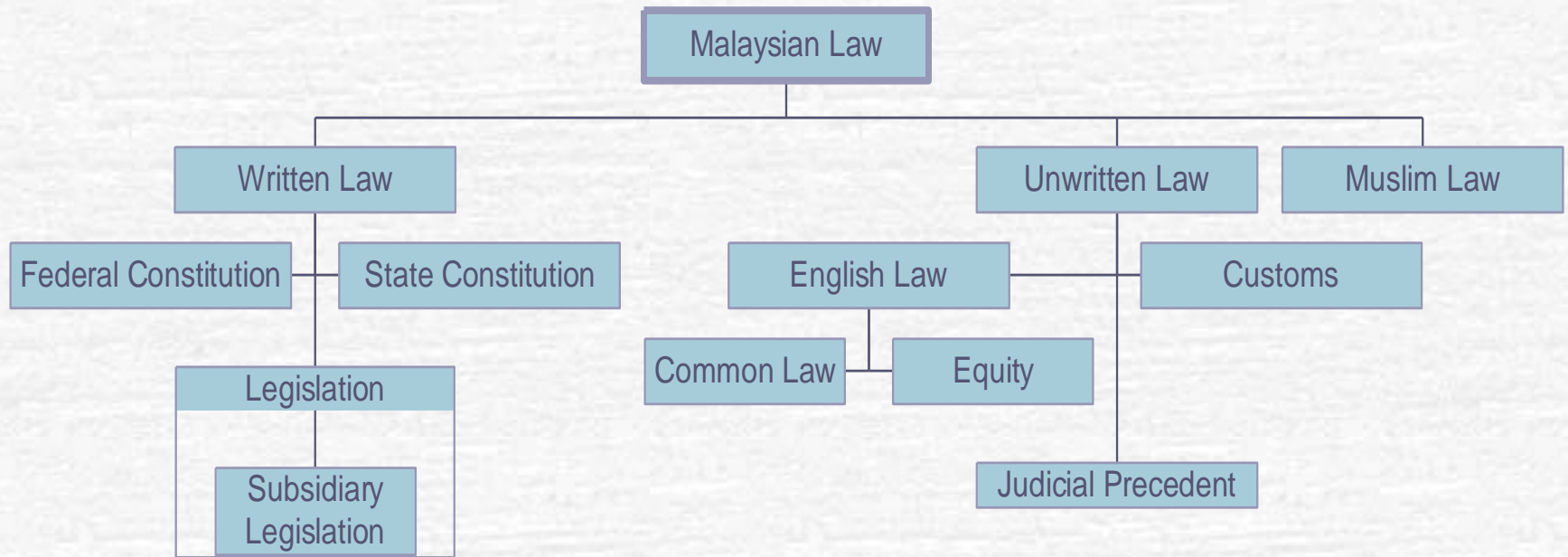
- Defendant was a manufacturer of a ginger beer which been bottled in opaque bottle.
- The ginger beer was bought by a friend of Plaintiff and it was given to her as a gift.
- Plaintiff drank the beer and while drinking she found a decomposed snail in it.
- She suffered serious ill.

Donoghue vs. Stevenson (contd)

Held:

- Plaintiff was entitled to the compensation though there was no contractual duty on the defendant towards the plaintiff, the defendant owed a duty of care towards the plaintiff i.e. to make sure that the consumer will not suffer injuries when consumed the product.

Sources of Law



Sources of Law (contd)

Can be divided into 2: -

- 1. Written law :

- Law which is being enacted by Parliament or State Legislative Assemblies.

- It comprises of: -

1. Federal Constitution

2. State Constitution

3. Legislation

4. Subsidiary Legislation

Sources of Law (contd)

- 2. Unwritten Law:
 - Law which is not being enacted by Parliament or State Legislative Assemblies.
 - It comprises of: -
 1. English Law.
 2. Judicial Precedent
 3. Custom

Federal Constitution.

It is the supreme law of the land.

- Art 4 of F.C. provides: -
 - This Constitution is the supreme law of the Federation and any law passed after Merdeka Day which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void.*

Federal Constitution (contd)

- It lays down :
 - the power of the Federal and State Governments
 - the fundamental rights of the individual etc
- The FC can only be amended by a 2/3 majority of Parliament.

State Constitutions

- Each state has its own constitution regulating the government of the state.
- It comprises of provisions which are enumerated in the Eight Schedule to FC.
- It includes matters concerning the Ruler, the Executive Council, the Legislative Assembly, State Employees etc.

Legislation

- It refers to laws made by a body which has the power to make laws i.e Parliament at Federal level and State Legislative Assembly at State Level.
- Laws made by Parliament are applicable throughout Malaysia.
- But laws made by State Legislative Assembly can only be applied to that particular state.

Legislation (contd)

Various terms in reference to legislation:

1. Acts : laws made by Parliament after Malaysia's Independence in 1957.
2. Ordinance : laws made by Parliament after 1946 but before 1957.
3. Enactment : laws made by State Legislative Assembly (except in Sarawak; its laws are called Ordinance).

