TAYLOR'S UNIVERSITY

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# CERTIFICATE OF PARTICIPATION

This certificate is presented to

## Dr. Muhamad Hassan Bin Ahmad

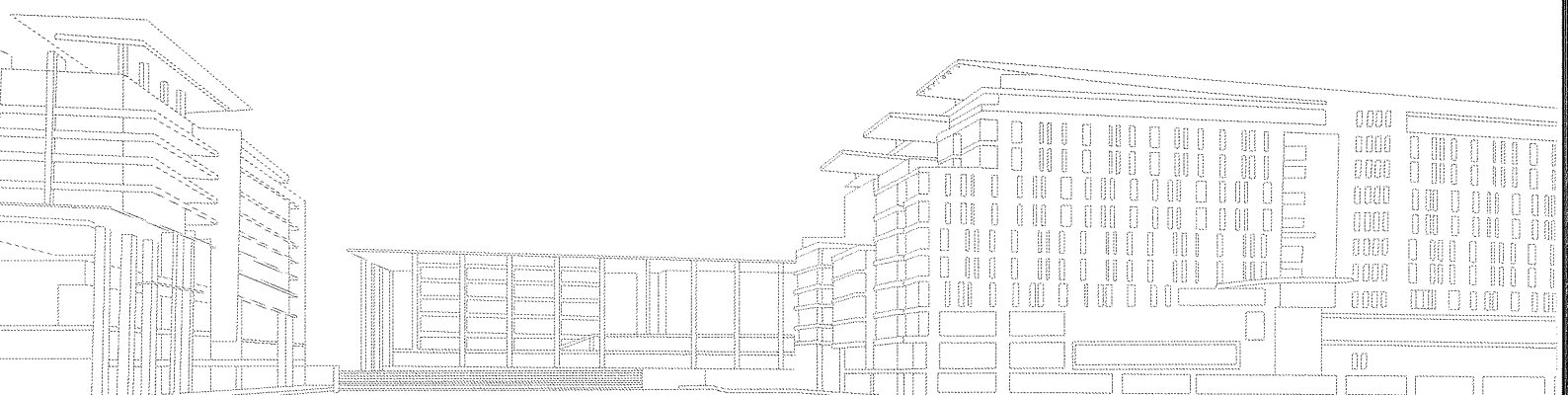
*in recognition of your participation as a parallel session speaker*
**Parallel Session 1D (Academic Perspectives) - Legal Education and Training**

*with paper titled*
*Imbuing lawyers' problem-solving skills in law school curriculum to off-set adversarial 'hired-gun' mind set*

## International Conference on the Future of Law & Legal Practice (ICFLP 2019)

15th – 16th October 2019
At Dorsett Grand Subang Jaya, Malaysia

Harmahinder Singh
Chairperson, ICFLP 2019
Head of School, Taylor's Law School



**International Conference on the Future of Law & Legal Practice**
**15th – 16th October 2019**
**Dorsett Grand Subang Jaya**

**Day 1 – Tuesday, 15 October 2019** Updated 30 Sept 2019

| Time | Session Details | |
|---|---|---|
| 8.00 am - 9.00 am | Registration | |
| 9.00 am - 9.15 am | **Welcome and Opening Addresses** | |
| 9.15 am – 9.40 am | **Keynote Address –** YAA Tan Sri Datuk Seri Panglima Richard Malanjum<br>*Former Chief Justice of Malaysia* | |
| 9.40 am – 10.00 am | **Official Launch of Conference** | |
| 10.00 am - 10.30 am | Refreshments | |
| 10.30 am - 11.45 am | **Plenary Session 1**<br>***Technology and Educating the Lawyer – Intelligent Legal Professionals vs Artificial Legal Intelligence***<br><br>With the advent of IR4.0 and the age of artificial intelligence, it has become crucial that members of the legal community be equipped and informed to embrace the journey ahead. This session will explore reflections of the journey of educating lawyers from the past to the present, preparing legal professionals for this 'impact of technology' on the profession, professionalism and the defence of the rule of law in the age of artificial intelligence. This session will also explore steps that need to be taken in this direction which starts from equipping law students all the way to legal practitioners and members of the judiciary. | **Moderator:** Mr. Philip Koh<br>*Senior Partner, Messrs Mah-Kamariyah and Philip Koh*<br><br>**Panelists:**<br>• Dato' Mahadev Shankar<br>*Former Court of Appeal Judge*<br>• Ms. Santhi Latha<br>*Dean, Rajah & Tann Asia Academy*<br>• Mr. Steven Thiru<br>*Senior Partner, Messrs Steven Thiru & Sudhar Partnership*<br>• Mr. G.K. Ganesan<br>*Messrs GK Ganesan* |
| 11.45 am - 1.00 pm | **Plenary Session 2**<br>***The Significance of Malaysia's Commitment to International Human Rights Conventions***<br><br>The recent U-turns by the Malaysian Government on two major international law conventions underscores a cautious approach taken by the government in the accession to Human Rights Conventions. There is however a growing need to strengthen a unified human rights voice within the region. This panel consisting of renown practitioners, judges and academics will look into Malaysia's commitment towards Human Rights Conventions thus far and its implications. | **Moderator:** Ms. Firdaus Husni<br>*Chief Human Rights Strategist Malaysian Centre for Constitutionalism and Human Rights*<br><br>**Panelists:**<br>• Dato' Haji Sulaiman Abdullah<br>*Founder of Messrs Sulaiman*<br>• Dato' Gurdial Singh Nijar<br>*President of HAKAM*<br>• Emeritus Prof. Datuk Dr. Shad Saleem Faruqi<br>*University of Malaya Professor of Law*<br>• Prof. Dato' Dr. Aishah Hj Bidin<br>*National University of Malaysia Professor of Law* |
| 1.00 pm - 2.00 pm | Lunch | |
| 2.00 pm - 3.30 pm | **Parallel Session 1A \| Practitioner Perspectives - Corporate Law (Subang 1)**<br>***Messrs Shook Lin & Bok*** | **Speakers:**<br>• Mr. Jalalullail Othman<br>• Dr. Syed Adam Alhabshi |

