Chapter 1: Introduction to the Malaysian Legal System
Lesson Objectives

By the end of the lesson, students will be able to:

❖ Define the meaning of law
❖ Describe the purpose and function of law
❖ Identify the different sources of Malaysian law
❖ Describe the court system (hierarchy) in Malaysia
What is Law?
What is Law?

- Law can be described as a general rule of conduct for laymen on how to behave themselves in society - the do’s and don’ts

- Definition given by lawyers:
  - Philips S. James: ‘law is a collection of rules of human conduct prescribed by human being for the conduct of human beings’
  - Sir John Salmond: ‘the body of principles, recognized and applied by the state in the administration of justice’
  - John Austin: ‘the command set by a superior being to an inferior being and enforced by sanctions (punishment)’
The characteristics of law are:

- Law prescribes standards of conduct that we have to conform to - some conducts are forbidden
  - certain conditions imposed on conduct
  - certain transaction may be carried out with legal backing
- Law regulates human conduct
- Law is dynamic and changes as society and values changes
- Law is enforced and imposed
Functions of Law
Functions of Law

Why is there a need for law?

• To protect us from anti social behavior
• To maintain public order and peace in the society
• Law provides the solution to disputes or disagreement between members of the society
• Law lay certain rules and regulations on how the government should govern a state
Classification of Law

- Public and Private
- Civil and Criminal
- Municipal and Public International Law
- Substantive and Procedural
Common Terms in Law

- SUIT
- CLAIM
- ACTION
- PARTIES
- PLAINTIFF
- DEFENDANT
- BURDEN OF PROOF
- PRIMA FACIE
- VERDICT
- GUILTY
- LIABLE
Sources of Malaysian Law
Sources of Malaysian Law

**Written Law**
- Federal
- State

**Unwritten Law**
- Custom
- English Law
- Judicial Precedent

**Islamic Law**

**Legislations**
#1 Written Law

- Law which can be found in writing and have undergone the process of law making by the legislative body
- Legislative body in Malaysia can be divided into two:
  1. The Parliament
  2. State Legislative Assembly
- Parliament and State Legislature have to enact laws according to provisions in the Federal Constitution
  - List I of the Ninth Schedule for Parliament
  - List II for State
  - List III - concurrent
#1 Written Law

- Law made by the legislative bodies are known as legislation.
- **State Enactment** – laws made by state legislative assembly.
- **Ordinances** – laws enacted before Independence & also laws in Sabah & Sarawak.
- **Subsidiary / Delegated Legislation** - law made by certain bodies under power conferred on them by certain Acts a.k.a Rules, Regulations and By- laws.
#1 Written Law

**Reasons** for subsidiary delegation:

- Insufficient laws to deal with everyday matters
- Economize the legislative time of legislature
- Lack of expertise in technical matters
- Delegated legislation is more flexible and elastic

However, all the above laws must be in accordance with / does not contravene the supreme law of the land i.e. the Federal Constitution
#2 Unwritten Law

- Laws which are not the result of formal law making process.
- Not necessarily ‘unwritten’ - law which existed and practiced under the sanction of other specific law.
- Includes customary law, judicial precedents and English common law and equity.
Customary Law

• Custom defined as ‘a rule of conduct, obligatory on those within its scope, established by long usage. Custom is to society what law is to state.

• To be acceptable as law, custom must be:
  – exist since time immemorial (antiquity)
  – certain and reasonable
  – obligatory
  – not repugnant to statute law
> Customary Law

- In Malaysia, only those customs pertaining to family matters i.e. marriage, divorce and inheritance are recognized and given legal enforcement by the courts.
- Example of recognized customary law:
  - Adat Pepatih (matrilineal)
  - Adat Temenggong (patrilineal)
Judicial Precedent

- Normally when judges pass decisions in court, they do not make it arbitrarily, but will follow the judicial precedent.

- Defined as ‘a judgment or decision by a court of law cited as authority for deciding a similar set of facts or case which serves as an authority for the legal principles embodied in its decisions’ (ratio decidendi).

- This doctrine of binding precedent (stare decisis) says that a judge is bound to apply the rules contained in previously decided cases - if they’re the same ‘on all four’

1. Courts should treat similar cases in similar fashion.
2. Results in Precedents
3. **Binding Precedent** - Courts must follow the ratio decidendi of judgments made in higher courts in the same court hierarchy.

4. **Persuasive Precedent** - Courts may follow the ratio decidendi of all other courts not higher in the same court hierarchy, or the obiter dicta of all courts.

   - However its application depends on the hierarchy of courts where only lower courts are bound by the decision of superior courts, not vice versa.
English Common Law and Equity

- Common law - law created by customs and decisions of judges - unwritten because no complete codification.
- Malaysia adopted Common law due to the colonization.
- After Independence - by virtue of Sec. 3 and 5 of the Civil law Act 1956
  - Sec 3 - English law applicable only if:
    a. there a lacuna in the local statutes.
    b. the English law is suitable to local conditions
English Common Law and Equity

- Sec 5 - application of English law in commercial matters
- Equity - fairness or natural justice
- A body of law developed to supplement the inadequacies / defect in common law
#3 Islamic Law

- Based on the Holy Quran and Sunnah of the Prophet
- Has been around since the early days of the Malacca Sultanate
- Invasion and colonization diminished its importance
- However, Islam recognized as the official religion in Malaysia by Article 3 Federal Constitution
- Islamic Law now only significant in areas of family law and is under the jurisdiction of State Govt..
- Islamic Law - administered by the Syariah Court by virtue of Article 121 (A) FC to the exclusion of civil court.
Court System in Malaysia

• In Malaysia - court system consist of three tier system.
• One trial - two appeal
• The system allows parties to any dispute to appeal from court of first instant to another court of higher jurisdiction.
• Highest court in the land - Federal Court.
• Each court has its own jurisdiction
Court System in Malaysia

**Magistrate Court**
- A First Class Magistrate may hear a civil case when the amount in dispute does not exceed RM100,000.
- Criminal – offences punishable by fine and < 10 years

**Session Court**
- Any civil matter where the amount in dispute does not exceed RM1,000,000.
- Jurisdiction to try all criminal offences EXCEPT those punishable by death.

**High Court**
- Any civil matter where the amount in dispute exceed RM1,000,000.
- May hear all matters but generally confines itself to offences on which the Magistrates and Sessions Courts have no jurisdiction, for instance, offences which carry the death penalty.
Court System in Malaysia

• The court’s hierarchy relates to the doctrine of binding precedent

• Importance of a court hierarchy
  – Serious matters are heard by higher courts with more experienced judges.
  – Ensures doctrine of precedent can operate through appellate jurisdiction.
  – Allows appeals against decisions on the basis of mistakes of law.
  – Allows for specialization.
Hierarchy of Courts in Malaysia
(After 24th June 1994)

- Federal Court
- Court Of Appeal
  - High Court Of Malaya
    - Session Court
      - Magistrate Court
  - High Court of Sabah & Sarawak
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