Subsidiary Legislation

- ☞ Also known as subordinate / delegated legislation.
- ☞ It refers to laws made by persons or bodies under powers conferred on them by Acts of Parliament or State Assemblies.
- ☞ It includes :-
 - *'any proclamation, rule, regulation, order, notification, by-law or other instrument made under any Ordinance, Enactment or other lawful authority and having legislative effect'* – **Interpretation Act 1967.**
- ☞ Example : parking by-laws enacted by local authority.

English Law

- English law has been adopted in Malaysia due to the British Colonial rule.
- Though the British empire is no longer in existence, the English legal principles had been indirectly applied by judges to the local conditions in the absence of local legislation.
- Nowadays local laws have been enacted to replace the English law.

Judicial Precedent

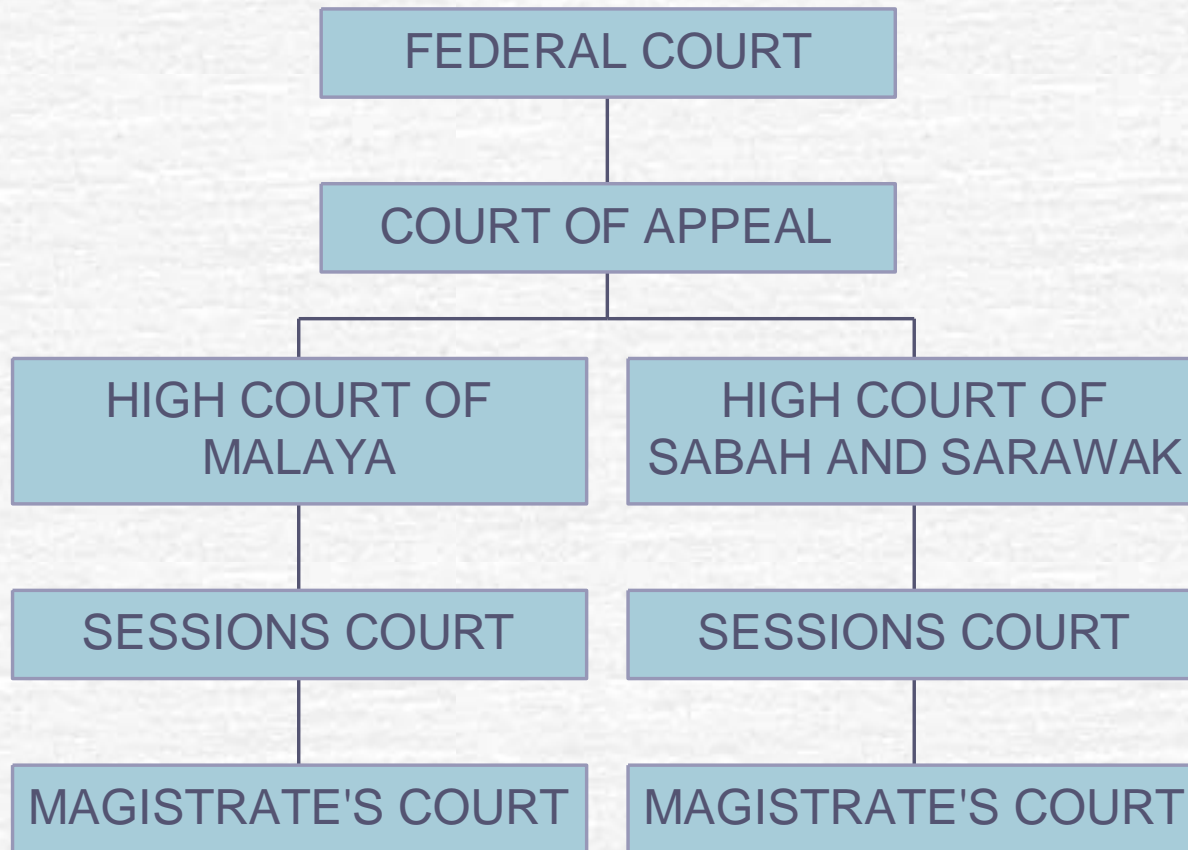
- ☞ It means decisions made by judges previously in other case on similar facts.
- ☞ 2 types of precedents: -
 - 1. Declaratory : a judge applies existing rule without extending it.
 - 2. Original : no previous decision made by other judges, then the judge made decision based on justice, equity and good conscience.

Malaysian Court System



- Is a single-structured judicial system consisting of two parts:-
 - the superior courts and
 - the subordinate courts.
- The superior courts are:-
 - The High Court,
 - The Court of Appeal and
 - The Federal Court.

Malaysian Court System



Malaysian Court System

- ☛ The subordinate courts are :-
 - The Magistrate's Court
 - The Sessions Court.
- ☛ Other courts outside the hierarchy are :-
 - Special Court
 - Shariah Court
 - Penghulu's Court
 - Native Court
 - Court for Children

Federal Court

- Is the highest judicial authority and the final court of appeal in Malaysia.
- The Federal Court earlier (i.e before 24th June 1994) known as the Supreme Court but later renamed as Federal Court.

Federal Court

➤ A. Establishment.