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| | ***Sustainability and Competition in the Digital Age – The Legal Challenges***<br>This session aims to provoke a critical discussion into the challenges that lawyers face in this brave new world. Sustainability and Competition in this Digital Age form a tripod upon which lawyers strive to prop up the ever changing legal landscape. How do we strike the legal equilibrium between preserving the planet, protecting the people and enhancing the profits? Can we maintain effective and efficient competition in goods and services? All of these to be stress tested against the backdrop of the Digital Age where smart contracts and artificial intelligence and big data analytics abound. How do we compete in a sustainable manner by employing digitalized ways and means? We explore how much of a legal evolution vs a legal revolution is taking place in the current fintech space | • Ms. Dhaniah Ahmad |
| | **Parallel Session 1B \| Practitioner Perspectives - Human Rights and Liberties (Subang 2)**<br>***Messrs Sivananthan Advocates & Solicitors***<br><br>***An insight into the lives of prisoners in Malaysia***<br>Imprisonment in itself serves as a punishment due to the loss of an individual's right to liberty as a result of being confined in a closed environment. Therefore, the conditions in custodial institutions should not serve as a further punishment by having a harmful effect on a prisoner's well-being. As a result of this wrongful treatment, the prison system in Malaysia is not rehabilitative. Presenters for this session are criminal defence lawyers from Sivananthan Advocates & Solicitors. They will share their insights on the Rights of a prisoner under the Prisons Act 1995, Treatment of Prisoners in Malaysia, The United Nations' Standard Minimum Rules for the Treatment of Prisoners and whether Malaysia as a signatory is conforming to the same and Rights of a prisoner in the event of non-conformity. | **Speakers:**<br>• Ms. Jasmine Cheong Chi-May<br>• Ms. Dhanyaa Shreeya Sukumar |
| | **Parallel Session 1C \| Academic Perspectives - Healthcare and Medical law (Subang 3)**<br><br>Law and ethics are paramount within the medical profession. Ethics, also known as moral philosophy, is a branch of philosophy that addresses questions about morality including concepts such as good and evil, right and wrong, virtue and vice, justice and crime. Ethics cannot be compelled and hence, cannot be enforced. When legal issues arise, legal theories and settlement mechanisms shape the decision making process. These pertinent issues will be highlighted and discussed during this session. | **Academic speakers:**<br>• **Ms. Kuek Chee Ying**<br>*The Ethical Perceptions of Selected Stakeholders on the Practice of Saviour Siblings in Malaysia*<br>• **Ms. Andriea Bastiampillai & Dr. Hanna Ambaras Khan**<br>*Mediation as the Suitable Dispute Resolution Method in Medico-Legal Issues: Special* |

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| | | *Reference to the Malaysian Position*<br>• **Ms. Marini Arumugam**<br>*The Bolam Test: An analysis of the practical application of the Bolam Test in Malaysian Medical Negligence Cases*<br>• **Ms. Sia Chin Chin**<br>*A Legal Anatomy of Legislations to Promote a Healthy Lifestyle* |
| | **Parallel Session 1D \| Academic Perspectives - Legal Education and Training (BIZ CTR)**<br><br>Law and justice are fundamentally and profoundly linked. Each stem from and justifies the other. The complexity of real-life circumstances though, can make this bond difficult to achieve in every case. Appreciate the experiences of academics, as they incorporate both law and justice into the study of law. | **Academic speakers:**<br>• **Ms. Sia Chin Chin**<br>*Loneliness in law*<br>• **Mr. Harpajan Singh**<br>*Analysing the citation of Wikipedia in Malaysian judicial opinions*<br>• **Assoc. Prof Zuraida Rastam Shahrom**<br>*Clinical Legal Education in University Malaya: Goals and Challenges*<br>• **Ms. Suzanna Abdul Hadi**<br>*Blended Learning and the Bridging Course*<br>• **Dr. Muhamad Hassan Ahmad & Prof Dato Seri Dr. Ashgar Ali Ali Mohamed**<br>Imbuing lawyers' problem-solving skills in law school curriculum to off-set adversarial 'hired-gun' mind set |
| 3.30 pm - 3.45 pm | Refreshments | |
| 3.45 pm - 5.15 pm | **Parallel Session 2A \| Academic Perspectives - Corporate Law (BIZ CTR)**<br><br>Corporate law dictates the formation and the activities of corporations, while corporate governance regulates the balancing of interests among a business's different stakeholders. Corporate law and governance therefore directly shapes what businesses do and how they do it. Understanding commercial law and corporate law can help business owners avoid breaking the law and eliminate unnecessary costs and hassle. While these two types of law both have a significant impact on the way businesses operate, they have distinct differences. Many people are confused about the difference between business law and corporate law. Corporate law is a legal field that governs the formation of companies, shareholder | **Academic speakers:**<br>• **Ms. Crystal Wong Wai Chin**<br>*Climate change & energy: Malaysia's energy policy - where roads paved with good intentions lead*<br>• **Dr. Loganathan Krishnan**<br>*The Legal Framework Governing Removal of Auditors: Company's Rights versus Auditor's Rights*<br>• **Dr. Ong Tze Chin**<br>*Judicial approaches of contractual remedies for consumer sale of goods in* |

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| | rights, mergers, and acquisitions, while business law or commercial law deals with how one forms and runs a business.<br>A myriad of current approaches towards to contract and company law in Malaysia will be discussed during this corporate law session. | *Malaysia*<br>• **Ms. Sia Chin Chin**<br>*Regulating unfair contract terms for small businesses in Malaysia* |
| | **Parallel Session 2B\| Academic Perspectives - Human Rights and Liberties (Subang 1)**<br><br>Laws define and regulate legal rights. These are not just declarations of liberties and responsibilities, but also assurances that if these rights are violated, protection measures are available to enforce such rights and punish such infringements. Many legal rights are critical for the parties enjoying such entitlements, the breaches of which can have devastating effects. It then becomes vital that the laws adequately recognise and provide effective protection of such rights. | **Academic speakers:**<br>• **Mr. Mark Goh**<br>*Making rights a reality: a case of enforcing constitutional rights horizontally*<br>• **Ms. Heama Latha Narayanan Nair**<br>*Balancing the rule of law and children's right to participation in legal proceedings*<br>• **Ms. Jenita Kanapathy**<br>*An overview of current laws protecting the rights of the old and elderly in Malaysia*<br>• **Asst. Prof Kevin Crow**<br>*The individual moralization of corruption and the international corporate person*<br>• **Dr. Vijayalakshmi Venugopal**<br>*Law and morality - the chicken, the egg and the duck* |
| | **Parallel Session 2C \| Practitioner Perspectives - Healthcare and Medical Law (Subang 2)**<br>***Messrs Raja, Darryl & Loh***<br><br>***Personal Data Protection Act 2010 (PDPA) and Relevant Provisions relating to Healthcare***<br>This session will provide an overview of the Personal Data Protection Act 2010 (PDPA), its applicability and principles. Rights of the Patient vis-à-vis the PDPA will be presented together with exemptions to compliance with the Personal Data Protection Principles. The session will conclude with the mechanism of complying with the PDP and the question of application of Data Protection Regulations. | **Speaker:**<br>• Ms. Tong Lai Ling |
| | **Parallel Session 2D \| Practitioner Perspectives - The Practice of Law in the Era of Technology and Disruption (Subang 3)**<br>***Messrs Christopher & Lee Ong***<br><br>***The Practice of Law in the Era of Technology and Disruption***<br>Reflecting the increasing importance and role of technology in our day-to-day lives, as well as the disruption brought about by "new" market disruptors | **Speakers:**<br>• Mr. Deepak Pillai<br>• Ms. Tracy Wong<br>• Ms. Anissa Maria Anis |

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| | such as Netflix, Grab, Airbnb, AWS and GoBear, the panel will guide audience through the impact of technology and these "new" market disruptors on the work that they do in the areas of technology law, media law and fintech law. Together with this, the panel will explore the role played by technology in the digitalisation of law firms, inclusive of the role of Artificial Intelligence in the practice of the law itself (and seek to answer the often-canvassed question of whether AI can replace lawyers?). | |
| 5.15 pm - 6.30 pm | Networking Session | |
| 6.30 pm - 10.00 pm | Conference Dinner | |

