ARGSUMENTS OF CURRENT MALAYSIAN LEGAL SYSTEM – PERSONAL COMMENTARY ON SELECTED LEGISLATIONS

CHUEN-TAT KANG
Abstract: Malaysia is a developing nation that gained independent from British on 31 August 1957. The political culture, social and economy changes tremendously when the nation becomes more advanced than the time during the British colony. More and more rules, laws and legislation are developing concurrently with the movement of time from old to the new generation of Malaysia to meet the contemporary requirement, with the amendment and deletion of obsolete legislations, besides addition of new laws. Although Common Law in Malaysia, as a member of Commonwealth countries, are derived from the British laws, adaptations are required in order to suit the trend of the Malaysian society, executable for different purposes in Malaysia, as major guidance of human activities in the developing nation. The new acts may only be accepted with legal validity, for the use throughout Malaysia, when the drafts are passed by the Lower House and Upper House in the parliament of Malaysia, approved by the King of Malaysia. Those laws accepted in the Parliament does not necessarily means that no flaws exists even majority of the parliamentarian agree without objections to the new acts, even though checking has been performed by the representatives of the people. Detection of various mistakes and execution problem of such legislation did not require any law specialist or professional knowledge, but any mindful person, with acceptable language skills and general knowledge, may be able to assist in the rectification in the error of laws. Examples of detailed studies concerning the problems that might raise of applying various local and international legislations in Malaysia are given as follows:

SECTION ONE : UNIVERSITY AND UNIVERSITY COLLEGES ACT 1971 (MALAYSIAN ACT 30)

University and University Colleges Act 1971 (Malaysian Act 30) section 15 (Part III : Universities) (1) No person, while he is a student of the University, shall be a member of, or shall in any manner associate with, any society, political party, trade union or any other organization, body or group of persons whatsoever, whether or not it is established under any law, whether it is in the University or outside the University, and whether it is in Malaysia or outside Malaysia, except as may be provided by or under the Constitution, or except as may be approved in advance in writing by the Vice-Chancellor. (2) No organization, body or group of students of the University, whether established by, under or in accordance with the Constitution, or otherwise, shall have any affiliation, association or other dealing whatsoever with any society, political party, trade union or any other organization, body or group of persons whatsoever, whether or not it is established under any law, whether it is in the University or outside the University, and whether it is in Malaysia or outside Malaysia, except as may be provided by or
under the Constitution, or except as may be approved in advance in writing by the Vice-Chancellor. (3) No person, while he is a student of the University, shall express or do anything which may be construed as expressing support, sympathy or opposition to any political party or trade union or as expressing support or sympathy with any unlawful organization, body or group of persons. Malaysian Act 30 Section 15A: (1) No student of the University, or any organization, body or group of students of the University, shall, in or outside the Campus, or in or outside Malaysia, collect or attempt to collect, or promote or attempt to promote any collection of, or make any appeal orally or in writing or otherwise or attempt to make any such appeal for, any money or other property from any person, not being money or property due or about to fall due under or by virtue of any written law, contract or other legal obligation.

The provision of University and University Colleges Act 1971 (Malaysian Act 30) section 15 (1)-(3) and 15A(1) has been deemed unconstitutional that have indirectly denied the rights for freedom of association among Malaysian university students that have been considered an adult instead of under-aged kids. In the community of varsity as a tertiary institution of higher learning, everybody is free to associate with any legal bodies in order to be involved in any healthy activities without breaching the rules, at the same time, being able to cope with the heavy load of study, provided that such university students do not abuse the name of the university for any extraneous purposes that may be deemed illegal and may interfere with the university administration when such title of university students are applied. The provisions of University and University Colleges Act 1971 (Malaysian Act 30) section 15 (1)-(3) and 15A(1) are recommended to be amended where the approval in writing by Vice Chancellor may not be practical for huge numbers of university students having some form of connection with many different organization throughout the world. There is no need to control the freedom of association among university students that have been involved in beneficial activities for the communities. If such control is truly required to restrict certain illegal activities among university students, then the university in Malaysia may need to establish very efficient registering and investigative bodies that typically handle various activities of the students at very fast and accurate rates to resolve various issues that may happen in the activities, within short times, otherwise what is the point of setting up such legislations when it has been proven not practicable in reality?

University and University Colleges Act 1971 (Malaysian Act 30) section 15 (Part III : Universities) D. (1) Where a student of the University is charged with a criminal offence he shall immediately thereupon be suspended from being a student of the University and shall not, during the pendency of the criminal proceedings, remain in or enter the Campus of that or any other University. (2) Where a court finds that a charge for a criminal offence is proved against a student of the University, the student shall, immediately thereupon, cease to be a student of the University, and shall not remain in or enter the Campus of that or any other University. (3) A student of the University who is detained, or is subjected to any order imposing restrictions on him, under any written law relating to preventive detention or internal security, shall, immediately thereupon, cease to be a student of the University and shall not remain in or enter the Campus of that or any other University.
University and University Colleges Act 1971 (Malaysian Act 30) section 15D(1)-(3) has been deemed denying the basic human rights of any criminals by having the terms “shall not remain in or enter the Campus of that or any other University” when in fact universities and colleges are public venues accessible for everybody, unless the safety issues in Malaysian society is alarmed because the Malaysian authority has failed to protect the citizen from the potential attacks by criminals hidden in any public places in Malaysia, when the Malaysian community safety standards falls behind many countries in the world around year 2010 that retard the foreign investment and businesses to Malaysia. It is all right not to allow the suspected criminal to enter the location where the crimes may have happened in one campus, but not “any other university” that may be outside Malaysia where Malaysian government has not authority to control over it. Furthermore, such provisions of the abovementioned legislations are deemed inappropriate that have indirectly assumed the suspected as criminal even unproven.

University and University Colleges Act 1971 (Malaysian Act 30) section 21 (Part IV : University Colleges) (1) The Yang di-Pertuan Agong may by regulations prescribe the Constitution of a University College. (2) The Yang di-Pertuan Agong may at any time amend the Constitution of a University College.

The provision of Malaysian Act 30 section 21(1) and 21(2) may have provided excessive power to the King for the Federation of Malaysia or in Malay language term “Yang di-Pertuan Agong” to prescribe and amend Constitution of University College in Malaysia even without consulting the opinion of Malaysian public about the practicability of such action of the ruler under democratic system in Malaysia where the objective power of the majority people under the ruler should be greater than the ruler in administrative decision making concerning the public interest. The King may also need to comply with majority interest even the King holds supreme power of ruling in the nation. As recommendation, the provision of the Malaysian Act 30 section 21(1) and 21(2) should be amended to allow special Board of Director of the Malaysian University College to vote on behalf of public opinions in favour of the majority when intend to alter Constitution of a University College in Malaysia.