- Article 121(2) of the Federal Constitution :-
 - “ There shall be a court which shall be known Mahkamah Persekutuan (Federal Court) ...”

Federal Court

➤ B. Constitution.

● Article 122 of the FC :

- The Federal Court shall consist of :-
 - i. A President styled as Chief Justice (formerly called the Lord President);
 - ii. President of the Court of Appeal;
 - iii. 2 Chief Judges of the High Court in Malaya and Sabah and Sarawak and
 - iv. 7 other judges.

Federal Court

☛ C. Jurisdiction.

- The Federal Court shall have appellate, original, consultative/advisory and referral jurisdiction.

- 1. Original Jurisdiction.
 - i. To determine the validity of a law made by Parliament or a State Legislature as being in excess of powers.

 - ii. To determine disputes between States or between the Federation and any State.

Federal Court

- 2) Appellate jurisdiction
 - To make final judgments on any cases which come before it on appeal from the Court of Appeal.

- 3) Consultative/advisory jurisdiction
 - To give opinion on any question referred to it by the YDPA concerning the effect of any provision of the F.C which has already arisen or is likely to arise.

- 4) Referral jurisdiction
 - To determine constitutional questions which have arisen in the proceedings of the High Court but referred to the Federal Court for a decision.

Court of Appeal

➤ A. Establishment.

- Article 121(1B) of the F.C :-

- “There shall be a court which shall be known as the Mahkamah Rayuan (Court of Appeal)
...”

Court of Appeal (contd)



- Inside the Court of Appeal, KL.

Court of Appeal (contd)

➤ B. Constitution.

● Article 122A :-

- The Court of Appeal shall consist of :-
 - A Chairman styled as the President of the Court of Appeal and
 - 10 other judges.

Court of Appeal

➤ C. Jurisdiction.

- The COA shall have **appellate** jurisdiction to hear and determine any appeals from the High Court relating to both civil and criminal.

High Court

➤ A. Establishment

- Article 121(1) of the F.C :-

- There shall be 2 High Courts of co-ordinate jurisdiction and status namely :-

- i. High Court of Malaya
- ii. High Court of Sabah and Sarawak.

High Court

➤ B. Constitution

● Article 122 AA of the F.C

- Each of the High Court shall consist of :-
 - i. A Chief Judge and
 - ii. Not less than 4 others judges
- But the no. of other judges shall not exceed :-
 - i. High Court of Malaya – 47 judges
 - ii. High Court of Sabah and Sarawak – 10 judges.

HIGH COURT

Original Jurisdiction	Appellate Jurisdiction		Advisory Power	Reversionary Power
	Civil	Criminal		
Hear all civil and criminal cases untriable in subordinate courts.	Hear all civil appeals from subordinate courts.	Hear all criminal appeals from subordinate courts.	Advise subordinate courts on constitutional issues.	Revise subordinate court's decision in criminal and civil cases.
	<u>Exception :-</u>	<u>Exception:-</u>		

HIGH COURT

	<p>The value of subject matter is less than RM 10,000.</p>	<ol style="list-style-type: none">1. Offences punishable with fine not exceeding RM25.2. A person who has pleaded and found guilty except as to the extent or legality of the sentences.3. A person who has been acquitted except with the sanction of Public Prosecutor		
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Sessions Court

➤ A. Establishment

- Section 3(2) of the Subordinate Courts Act 1948 :-
 - There shall be established the following courts:
 - i. Sessions Court.
 - ii. Magistrate's Court.

Sessions Court

Original Jurisdiction	
Civil	Criminal
<p>Unlimited jurisdiction to hear :-</p> <ol style="list-style-type: none">1. Running down cases (actions of negligence by pedestrian to motorists who have caused them injuries), landlord and tenant and distress (hold the property of a person against the payment of debts)2. Civil cases where the amount in dispute not exceeding RM 250,000.003. With the consent of the conflicting parties, to hear cases exceeding RM250,000.00 BUT the sentence is limited to RM 250,000.00	<p>Try all offences except punishable with death sentence.</p>

Sessions Court

EXCEPTION

Matters relating to:-

- i. Immovable property,
- ii. Specific performance / recession of contracts.
- iii. Injunction
- iv. **Probate** (Probate is the [legal](#) process of administering the [estate](#) of a deceased person by resolving all claims and distributing the deceased person's [property](#) under the valid will) and **administration of estates.**
- v. Divorce (for non-muslim).
- vi. Bankruptcy.
- vii. Accounts.

Magistrate's Court

➤ A. Establishment

- Section 3(2) of the SCA 1948.

➤ B. Classification :-

- First Class Magistrate.
- Second Class Magistrate.

Magistrate's Court

Court	Original Jurisdiction		Max damages (Civil)	Max fine (Criminal)	Maximum Sentence
	Civil	Criminal			
	Cases where the amount in dispute not exceeding RM 25,000.00	Offences punishable with : i. less than 10 years imprisonment or ii. fine only or iii. Cases involving robbery and housebreaking by night	RM 25,000.00	RM 10,000.00	5 year's jail and 12 strokes of whipping
					Combination of fine and jail sentences.