



LEGAL PROFESSION IN MALAYSIA: PRACTICE AND ETHICS

General Editors
Ashgar Ali Ali Mohamed
Muhamad Hassan Ahmad

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Legal Profession in Malaysia: Practice and Ethics is a comprehensive guide to the Malaysian legal profession, offering insights into both the Civil and Syarie legal systems. Covering 31 chapters, the book explores the evolution of legal practice in Malaysia, the regulatory frameworks governing the profession, and admission requirements for advocates, solicitors, and Syarie lawyers. It also examines key professional responsibilities, such as maintaining integrity, competency, and professionalism, managing solicitor-client relationships, and fulfilling duties to the court, opposing counsel, and clients. Topics like legal professional privilege, conflicts of interest, types of legal firms, costs and taxation, and disciplinary procedures are also addressed.

The book further explores contemporary challenges facing the profession, including globalization, technological advancements, declining standards in legal education, and the need for specialization to enhance competency. Issues such as occupational stress, legal aid, pro bono services, judicial immunity, and misconduct are also covered. Authored by experts, this book serves as an invaluable resource for students, academics, and practitioners, offering both practical guidance and thought-provoking insights into the legal profession in Malaysia.



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PREFACE

In Malaysia, the major legal systems adopted are the common law system and the Islamic legal system, particularly in matters relating to the personal law of Muslims. In the above systems, it employs a different mode of trial where in the former, it is the adversarial system, while in the latter, the inquisitorial system. In an adversarial trial, as practiced in the ordinary courts of law, the parties through their advocates have control over their respective cases as they see fit, and the trial judge merely presides at the hearing and takes a passive role in presenting the evidence. This stands in sharp contrast to the inquisitorial system where the court assumes a dominant role in investigating the facts, forming an opinion on whether the evidence is sufficient to justify charging the accused and establishing whether there is a *prima facie* case against the accused based on the available records.

With the technical rules on court procedure and trial for criminal and civil cases, coupled with the strict requirement to adhere to the laws of evidence to establish or defend the claim, a layman in an adversarial system who is unfamiliar with the procedural requirements would not be able to represent or defend himself effectively. Hence, the need to engage a qualified advocate and solicitor, skilled in conducting court proceedings, to ensure that the proceedings will be carried out systematically and efficiently and protect the parties from costly errors.

With these two different legal systems, there is a dual legal profession practiced in Malaysia, namely, the Legal Profession Act 1976 (LPA) enforced in West Malaysia, the Sabah Advocates Ordinance (Cap. 2) and the Sarawak Advocates Ordinance 1958 (Cap. 110), in Sabah and Sarawak, respectively, and the Syariah legal profession pursuant to the Syariah Legal Profession (Federal Territories) Act 2019. Several legal profession bodies have been established in the above-mentioned statutes to regulate the profession, namely, the Legal Profession Qualifying Board, the Malaysian Bar, the Bar Council, the State Bar Committee, and the Disciplinary Board and the Disciplinary Committee under the LPA. While in the Syariah Legal Profession (Federal Territories) Act 2019, the Syariah Legal Profession Qualifying Board, *Badan Peguam Syariah*, *Majlis Peguam Syariah*, and the Disciplinary Committee of Peguam Syariah.

With that said, the book *Legal Profession in Malaysia: Practice and Ethics* which consists of 31 chapters, covers a wide range of topics on the legal profession in Malaysia with reference to the LPA and the Syarie Legal Profession (Federal Territories) Act 2019. It traces the development of the legal profession and practice in Malaysia, the legal profession regulatory bodies under the civil and Syariah systems, the admission requirements to be an advocate and solicitor, including the articulated clerks under the LPA, admission requirements as an advocate under the Sabah Advocates Ordinance and the Sarawak Advocates Ordinance, and the admission requirements to be a Syarie lawyer or *Pegulam Syarie* under the Syarie Legal Profession (Federal Territories) Act 2019.

The discussion also encompasses the lawyer's duty to preserve and protect the legal profession, the counsel's competency and professionalism, the lawyer's several duties to the court, solicitor-client relationship, the lawyer's duty to opposing counsel, legal professional privilege, conflict of interest in the legal profession, publicising of legal practice, the solicitor-client costs and the taxation of bill of costs. Also covered are chapters concerning the law on contempt of court and the issue relating to the relevancy of the contempt of scandalising the court. Further, there is an extensive discussion on professional misconduct involving the advocate and solicitor, disciplinary procedures, and punishment, including the reinstatement or restoration to the Roll of Advocate and Solicitor, the professional indemnity insurance scheme, and the compensation fund.

Also featured in the book are chapters relating to the types of legal firms in Malaysia and the various challenges to the legal profession. These include the impact of globalisation on the legal profession, technology in the delivery of the justice system, and the need for the members of the legal profession to adapt and embrace the changes to keep pace with a rapidly evolving world, the need for continuous learning among lawyers, the need for a common entry requirement for admission to the profession thereby addressing the declining standards of legal education, the growing competition in the industry and lastly, the occupational stress involving members of the profession, which often results in high dissatisfaction in terms of job mobility, burnout, and quality performance, among others.


The role of a barrister or a solicitor in England and Wales is compared with an advocate and solicitor in West Malaysia with a special focus on whether the members of the legal profession in Malaysia should specialise in the interest of enhancing their competency. Aside from the above, legal aid, *pro bono* service, judicial immunity, and judicial misconduct are also featured in the book.

The chapters are contributed by a pool of academics who are extensively involved in the research and publication on this subject. Admittedly, this book would be an excellent source of reference for students pursuing the Bachelor of Laws programme as well as legal practitioners to acquire an understanding of the subject as well as keeping abreast of various case laws on the subject. The non-legal communities would also find this book useful to understand the practise and ethics of the legal profession in the common law system and the Islamic legal tradition as practiced in Malaysia. Besides, the chapters have been written in simple language and the contents are easily comprehensible.

