Constitutional Law and Human Rights in Malaysia
Topical Issues and Perspectives

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Contents

Preface ........................................................................................................................................ vii
About the Authors ....................................................................................................................... ix
Table of Cases ............................................................................................................................ xxi
Table of Statutes ........................................................................................................................ xlii
Table of International Conventions, Agreements and Treaties ........................................ iii

Principal Organs of Government

Chapter One
The Doctrine of Separation of Powers: Judicial Review as a Check and Balance Tool ................................................................. 1

1.1 Introduction ................................................................................................................................ 1
1.2 Constitutionalism, rule of law and judicial review ........................................................................ 1
1.3 Doctrine of separation of powers, principle of check and balance and judicial review .................. 3
  1.3.1 Doctrine of separation of powers in Malaysia ............................................................................. 4
  1.3.2 The principle of check and balance .......................................................................................... 7
  1.3.3 Judicial review ............................................................................................................................ 7
    1.3.3.1 The scope and nature of judicial review .................................................................................. 7
    1.3.3.2 Relief available in judicial review .......................................................................................... 8
    1.3.3.3 Review of primary legislation/check on the Legislature ......................................................... 8
    1.3.3.4 Review of action and decision/check on the Executive ......................................................... 14
1.4 Selected issues and cases .............................................................................................................. 15
1.5 Conclusion .................................................................................................................................... 20

Chapter Two
The Civil Service and the Doctrine of Holding Office at Pleasure .................................................................................................. 21

2.1 Introduction .................................................................................................................................. 21
2.2 The constitutional position of a public servant ............................................................................. 22
2.3 Appointment and security of tenure ............................................................................................ 23
2.4 The contractual nature of the relationship ................................................................................. 27
2.5 Procedural protections .................................................................................................................. 28
2.6 The roles and functions of the Service Commission and Council ............................................. 32
  2.6.1 Duty of confidentiality .................................................................................................................. 33
  2.6.2 Disclosure in the public interest ............................................................................................... 34
Chapter Three
Crown Privilege under the Common Law and the Evidence Act

3.1 Introduction ........................................................................... 39
3.2 Crown privilege ..................................................................... 40
3.3 Expanding scope of public interest immunity ...................... 41
3.4 Court withholding evidence in the public interest ............... 44
3.5 Test applied for claim to withhold evidence ......................... 46
  3.5.1 Class claims and content claims ..................................... 46
  3.5.2 Balancing competing interests ....................................... 47
  3.5.3 Court's power to inspect documents ............................... 48
3.6 Crown privilege under the Evidence Act 1950 ..................... 49

Chapter Four
Accountability and Integrity of the Judiciary .............................. 57

4.1 Introduction ........................................................................... 57
4.2 Maintaining judicial ethics ................................................... 58
4.3 Judicial ethics in Malaysia .................................................... 59
4.4 Judicial delinquents .............................................................. 60
4.5 Methods of supervising judges' conduct ............................... 63
  4.5.1 Tribunal .......................................................... 63
  4.5.1.1 Criticisms on the process of judges' removal .......... 65
  4.5.1.2 Did the working party really intend to free Article 125(3) and (4) from political influence? ...................... 66
  4.5.2 Judges' ethics committee ........................................... 68
  4.5.2.1 Background of the Malaysian Judges' Code of Ethics .................................................. 68
  4.5.2.2 The scope of the Judges' Code of Ethics 2009 .... 72
  4.5.2.3 Issues on the Judges' Code of Ethics 2009 .......... 74
  4.5.2.4 Disciplinary procedure on breach of Code .......... 76
4.6 Conclusion ............................................................................. 77

Chapter Five
Contempt of Court vs Freedom of Speech and Expression: Rethinking the Courts' Attitude ..................................................... 79

