

# Chapter 1: Introduction to the Malaysian Legal System



# Lesson Objectives

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- 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

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**

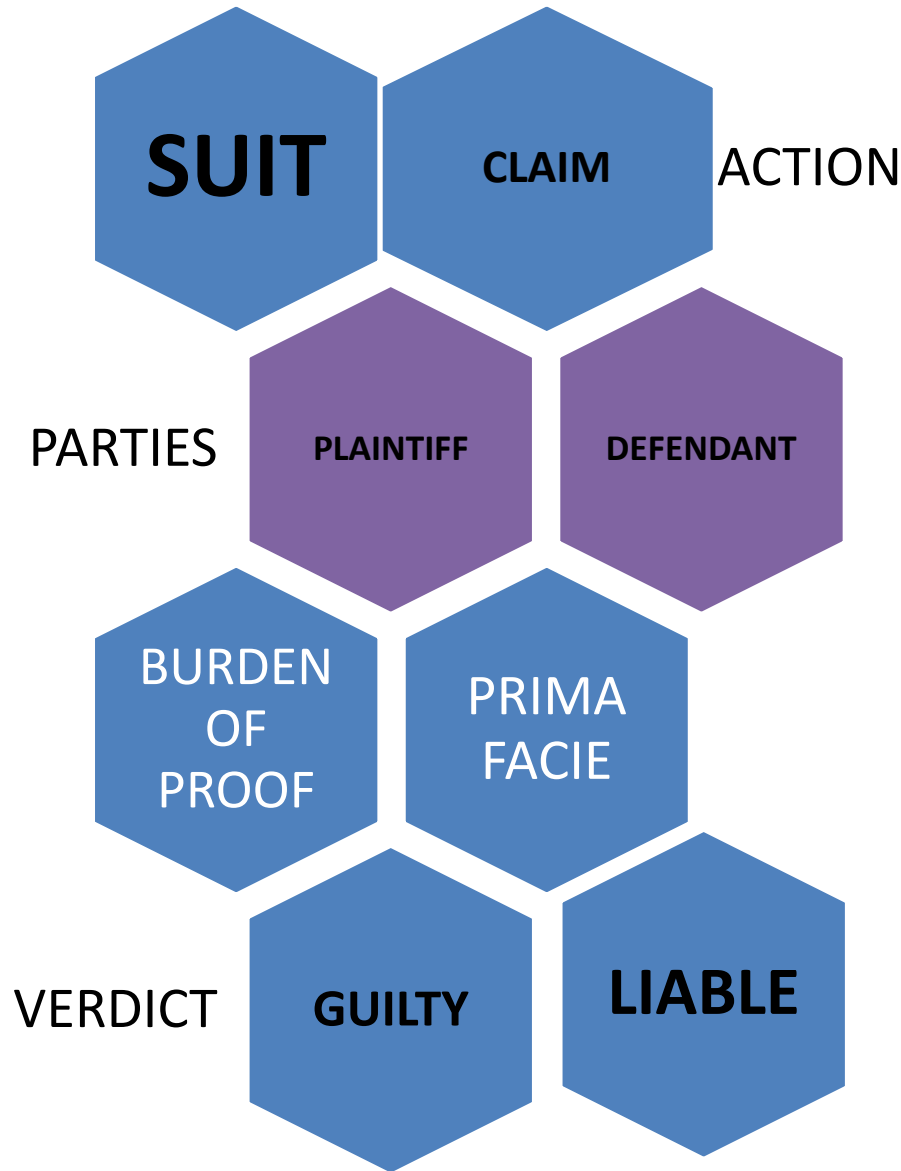
**CIVIL  
AND  
CRIMINAL**

**MUNICIPAL  
AND  
PUBLIC  
INTERNATIONAL  
LAW**

**SUBSTANTIVE  
AND  
PROCEDURAL**



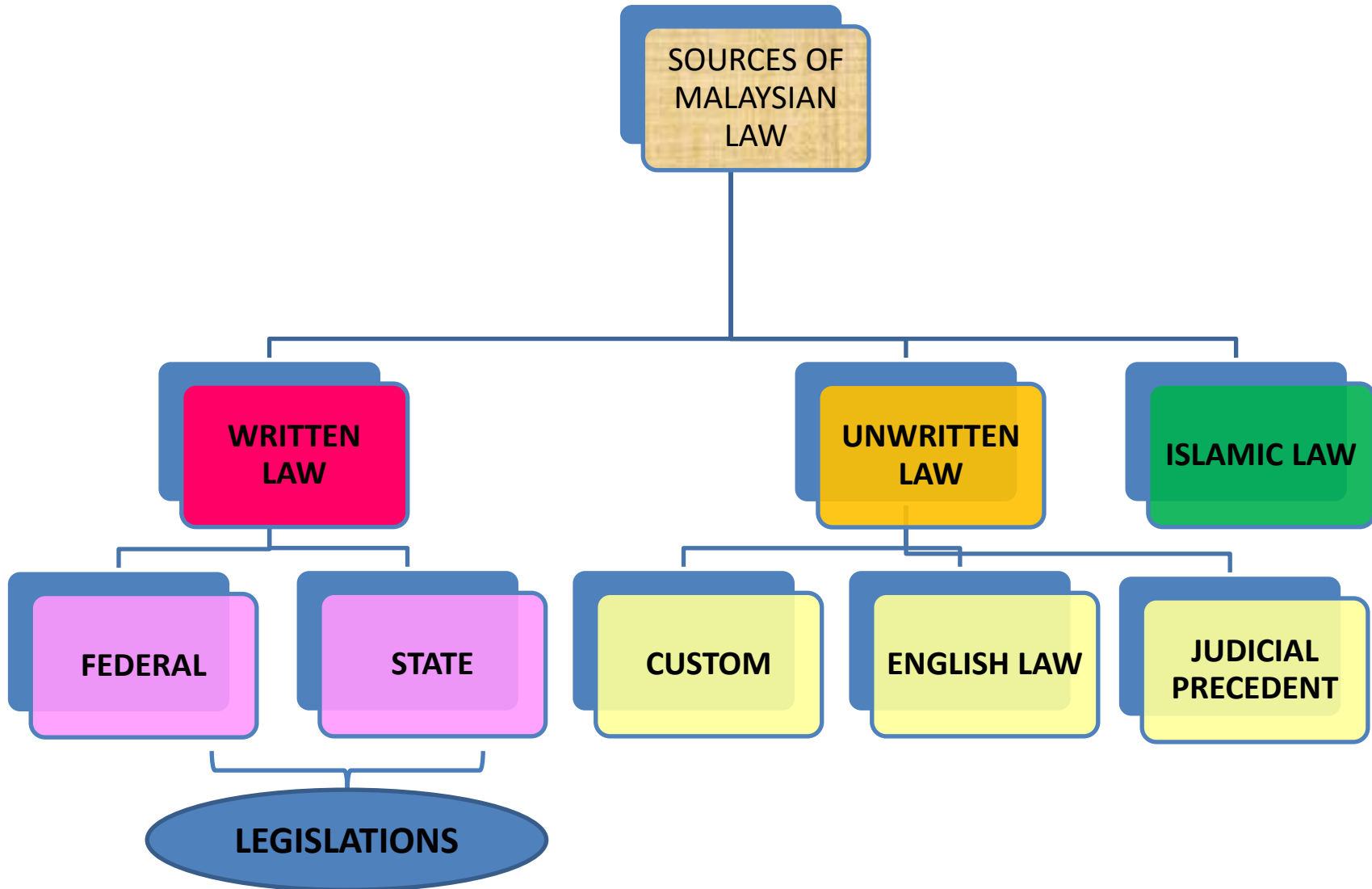
# Common Terms in Law





# Sources of Malaysian Law

# Sources of Malaysian Law



# #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

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- Law made by the legislative bodies are known as **legislation**
- **Acts of Parliament**- law passed by Parliament after 1957
- **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

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**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

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- 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

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- 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

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- 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 )

- 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.