University and University Colleges Act 1971 (Malaysian Act 30), First Schedule section 4(2) (Part I : The University : Powers of University) : If the Yang di-Pertuan Agong is satisfied, with a view to maintenance and promotion of the Federation’s foreign relations, that it is necessary to confer an honorary degree upon a foreign dignitary, on the direction by the Yang di-Pertuan Agong the University shall confer such degree as stated in the direction.

Malaysia intends towards establishing a truly world class varsity renown throughout the world. However, many popular foreign dignitaries that may have indirectly contributed to scientific research advancement for Malaysia has not been respected, perhaps forgotten. Malaysian varsity needs to strive in order to achieve among one of the top 100 world’s best universities in the world as vision. This may be the task of Yang di-Pertuan Agong or King for the Federation of Malaysia to provide the honorary degree to the correct persons that assist Malaysia to foster close ties with foreign research institutes that may bring Malaysian research famous throughout the world, in accordance to Malaysian Act 30, First Schedule Section 4(2).
University and University Colleges Act 1971 (Malaysian Act 30), First Schedule section 47
(Part VI : General Provision, Admission of students) A student shall not be admitted to the
University to a course of study for a degree unless he shall have satisfied such requirements as
may be prescribed by Rules..

There are in many situations where the exceptionally excellent students are being refused to
study in a particular course or enrolled in postgraduate research studies for the unacceptable
excuses of lack of suitable or insufficient placement within the university. Many universities in
Malaysia are in fact breaching Malaysian Act 30, First Schedule section 47, continuously since
Malaysia obtained independence in 1957. Such stern prosecution against defective university
administration should be conducted when maladministration occur within the varsity due
potentially to discrimination on whatever reasons.

University and University Colleges Act 1971 (Malaysian Act 30), First Schedule section 53
(Part VI : General Provision, Deprivation of degree, etc., on grounds of misconduct)
(1) If any member of an Authority, or any graduate of the University, or any person who has
received a degree, diploma, certificate or other academic distinction from the University, is
convicted by a court of law of any heinous offence whether within or without Malaysia, or is in
the opinion of the Board guilty of scandalous conduct, it shall be lawful for the Chancellor, on
the recommendation of not less than two-thirds of all the members of the Board—…. (b) to
deprive him of any degree, diploma or other academic distinction conferred upon him by the
University. (2) Scandalous conduct in subsection (1) includes wilfully giving any staff, officer,
employee or Authority of the University any information or document which is false or
misleading in any material particular in obtaining a degree, diploma, certificate or other
academic distinction from the University.

A lot of serious criminals, especially of white-collar nature, are conducted by those professionals
possessing university qualification that could happen inside or outside Malaysia. That may be
unfair for intelligent convicts to be deprived of university qualification that has been awarded to
them even for heinous acts that are not related to their university study. That means the
recommendation of not less than two-thirds of all the members of the Board of Directors of the
university to the Chancellor, as a higher education institution, to deprive the academic
qualification, even for minor breach of laws but deemed as heinous to certain party, or any
serious offences occurred after graduation but have no connection with university study, may be
deemed inappropriate and unfair to the convicts, in order to prevent abuse of power of any
people especially those influential to the decision of Chancellor, that may threaten the rights of
the convicts that latter be accused for applying university qualification and knowledge learnt in
tertiary college to commit such heinous acts not derived from any tertiary study experience,
when implementing University and University Colleges Act 1971 (Malaysian Act 30), First
Schedule section 53. The term “Authority”, that is defined in Malaysian Act 30, Section 2 (First
Schedule – Interpretation), may be the party susceptible to abuse of power while implementing
such legislation.
Educational Institutions (Discipline) Act 1976 (Malaysian Act 174), section 9 (Part III : The Students’ Representative Committee and Other Student Bodies) (1) The Minister or the Executive Head may, in his absolute discretion, without assigning any reason therefor, suspend or dissolve the SRC or any student body established under section 8, and give such consequential directions or instructions or take such consequential steps as may be necessary or expedient to give effect to the suspension or dissolution…(3) The suspension or dissolution of the SRC or a student body established under section 8 shall be final and no court shall have any jurisdiction to entertain any proceedings against such suspension or dissolution.

The provision of Malaysian Act 174, section 9(1) that simply allow the Minister - Minister of Education or Minister of Higher Education or Executive Head - the officer or member of the staff of the Institution who functions as the principal executive officer of the Institution, may expose the unprotected student organizations to abuse of power by certain top staffs members that has given authority to shut down the student organization registered under the institution, for any reasons but without giving any reasons, that may lead to lack of transparency in Malaysian administrative law. There should be some basis for the affected student organization to challenge for review of administrative decision, when Malaysia is a democratic nation that should always respect the viewpoint of everybody even the disliked dissidents if they contribute to institutional development with some form of memberships support. Furthermore, Malaysian Act 174, section 9(3) are deemed illegal and illogical when the legislation disallowed the law court, the judiciary body of the nation to make decision against suspension or dissolution of student bodies registered under any educational institutions in Malaysia, that has indirectly allowed the executive power of the Malaysian government to interfere with judiciary processes even if certain administrative procedures are not complied with.

Educational Institutions (Discipline) Act 1976 (Malaysian Act 174), section 10 (Part IV : Offences) (1) No person, while he is a student of an Institution, shall be a member of, or shall in any manner associate with, any society, political party, trade union or any other organization, body or group of persons whatsoever, whether or not it is established under any law, whether it is in the Institution or outside the Institution, and whether it is in Malaysia or outside Malaysia, except as may be provided by or under this Act, or except as may be approved in advance in writing by the Minister…. (5) Any person who contravenes or fails to comply with subsection (1), (2), (3) or (4) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

There is not possible for every minor organizational activity among students from Malaysian educational institutions, even of unimportant nature, to go through the Ministry of Education or Ministry of Higher Education Malaysia. It is also impractical for every delegate of the abovementioned ministries to provide formal approval letter for every student activities conducted in Malaysian educational institutions. In reality and with reference to the clear
interpretation of Educational Institutions (Discipline) Act 1976 (Malaysian Act 174), section 10 (Part IV : Offences) (1)-(5), all of the students from Malaysian educational institutions may have to be fined at certain amount of money or imprisoned for certain duration or both for many different unregistered activities outside the control of their educational institutions in Malaysia while being students. Penalties are recommended to only those illegal activities contradictory to laws especially of criminal nature, inclusive of abusing the branded name of the educational institutions for many different activities unrelated to their formally approved educational program, whether within or extra-curricular nature, but not all activities involving any organization.