5.1 Introduction ........................................................................... 79
5.2 The Malaysian courts' approaches in striking a balance ....... 80
5.3 Rethinking the Malaysian courts' approaches in striking a balance ......................................................... 87
5.4 Concluding remarks ............................................................. 94
Chapter Six
Access to Justice: Adversarial Costs in Public Interest Litigation

6.1 Introduction
6.2 Judicial discretion in awarding costs
6.3 Costs in the United Kingdom
6.4 Costs in Malaysia
   6.4.1 Specific statutory provisions for order of costs
6.5 The position in Canada
6.6 Different kinds of costs mechanisms
6.7 The Aarhus Convention
6.8 Conclusion

Chapter Seven
Functions and Privileges of Parliament: An Overview

7.1 Introduction
7.2 What is Parliament?
   7.2.1 Parliament building
   7.2.2 Parliament as an institution
7.3 The structure and main components of Parliament
   7.3.1 Constitutional and legal framework of parliamentary privileges in Malaysia
   7.3.2 Parliament as the central organ of Malaysian democracy
7.4 Definition and purpose of parliamentary privileges
   7.4.1 The sources and legal framework of parliamentary privileges in Malaysia
   7.4.2 Types of parliamentary privileges
7.5 Privileges of the Houses of Parliament as a collectivity
   7.5.1 Rights of the House to regulate its own composition and have exclusive cognizance of matters arising within the House
   7.5.2 The power to discipline
7.6 Rights and immunities of individual members of Parliament
   7.6.1 Freedom of speech
   7.6.2 Exemption from court attendance
   7.6.3 Freedom from arrest
7.7 A comparison of two cases on power to punish for contempt: A distinction between the power of the State Legislative Assembly and the Federal Parliament
7.8 Conclusion

Chapter Eight
The Election Commission: History and Functions

8.1 Introduction
8.2 Historical background
8.3 The 1955 election: successful experiment of the elections in Malaya................................................................. 139
8.4 The Election Commission since independence.......................... 140
  8.4.1 The organisation of Election Commission.......................... 140
  8.4.2 Functions of the Election Commission............................. 143
8.5 Demands for electoral reform............................................... 145
8.6 Conclusion........................................................................ 147

Chapter Nine
Elected Members and the Right to Change Party.......................... 149
  9.1 Introduction...................................................................... 149
  9.2 Elections and the party system.......................................... 150
  9.3 Concept of an elected representative................................. 151
  9.4 Islamic theory of democratic government and the role of elected representatives.................................................. 152
  9.5 Anti-defection law: Legal position in Malaysia...................... 154
    9.5.1 Anti-defection laws: Legal position in India..................... 157
    9.5.2 Is there a need to enact an anti-defection law in Malaysia?............................................................... 158
  9.6 Overcoming legal hurdles.................................................. 161
    9.6.1 The advantages and disadvantages of anti-defection laws................................................................. 162
  9.7 Conclusion........................................................................ 162

Chapter Ten
Islamic Law within the Federal Framework and Legal System of Malaysia and Nigeria................................................. 165
  10.1 Introduction.................................................................... 165
  10.2 The nature of the Malaysian and Nigerian states................... 166
  10.3 Status and scope of Islamic law........................................ 169
    10.3.1 Civil law (Muamalat)................................................ 169
    10.3.2 Criminal law.......................................................... 170
    10.3.3 Harmonisation of Islamic law.................................... 173
  10.4 Application of Islamic law................................................ 175
    10.4.1 Jurisdiction of Islamic courts..................................... 175
    10.4.2 Jurisdiction of civil courts (English courts) in Islamic law matters......................................................... 178
    10.4.3 Harmonisation of Islamic law in Malaysia and Nigeria................................................................. 180
    10.4.4 Obstacles to the application of full Islamic law............ 181
  10.5 Conclusion........................................................................ 181

Chapter Eleven
Enforcing the Law against Enforcers: The Enforcement Agency Integrity Commission.............................................. 183
  11.1 Introduction..................................................................... 183
Chapter Twelve
General Principles of Good Governance in Public Administration: A Judicial Approach