**Day 2 - Wednesday, 16 October 2019**

| Time | Session Details | |
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| 9.00 am - 10.30 am | **Parallel Session 3A\| Practitioner Perspectives - Corporate Law (Subang 1)**<br>***Messrs Lee Hishammuddin Allen & Gledhill***<br><br>***Can the Law Keep Up with the Internet of Things?***<br>The Internet of Things (IoT) is the latest phase in the evolution of the internet, bringing unprecedented access and insights into people's lives. The IoT has the ability to collect and exchange data on every aspect of our lives and business, which increases efficiency and predictability. By virtue of this, the exponential growth of technology beckons the question of whether the law is able to keep up with the new issues and challenges which IoT brings about, for example, intellectual property, data protection, privacy, automated contracts and product liability. The challenge is for both the lawmakers and the legal professionals. What are the skills and concepts which are critical to advocate for laws which are well suited for the IoT era which is already beginning? | **Speakers:**<br>• Mr. Raphael Tay Choon Tien<br>• Mr. Vernon Jude Samuel<br>• Mr. Vicks Kanagasingam |
| | **Parallel Session 3B \| Practitioner Perspectives - Human Rights and Liberties (Subang 2)**<br>***SUARAM***<br><br>***Criminal Justice and Human Rights***<br>The panel aims to explore the close relationship between the day-to-day function of the Criminal Justice System with human rights principles in the context of legal aid. Legal aid services are provided for to uphold the right to fair trial by ensuring the accused is represented and receives the appropriate legal advice. However, the reality is often more complex with lawyers providing more support and assistance than what the surface reveals. What role does legal aid play in ensuring | **Speakers:**<br>• Ms. Dobby Chew Chuan Yang<br>• Ms. Ho Sue Lu<br>• Mr. Muhamad Izwan<br>• Ms. Farida Mohd |

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| | the integrity of our criminal justice system and how does it protect and promote the right to fair trial? | |
| | **Parallel Session 3C \| Academic Perspectives - Corporate Law (BIZ CTR)**<br><br>Artificial Intelligence (AI) has already started to transform corporate law and litigation in many ways. AI can augment what lawyers do and enable them to take on higher-level tasks such as advising clients, negotiating deals and appearing in court for corporate matters.<br>AI tools can assist lawyers to conduct the tedious work of due diligence exercises more efficiently and with greater accuracy. AI has the ability to analyse data and predictions about outcomes of legal proceedings, perhaps more accurately than humans. The question is whether the time has come for corporate litigation firms to commit to becoming AI-ready by embracing internal AI practices. At the same time issues in relation to contract law in Malaysia will be covered during this session.<br><br>The speakers of this session will share insights on the development of technology within corporate law and also address pertinent issues involving contract law. | **Academic speakers:**<br>• **Dr. Jason James Turner** *Preparing a legal profession fit for the 4th industrial revolution: insight and reflections on legal practice in Malaysia*<br>• **Mr. Daniel Chua** *Commercial dispute resolution in the midst of change: Mapping the domain of transnational dispute resolution as a discipline*<br>• **Dr. Norhoneydayatie binti Abdul Manap** *Remedy for misrepresentation in contracts: A case analysis in Malaysia* |
| | **Parallel Session 3D \| Academic Perspectives - Legal Education and Training (Subang 3)**<br><br>This session considers legal education in the current times. The question arises whether the traditional legal educational methods suffice for future lawyers? Will the traditional methods give future lawyers the necessary knowledge and skills they need? The answer will most likely be a combination of yes and no. While the traditional learning methods may be crucial for the basic legal education and skills, in the 21st century, technology and its influence will take legal education to greater heights. Academicians would need to combine technology together with the traditional complexity of real-life experiences to educate future lawyers. | **Academic speakers:**<br>• **Prof. Norma Martin Clement** *Signature pedagogies, archetypal learning spaces: Implications for legal education in the 21st century*<br>• **Ms. Puteri Sofia Amirnuddin** *Gamification as a tool to develop law students' soft skills*<br>• **Prof. Nick Taylor & Ms. Rachel Taylor** *Effective feedback: searching for the silver bullet*<br>• **Prof. Warren Barr** |

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| | | *Challenging tradition: supporting learning in equity & trusts and land law through embracing technology and new delivery methods*<br>• **Dr. Muhamad Hassan Ahmad & Ms. Puteri Sofia Amirnuddin** *Transforming the legal education in the era of IR4.0* |
| 10.30am - 11.00 am | Refreshments | |
| 11.00 am - 12.30 pm | **Parallel Session 4A \| Academic Perspectives - Corporate Law (BIZ CTR)**<br><br>Ethics consists in learning what is right and what is wrong and doing the right thing. It is interesting to note that ethical decisions have various consequences, outcomes, alternatives and personal implications. With the proliferation of multinational corporations and their increased influence in governments, in theory, while both law and ethics have become central aspects of decision-making, the reality is less certain. Presenters for this session will share their understanding of how law and ethics actually works in the field of corporate law research and practice. | **Academic speakers:**<br>• **Ms. Saratha Muniandy** *Corporate manslaughter framework in Malaysia*<br>• **Dr. Farhah Abdullah** *Consumer contracts: Revisiting the Malaysian legislative control and judicial intervention of exclusion clauses*<br>• **Mr. Harcharan Singh Ujagar Singh** *Honestly, what is dishonesty?* |
| | **Parallel Session 4B \| Academic Perspectives - Human Rights and Liberties (Subang 1)**<br><br>Human rights and liberties are the basic rights and freedom of every citizen, which include the rights of protection from States' abuse of power. Despite being in the 21st century, there remains a lack of full freedom and protection to individuals, with justice as a mere abstract idea in some areas such as promoting just, peaceful and inclusive societies where structural injustice and inequality still remains. Gaps still remain in violence against women and children, citizens and non-citizens such as refugees and basic theories and practices of incorporating laws and justice in human rights cases. The papers presented in this session range from infringements of individuals' rights to the debasement of collective rights in post conflict situations. | **Academic speakers:**<br>• **Mr. Lai Mun Onn** *Should the right to life include the right to die? Euthanasia and assisted suicide*<br>• **Ms. Marini Arumugam** *The right to early childhood education and Malaysia's international obligation*<br>• **Dr. Kuek Tee Say** *The etymology of statelessness in Malaysia and its positive application within the state - a study on stateless Indians*<br>• **Dr. Sree Kala Nair** *Non-inclusiveness of students in sexual harassment law* |

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| | **Parallel Session 4C \| Practitioner Perspectives - Healthcare and Medical Law (Subang 2)**<br>***Messrs Raja, Darryl & Loh***<br><br>***Anticipating End of Life – Is the current legal framework adequate to protect the interests of patients and doctors?***<br>This session will explore issues such as the right to refuse treatment in end of life scenarios, the active vs passive euthanasia distinction and its legal implications; the do not resuscitate/do not attempt to resuscitate directives as well as living wills and other advance care directives.<br><br>***Artificial Intelligence in Medicine – The Legal Issues***<br>This session will explore issues such as where liability ought to rest when there is an adverse outcome; the probable causes of action and the potential defendants and whether the standard of care for medical practitioners should be modified. | **Speakers:**<br>• Mr. Harish Nair<br>• Ms. Charlaine Chin |
| | **Parallel Session 4D \| Practitioner Perspectives - Legal Education (Subang 3)**<br>SKRINE<br><br>***Experiences Within the Legal Profession***<br>The panellists drawing from their experience in their respective careers will share their thoughts on the skills set required for their jobs, interesting moments, challenges, values, and the quest for work-life balance. | **Speakers:**<br>• Ms. Theresa Chong<br>*Senior Partner, Skrine*<br>• Mr. Lee Shih<br>*Partner, Skrine*<br>• Mr. Jeremy Lee Eng Huat<br>*Pupil, Skrine*<br>• Mr. Jason Lim<br>*Principal Legal Counsel, Huawei Technologies (Malaysia)*<br>• Ms. Lorett M. Jesudoss<br>*(UNHCR - inter-governmental organization)* |
| 12.30 pm - 1.00 pm | **Closing Address** | |
| 1.00 pm | Lunch and Networking Session | |