Educational Institutions (Discipline) Act 1976 (Malaysian Act 174), section 11 (Part IV : Offences) (1) No student of an Institution, or any organization, body or group of students of an Institution, shall, in or outside the campus, or in or outside Malaysia, collect or attempt to collect, or promote or attempt to promote any collection of, or make any appeal orally or in writing or otherwise, or attempt to make any such appeal for, any money or other property from any person, not being money or property due or about to fall due under or by virtue of any written law, contract or other legal obligation. (2) Any person who contravenes or fails to comply with subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

The provision of Malaysian Act 174, section 11(1) that prohibited the money collection activities among the registered students in Malaysian educational institutions is not appropriate when every minor activity is not possible to go through the busy Minister of Education or Minister of Higher Education Malaysia. If such complicated procedures are truly required to control the financial support among students in Malaysian educational institutions for the illegal activities, then the relevant ministries of education must ensure that they are efficient enough in the administration up to world class standard and no bureaucratic policies or corruption happened within the governmental department that may have delayed the approval processes, however the reverse may sometimes be true. As long as the relevant students performed legal activities under their own name and initiatives without even abusing the name of their current educational institution, beyond the vicinity of their educational institutions, then the money collection activity may be allowed provided the faults that happened latter are due to the students themselves without involving their educational institutions. The application of penalty as in Malaysian Act 174, section 11(2) is recommended to be amended to cater only those illegal activities against the law, corruption and funding appropriation with intentional abuse of processes only, but not all money collection activities.

Educational Institutions (Discipline) Act 1976 (Malaysian Act 174), section 15 (Part IV : Offences) (1) The Minister may, where upon representations made by any particular Institution, he is satisfied that it is desirable to do so in the interest of that Institution, order in writing that any student of an Institution be suspended from being a student thereof for such period as the Minister may specify in the order, or be expelled from it, and such student shall, immediately thereupon, be so suspended or expelled, as the case may be…(3) The Minister may give such
decision with regard to any representations made under subsection (2) as he may deem fit and proper, and such decision shall be final.

In any form of administrative laws, there should be procedures to challenge the decision of the minister in the governmental department even in the Ministry of Education and Ministry of Higher Education Malaysia. Malaysian Act 174, section 15(3) is recommended to provide procedures to question the decision made by any minister in order to clarify further about the logic made behind any administrative decision. Such provision in view of Malaysian Act 174, section 15(1), may provide the opportunity for the appellant to obtain objective and fair viewpoints from parties not involved in the ministerial disputes in order to prevent abuse of power in the governmental ministries that may simply expel any student without significantly sound reasoning for certain improper administrative actions.

Educational Institutions (Discipline) Act 1976 (Malaysian Act 174), section 18 (Part V : Transitional) (5) Any question as to whether the members of any society or co-operative society, as the case may be, are wholly or predominantly students of one or more Institutions shall be decided by the Registrar of Societies or the relevant Registrar of Co-operative Societies, as the case may be, and his decision thereon shall be final and shall not be questioned or reviewed in any court.

The provision of Malaysian Act 174, section 18 that denied the rights of appeal against the decision of Registrar of Societies in any law court, should be amended for fairness consideration and prevent the abuse of power of the Registrar of Societies that may have awarded excessive power to act on behalf on the Malaysian government, where the decision-making process may also be influenced politically with prejudice and bias against unfavourable parties, whether intentionally or unintentionally. However, law court actions recommended should be emphasized as final resort to settle such disputes as related to any question of law.

Educational Institutions (Discipline) Act 1976 (Malaysian Act 174), section 26 (Part V : Transitional - This Act and subsidiary legislation made thereunder to prevail) In the event of any inconsistency or conflict between the provisions of this Act or any subsidiary legislation made thereunder and the provisions of any other federal law or subsidiary legislation made thereunder relating to education or educational institutions or any particular educational institution, the provisions of this Act and the subsidiary legislation made thereunder shall prevail.

Malaysian Act 174, section 26 seemed to have privileges over other federal government legislations in Malaysia especially related to educational institutions, more superior than National Council on Higher Education Act 1996 (Malaysian Act 546), Universities and University Colleges Act 1971 (Malaysian Act 30), Education Act 1996 (Malaysian Act 550), Private Higher Educational Institutions Act 1996 (Malaysian Act 555) and even the Constitution of Malaysia. Then there exist non equivalent position of various Malaysian laws passed by the same federal parliament of Malaysia, and may cause confusion when the laws other than Malaysian Act 174, for example Act 546, Act 30, Act 550 and Act 555 did not mention clearly that Act 174 is more superior than them.
Educational Institutions (Discipline) Act 1976 (Malaysian Act 174), Second Schedule section 6
[Educational Institutions (Discipline of Students) Rules 1976, Part II – General Discipline : 
Attire and appearance] A student shall be decently or appropriately attired while attending 
lecture, tutorial, examination, class, workshop or while involving or attending any activity either 
inside or outside campus or while present in any part of the campus.

Malaysian Act 174, Second Schedule section 6 may require standard guidelines on the type of 
attire that should be worn by every student especially at tertiary educational institutions that may 
be varied among different management, and also to prevent unnecessary dispute raised in 
physical appearances. Some may prohibit jeans and shorts, whereas others may make headscarfs 
among Muslim women and haircuts below certain length compulsory. The term “appropriately 
attired” may be interpreted differently for different people as well.

Educational Institutions (Discipline) Act 1976 (Malaysian Act 174), Second Schedule section 9
[Educational Institutions (Discipline of Students) Rules 1976, Part II – General Discipline : 
Organizing, etc., of assemblies] (1) No student, and no organization, body or group of students, 
shall, without the prior permission of the Executive Head or of a person authorized in writing by 
the Executive Head to grant such permission, hold, organize, convene or call, or cause to be held, 
organized, convened or called, or be in any manner involved in holding, organizing, convening 
or calling, or in causing to be held, organized, convened or called, or in doing any act towards 
holding, organizing, convening, or calling, any assembly of more than five persons in any part of 
the campus or on any land or in any building belonging to or under the possession or control of 
the Institution or used for the purposes of the Institution…(3) No student shall knowingly attend 
or participate in an assembly held in contravention of subparagraph (1) or (2).

The provision of Malaysian Act 174, Second Schedule section 9 consists of errors of law and is 
recommended to be amended with certain exemption clauses that allow certain gathering of more 
than 5 students to be held in the Malaysian educational institution. For example, it is not 
possible for every student gathering in a campus with more than 5 students to obtain prior 
permission from Executive Head unless special officer is typically assigned to deal with such 
bureaucratic procedures to register every student gathering held in the building of the related 
educational institution. Furthermore, student group picnic, coffee shop and canteen gathering for 
general leisure and recreational purposes in educational premises may not require any prior 
permission from any Executive Head when the park and canteen is open for business operation, 
unless the group gathering with more than 5 students are held in special room, field or any 
usually crowded public venue in the educational institution that need to be booked prior to the 
gathering in order to prevent clashes of venue usage and over-congestion. Such restriction may 
be effective against illegal activities but overemphasizing of such regulations may also 
contradictory to freedom of association among students, further nullifying Malaysian Act 174, 
Second Schedule section 9 that breaches human rights provision as stated in Constitution of 
Malaysia.
No student, and no organization, body or group of students, shall publish, distribute or circulate any document within or without the campus. Provided that the Executive Head, or a person authorized by him in writing, may permit in writing the publication, distribution or circulation of a particular document for such purposes and subject to such restrictions, terms or conditions as the Executive Head or the person authorized by him as aforesaid may deem necessary or expedient to impose in granting such permission.