12.1 Introduction .................................................................................................................. 199
12.2 Public authority defined .............................................................................................. 200
    12.2.1 Multiple powers .................................................................................................. 201
12.3 Judicial approaches on good governance ................................................................. 201
    12.3.1 Jurisdiction versus no jurisdiction ..................................................................... 201
    12.3.2 Bona fides versus mala fides ............................................................................ 202
    12.3.3 Proper purpose versus improper purpose ......................................................... 203
    12.3.4 Relevant facts versus irrelevant facts ................................................................. 204
    12.3.5 Non-dictation versus abdication ....................................................................... 205
    12.3.6 Mechanical decisions ........................................................................................ 205
    12.3.7 Non-restraint .................................................................................................... 206
    12.3.8 Reasonable delay versus undue delay ............................................................... 207
    12.3.9 No discrimination ............................................................................................. 208
    12.3.10 Rationality (reasonableness) versus irrationality (unreasonableleness) ......... 208
    12.3.11 Procedural propriety (procedural fairness) versus procedural impropriety ...... 210
    12.3.12 Right of hearing (audi alteram partem) ............................................................ 211
    12.3.13 No bias (nemo judex in causa sua) .................................................................. 212
    12.3.14 Reasoned decision .......................................................................................... 213
12.4 Conclusion .................................................................................................................. 214

Chapter Thirteen
Malaysian Constitution, Political Parties and the Party System .................................... 215

13.1 Introduction .................................................................................................................. 215
13.2 Political parties and party system .............................................................................. 215
13.3 Political parties and party system in the Malaysian Constitution ............................. 218
13.4 Political parties and party system in Malaysia ......................................................... 220
13.5 Conclusion .................................................................................................................. 224
Chapter Fourteen
Living in Limbo: Constitutional and Legal Issues of Unregistered Births.................................................. 225
14.1 Introduction................................................................................................................................. 225
14.2 The importance of birth registration....................................................................................... 225
14.2.1 Right to education.................................................................................................................. 226
14.2.2 Right to health and a family environment.......................................................................... 226
14.2.3 Juvenile justice....................................................................................................................... 227
14.2.4 Entitlement to state benefits and participation in society.................................................. 227
14.2.5 Right to a name and nationality......................................................................................... 228
14.2.6 Right to be exempted from certain laws.............................................................................. 228
14.3 Factors of non-registration of birth......................................................................................... 230
14.3.1 Political barriers.................................................................................................................... 230
14.3.2 Administrative barriers........................................................................................................ 230
14.3.3 Legislative barriers............................................................................................................... 230
14.3.4 Economic barriers................................................................................................................ 231
14.3.5 Geographical barriers.......................................................................................................... 231
14.3.6 Social cultural barriers......................................................................................................... 232
14.4 Registration of birth in Malaysia.............................................................................................. 232
14.5 Registration of birth and the right to citizenship in Malaysia.................................................. 233
14.5.1 Proof of citizenship............................................................................................................... 234
14.5.2 Registration of a child born overseas................................................................................... 235
14.6 Conclusion................................................................................................................................. 237