At the outset, as the general editors of this title, we would like to express our heartfelt appreciation to all the contributors for their extensive research in terms of the collection of laws, principles, and authorities. Their research and multifarious knowledge of this subject would certainly make this book an excellent source of reference for all those interested in this subject.

Our heartiest appreciation and thanks are also due to Tun Dato' Seri Utama Abdul Hamid bin Haji Mohamad, the former Chief Justice of Malaysia, for spending his precious time preparing the Foreword to this book. Further, we would like to extend our gratitude to the publisher, CLJ Malaysia Sdn Bhd, for taking a great deal of interest in the publication and for their support in finally getting this book published.

The applicable laws and the developments stated in this book stand as of 1 March 2025.



Professor Dato' Sri Dr Ashgar Ali Ali Mohamed
Dr Mubamad Hassan Ahmad
1 March 2025

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FOREWORD

Access to justice is one of the fundamental human rights inherent to all human beings in that no one with legal claims or actions should be deprived of their right to seek redress in the courts of justice. The terms “equal before the law” and “equal protection of the law” in the Federal Constitution art. 8 supports the above concept. The adversarial system practiced in the Malaysian civil courts emphasised the important role played by lawyers, where the parties through their advocates control their respective cases in the best manner as it appears to them and the court does not direct or dictate to them on how to conduct the case.

With the different sets of procedures applicable to criminal and civil cases, the parties normally engage qualified advocates and solicitors to represent them to protect themselves from costly errors.

The legal profession in Malaysia is regulated by the Legal Profession Act 1976, which Act came into force in West Malaysia on 1 June 1977 but has not been extended to Sabah and Sarawak although s. 2 of the Act allows for its applicable to Sabah and Sarawak with such modifications as the Yang di-Pertuan Agong may by order make, and such Order shall be published in the *Gazette*. Currently, the legal profession in Sabah and Sarawak is regulated by separate legislation namely, the Advocates Ordinance (Cap. 2) and the Advocates Ordinance 1958 (Cap. 110), respectively.

The legal profession in West Malaysia is fused in that a person admitted to the Bar is both an “Advocate and Solicitor” with the exclusive right to appear and plead in all Courts of Justice in Malaysia according to the law in force in those courts. Although the admission to the High Court of Sabah and Sarawak is only in respect of an advocate nevertheless, an advocate in these States also performs the functions of a solicitor.



However, in England, the legal profession is divided into the profession of solicitors and barristers. Solicitors handle clients, client money, client relationships, gathering information from the client, interviewing the client for preparing witness statements, filing and serving court papers, providing address for service, and instructing the barrister. They also undertake non-contentious work like conveyancing. Meanwhile, barristers are trained to advocate before the courts, besides regularly drafting court papers and giving written and oral opinions. Generally, barristers specialise in certain areas of practice such as criminal law, shipping law, company law, family law, competition law, and environment and planning law among others, and they take up work only in those areas, although there is no restriction in their practising certificate from taking work on any area of law.

With that said, the book *Legal Profession in Malaysia: Practice and Ethics* which comprises 31 chapters extensively discusses the legal profession in Malaysia which includes the legal profession and practice during the British administration of Malaya and since independence, the various statutory bodies regulating the legal profession under the Legal Profession Act 1976 and Syariah Legal Profession (Federal Territories) Act 2019, the admission requirements as an advocate and solicitor in West Malaysia, or as an advocate in Sabah and Sarawak, and the admission requirements as Syariah lawyer or *Peguam Syariah* in the Federal Territories.

The advocate and solicitor's duties and obligations are well featured in this book through several dedicated chapters discussing, among others, lawyers' diligence in their observance of undertakings and all directions given by the court; to assist the court in the administration of justice, not to mislead the court, knowingly or recklessly; to be frank in their responses and disclosures to the court; to act with competence, honesty and courtesy towards other lawyers, parties and witnesses; and not to undermine the dignity and authority of the court, among others.

Further, the legal professional privilege and confidentiality of all communications between the clients and their lawyer, conflict of interest in the legal profession, publicising legal practice, and the lawyer-clients fees and billing are also featured in the book. Also worth mentioning is an extensive discussion on legal professional misconduct, disciplinary procedures, punishment, and restoration to the Roll after being disbarred. It also covered the legal firm's regulatory compliance and the professional indemnity insurance and compensation fund.

The current challenges to the legal profession such as globalisation and the legal profession; technology and the legal profession; the need for continuous learning among lawyers; towards a single-entry mode into the legal profession; competition in the legal industry; and occupational stress among members of the profession are also well captured in the book. Heightening of legal competency through lawyer specialisation, legal aid, and *pro bono* service as well as judicial immunity and the circumstances where the immunity can be pierced are also among the significant features of the book.

Undoubtedly, the book is an excellent source of reference to legal profession in Malaysia with an extensive discussion of the relevant statutory provisions and decided cases on the subject. I am fully confident that this book which is a first of its kind capturing both the civil and Syariah legal profession and practise will be of great interest not only to the law students but also to the members of the profession and the public in deepening their knowledge and understanding of the subject under the common law tradition and Syariah legal system as practiced in Malaysia.

With that said, I heartily congratulate all contributors to this title for their extensive research, and to the editors, for successfully completing this onerous task and coming up with this useful legal material which would certainly contribute to the pool of legal knowledge from the Malaysian perspective.

I wish you all great success with this publication.

Thank you.

A handwritten signature in black ink, reading "Abdul Hamid". The signature is written in a cursive style with a large initial 'A'.

Tun Dato' Seri Utama Abdul Hamid bin Haji Mohamad
Former Chief Justice of Malaysia

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