No student, and no organization, body or group of students, shall organize, carry out or participate in any activity outside the campus, except with the prior written permission of the Executive Head and in due compliance with any restriction, term or condition which the Executive Head may deem necessary or expedient to impose.

The provision of Malaysian Act 174, Second Schedule section 12(1) and Second Schedule section 13 may not be appropriate and unfair for the student especially those of mature above or at 18 years old that need to bear their own responsibilities while involving in any activities outside the campus. Such provision for naive children below 18 years old may be effective to prevent them from being used by illegal organizations for any activities that exploit their interest. Control of every student activity outside the campus and school is not possible and beyond the rights of the educational authority, unless the name and representation of the related educational institutions are used as symbols and objective towards organizing such external student activities beyond the vicinity of their school. Malaysian Act 174, Second Schedule section 12(1) and Second Schedule section 13 may protect the related educational institution from being blamed for any wrongdoings and accidents happen among the students. However, the more effective remedy in order to prevent confusion of the legislations are compulsory permission must be obtained from the Executive Head of the educational institution for all formally registered activities of students but not any private student activities, where such responsibilities to control the action of the student belong to their parents and guardian if the students are below 18 years old or those dependent with certain disabilities, and for mature students of 18 years old and above, they need to take care of themselves outside the campus with assistance from police for all privately organized student activities without involving their educational institutions.

No student, and no organization, body or group of students, shall organize,
managing, run or assist in organizing, managing or running, or participate in, any gaming, wagering, lottery or betting within the campus.

Educational Institutions (Discipline) Act 1976 (Malaysian Act 174), Second Schedule section 18 [Educational Institutions (Discipline of Students) Rules 1976, Part II – General Discipline: Consumption or possession of liquor and drunkenness] (1) No student shall, within the campus, consume or have in his possession or under his custody or control any liquor.

Malaysian Act 174, Second Schedule section 16-18(1) consists of various provisions that breaches the student rights. The related educational institutions, under the Ministry of Education or Ministry of Higher Education Malaysia or both, have to respect the basic human rights of the students under their supervision but not unnecessarily restrict their conduct that are accepted by majority Malaysian and world community but unaccepted locally by just their educational institution that may have acted against the norm of the society but no the students. Malaysian Act 174, Second Schedule section 16 has directly denied the rights of the students to voice their opinion to make objection against unfair administrative decisions sometimes by the political educational authorities. Every opinion should be heard and justified, that may proceed with formal debate if disagreement exists between the students and their educational institutions. Such lengthy procedures of objection may deemed necessary for democratic Malaysian society that promote critical thinking and ability to differentiate among their students, without any further illegal violent and destructive plots due to hidden but latter exploded dissatisfaction, rather than asking the students to shut up totally. There should be no prohibition allowed also for certain type of gaming, especially for welfare-based lottery, that already accepted under Malaysian law but unacceptabe for students even above 17 years old, under Malaysian Act 174, Second Schedule section 17. The student participates in gaming should bear their own responsibility without causing trouble of debt to their educational institution. It is also recommended that fair betting is allowed among students if authorized by their educational institutions especially for fund-raising purpose but not for profit-making. Malaysian Act 174, Second Schedule section 18 is recommended for certain Muslim students and those students with certain religious practises that prohibit alcohol consumption only, and prohibit drunkenness among all students although consumption and possession at certain limit are recommended to be allowed, for example, around 100 millilitre per student at maximum per day especially those of healthy medicinal values and prohibited totally for those who drive or operating heavy and dangerous machinery inclusive of car and motorcycle.

Educational Institutions (Discipline) Act 1976 (Malaysian Act 174), Second Schedule section 23 [Educational Institutions (Discipline of Students) Rules 1976, Part II – General Discipline: Living or sleeping in the campus] No student shall use or cause to be used any part of the campus or any part of any building within the campus as living or sleeping accommodation, except the accommodation provided for him in the hostel by the Institution.

The provision of Malaysian Act 174 Second Schedule section 23 may require update by addition of clause that allow living and sleeping in camp site to be allowed, that is not classified as hostel. If no such provision is provided, the educational institutions themselves may breach the legislation when allowing the campus venue to be utilized for legally approved student activities.
If the legislation totally prohibit any camp to be set up inside campus, then the wastage of resources may occur when in fact the facility in the Malaysian educational institutions should be fully utilized for the maximum benefits of all staffs and students.

Educational Institutions ( Discipline) Act 1976 (Malaysian Act 174), Second Schedule section 27 [Educational Institutions (Discipline of Students) Rules 1976, Part II – Hostel Discipline : Entering or remaining in a resident student’s room] (1) No person shall enter or remain in a room occupied by a resident student except the resident student himself:… And provided further that this paragraph shall not be deemed to prohibit a student from entering the room of a resident of the same sex for a visit for a normal social purpose.

The provision of Malaysian Act 174 Second Schedule section 27(1) is recommended to be amended to allow visitor of opposite sex to enter or remain in a hostel room occupied by a student, where the opposite sex visitor may be the parents, relatives, guardians and good friends provided no sexual intercourse activities allowed inside certain college owned hostel. The original motive of the legislation may also not able to hinder the invasion of either homosexual nor bisexual visitors against the safety of the hostel resident even same sex visitors are allowed to enter the room.

Educational Institutions ( Discipline) Act 1976 (Malaysian Act 174), Second Schedule section 33 [Educational Institutions (Discipline of Students) Rules 1976, Part II – Hostel Discipline : Resident student to vacate or transfer residence on being required by Institution] (1) A resident student resides in a hostel at the absolute discretion and pleasure of the Institution. (2) The Institution may require a resident student to vacate his residence or to transfer his residence to a different accommodation provided by the Institution at any time without assigning any reason.

For profit-making educational institutions in Malaysia especially those possessing profit-making nature and charging high cost for high class, quality and standard accommodation, where the hostel is liked a hotel, Malaysian Act 174 Second Schedule section 33 may be unfair for the part of residing student as a consumer rather than a welfare-assisted subsidized resident. The educational institution must also follow Contract Act 1950 and other legislation of Malaysia but not act according to the “absolute discretion and pleasure of the Institution”. Sound reasons may need to be provided to the resident under special request by the educational institution but not simply ignore the customer who is also the resident of the hostel, where the term “without assigning any reason” should be forbidden in Malaysian Act 174.