Chapter Fifteen
Effective Federal-State Coordination Mechanism for Good Governance and Sustainable Land Administration............... 241
15.1 Introduction ............................................................................................................................ 241
15.2 Good governance in land administration systems................................................................ 243
15.3 Malaysian land policy framework.......................................................................................... 248
15.4 Legal regulatory framework.................................................................................................. 250
15.5 Institutional and administrative framework.......................................................................... 252
15.5.1 The National Land Council............................................................................................... 253
15.5.2 Department of Director General of Land and Mines (DGLM).......................................... 254
15.6 Analysis of the effectiveness of the functions of the federal agencies in coordinating the land administration system........................................................................................................... 256
15.6.1 Lack of powers for coordinating the federal and state land administration relationship .......................................................................................................................... 257
15.6.2 Lack of powers for DGLM in coordinating land administration for country................ 258
15.6.3 Federal and state jurisdictional issues................................................................................ 258
15.6.4 Lack of coordination between government agencies ....................................................... 260
15.7 Globally emerging initiatives in nationalising management of land administration ............. 261
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>15.7.1</td>
<td>Australian initiatives</td>
<td>261</td>
</tr>
<tr>
<td>15.7.2</td>
<td>European Union initiatives</td>
<td>261</td>
</tr>
<tr>
<td>15.7.3</td>
<td>United States initiatives</td>
<td>261</td>
</tr>
<tr>
<td>15.8</td>
<td>Malaysian initiatives in meeting global needs</td>
<td>262</td>
</tr>
<tr>
<td>15.9</td>
<td>Proposed reforms to enhance the land administration system to meet the global challenges</td>
<td>263</td>
</tr>
<tr>
<td>15.9.1</td>
<td>Enhance role of the National Land Council in coordinating land administration between federal and state authorities</td>
<td>264</td>
</tr>
<tr>
<td>15.9.2</td>
<td>Establish National Centre for Developing and Maintaining Electronic land administration system (MyeLAS)</td>
<td>265</td>
</tr>
<tr>
<td>15.9.3</td>
<td>Elevate position of Department of Director General of Land and Mines to National Agency for Land Administration and Management</td>
<td>266</td>
</tr>
<tr>
<td>15.9.3.1</td>
<td>Review of the legal and institutional framework for land administration</td>
<td>267</td>
</tr>
<tr>
<td>15.9.3.2</td>
<td>Improve procedures in land administration to enhance service delivery</td>
<td>267</td>
</tr>
<tr>
<td>15.9.3.3</td>
<td>Advisor to federal and state governments on land policy, law and administration matters</td>
<td>268</td>
</tr>
<tr>
<td>15.9.3.4</td>
<td>Establish think tank for land administration and management at federal level</td>
<td>268</td>
</tr>
<tr>
<td>15.9.3.5</td>
<td>Capacity building of land administration organisation and staff</td>
<td>268</td>
</tr>
<tr>
<td>15.10</td>
<td>Conclusion</td>
<td>269</td>
</tr>
</tbody>
</table>

Chapter Sixteen
Eviction of Unlawful Occupiers of Land: Judicial Responses and Policies ........................................ 271

16.1 Introduction .................................................................................................................................. 271
16.2 General concepts .............................................................................................................................. 272
16.2.1 The squatter phenomenon in Malaysia ......................................................................................... 273
16.2.2 Judicial responses to the position of squatters on state and private land ................................. 275

16.3 Emergency (Clearance of Squatters) Regulations 1969 ............................................................... 280
16.4 Forced eviction under the international human rights dimension ............................................... 283
16.4.1 An alternative to forced eviction? .............................................................................................. 285

Chapter Seventeen
Legal Status of the States in Malaysia before Independence: Were we Colonised? ............................. 289

17.1 Introduction .................................................................................................................................. 289
17.2 The British and the Malay States: Policy of non-annexation and treaty of protection .................. 290
17.2.1 The British and the Straits Settlements ...................................................................................... 294
17.3 The British and the Borneo States .................................................. 295
17.4 Distinction between Protected State, Protectorate State and Crown Colony .......................................................... 296
  17.4.1 The Malay States as Protected States ......................... 298
  17.4.2 The protected Malay States: British influences over government and administration of the States ......................... 301
  17.4.3 The Crown Colony of the Malay Peninsula: British Government in the Straits Settlements .................................. 302
17.5 British direct rule after World War II: The Unitary Malayan Union ............................................................... 305
  17.5.1 British direct and indirect rule after World War II: The Federation of Malaya 1948 ........................................... 306
  17.5.2 The root of confusion: Protectorate State and the status of states under East India Company and the British North Borneo Chartered Company .................................. 308
17.6 Conclusion ............................................................................ 310