# IMBUE PROBLEM-SOLVING SKILLS IN LAW SCHOOL CURRICULUMS TO OFF-SET ADVERSARIAL 'HIRED-GUN' MIND-SET

**BY**

**Prof. Dato' Sri Dr. Ashgar Ali Ali Mohamed**
**Dr. Muhamad Hassan Ahmad**

**INTERNATIONAL CONFERENCE ON THE FUTURE OF LAW AND LEGAL PRACTICE (ICFLP) 2019**

**15 - 16 October 2019**
**Dorsett Grand Subang Hotel**

35th ANNIVERSARY 1983 - 2018 IIUM

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INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA
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# INTRODUCTION

- **Disputes** or conflicts of various nature **are inevitable** in any given society.

- Unresolved disputes or conflicts **may have an adverse impact** not only **to the disputants** but also to **the society as a whole** (e.g. political, economical, environmental disputes, etc.).

- Hence, **disputes ought to be resolved amicably** not only **to amend the relationship between the parties** involved but also **to maintain social harmony and cohesion**.

- What are the ways available to resolve disputes in the current legal system?

# CHALLENGES OF SETTLING DISPUTES IN THE ADVERSARIAL SYSTEM

- At the national level, for common law countries, it is of an **adversarial nature** and **parties are subjected to** the **stringent** and **rigorous** (sometimes **ridiculous**) **procedural rules of the court**.
  - **Filing** of the dispute with the court for relief
  - **Serving** relevant documents to the other party
  - **Case management** meetings
  - **Litigation proceedings** involve 'discovery' and 'interrogation'
  - **Hearing** of the dispute is **in open court with no confidentiality** except in certain exceptional circumstances.
  - The parties **would not have direct control** over the course of the trial as it has to be **through their advocates**.
  - The case **will be decided on** the basis of relevant as well as admissible **evidence produced** and **witnesses examined** in the court.

# Cont'd.

- Yet, **the decision** of the court may **not** necessarily be the **final** as the unsatisfied party **can** still file an **appeal** against it **to the superior courts**.

- **Litigation** of a dispute in the courts is **costly**; **exhausting** of dealing with lawyers and judges; **time-consuming** with **unpredictable outcomes**; and, above all, creating irreversible **damage to the relationships** between the parties.

- Therefore, the **adjudication** before the court **should only be the last resort** **when the parties fail to resolve** the dispute **through** more **effective and amicable dispute resolution methods** such as **negotiation**, **mediation**, **conciliation**, **arbitration**, as the case may be.

# MEDIATION AS AN EFFECTIVE AND AMICABLE MODE OF DISPUTE SETTLEMENT

- Section 3 of the Mediation Act 2012 defines 'mediation' as: "[A] **voluntary process** in which **a mediator facilitates communication and negotiation** between parties to assist the parties **in reaching an agreement** regarding a dispute".
- Mediation **promotes compromise** where the mediator would assist the parties in reaching for an amicable settlement.
- The mediator would **maintain a safe and respectful atmosphere**.
- He would **listen to the arguments** put forward by the parties.
- He may ask questions to **guide** the disputants and **help** them understand the issues.
- He would **encourage** the parties **to develop a mutually acceptable solution**.
- He may **offer suggestions**, **recommendations and alternatives** for consideration by the parties as a means of resolving the dispute.

# Cont'd.

- Mediation **empowers the parties to seek for a lasting solution** that meet their own needs and interests under the guidance of the mediator.
- It **costs** the parties a lot **less** than bringing the case before a court.
- It **consumes less time** than legal proceedings before a court.
- It is **held in a private setting** (behind closed doors) except with the consent of the disputing parties and **this preserves the confidentiality** of information.
- Undoubtedly, mediation **can assist** the disputing parties **to re-establish trust and respect**, prevent damage to an **on-going relationship** unlike litigation.
- **Even if termination** of a relationship **is the option**, mediation **can make** the termination **more amicable**.

# COURT-ANNEXED MEDIATION

- Courts in many countries are **burdened with the ever increasing volume of cases** (justice delayed is justice denied) and thus numerous **alternative dispute resolution mechanisms have been introduced** including ‘mediation’.

- In Malaysia, some legislations contain specific provisions on the use of mediation as a mode of dispute settlement such as the **Law Reform (Marriage Divorce) Act 1976**, the **Industrial Relations Act 1967**, the **Housing Development (Tribunal for Homebuyer Claims) Regulations 2002**, the **Legal Aid Act 1971**, and the **Syariah Court Civil Procedure (Federal Territories) Act 1998**, among others.

# Cont'd.

- **Order 34, Rule 2(2) of the Rules of Court 2012**: "[T]he **Court may**, at a pre-trial case management, consider…, **expeditious and economical disposal of the action** or proceedings, **including a mediation** in accordance with any practice direction for the time being issued".
- **Order 59, Rule 8(c) of the Rules of Courts 2012**: [T]he **court shall**,… as may be appropriate in the circumstances, take into account – the conduct of the parties in relation to any **attempt at resolving the cause or matter by mediation** or any **other means of dispute resolution**".
- The Practice Direction No. 2 of 2013 also provides for the **mediation** process **for road accident cases** in Magistrate's Courts and Sessions Courts'.

# Cont'd.

- The **Kuala Lumpur Court Mediation Centre** was established to provide '**free-of-charge**' mediation services conducted by judges or judicial officers.
- It later changed its name to the **Court-Annexed Mediation Centre Kuala Lumpur** which is situated inside the Kuala Lumpur Court Complex.

- The Practice Direction No. 4 of 2016: "[J]udges **may**, with the consent of the parties, **use mediation to resolve the dispute** and this **can be carried out at any stage**, whether it is before a trial, at the pre-trial case management, after the trial has commenced or even when the case had reached the appeal stage".
- In June 2016, the **Federal Court Mediation Division** was established under the supervision of the Chief Registrar of the Federal Court of Malaysia.

# DISPUTE RESOLUTION TRENDS AT THE INTERNATIONAL LEVEL

- **Article 2 (3) of the UN Charter**: "All Members **shall settle** their international **disputes by peaceful means** in such a manner that international peace and security, and justice, are not endangered".

- **Article 33 (1) of the UN Charter**: "The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, **first of all**, seek a solution by **negotiation**, **enquiry**, **mediation**, **conciliation**, **arbitration**, **judicial settlement**, resort to **regional agencies or arrangements**, or **other peaceful means** of their own choice".