Educational Institutions ( Discipline) Act 1976 (Malaysian Act 174), Third Schedule section 1 [Students’ Representative Committee : Election of SRC] (1) The students of an Institution shall elect a Students’ Representative Committee in the following manner: (a) in the case of an Institution providing a course of study only in one particular field extending over a period of years, the students of each particular year shall elect by secret ballot, conducted by the Students’ Affairs Officer, such uniform number of students studying in the respective year to be representatives in the SRC as may be determined by the Executive Head
Although election is deemed necessary for a democratic polity that award voting power for members to select their own desired leader to manage an organization, there shall be no prohibition to use alternative methods to conduct such democratic processes. There are many way to conduct election, some via open of hand rising or display of proof of support to certain leaders and other may opt to be silent on their choice. However, the provision of Malaysian Act 174 Third Schedule section 1(1)(a) just allow secret ballot to choose Students’ Representative Committee, that is recommended to alter as in the following section 1(1)(b) that allow also use alternative methods to choose their representatives.

Educational Institutions (Discipline) Act 1976 (Malaysian Act 174), Third Schedule section 13 [Students’ Representative Committee : Disputes as to elections] If any dispute arises as to whether any member or office-bearer of the SRC or of an ad hoc committee of the SRC has been duly elected or appointed, as the case may be, or is entitled to be or to remain a member or office-bearer thereof, the dispute shall be decided by the Executive Head or by a person appointed by him for the purpose, and the decision thereon of the Executive Head or of such person shall be final.

According to Educational Institutions (Discipline) Act 1976 (Malaysian Act 174), section 2 (Part I : Preliminary – Interpretation) “Executive Head” means the officer or member of the staff of the Institution who functions as the principal executive officer of the Institution. Such Executive Head is a principal or headmaster in primary or secondary school, or Vice Chancellor and Chief Executive Officer for university of tertiary college in Malaysia. The provision of Malaysian Act 174 Third Schedule section 13 that denied the rights of the aggrieved to appeal to Minister of Education or Ministry of Higher Education or law court in Malaysia by having the word “decision...shall be final” may not be correct when and should be deleted when vertical appellant pathways are available towards the superior of the Executive Head.

SECTION THREE : EDUCATION ACT 1996 (MALAYSIAN ACT 550)

Education Act 1996 (Malaysian Act 550), section 2 (Part I – Preliminary), In this Act, unless the context otherwise requires—“national school” means a government or government-aided primary school—...(d) in which facilities for the teaching of—

(i) the Chinese or Tamil language shall be made available if the parents of at least fifteen pupils in the school so request

(ii) indigenous languages shall be made available if it is reasonable and practicable so to do and if the parents of at least fifteen pupils in the school so request.

The provision of Malaysian Act 550 section 2 is recommended to cover not only Chinese, Tamil and indigenous languages but for all languages available in the world, in the interpretation of “national school”, provided that Malaysian Malay and English languages are made compulsory to every related student, when Malaysia is moving towards modernization and globalization where some other languages, for example, Arabic, French, Japanese and other international languages are requested by at least fifteen parents. The English language of higher level and
equivalent to British and American standard at the same year level should also be provided wherever there are request, in addition to Malaysian English subject. Such provision is given in the definition of “national secondary school” and it is also suggested for national primary school.

Education Act 1996 (Malaysian Act 550), section 2 (Part I – Preliminary), In this Act, unless the context otherwise requires—... “national secondary school” means a government or government-aided secondary school— (a) providing a five-year course of secondary education appropriate for pupils who have just completed primary education... “secondary education” means education comprising lower secondary and upper secondary education.

The length of free secondary education for Malaysian government school is recommended not only limited to five years, normally until Secondary Form 5 as defined in Education Act 1996 (Malaysian Act 550), section 2, but should also include post secondary education particularly at Secondary Form 6. That means all students are welcome to further their education up to Secondary Form 6, usually called pre-university, but not only limited to Secondary Form 5, whether the students passed or failed in Malaysian Certificate of Education (SPM – Sijil Pelajaran Malaysia). If such suggestion is accepted then “secondary education” should include “lower secondary” (Secondary Form 1 – 2), “middle secondary” (Secondary Form 3 – 4) and “upper secondary” (Secondary Form 5 – 6).

Education Act 1996 (Malaysian Act 550), section 32 : Transition Class (Part IV – National Education System, Chapter 4—Secondary Education) The Minister may provide for a transition class in any academic national secondary school.

“Transition class” has not been defined clearly in Malaysian Act 550), section 32, and it may be a question whether Minister of Education Malaysia could approve different types of “transition class” for all secondary students at low or negligible fees, when there is a financial limitation to execute the proposal. Usually understood “transition class” is Remove Class before Secondary Form One after completion of primary education, mainly strengthening Malaysian national language or Malay language. Other forms of transition class are suggested to be held after Secondary Form 5 to assist those failing especially the Malay language and other key subjects at Malaysian Certificate of Education (MCE) [Sijil Pelajaran Malaysia (SPM)] or O-level equivalent to pass, using the vacated school building in the daytime of weekends and school holidays to improve themselves. English language at international level equivalent to Singaporean or United Kingdom (UK) standard may be another option for the proposed “transition class” program.

Education Act 1996 (Malaysian Act 550), section 50 : Teaching of the Islamic religion (Part IV – National Education System, Chapter 10—Secondary Education) (1) Where in an educational institution there are five or more pupils professing the Islamic religion, such pupils shall be given religious teaching in Islam by teachers approved by the State Authority.
The minimum number of students required to open a religious study class is recommended to be fifteen instead of five, provided that the parent or guardian of the students request so, in order to consistent with the language learning of Chinese Mandarin, Indian Tamil and native languages in primary and secondary schools under Malaysian national education system as stated in Malaysian Act 550 section 2 for the definition of “national school” and “national secondary school”. Furthermore, the provision of Malaysian Act 550 section 50 should not be limited to Islamic religion but for all other major religion in the worlds, inclusive of Christianity professed by some tribes of Sabah and Sarawak, Buddhism, Hinduism, Sikhism etc, when Malaysia is composed of multicultural and multiethnic groups with diversified religious faith and tradition. Such measures may save the cost of moral and religious education, where it may be deemed not compulsory but optional in national education system when there is no direct evidences proven to Malaysian public that those students doing well in moral or religious studies under Malaysian national education system could have better ethics than those students learning foreign non-Malaysian educational syllabus, where in reality the reverse situation may be true sometimes. Malaysian Act 550 section 50 may be used to force the Muslim students to study Islamic religion even when they dislike religious studies or if they are more interested in other professional subjects where such exemption from Islamic studies may be recommended if the affected Muslim students opted other modern languages or professional and technical subjects as substitutes for the Islamic studies, or moral education for non-Muslim as well, saving the effort of school as well that may be avoided from punishment for not being able to provide Islamic religious studies for 5 or more Muslim students in the same school.