**HUMAN RIGHTS**

**Chapter Eighteen**

**Religious Rights and Freedom: Comparative Perspectives** 313

18.1 Introduction ............................................................................ 313
18.2 Islam as the religion of the Federation under Article 3(1) of the Federal Constitution (FC) ........................................ 314
  18.2.1 Adoption of official faith: Greece .................................. 314
  18.2.2 Adoption of official faith: Ireland .................................. 315
  18.2.3 Secular constitution: Australia ...................................... 315
  18.2.4 Secular constitution: Nigeria ........................................ 316
18.3 The first argument: Religious rights and freedoms guaranteed in the States' Constitutions ..................................... 316
  18.3.1 States with official religion: Malaysia ......................... 316
  18.3.2 States with official religion: Greece ......................... 317
  18.3.3 States with official religion: Ireland ............................ 317
  18.3.4 Other secular states: Australia ................................. 318
  18.3.5 Other secular states: Nigeria .................................... 318
18.4 Freedom of religion in Malaysia under Article 11 and the restriction on religious rights under the FC ...................... 319
18.5 The second argument: Democratic and secular constitutions ................................................................. 322
  18.5.1 International human rights instruments .................... 322
  18.5.2 The Universal Declaration of Human Rights .................. 322
  18.5.3 United Nations Declarations ...................................... 322
            18.5.3.1 The 1981 Resolution .................................... 322
18.6 The practice of the European Court of Human Rights (ECHR) .......................................................... 324
  18.6.1 Freedom of religion under the European Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention) ....... 324
18.6.2 The restriction of religious rights and freedom under the doctrine of “margin of appreciation”: the jurisprudence of the ECHR ........................................... 325
18.7 Conclusion ............................................................................... 329

Chapter Nineteen
Right to Development as a Human Right: A Challenge for Malaysia ................................................................. 331
19.1 Introduction ............................................................................ 331
19.2 Human rights and development in perspective .................... 332
19.3 Globalisation and human rights ............................................. 333
19.4 The right to development: a controversial concept ... 334
   19.4.1 Historical background .................................................. 334
   19.4.2 The evolving concepts ................................................... 335
   19.4.3 Specifying the content of the right to development .... 336
      19.4.3.1 Comprehensive development ............................... 336
      19.4.3.2 Respect for all human rights .............................. 336
      19.4.3.3 Participation ..................................................... 337
      19.4.3.4 Social justice .................................................... 337
      19.4.3.5 Self-determination ............................................ 337
   19.4.4 Clarifying the nature of the right to development .... 337
      19.4.4.1 A human right .................................................. 338
      19.4.4.2 Right-holders ............................................... 338
      19.4.4.3 Duty-holders ................................................. 339
      19.4.4.4 National implementation .................................. 339
19.5 Human rights-based approaches to development ............... 340
19.6 Challenges for Malaysia ....................................................... 342
   19.6.1 The challenge of enforcing constitutionalism and rule of law ................................................................. 342
   19.6.2 Challenge of promoting popular participation and participatory democracy ................................. 343
   19.6.3 The challenge of strengthening capacity of public service ......................................................... 344
19.7 Conclusion ............................................................................... 346

Chapter Twenty
Balancing Business and Human Rights: Conflicts, Challenges and Prospects ......................................................... 347
20.1 Introduction ............................................................................ 347
20.2 Business and human-rights: a multi-dimensional relationship ................................................................. 348
   20.2.1 Business as violators of human rights ...................... 349
   20.2.2 Corporate complicity in human rights abuses committed by states ................................................. 352
   20.2.3 Business as promoters and protectors of human rights ................................................................. 352
Contents