- Why can't **we adopt the same dispute settlement sequence**, with necessary adjustments, **in the national legal system**?

# Cont'd.

- On 20 December 2018, the UN General Assembly adopted the "**Convention on International Settlement Agreements Resulting from Mediation**" (the Singapore Mediation Convention) with the aim **to promote mediation as an alternative and effective method of resolving commercial disputes** with the exclusion of consumer transactions for personal, family or household purposes, inheritance and employment law.

- On 07 August 2019, it was signed by **46 States** and will **enter into force** after 6 months which is on **07 February 2020**.

- It **imposes an obligation** to the parties **for the cross-border enforcement of a settlement agreement** resulting from mediation.

# IMBUING WOULD-BE LAWYERS WITH MEDIATION SKILLS

- Would it be sufficient **just to equip would-be lawyers only with litigation skills** and **the adversarial 'hired-gun' mindset**?

- It is proposed that **curriculums at law schools must give preference to conflict resolution skills** rather than **solely focusing on the advocacy or litigation skills**.

- For example, in mediation, **the mediator** has to **listen**, **guide**, **advise** and **assist the parties** through the negotiation process **towards a win-win solution** which satisfied all parties.

# Cont'd.

- In order to do that a mediator **must have the requisite knowledge and skills** such as:
  - **Understanding the law** relating to the subject matter of the dispute;
  - **Understanding the parties**' desires;
  - **Collecting information**;
  - **Facilitating communication** and **agreement**;
  - Ability to **manage cases and documents**;
  - Ability to **deal with strong emotions** and **sensitivity**;
  - Ability to **be creative** and **reasonable**;
  - **Possessing analytical skills**, **interviewing techniques**, and **a sense of commitment** to the whole exercise of mediation process.

# Cont'd.

- The **would-be lawyers must be imbued** with these knowledge and skills **at the earliest stage** of their legal education.

- This could be done by **integrating those skills into the substantive law subjects** and has to be **reflected in the curriculums**, **teaching** and **examination**.

- By having these skills into mainstream law subjects, **they may** likely to **draw more attention into dispute resolution** rather than litigation in the court system.

- Although **ADR** has now been made **a compulsory subject** at the local law schools, this is still **not enough** for them.

# Cont'd.

- The Mediation Act 2012 provides that "[A] person who **possesses the relevant qualifications**, **knowledge** or **experience in mediation through training** or **formal tertiary education** or satisfies the requirements of an organisation which provides mediation services, can be appointed as a mediator under the Act".
- The **certifying bodies in Malaysia** include: the Malaysian Mediation Centre (MMC); the Asian International Arbitration Centre (AIAC); the Constructions Industry Developments Board (CIDB), among others.
- The **local universities should** look into **conducting mediation training** and **certifying law students as mediators**.
- It can also be done **in collaboration with local and/or international accreditation bodies**.

# PUBLIC AWARENESS OF THE MEDIATION

- Writing in the **mainstream media** and **social media**
- **Organising** specific **programmes** for public and practitioners by the Law Schools, Bar Council, Courts and other legal professional bodies
- **Demand & Supply Theory**: If the parties are **aware of the benefits of mediation**, it would **increase the demand** for it.
- Then, **more people would like to be** groomed themselves as **mediators** rather than just lawyers.
- **Court will have free hands** from volumes of cases.
- To this end, members of the **legal fraternity** would **have to place their clients' interests above their own** and **promote mediation** although it may lead to less revenue.
- Hence, this **adversarial 'hired-gun' mindset should be steered away**.

# CONCLUSION

- By looking at the challenges of adversarial system and opportunities in ADR, it is time for us to **train them not only** to become **good litigators and solicitors but also** sensible **negotiators**, **mediators**, **conciliators** and **arbitrators**.

- The **adversarial 'hired-gun' mindset must be discarded** and the curriculums at **law schools must play an important role by emphasising** the importance of **conflict resolution skills** rather than **focusing only on advocacy and litigation skills**.

- It is hoped that this would foster **future lawyers** who **would place their client's interest above their own** and would **incline more towards solving the disputes in amicable manners**.

# THANK YOU

# IMBUING LAWYERS' PROBLEM-SOLVING SKILLS IN LAW SCHOOL CURRICULUM TO OFF-SET ADVERSARIAL 'HIRED-GUN' MIND-SET

Ashgar Ali Ali Mohamed (Prof Dato' Sri Dr.)
Ahmad Ibrahim Kulliyyah of Laws, International Islamic University Malaysia

Muhamad Hassan Ahmad (Dr.)
Ahmad Ibrahim Kulliyyah of Laws, International Islamic University Malaysia

## ABSTRACT

It is undeniable that the alternative mode of dispute resolution such as mediation and conciliation is in most circumstances able to improve the strain relationship between the disputants. Adjudication before the court would be as the last resort only when the parties are unable to resolve the dispute amicably. To this end, members of the legal fraternity have to place clients' interests above their own, and have to discard their litigation mind-set and promote, for example, mediation, although it may lead to less revenue. Individual lawyers who earn a living from the fee he/she charges the client, may not be receptive of mediation because there would be a lesser role for them if mediation is implemented. The adversarial 'hired-gun' mind-set has to be corrected. Hence, this paper proposes that the law school curriculum must move away from the adversarial nature of teaching and training lawyers by integrating alternative dispute resolution system. The law school curriculum must stress on lawyers' problem-solving (instead of problem-making) skills, i.e. emphasis on dispute settlement as opposed to litigation. The law students ought to be taught the basic concept of alternative dispute resolution at the earliest stage of their legal education. The mediation/conciliation skills should be integrated into substantive law subjects and to be reflected in the curriculum, teaching and examination. By having such a programme, it is hoped that the would-be lawyers should be imbued with a mind-set of problem-solving and not just acquiring the skills of advocacy in litigation.

## INTRODUCTION

Alternative modes of dispute resolution such as mediation and conciliation are, in most circumstances able to improve the strain relationship between the disputants. Only when the parties are unable to resolve the dispute amicably would adjudication before the court become necessary as the last resort. To this end, members of the legal fraternity would have to place their clients' interests above their own, and to discard their litigation-based mindset, promoting mediation although it may lead to less revenue. Individual lawyers who earn a living from the fee he/she charges the client may not be receptive of mediation because there would be a lesser role for them if it was implemented. Hence, this adversarial 'hired-gun' mindset should be steered away from. This paper aims to propose a change in the law school curriculum which would shift away from the adversarial nature of teaching and training of lawyers and to place an emphasis on dispute settlement as opposed to litigation. Would-be lawyers ought to be taught the basic concept of alternative dispute resolution at the earliest stage of their legal education. At the same time, mediation skills should be integrated into substantive law subjects and to be reflected in the

curriculum via teaching and examinations. By having such a programme, it is submitted that the would-be lawyers should be inclined towards solving client's problem through alternative modes instead of litigating disputes.

## SETTLEMENT OF DISPUTES IN ADVERSARIAL SYSTEM

Disputes or conflicts are common in different places and circumstances and may arise among workers, customers and suppliers, between organisational units, departments and even across international borders. Disputes between husband and wife, parent and child, neighbours and commercial disputes ought to be resolved amicably. Achieving this would ensure that the relationship would continue to work, this would benefit the parties involved and it would maintain social harmony and cohesion. Unresolved disputes or conflicts on the other hand may have an adverse impact on the relationship between the disputants as well as other effects such as their productivity and commitment towards their work or organisation. The dispute settlement mechanism would include negotiation, mediation, conciliation, arbitration, and judicial settlement.