Education Act 1996 (Malaysian Act 550), section 75 : Subjects to be taught in private educational institutions providing post-secondary education (Part VII – Private Educational Institution) (1) The Minister may require a private educational institution providing post-secondary education to teach the following subjects : (a) the national language, where the medium of instruction is other than the national language; (b) Malaysian studies; (c) the English language, where the medium of instruction is other than the English language; (d) studies relating to Islamic education for pupils professing the Islamic religion; and (e) moral education for pupils not professing the Islamic religion, based on the prescribed curriculum.

The cost of post-secondary private education in Malaysia is usually high in comparison to those polytechnics sponsored by the Malaysian government. The learning of the subjects like Malaysian national language of Malay, English language, Islamic studies and moral education may not be necessary and may increase further the financial burden of the students of private polytechnics in Malaysia if not related to their professional studies, although such abovementioned subjects may assist the students to gain extra bonus marks for their course, that may be approved by the Ministry of (Higher) Education Malaysia that directed the private tertiary colleges to do so, but may not be necessarily accredited by professional organizations that calculated the load of studies based only on professional subjects related to the title and the level of the relevant course before recognizing the diploma or certificate to be equivalent to the professional standards of other more well-established countries, namely those in Singapore, Australia and United Kingdom. Malaysian Act 550 section 75 is recommended to set Islamic studies, moral education and Malaysian studies as optional subjects instead of compulsory, and compulsory Malaysian Malay and English languages equivalent to the level of Ordinary O level
for English Language in Singapore and United Kingdom, and Malaysian Certificate of Education (MCE) [Sijil Pelajaran Malaysia (SPM)] for Malay language in Malaysia, only for those students pursuing certain course of studies where such language is necessary to understand the professional studies, but not for all students even if they posses good results in such language subjects in their secondary studies, and attendance to such English or Malay language courses may be optional as self-improvement or revision for those who already have adequate skills in such languages based on the results of the previous secondary school studies. However, the basic Malay and English languages should be taught also as options, even not relevant to their core course of studies, to assist those students followed foreign non-Malaysian secondary educational syllabus to be able to communicate with Malaysian society where the students are living together, where the components of Malaysian studies could be included as well as part of the basic optional modern language subjects of Malay and English languages. Legal studies relevant directly to their respective professionalism that could be approved by both Ministry of (Higher) Education Malaysian and professional accreditation bodies as core subjects, are recommended to be options equivalent to those moral education and religious studies, although those do well in law, moral education and Islamic religious studies do not necessarily guarantee that the students may possess higher professional ethics than others who did not study or do well in the subjects in the practical life.

Education Act 1996 (Malaysian Act 550), section 84 : Refusal to register an educational institution (Part VIII – Registration of Educational Institutions, Chapter 1 – Registration of Educational Institutions) The Registrar General may refuse to register an educational institution if he is satisfied—… (d) that existing educational facilities are already adequate in the area in which it is proposed to open the educational institution.

Malaysian Act 550 section 84(d) may not be an appropriate reason to refuse the registration of an educational institution because it is impossible for any area throughout the world to have adequate educational facilities inclusive of those in Malaysia. Such refusal may give wrong impression to the public where such decision may be affected by competitors of the existing educational institutions in such area that intentionally retard the successful registration. However, the Registrar General may need to remind the applicant of such registration that harsh competition is in the area in order to get sufficient number of students for sustenance, though beneficial competition is good in the improvement of educational services over other nearby counterparts.

Education Act 1996 (Malaysian Act 550), section 90 : Grounds of refusal to register a governor or employee (Part VIII – Registration of Educational Institutions, Chapter 3 – Registration of Educational Institutions) (1) The Registrar General may refuse to register a person as a governor or employee of an educational institution if—… (d) the person is not a citizen of Malaysia. (2) The Registrar General shall refuse to register a person who is under the age of eighteen years as a governor.

Those non-Malaysians who posses permanent resident status and certain special working to Malaysia should be allowed to register themselves in educational institutions in Malaysia, when...
many foreign non-Malaysian visiting professors, international English languages teachers and staff members with Malaysian spouse are servicing throughout Malaysia. Malaysian Act 550 section 90(d) is recommended to include such working groups. If such educational institution is inherited lawfully especially those operated on private basis, then there should be no age discrimination for those under-aged children below 18 years to act as governor for the entity provided the guardian may act on their behalf until the child reach 18 years old. Malaysian Act 550 section 90(2) is suggested to alter to meet such special circumstances.

SECTION FOUR : OTHER MALAYSIAN EDUCATIONAL LEGISLATIONS

Private Higher Education Institutions Act 1996 (Malaysian Act 555), section 43 (1) (Compulsory subjects) All private higher educational institutions shall teach the following subjects : (a) Malaysian studies: (b) studies related to the teaching of Islamic religion for students professing the Islamic religion; and (c) moral education for non-Muslim students; section 41 (medium of instruction) (1) All private higher educational institutions shall conduct its courses of study in the national (Malay) language...(3) Notwithstanding subsection (1), the private higher educational institution may, with the approval of the Minister-(a) conduct a course of study or a substantial part of a course of study in the English language, or conduct the teaching of Islamic religion in Arabic.

The abovementioned Private Higher Education Institutions Act 1996 (Malaysian Act 555), section 41 and section 43 constitute probable retard of Malaysian higher education towards world class standard where the Malaysian government tried to impose unnecessary outdated policies to interfere with the private education development. The core subjects of professional studies, namely law, engineering, accountancy, medicine etc should be the major focus, whereas others unrelated should be classified as elective subjects.

National Council on Higher Education Act 1996 (Malaysian Act 546), section 11 : Termination of Appointment - The Minister may terminate the appointment of any member of the Council appointed under paragraph 4(g), (h) or (i) at any time WITHOUT ASSIGNING ANY REASON therefor.

Section 4 : Members of the Council - The Council shall consist of the following members :...(g) three Vice-Chancellors of any of the Universities and University Colleges established under the Universities and University Colleges Act 1971 (Malaysia) (h) not more than two persons who are the chief executive officers of any private higher education institution; and (i) not more than three persons who, because of their knowledge and experience, would in the opinion of the Minister be assistance of the Council.

Section 2 : Interpretation..."Council" means the National Council of Higher Education established..."Minister" means the Minister responsible for education.

The provision under National Council on Higher Education Act 1996 (Malaysian Act 546), section 11 that allow termination of appointment without good reasons could be contradictory to
employment law and basic human rights. Such provision to disallow judicial review in Malaysian government decision could be vague and generate no meaning in part of executive government. The act of parliament should also be precise and contain no ambiguity, where such provision to prohibit administrative appeal could be impossible in Malaysian society that demands clear and logical explanation with sound reasoning. Reasons of termination could be referred to section 12 of the Malaysian Act 546: Functions of Council if the committee could not perform the function properly.