20.3 Understanding business-related human rights abuses in Malaysia ............................................ 353
  20.3.1 Overview ............................................................................. 353
  20.3.2 Contributing factors .............................................................. 355
    20.3.2.1 Regulatory vacuum in regards to business conduct .......... 355
    20.3.2.2 Misconceptions about CSR ............................................ 356
20.4 Regulatory and voluntary-based solution mechanisms .......................................................... 358
  20.4.1 Regulatory approaches .......................................................... 358
  20.4.2 Voluntary approaches ......................................................... 361
20.5 Findings of the study and some recommendations ............................................................... 362
  20.5.1 Harmonising the regulatory and voluntary approaches ......................................................... 362
  20.5.2 Human rights as business and states responsibilities .................. 364
  20.5.3 Human rights principles are good for business ...................... 364
20.6 Conclusion ............................................................................. 365

Chapter Twenty One
Rights of the Orang Asli under the Federal Constitution ............. 367
  21.1 Introduction ........................................................................ 367
  21.2 Legal definition of indigenousness .............................................. 368
    21.2.1 Orang Asli ........................................................................ 368
    21.2.2 Native of Sabah and Sarawak .......................................... 370
    21.2.3 Malay ............................................................................. 372
  21.3 The Orang Asli rights under the Federal Constitution .................. 373
    21.3.1 Article 8(5)(c) .................................................................. 374
    21.3.2 Articles 13(1) and (2) ......................................................... 377
  21.4 Law as a tool for the advancement of the Orang Asli ................. 379
  21.5 Conclusion ........................................................................... 381

Chapter Twenty Two
Right to Health: International Human Rights Law and the Experience of Other Countries ................. 383
  22.1 Introduction ........................................................................ 383
  22.2 Brief concept of health ............................................................. 383
  22.3 Health and human rights ........................................................... 385
  22.4 International human rights instruments on the right to health ... 387
    22.4.1 Regional instruments on the right to health ......................... 392
      22.4.1.1 Europe ..................................................................... 392
      22.4.1.2 American continent ..................................................... 393
      22.4.1.3 Africa ...................................................................... 394
    22.4.2 Scope of the right to health ................................................ 394
    22.4.3 Constitutional rights to health ............................................. 395
  22.5 Implementing the right to health: examples of selected countries ........................................... 397
    22.5.1 Position in Malaysia .......................................................... 406
  22.6 Conclusion ........................................................................... 408
Chapter Twenty Three
Rights of Persons with Disabilities (PWD): The “Almost Forgotten” Protection under the Federal Constitution .......... 411
23.1 Introduction.......................................................... 411
23.2 International human rights law for PWD position in UN, CRPD ................................................................. 414
23.3 Laws governing PWD in Malaysia ........................................... 419
23.4 Position in Federal Constitution for PWD ........................................ 423
   23.4.1 Article 5 – Personal liberty ................................................. 423
   23.4.2 Article 8 – Equality ........................................................ 426
   23.4.3 Article 12 – Education ...................................................... 428
23.5 Conclusion .................................................................. 430

Chapter Twenty Four
Freedom of Information: Principles and Challenges Towards Vision 2020 ................................................................. 431
24.1 Introduction.......................................................... 431
24.2 History.................................................................. 431
24.3 Freedom of information as a human right under the umbrella of freedom of expression ........................................... 432
24.4 Movement toward freedom of information legislation .......... 433
24.5 Concept and scope of freedom of information....................... 434
24.6 Principles under freedom of information and challenges .......... 436
24.7 Conclusion .................................................................. 442

Chapter Twenty Five
Right to Privacy: Development, Cases and Commentaries ...... 445
25.1 Introduction.......................................................... 445
25.2 Definition and scope of right to privacy ...................................... 446
   25.2.1 Right to privacy in the common law ...................................... 448
   25.2.2 Right to privacy in the Islamic perspective .............................. 450
25.3 Right to privacy in the Malaysian Constitution ............................ 452
   25.3.1 Right to privacy as a subset of right to life and liberty ............... 453
   25.3.2 Right to privacy as a subset of the right to property .......... 455
25.4 Recent developments from Malaysian courts ......................... 457
25.5 Conclusion .................................................................. 465