Judicial settlement in the common law system is of an adversarial nature. This would involve the filing of the dispute with the court for relief and with that the parties would be subjected to the stringent procedural rules of the court. In a civil dispute, parties are required to file pleadings and other originating documents in court thereafter serving these documents to the other party either by personal or non-personal service. When service of the document in the ordinary form appears to be impracticable for any reason, such as for example, the defendant's whereabouts are unknown or they could not be traced or the defendant refused to accept the delivery or evading service, among others, then substituted service may be obtained. Part of the litigation proceedings will include 'discovery' and 'interrogation', the former involves the request for the production of important documents while the latter involves the request of pertinent information by written questions. Thereafter, case management meetings will be fixed by the court to give directions to the parties as to the future conduct of their actions in order to ensure just, expeditious and economical disposal of the dispute.

The hearing of the dispute will be held in open court with the public and the press having access to the proceedings. However, in certain exceptional circumstances, proceedings may be held in camera. The court may make such reservation, for example, where they are satisfied that it is expedient in the interests of justice, public safety, public security or propriety as well as other sufficient reason to do so, including where it is necessary to protect the identities of victims or interested witnesses.[1] The parties would have control over the course of the trial through their advocate. They may decide on the evidence that would be adduced to support their case or claim as long as the evidence is relevant and admissible. The admissibility of evidence along with the mode of its production is regulated by The Evidence Act 1950. Section 137 of the same act governs the manner in which witnesses are produced and examined in court. The parties are given the freedom to present their case and set forth their points of view though subjected to the existing laws relating to procedure and trial. Ultimately, the decision of the case will rely on the presentation of the evidence.

[1] See the Courts of Judicature Act 1964 s 15 and the Child Act 2001 (Act 611) s 12. See also the cases of *PP lwn KK* [2007] 6 CLJ 367; *Pendakwaraya lwn Shahareeil Said* [2007] 6 MLJ 567, [2007] 4 CLJ 405.

Upon hearing all parties concerned along with the evidence presented, the court will then make a decision. In deciding on the matter, the court would have to consider and weigh all questions that were raised and the decision would have to be based on the evidence collected and heard. The judge must thoroughly elucidate the facts and issues of the case in hand and thereafter make a decision that attains a reasonable degree of certainty. Generally, the judge is expected to deliver written grounds of judgment which 'should contain a narration of facts of the case, the issues to be adjudicated upon, a discussion on evidence, such as contradictions, inconsistencies, corroboration, warnings, accomplice's evidence, etc, the findings of facts, a statement of law to be applied to the facts so found and finally the conclusion'.[2]

The decision of the court however, may not necessarily be the final say. The party who are dissatisfied with the decision of the trial court may, subject to the fulfilment of the requirements of the relevant law, file an appeal against it in the superior courts. Decision from the Magistrates' court and Sessions court would proceed to the High Court. Appeals must adhere to the court's hierarchy. For example, an appeal to the Court of Appeal would be against the decision of the High Court exercising its original jurisdiction, appellate or revisionary jurisdiction for the matter that was decided by the Sessions Court.[3] If the appeal was against the decision of the Magistrates' court, an appeal to the Court of Appeal may lie from the decision of the High Court exercising appellate or revisionary jurisdiction although it would be restricted on question of law which had arose during the course of appeal or revision.[4] The Federal Court, the apex court, will hear appeals from the Court of Appeal which had been heard and decided by the High Court exercising original jurisdiction.[5] All appeals to the Federal Court must be with the leave of the Federal Court.[6] The procedure governing appeals to the superior courts as well as the machinery for obtaining satisfaction or compelling compliance of a judgment is contained in the Rules of Court 2012.

From the above, it is apparent that the administration of justice in the civil courts adheres to common law precedents and statutes. Many of the problems associated with the process of litigation are common to the adversarial process adopted by the legal systems of colonies which had inherited the common law and the English legal procedure. It is common knowledge that litigation of disputes in the courts are costly, time-consuming with unpredictable outcomes and above all, creating irreversible damage to the relationships between the parties, particularly in matrimonial or labour disputes. There are many disputes that may be resolved outside the framework of conventional litigation, with the courts' role as a last resort after alternative modes had been exhausted yet the parties failed to reach an amicable solution.

## MEDIATION: AN EFFECTIVE MODE OF DISPUTE SETTLEMENT

Today, mediation is a widely adopted mode of dispute resolution as it only takes a fraction of the time of a trial or hearing, and it is a cost effective method of resolving dispute. Mediation will

[2] Tun Mohd Salleh Abas, 'Judgments/Grounds of Judgments of Subordinate Courts' [1984] 2 CLJ 142.
[3] Section 50 Courts of Judicature Act 1964.
[4] ibid, section 50(2A).
[5] ibid, section 87(1).
[6] ibid, section 96 (a).

cost the parties a smaller fraction compared to what they would have incurred if the case had been brought to court. Aside from the above, mediation is held in a private setting, in other words 'behind closed doors'. What this means is that members of the public and journalists will not be allowed to attend the mediation process except with the consent of the disputing parties. Thus, preserving the secrecy and confidentiality of information had transpired at the mediation.

Basically, mediation promotes compromise or collaboration where the mediator would assist the parties in reaching an amicable settlement. The mediator would listen to the arguments forwarded by the parties. He may ask questions to guide the disputants and help them understand the issues. Furthermore, he would encourage the parties to develop a mutually acceptable solution. The mediator would also maintain a safe and respectful atmosphere. He may offer suggestions, recommendations and alternatives for consideration by the parties as a means of resolving the dispute. The process works because the parties are given the power and obligation to seek solutions that meet their own needs and interests. The disputing parties are able to speak for themselves, and work together to find a lasting solution to their conflict under the guidance of the mediator. Undoubtedly, mediation can assist the disputing parties to re-establish trust and respect, prevent damage to an on-going relationship unlike conventional litigation. If termination of a relationship is the option, mediation can make the termination more amicable.

It may be added that for mediation to be effective, the mediator must possess unquestionable reputation and integrity. At the same time, he must have good knowledge of the subject matter of the dispute between the parties and the personal values of the parties. A mediator should have the ability to analyse the issues effectively before he can guide the parties towards a settlement. They must have patience and tact in creating and maintaining rapport with the disputants, enhancing the success of the process. By displaying impatience, the mediator may jeopardize the mediation, causing the disputant to think that if he remains unresponsive for a little longer, the process will end. This could cause the disputant to lose respect for the mediator, thereby reducing the mediator's effectiveness.

It is also important to convince the parties that mediation would be a better mode of settlement and the parties must be made aware of the tedious process of the court. The parties must be strongly urged to settle their differences through mediation where the out-of-court settlement would arrive at a win-win solution and their harmonious relationship would continue as opposed to a judgment of the court where the adversarial nature of 'winner takes all' would undoubtedly poison the relationship between the parties and this would lead to the deterioration of the relationship.