- 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

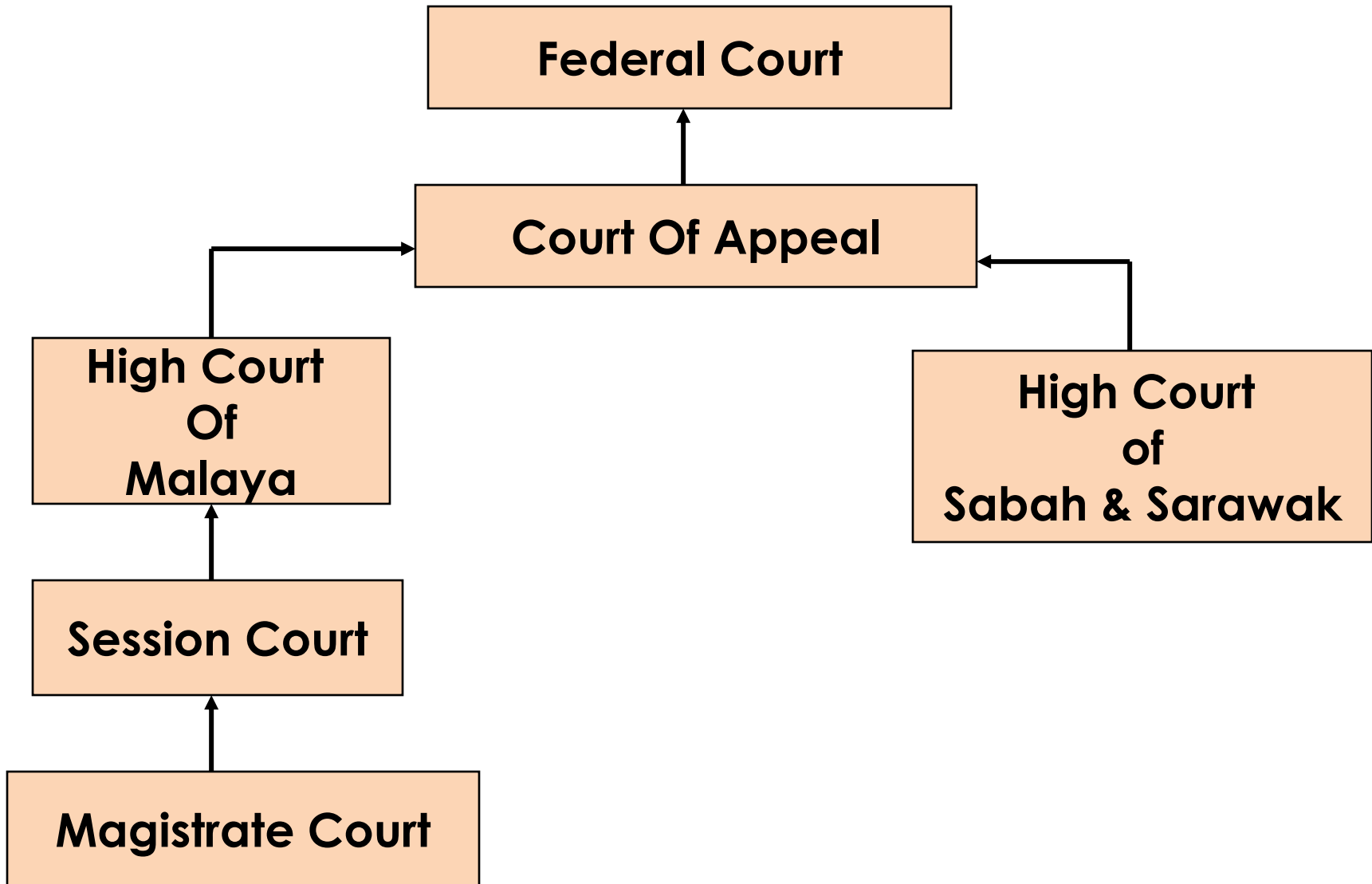
- Any civil matter where the amount in dispute exceed RM1,000,000.
- May hear all matters but generally confines itself to offences on which the Magistrates and Sessions Courts have no jurisdiction, for instance, offences which carry the death penalty.



# 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 24<sup>th</sup> June 1994)



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