Chapter Twenty Six
Slavery and Human Trafficking: Constitutional Provisions and Domestic and International Laws ..................... 467
26.1 Introduction.......................................................... 467
26.2 Prohibition of slavery and forced labour in the Federal Constitution and international laws ......................... 468
   26.2.1 Slavery, forced labour and human trafficking ....................... 472
<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Subtitle</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>26.3</td>
<td>The meaning of human trafficking</td>
<td>.................................................................</td>
<td>473</td>
</tr>
<tr>
<td>26.3.1</td>
<td>The difference between human trafficking and human smuggling</td>
<td>.................................................................</td>
<td>474</td>
</tr>
<tr>
<td>26.3.2</td>
<td>Difference between trafficking in persons and smuggling of migrants</td>
<td>.................................................................</td>
<td>475</td>
</tr>
<tr>
<td>26.3.3</td>
<td>International laws on the suppression of human trafficking</td>
<td>.................................................................</td>
<td>476</td>
</tr>
<tr>
<td>26.4</td>
<td>Malaysian laws used to suppress human trafficking</td>
<td>.................................................................</td>
<td>477</td>
</tr>
<tr>
<td>26.4.1</td>
<td>The Penal Code</td>
<td>.................................................................</td>
<td>477</td>
</tr>
<tr>
<td>26.4.2</td>
<td>The Child Act 2001</td>
<td>.................................................................</td>
<td>478</td>
</tr>
<tr>
<td>26.4.3</td>
<td>The Immigration Act 1959 (Revised 1963)</td>
<td>.................................................................</td>
<td>478</td>
</tr>
<tr>
<td>26.4.4</td>
<td>Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007</td>
<td>.................................................................</td>
<td>479</td>
</tr>
<tr>
<td>26.4.5</td>
<td>Enforcement of the 2007 Act and the Government's national action plan against human trafficking</td>
<td>.................................................................</td>
<td>482</td>
</tr>
<tr>
<td>26.5</td>
<td>Conclusion</td>
<td>.................................................................</td>
<td>483</td>
</tr>
<tr>
<td></td>
<td><strong>Chapter Twenty Seven</strong></td>
<td>.................................................................</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Beatrice Fernandez v Sistem Penerbangan Malaysia:</strong></td>
<td>.................................................................</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>A Constitutional Critique</strong></td>
<td>.................................................................</td>
<td></td>
</tr>
<tr>
<td>27.1</td>
<td>Introduction</td>
<td>.................................................................</td>
<td>485</td>
</tr>
<tr>
<td>27.2</td>
<td>Facts of the case: Beatrice Fernandez</td>
<td>.................................................................</td>
<td>486</td>
</tr>
<tr>
<td>27.2.1</td>
<td>Review of the court's decision</td>
<td>.................................................................</td>
<td>487</td>
</tr>
<tr>
<td>27.2.2</td>
<td>Whether Article 8 of the FC is applicable to terms and conditions of a collective agreement</td>
<td>.................................................................</td>
<td>487</td>
</tr>
<tr>
<td>27.2.3</td>
<td>Whether Clause 2(3) of the collective agreement violates Article 8 of the FC as it was discriminatory in nature</td>
<td>.................................................................</td>
<td>491</td>
</tr>
<tr>
<td>27.2.4</td>
<td>The applicability of the convention on the elimination of all forms of discrimination against women (CEDAW), to the terms and conditions of the collective agreement</td>
<td>.................................................................</td>
<td>495</td>
</tr>
<tr>
<td>27.3</td>
<td>Reception of international treaties within our domestic law</td>
<td>.................................................................</td>
<td>495</td>
</tr>
<tr>
<td>27.3.1</td>
<td>Why CEDAW should be applicable to the terms and conditions of the collective agreement</td>
<td>.................................................................</td>
<td>498</td>
</tr>
<tr>
<td>27.3.2</td>
<td>Other possible arguments</td>
<td>.................................................................</td>
<td>500</td>
</tr>
<tr>
<td>27.3.2.1</td>
<td>Necessity of contracting out of fundamental rights</td>
<td>.................................................................</td>
<td>500</td>
</tr>
<tr>
<td>27.4</td>
<td>Conclusion</td>
<td>.................................................................</td>
<td>501</td>
</tr>
<tr>
<td></td>
<td><strong>Chapter Twenty Eight</strong></td>
<td>.................................................................</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Freedom of Speech on the Internet: Shariah and Malaysian Perspectives</strong></td>
<td>.................................................................</td>
<td></td>
</tr>
<tr>
<td>28.1</td>
<td>Introduction</td>
<td>.................................................................</td>
<td>503</td>
</tr>
<tr>
<td>28.2</td>
<td>Scope of freedom of speech</td>
<td>.................................................................</td>
<td>503</td>
</tr>
<tr>
<td>28.2.1</td>
<td>Nature of the internet</td>
<td>.................................................................</td>
<td>504</td>
</tr>
</tbody>
</table>
Contents