Mediation however is not, and should never assume to be a substitute for the judicial system. It is only an alternative mode of dispute resolution and, where mediation failed to amicably resolve the dispute, it will be referred to and adjudicated in court. The Law Reform (Marriage Divorce) Act 1976,[7] Industrial Relations Act 1967,[8] Housing Development (Tribunal For Homebuyer

[7] Act 164. See ss 55(1) and 106 where reconciliation is a prerequisite for the filing of a divorce petition under this Act. See also Divorce and Matrimonial Proceedings Rules 1980. Generally, 'conciliation' and 'mediation' are used interchangeably although some have argued the existence of some difference in the functioning of the two especially in relation to their role as a neutral third party.

8 Act 177. See s 20.

Claims) Regulations 2002,[9] Legal Aid Act 1971[10] and Syariah Court Civil Procedure (Federal Territories) Act 1998,[11] among others contains provision on mediation as a mode of dispute settlement.

## MEDIATION IN THE COURTS

Undoubtedly, the courts in many countries are burdened with the ever increasing volume of cases. The disposal of cases in the courts would normally take many years and this inevitable would have a negative impact on the very essence of justice as the famous legal maxim encapsulates, 'justice delayed is justice denied'. In order to relieve the courts' burden, various alternative dispute resolution mechanisms have been introduced. Mediation undoubtedly could ease part of the judiciary's workload, streamline the judicial process and ultimately preserve the quality of the judicial system. In order to promote mediation in the civil courts without going through the trial and appeals process, the Chief Justice of Malaysia introduced the Practice Direction No. 4 of 2016. It provides that judges may, with the consent of the parties, use mediation to resolve the dispute and this can be carried out at any stage, whether it is before a trial, at the pre-trial case management, after the trial has commenced or even when the case had reached the appeal stage.

The parties are allowed to choose either a judge-led mediation or a mediator agreeable to both the parties. The mediation opted by the parties must be completed within a period of 3 months from the date the case is referred to for mediation. The period may however be extended with the approval of the Court. The objective of the practice direction is to encourage parties to arrive at an amicable settlement without going through or completing a trial or appeal. Mediation is also employed to solve matters at the appellate stage in the Court of Appeal and the Federal Court.[12]

It may be added that the Practice Direction No. 2 of 2013 entitled 'Mediation Process for Road Accident Cases in Magistrate's Courts and Sessions Courts' requires all personal injury claims arising from motor vehicle accident to undergo a compulsory mediation before a Court Mediation Officer (who is either a Session Court Judge or a Magistrate, other than the presiding Sessions Court Judge or Magistrate who is handling the matter).[13] The mediation is required to take place once the pleadings are closed and not later than 10 weeks after the claim has been filed, along with the basic documents such as initial medical report, sketch plan prepared by the police investigating officer, police reports lodged by parties, photos (if available) as well as other

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[9] PU (A) 476/2002. For example, reg 23(1), which deals with negotiation for settlement, provides: 'At the hearing, the Tribunal shall, where appropriate, assist the parties to effect the settlement of claim by consent.

10 Act 26. See Part VA (ss 29A to 29F) of the said Act. See also Legal Aid (Mediation) Regulations 2006 (PU (A) 163/2006).

11 Act 585. Section 99 of the said Act provides: 'The parties to any proceedings may, at any stage of the proceedings, hold *sulh* to settle their dispute in accordance with such rules as may be prescribed or, in the absence of such rules, in accordance with *Hukum Syarak*.' See also the Syariah Court Civil Procedure (*Sulh*) (Federal Territories) Rules 2004, (PU (A) 18/ 2004).

[12] Azmi, Tun Zaki, "Opening Address – 2nd Asian Mediation Association Conference" (speech, Kuala Lumpur, February 24 2011).

[13] Accident claims are tried in either Magistrate Court or Sessions Court, where the former for claim less than or at RM100,000, while Sessions Court has unlimited jurisdiction to try all actions and suits of a civil nature in respect of motor vehicle accidents. See section 65 and section 90 of Subordinate Courts Act 1948.

supporting documents. The 2013 Practice Direction is not affected and unperturbed by the issuance of the Practice Direction No. 4 of 2016.

It is noteworthy that Order 34 rule 2 (2) of the Rules of Court 2012[14] specifically states that "the Court may, at a pre-trial case management consider any matter including the possibility of settlement of all or any of the issues in the action or proceedings and require the parties to furnish the Court with such information as it thinks fit, and the appropriate orders and directions that should be made to secure the just, expeditious and economical disposal of the action or proceedings, including a mediation in accordance with any practice direction for the time being issued." Again, Order 59 rule 8(c) of the Rules of Courts 2012 states that in the exercise of discretion as to costs, the court "shall, to such extent, if any, as may be appropriate in the circumstances, take into account – the conduct of the parties in relation to any attempt at resolving the cause or matter by mediation or any other means of dispute resolution."

Alongside with the practice directions, the Kuala Lumpur Court Mediation Centre was established which was to provide free-of-charge mediation services conducted by judges or judicial officers. An eight-page document issued by the Centre contains the guideline on mediation services offered by the Centre. The Centre has since changed its name to the Court-Annexed Mediation Centre Kuala Lumpur which is situated inside the Kuala Lumpur Court Complex.[15] A brochure entitled 'The Court-Annexed Mediation Centre Kuala Lumpur – a positive solution' replaced the previous eight-page document.[16] In June 2016, the Federal Court Mediation Division was established under the supervision of the Chief Registrar of the Federal Court of Malaysia. The existence of mediation alongside with conventional adversarial adjudication provides opportunity for the disputants to reach an amicable settlement even when a claim is filed at court. However, the adversarial nature of the court would more likely than not leave the parties bitter at its judgment.

## SINGAPORE MEDIATION CONVENTION

On 20 December 2018, the United Nations General Assembly had adopted the Convention on International Settlement Agreements Resulting from Mediation which is also known as the Singapore Mediation Convention. The Convention is primarily aimed at promoting mediation as an alternative and effective method of resolving commercial disputes with the exclusion of consumer transactions for personal, family or household purposes, inheritance and employment law. The official signing of the Convention was held in Singapore on 7 August 2019 with 46 states signing it and the Convention will enter into force after a lapse of 6 months from the official signing date. This Convention is similar to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards which is also known as the New York Arbitration Convention adopted on 10 June 1958 which provides the framework for the recognition and enforcement of foreign arbitral awards and the referral by a court to arbitration.

[14] (P.U. (A) 205/2012)

[15] Court-annexed mediation refers to situation where a judge and judicial officers act as mediator to litigating parties after they have filed their action in the court.

[16] 'Kuala Lumpur Court Mediation Centre Court – Annexed Mediation' see https://www.aseanlawassociation.org/11GAdocs/workshop5-malaysia.pdf

The Singapore Mediation Convention would impose an obligation to the parties with respect to both enforcement of a settlement agreement and the right of a disputing party to invoke a settlement agreement covered by the convention. Pursuant to the convention, the settlement agreement has cross-border enforcement where the agreement arrived thereto can be enforced in another convention State, where foreign parties are involved. All that is required is that the disputing party shall supply to the competent authority the settlement agreement signed by the parties and evidence that the settlement agreement results from mediation. Additional document may be requested by the competent authority to satisfy itself that the requirements of the convention have been complied.

