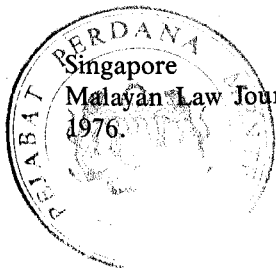


CONSTITUTIONAL LAW CASES FROM MALAYSIA AND SINGAPORE

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SECOND EDITION



PUSTAKA PERDANA



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PREFACE TO THE SECOND EDITION

Rapid development of case-law in constitutional law subsequent to the appearance of the First Edition five years ago is the main reason for the publication of this Second Edition. During this period, the courts in Malaysia and Singapore have rendered more than thirty-five judicial decisions many of which authoritatively clarify major questions, or establish important principles, in significant areas such as fundamental liberties, citizenship, public servants, preventive detention and emergency powers. This Second Edition incorporates these new cases while retaining the majority of the cases appearing in the First Edition. I have omitted only six cases* which appeared in the First Edition which were cases where discussion of a provision was general, tangential or even obiter and which I had then included only because case-law was still in its infancy. (As I had stated in the Preface to the First Edition "with subsequent development of case-law over the years, a more restrictive selection may be justified in future editions of this casebook").

As to the format and contents, the basic pattern of the First Edition has been retained (see Preface to the First Edition). The reader's attention, however, is drawn to two changes: *First*, the reference to cases cited and other citations have been incorporated in the text of the judgments instead of resorting to footnotes; *secondly*, in the *Notes and Questions* reference is often made to certain cases which, because of obliqueness of the constitutional issues raised, have not been extracted.

As to the inclusion in one casebook of judicial decisions from two separate independent countries, Malaysia and Singapore, I remain convinced of the wisdom of continuing this approach. Not only do many provisions of the Malaysian Constitution still have constitutional force in Singapore, but in the past five years the Courts in both countries have continued to show a willingness to respect and follow constitutional decisions emanating from each other's jurisdiction. The case extract headings, however, clearly indicate to the reader the country and court which decided the case.

Cut-off dates. For the judgments, the latest volume of the *Malayan Law Journal* consulted was [1975] 2 M.L.J. and cases appearing subsequent to December 1975 M.L.J. are not incorporated.

For the bibliography on Malaysian and Singapore Constitutional Law I have endeavoured to keep it up to date as of *July 1976*.

Cases decided after cut-off date: I wish to bring to the reader's attention the following case reported after the cut-off dates, which has a bearing on Constitutional Law:-

-
- * 1. *Choeldi, Johannes & Ors., ex parte* [1960] M.L.J. 184.
 - 2. *Ghazali v. Public Prosecutor* [1964] M.L.J. 156.
 - 3. *Gnanasundram v. Public Services Commission* [1966] 1 M.L.J. 157.
 - 4. *Haji Wan Othman & Ors. v. The Government of the Federation of Malaya* [1965] 2 M.L.J. 31.
 - 5. *Sambasivam v. Public Services Commission & Anor.* [1970] 1 M.L.J. 62.
 - 6. *Shaaban & Ors. v. Chong Fook Kam & Anor.* [1969] 2 M.L.J. 219.

Rajion bin Haji Sulaiman v. Government of Kelantan [1976] 1 M.L.J. 118
(Federal Court, Malaysia.)

Here the issue was whether the Government of Kelantan had acted wrongly in stopping annual increments on the ground that appellant had not passed required examinations. The letter of appointment had not stated that he had to pass any examination. It was *held*, inter alia, (1) that as the appellant held office at the pleasure of the Ruler, his tenure of office was subject not only to rules and regulations prevailing at the time of his appointment but also to any amendments to such rules and regulations; (2) that, therefore, appellant could not contend that his letter of appointment made no reference to passing of any examination; (3) that in his case payment of salary above the bar on conversion must be regarded as an indulgence by the State in recognition of his past services but the requirement that he should pass the examination required by the rules remained applicable to him and therefore he has no right to further increments until passing such examination. (Art. 132(2A)).

Acknowledgments: I must gratefully record my gratitude to Mr. Amir Mallal and Encik Al-Mansor Adabi of the Malayan Law Journal and their colleagues in M.L.J. for their support and close cooperation in the production of this Second Edition; Law student Woo Bih Li who assisted in research for this edition; and, Miss Catherine Teo of the Law Faculty office for her valuable help. I continue to be grateful to my wife, Lalitha, for her patience and encouragement during my efforts to bring out this Edition in the midst of busy family commitments.

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July 1976.

PREFACE TO THE FIRST EDITION

This casebook has been prepared particularly for the Malaysian and Singapore law student studying local jurisprudence in Constitutional Law. No casebook can, of course, be an effective substitute for the original law reports. But students do face certain difficulties which have necessitated the publication of this casebook. For instance, the law reports on the library shelves are subject to intense and frequent use by students for all law subjects, by law teachers and by non-University users and, further, students are not permitted to take a law report out of the library for private study at home. Although this volume has been prepared for the law student, it is hoped that this single collection of local constitutional law cases will also prove useful for legal practitioners in Malaysia and Singapore.

I am, like other compilers and editors of casebooks, well aware that the real credit for the contents in this volume should be attributed not to the compiler and editor but to the original authors, namely, the learned judges themselves. In the context of Malaysia and Singapore the judiciary shares this credit with Dr. Bashir A. Mallal who, as Editor of *The Malayan Law Journal* has been responsible for reporting their judgments.

For cases from *Malaysia*, only cases decided after Merdeka Day 31st August 1957 have been included, that being the date when the Constitution of the independent Federation of Malaya came into operation. For cases from *Singapore*, the corresponding cut-off date is 16th September 1963, the date when Singapore joined Malaysia and received a new Constitution which (with amendments and modifications) still serves as Singapore's Constitution at the time this volume was prepared. However a few cases before these dates have been included where they turn on provisions *in pari materia*.

As to the content of the extracts which appear in this casebook it will be observed that I have included not only the cases which discuss a constitutional provision in depth, but also cases where discussion of a provision is general, tangential or, in some cases, even *obiter dicta*. It is my view that since the present caselaw on the Malaysian and Singapore Constitutions is still in its infancy, every judicial comment and clarification becomes significant and should be made available to the reader. With subsequent development of case-law over the years, a more restrictive selection may be justified in future editions of this casebook.

As far as possible the cases have been edited to omit the non-constitutional law issues. In some instances, lengthy cases touching on several constitutional issues have been split up and extracts appear under more than one entry. However, appropriate cross-references are inserted in both the Table of Contents as well as in the pages of the casebook to advise the reader of the various possible relevances which a particular case might have to different provisions of the Constitution. In some cases, the headnotes originally appearing in the law report are used but in other cases it has been found necessary to modify the original headnotes.

Wherever relevant "Notes and Questions" have been inserted for the aid of the students. Also included are *List of Cases By Reference to Constitutional Provisions* and *Bibliography on Malaysian and Singapore Constitutional Law*.

The latest volume of *The Malayan Law Journal* consulted at the time of going to press was [1970] 2 M.L.J.

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June 1971.

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