28.3 Freedom of speech as an integral part of democracy and the Shariah .......................................................... 505
28.4 Freedom of speech: A universal and domestic right .......... 507
28.5 Limitation and regulation of freedom of speech in civil society and from the Shariah perspective .......................... 511
28.6 Limitation and regulation of the freedom in international human rights law ............................................ 513
28.7 Limitation of freedom of speech in the internet: Prohibition and regulation of negative content on the internet .......... 515
28.8 Illegal and harmful content on the internet: Initiative taken and approach adopted by the European Union and its institutions .................................................................................. 516
28.8.1 Illegal content .................................................................. 516
28.8.2 Potentially harmful content .................................................. 516
28.9 Laws regulating the internet in some countries ............... 518
28.9.1 Internet Code of Practice of Singapore .......................... 518
28.9.2 Internet Code of Practice of Brunei Darussalam ............. 518
28.9.3 Communications Decency Act 1996 and Child Pornography Prevention Act 1996 ........................................ 518
28.9.4 Laws restricting and regulating internet content in Malaysia .................................................................. 519
28.9.5 Communication and Multimedia Act 1998 of Malaysia and regulation of internet content in Malaysia ............. 519
28.9.6 Restriction under defamation law ...................................... 522
28.10 Conclusion ........................................................................ 522

Index ................................................................................ 525
Chapter One

The Doctrine of Separation of Powers: Judicial Review as a Check and Balance Tool

Khairil Azmin Mokhtar and Siti Aliza binti Alias

1.1 INTRODUCTION

The Federation of Malaya Constitutional Commission or the Reid Commission in its report (Reid Report), which later became the basis of the Federation of Malaya Constitution 1957 and later known as the Malaysian Constitution 1963, stated that:

A Federal constitution defines and guarantees the rights of the Federation and the States: it is usual and in our opinion right that it should also define and guarantee certain fundamental rights which are generally regarded as essential conditions for a free and democratic way of life ...

The guarantee afforded by the Constitution is the supremacy of the law and the power and duty of the courts to enforce these rights and to annul any attempt to subvert any of them whether by legislative or administrative action or otherwise. (Emphasis added.)

The significance of the power of the court to review legislation made by the legislature and the action and decision of the executive is very obvious from the above recommendation. It is crucial for a federal democracy to have an independent and powerful judiciary to protect the rights of the people, the states and the federation. Otherwise the country would be a country with a constitution but devoid of constitutionalism.

1.2 CONSTITUTIONALISM, RULE OF LAW AND JUDICIAL REVIEW

The term “constitutionalism” may be described as the concept of limited government, whereupon the powers of the different wings of government are defined and the rights of the governed, enshrined.