

Origins of Malaysian Law

Malaysia is a federation of thirteen states and three federal territories, namely, Kuala Lumpur, Putrajaya and Labuan. The federation has a central government. The legislative and executive powers of the federation are divided between the central and state governments. Important matters such as defense, external affairs and others are under the Federal Government and matters of local concern, for example, land, mining, and agriculture are under the state law.

Early Law

Early laws of the Malay states are recorded from the time of the Malaccan Sultanate which was largely influenced by Hindu, Buddhist, and Islamic philosophy. The traditional laws were generally unwritten and only customary in nature. A Malay Sultan during the Malacca era held absolute power and commanded absolute loyalty from his subjects. The Sultan could declare war, decide on the life and death of his subjects, administer justice and maintain law and order.

European Colonialism

By the sixteenth century, Malacca was a bustling cosmopolitan port, attracting hundreds of ships each year. The city was known worldwide as a centre for trade. Unfortunately, this fame slowly ended when the Europeans began to extend their power into the East. The Malay Sultanate of Malacca broke up with the coming of the Europeans into the region, beginning with the Portuguese, the Dutch and later by the British.

Portuguese Administration

After the Portuguese captured Malacca in 1511, a military and civil administration was established. Malacca was governed by a governor or captain. However the Portuguese authorities did not exert their influence over the communities, who lived outside the city walls. Their interest was in trade and not in political power.

Dutch Administration

The Dutch defeated the Portuguese and took over Malacca in 1641. A Dutch administration was immediately established. The Dutch administration was headed by a governor and assisted by a council comprising of the mayor, the merchants, a secretary and many others. However, like the Portuguese, the Dutch were only interested in trade and never attempted to exert their political authority.

The Constitution

In Malaysia, we have a written constitution known as the Federal Constitution. The Federal Constitution of Malaysia was formally adopted on 31st August 1957. It is the highest law of our country and contains the fundamental rights of the citizen. The Constitution guarantees our basic rights such as the right to life and liberty, right to equality, right to education, right to property as well as freedom to practice one's religion.

Other Sources of Law

Common Law

Common Law is the oldest form of law and derived from the English courts over many centuries. English colonialists brought common law principles into our country and these principles formed the foundation of our legal system. Since written law cannot address fully every aspect of the principles of law, common law thus provides guidance on areas that are not covered by written laws. The Malaysian legal system and its laws follow closely English Common law principals and also apply judgements and decisions by the English Courts in deciding a case.

Statutes

A statute is a formal and written law of our country. When Parliament passes a law, it becomes an Act which is also known as statute law.

Customary and Native Law

Customary law is of little relevance to the communities in West Malaysia today. However, for the natives of Sabah and Sarawak, customary law remains an important source of law, particularly as a means of social control in remote communities and in the administration of

estates, family law and inheritance and as well as the election of traditional ruling chiefs.

Syariah Law

When the traders from the Arabian Peninsular and Gujarat (India) landed on the shores of Malacca in the fifteenth century, they brought along with them Islam. When the Malacca Sultanate embraced Islam, the Malays since then became Muslims and were governed by Islamic laws.

The main source of Syariah law is from the Al-Quran, Hadis and Sunnah.

Syariah Law in Malaysia applies only to Muslims and comes under the control of the Syariah Court. It covers matters such as marriage, divorce, adoption, wills and other offences under the Islamic law

International Law

There are two methods by which international law may be incorporated into domestic law. The first is through legislation. Legislation may expressly enact the terms of a treaty or convention to which Malaysia may be a party or it may impliedly do so by requiring domestic law to be♦♦ interpreted in accordance with a treaty or convention.
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The second method is through the common law process. Courts may, through the interpretation of domestic law, introduce principles of international law into the domestic system.

As far as human rights are concerned, the most important international document is the Universal Declaration of Human Rights 1948 (UDHR) which was adopted by all members of the United Nations.♦ The UDHR is the common yardstick to measure a nation♦s commitment to and respect for human rights standards
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