The competent authority may refused enforcement of the settlement agreement under limited circumstances such as where there was lack of capacity of either party to the settlement agreement, the settlement agreement had been rendered null and void, inoperative or incapable of being performed, or there had been a serious breach of conduct on the part of the mediator, or the granting of relief was contrary to the public policy of that State or if the subject matter of the dispute is not capable of settlement by mediation under the law of that State.

## MEDIATION SKILLS AMONG WOULD-BE LAWYERS

An early involvement in the dispute settlement can lead to strengthening relationships and this builds teamwork, other than that, it encourages open communication and cooperative problem-solving, resolves disagreements quickly and concentrates on win-win resolutions. Mediation promotes compromise or collaboration as people learn how to work harmoniously, develop creative solutions to problems and reach outcomes that mutually benefit those involved. As seen above, the judiciary is proactive in promoting mediation as a mode of dispute settlement of civil matters, making court appearances as a last resort. The obvious reason being that the traditional court process is costly, lengthy, and antagonistic; all of which would lead to a disillusionment with the state's legal process. Mediation is also extensively promoted at the international level and this is evident with the recent signing of the Singapore Mediation Convention. Hence, the members of the legal fraternity would have to take the lead by encouraging their clients to seek mediation an early resolution of their disputes including utilising the court-annexed mediation which is provided without any additional fee on the parties.

There are many disputes which should ideally be resolved through collaborative and less confrontational such as the workplaces and matrimonial disputes. Apart from providing fast, creative and mutually satisfactory resolutions, mediation has the potential of preserving the relationship between the parties. Mediation can mend and preserve frayed working relationships, even when the parties are extremely angry. Moreover, mediation fosters mutual respect through improved communication. The importance of mediation is also stressed in the matrimonial cases whereby the trust and preservation of family and keeping it together would be important. If the parties insist on their legal rights to be enforced by court or if the chances of getting an amicable and just solution by way of mediation are slim, the parties could then be referred to the court. Mediation has also been found to be a very useful mean for dispute settlement in the Legal Aid Department. Majority of the cases handled by the Legal Aid Department are matrimonial cases and mediation has been found to be a very useful mechanism for settlement of those cases.

The success of mediation depends on several factors and this includes the support shown by the legal advisers alongside the commitment of the disputants'. To this end, legal advisers must play an important role by encouraging their client to consider mediation at the preliminary stages of a dispute. In fact, a good lawyer must not only be able to assist clients in articulating their problems but they must also be able to generate, assess, and implement alternative mode of solving disputes. They have to place the clients' interests above their own, discard the litigation mindset and promote mediation, although it may lead to less revenue. Individual lawyers earning a living from the fee he/she charges the client, may not be receptive to mediation because there would be a lesser role for them if mediation is implemented. However, the misconception of the reduction of the role of lawyers because of mediation is not entirely correct. Through this process, more disputes can be resolved in lesser time leading to an increase in productivity.

The adversarial 'hired-gun' mindset i.e., the 'litigation' approach must be discarded and more amiable problem solving skills must be imbued into the would-be lawyers. To ensure the successful adoption of alternative dispute resolution, the law school curriculum must give preference to conflict resolution skills rather than to advocacy or litigation skills. In mediation for example, the mediator has to guide the parties through the negotiation process; advising, listening, and helping them towards a win-win solution or at least one that all parties are satisfied with. A mediator must have the requisite skills and knowledge in terms of understanding the parties' desires, collecting information, facilitating communication, facilitating agreement and the ability to manage cases and documents. The mediator's ability to be creative, to be able to deal with strong emotions, sensitivity, reasoning, emotional stability, analytical skills, interviewing techniques, and a sense of commitment to the whole exercise of mediation is equally important.

The would-be lawyers must be imbued with these skills at the earliest stage of their legal education. This could be done by integrating those skills into the substantive law subjects and has to be reflected in the curriculum, teaching and examination. By having these skills into mainstream law subjects, future lawyers would be more likely drawn into dispute resolution rather than the state court system. It is interesting to note that the alternative dispute resolution has now been made a compulsory subject at the local law schools. By familiarising this subject to the students it would create an increase in awareness of the alternative dispute resolution mechanism and to facilitate the development of alternative dispute resolution skills within the law school community.

It is worth noting that the Mediation Act 2012[17] provides that a person, who possesses the relevant qualifications, knowledge or experience in mediation through training or formal tertiary education or satisfies the requirements of an organisation which provides mediation services, can be appointed as a mediator under the Act.[18] Certification or accreditation involves nothing more

[17] Act 749.

[18] The Mediation Act 2012 provides inter alia, that the mediation agreement must be in writing (s 6(2)), the appointment of mediators shall be by way of agreement (s 7(4)), the parties can obtain assistance from an institution for the appointment of mediators (s 7(3)), parties can terminate the appointment if the mediator no longer satisfies the requirement of the institution, has pecuniary interest in the dispute or is found to have obtained appointment by fraud (s 8), confidentiality and privileged communication during mediation (ss 15-16), costs of mediation to be borne equally by the parties (s 17) and if the mediation is successful, the settlement agreement entered into shall bind the parties (ss 13-14).

than an individual taking one or more training programmes with a reputable or known training body which subsequently certifies the individual as accredited mediator. The certifying bodies in Malaysia include the Malaysian Mediation Centre (MMC),[19] the Asian International Arbitration Centre (AIAC) and the Constructions Industry Developments Board (CIDB), among others. The universities with a pool of experts among their staff should also be encouraged and given the task of conducting mediation training and certifying mediators through collaborative efforts with the above bodies.

It may be added that mediation would be more effective if disputants are made aware of the better value that mediation can offer, such as its ability to save costs and its potential for repairing relationships. The parties must be told that litigating disputes in the courts is costly, time-consuming and unpredictable in its outcome. And above all this, the 'winner takes all' hostile nature of the court would inevitably damage the relationships between the disputants. Apart from that, the delay in the disposal of cases due to the backlog and the costs for litigating disputes in court would be substantial, not to mention the tremendous costs the parties may incur paying to legal representatives. Hence, necessary steps should be taken at the grassroots to increase public awareness and knowledge of mediation. This may be done through writing in the mass media or through specific programmes organised by the law schools in collaboration with the legal profession bodies.

## CONCLUSION

Mediation is an effective and affordable mode of dispute resolution. Through this mode, the disputants would be self-empowered to find better ways to deal with their dissatisfaction and needs under the guidance of the mediator. In this manner, apart from being economic and saving the judicial precious time, the process would be able to maintain a harmonious relationship between the parties which is vital for the progress and development of the nation without any impediments. The adversarial 'hired-gun' mindset must be discarded and the law school curriculum must play an important role by emphasising the importance of conflict resolution skills as opposed to advocacy or litigation skills. By adding these skills into mainstream law subjects, it is hoped that in turn, this would foster future lawyers who would place their client's interest above their own and would be more inclined towards solving the client's problem at the preliminary stages *vide* the alternative modes. The judicial settlement would be resorted only after all the peaceful resolution avenues have been exhausted and they have failed to achieve the desired results.

[19] The Malaysian Mediation Centre is a body established in 1999 under the auspices of the Bar Council of Malaysia with the objective of promoting mediation as a means of alternative means of dispute resolution.