When compared to higher education sectors in other more advanced nations and Asian counterparts like Japan, Hong Kong and Singapore, the quality of higher education that could be provided by institutions of higher learning in Malaysia is very uncompetitive especially in the postgraduate research education at Master and PhD postgraduate levels, the key element of national reformation and reinvention. Under Malaysian Act 546, the Malaysian National Council on Higher Education in fact should be responsible for defective Malaysian university administration when such tasks are under the provision of section 12 in Malaysian Act 546.

National Council on Higher Education Act 1996 (Malaysian Act 546) section 11 (Part II: National Council on Higher Education, Termination of appointment) The Minister may terminate the appointment of any member of the Council appointed under paragraph 4(g), (h) or (i) at anytime without assigning any reason therefor.

The provision under National Council on Higher Education Act 1996 (Malaysian Act 546) is significantly politically-influenced Council that make the decision and determine the future direction of higher education sectors in Malaysia that inclined towards limiting the power of the
public and private universities’ representatives by limiting the number allowed in the Council irrationally under section 4(g) and section 4(h) of Malaysian Act 546, where in fact there should be unlimited placement available to welcome all university and tertiary college representatives to take part in the honourable nation-building decision-making processes. Furthermore, it was ridiculous for the provision of section 11 of Malaysian Act 546 that slashes the power of the tertiary educational sectors professionals that allow the Minister of Higher Education Malaysia to fire the university representatives anytime without any reasons, contradictory to any form of administrative and human rights laws in the world, but no such biased provision is available for political representatives from Malaysian government departments as in section 4(a)-(f) of Malaysian Act 546.

The definition of “Minister” is not provided in section 2 of Malaysian Act 555, Part I : Preliminary, Interpretation. In this circumstances the Minister is assumed to be Minister of Higher Education Malaysia. The provision of Malaysian Act 555, section 98(1) and section 98(2) may allow the Minister of Higher Education Malaysia to override the existing Malaysian law, that may also lead to abuse of power by certain politicians that have very influential power to act above the law regardless of various prescribed provision under the Malaysian Act 555. If difficulties are encountered while trying to execute the law then amendments should be made to the impractical sections with the consent of the majority of the members from Federal Parliament of Malaysia, even at the transitional period. Simply change the law by independent Ministry of Higher Education Malaysia may be illegal and inappropriate that may expose certain private institutions of higher learning Malaysia to potential unfair dealings and policies of Malaysian government that may act on political rather than professional education inclinations and motives. Malaysian Act 555, section 44 is related to the minimum standard to be met before certificates, diplomas or degrees can be awarded, described in Part II : Conduct of courses of study at private higher educational institutions. There are two bodies that confer the accreditation – Ministry of Higher Education Malaysia and professional bodies. However, there is no protection against the faulty private and even public university education provider that conducts tertiary courses at low standard unsatisfactorily below professional requirement even the courses offered are approved by the Minister of Higher Education Malaysia, leading to the situation where the diploma and degree awarded by Malaysian universities may not be competitive enough to meet world class standard.

SECTION FIVE : HUMAN RIGHTS LEGISLATIONS FOR MALAYSIAN SOCIETY

Elimination of All Forms of Racial Discrimination was signed in 1965 and entered into force in 1969. It builds on the non-discrimination provisions in the UN Charter.”

Malaysian government is against The International Convention on the Elimination of All Forms of Racial Discrimination, when the racial imbalance in the high government position, like Prime Minister and Deputy Prime Ministers, university Vice Chancellor, directors of government statutory bodies, chief ministers of states etc are fully or mostly dominated by Bumiputra natives. Other presumed migrant races, like Chinese and Indians, and non-Muslim races mainly from Borneo states, are just followers without realizing the rights of their ethnics have been breached, but merely kept silent in order to protect themselves first in the racist public sectors in Malaysia.

In Reference : Reicher, H. (ed) (1995), "Australian International Law - Cases and Materials", The Law Book Company Ltd t/as IBC Information Services, Australia, page 656 : “The International Convention on the Elimination of All Forms of Racial Discrimination was adopted by the (United Nations) General Assembly in 1966 and entered into force in 1969. The Convention defines racial discrimination as: “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”: Article 1.

It also mentioned that “The (International) Convention (on the Elimination of All Forms of Racial Discrimination) requires that parties “amend, rescind or nullify any law, which have the effect of creating or perpetuating racial discrimination wherever it exists” and to “prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization” : Article 2.

The racially discriminative policies in Malaysia were notorious not only among Malaysian government officers but throughout the world. However, not even one political party in Malaysia, whether ruling or opposition, able to create a hundred percent fair society without discrimination as defined in Article 1 of the Convention. Every race fight the rights for their own ethnic rather than considering other ethnic in Malaysia, with avoidance of breaching Article 2 of the Convention will never be possible.

for Human Rights. Unlike those advanced nations of Australia and Britain, there has not been any specific antidiscrimination legislations in Malaysia on the ground of sex, age, race, disabilities, political believes etc. So how the Human Rights Commission of Malaysia could execute the function properly when no power has been given to exercise its jurisdiction under Human Rights Commission of Malaysia Act 1999 (Malaysian Act 597), section 4: Functions and power of the Commission…(2) For the purpose of discharging its functions, the Commission may exercise any or all of the following powers: …(c) to study and verify any infringement of human rights in accordance with the provision of this Act.

International Convention on Civil Political Rights 1966, Article 38: Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously. As implied under Article 38, it is unlawful for a public authority to act in a way that is incompatible with a human right or, in making a decision, to fail to give proper consideration to a relevant human right.

Malaysian government has not signed nor ratified International Convention on Civil Political Rights 1966. See http://en.wikipedia.org/wiki/International_Covenant_on_Civil_and_Political_Rights, accessed 16 August 2011. International Convention on Civil Political Rights 1966, Article 38 prohibited the public authority in signatory and ratified nations to conduct the discriminative acts on the public service. For the absolute fairness of Malaysian government administration, all levels of public administration, from highest towards lowest positions, should consist on balanced racial distribution with special effort placed to attract qualified representations of certain racial group to fill in the appropriate Malaysian governmental department vacancies, which is ideally possible to be done but may have proven difficult to achieve in actual political situations dominated by native Malay origin that claimed themselves to be the original owner of the nation regardless of human rights of other ethnics with equivalent residency status and qualification when applying for jobs in Malaysian public service. Private sectors may follow the trend of public sectors that open the vacancy fairly if racial discrimination in employment extinguished in Malaysian society. It may be a question for Malaysian government to ratify the International Convention on Civil Political Rights 1966 if the federal Malaysian government representative signed the agreement, similar to the condition of China.

SECTION SIX: MISCELENNEOUS MALAYSIAN LAW

Industrial Relations Act 1967 (Malaysian Act 177), Part IX: Trade Disputes, Strikes and Lockouts and Matters Arising Therefrom: Section 38: Pupils not to take part in trade disputes (1) No pupil as defined in the Education Act 1961 (Act 63 of 1961), other than a lawful member of a trade union, shall – (a) do any act in contemplation or furtherance of a trade dispute…(2) The Minister of Education may, by notice in writing, require the governors or managers of any school to expel any pupil convicted or found guilty of an offence against this section and thereupon the governors and managers shall expel the pupil or cause him to be expelled accordingly.

The provision of Industrial Relations Act 1967 (Malaysian Act 177), section 38 will be very
unfair to the pupil that maybe unfairly treated with low wages and ill treatment. Such provision is against human rights unless exemption clauses are added whether only the truly affected pupil of school may have rights to involve in the disputes. The written consent from parents or guardians may be needed if the aggrieved pupil is below 18 years old.

In Reference : Wu, R.; Zul-Kepli, M. Y. (2010), “Malaysian Communication and Multimedia Commission : A Model of Unified Communications Regulator for Hong Kong”, Malayan Law Journal (MLJ) Article Supplement, Malaysia, page cv : [2010] 2 MLJ March – April 2010, mentioned that : “Malaysian government could take also action under section 211 and section 233 of the CMA (Malaysian Communications and Multimedia Act 1999) against owners, operators or writers of websites who misuse the internet to spread slanderous comments, insulting the country’s leaders, religious sensitivities and race and those who break the law could be slapped with a (Ringgit Malaysia) RM50,000 fine, one year’s jail or both (The Star Newspaper in Malaysia on 22 October 2007).

The provision under Malaysian Communications and Multimedia Act 1999, section 211 and section 233 may be able to prevent defamations without justified evidence. However, there seemed no provisional penalties against the national leaders that retard the freedom of speech on mass media when the statement of claims are published together with supporting evidence, which is also against the Constitution of Malaysia. The Malaysian public should in fact be educated on the screening of information obtained online where the government placed insufficient effort in this aspect.


Constitution of Malaysia, Article 11(4) seemed to over-protect the rights of Muslims in Malaysia without even one legal statement that prevented the propagation of any new religion to non-Muslims. It may not be necessary to mention such redundant spiritual statement in the honorable Constitution of Malaysia when Islam did not tolerate apostasy, yet the Muslims were very tolerant against the fundamentalists that commit crimes and terrorism by abusing the holy name of Islam for war purposes.

Malaysian Act 163 : Extra-territorial Offences Act 1976, Introduction. An act to deal with certain offences under written laws committed in any place without and beyond the limits of Malaysia and on the high seas on board any ship or on any aircraft registered in Malaysia or otherwise as if they were committed in Malaysia.

The extraterritorial effect of Malaysian Act 163 has been too narrowly interpreted and drafted.
The law is recommended not only to cover the extra-territorial offences on ship or aircraft but should be widening to many other aspects in the era of globalization. The area of the law coverage should also be applicable to offences committed by or against Malaysian citizens outside Malaysia especially in human rights area, internet and telecommunication offences that may jeopardize the safety of Malaysians etc. Section 2(3) of the Act 163 in Malaysia should be applied when many Western advanced nations like United States of America (USA) and Australia have wider interpretation of their laws beyond national boundaries.

This part is related to inappropriate execution of Islamic law in Malaysia, leading the ex-British colonial into the backward Islamic states opposed by many non-Muslims and even the Muslim community themselves in the federal of Malaysia.


Although Malaysia is one of the leaders among the Islamic nations in the world, there is not even one extra-territorial act of Malaysia that could counter the false Islamic teachings and terrorism among Malaysian Muslims that engaged in the Islamic militant activities outside Malaysia, nor any proper syariah laws that make Muslim compulsory to condemn the political and military activities that abuse and misuse the Islamic doctrine throughout the world, leading to civil wars, poverty and mishaps among Muslims.

Federal Constitution of Malaysia, Article 11(4) provides : state law and in respect of the federal territories of Kuala Lumpur, Labuan and Putrajaya, federal law may control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam.

Many different state enactment of Malaysia also prohibit the sending or delivering the publications relating to any non-Islamic religion to a Muslim, or distributing any publication or any publicity material relating to non-Islamic religion to a Muslim. Such provision of Federal Constitution of Malaysia, article 11(4) could be impractical under the era of information technology and globalization where many non-Muslim philosophies could be easily obtained.
online via internet and electronic mail delivery. For equality of Malaysian community, there
should also be restriction Muslim religious propagation to non-Muslims in Malaysia as well,
where such constitutional provision has deemed obsolete, that may have undermined the
religious talents of Malaysian Muslims, jeopardizing the basic human rights in religious freedom
and indirectly discriminating against holy non-Muslim scriptures that contain the knowledge and
talents of ancient civilization in the world, by classifying non-Muslim holy scriptures as if the
pornography that should not be touched by Muslims, closing the mind of many Malaysian
Muslims to new forms of philosophies of life that may provide better and more suitable forms of
advancement particularly among Malay race.

In *Minister of Home Affairs, Malaysia & Anor v Jamaluddin Othman* [1989] 1 MLJ 418, the
defendant was detained for planning to propagate Christianity among Malays. However, non of
the Malaysian government officer has been detained for trying to label Malaysia as an Islamic
state where in fact Malaysia is an ex-Western British colonial and secular nation, encouraging
non-Muslims to leave their religions for Islam when selfish Islamic doctrine prohibited the
followers to follow other non-Islamic religions. Under first part of Principle of Nation (“Rukun
Negara”) of Malaysia, atheist has been ignored when many problems of the world have been
caused by those who professes the said “holy” religions. Religious talent is not equal to
emotional quotient (EQ), etiquette and morality in many real world situations.

Defamation Act 1957 (Malaysian Act 286), section 12 (Part : Qualified privilege of newspaper)
(1) Subject to the provisions of this section, the publication in a newspaper of any such report or
other matter as mentioned in Part I of the Schedule of this Act shall be construed as protecting
the publication of any blasphemous, seditious or indecent matter or of any matter the publication
of which is prohibited by law, or of any matter which is not of public concern and the publication
of which is not for the public benefit.

The freedom of speech is the basic rights provided under the Constitution of the Federation of
Malaysia 1957. However, there are gray areas where argument arises about the parameter
adopted by Malaysian government to determine whether the press has made a defamatory
statement or not. There are various speeches and printed material that may be normal and usual
at one aspect of viewpoint but may be indirectly defamatory and disfavouring certain parties.
The provision under Malaysian Act 286, section 12(1) and section 12(3), maybe abused by
certain parties to suppress freedom of speech among public in Malaysia, which is
unconstitutional in Malaysia. The norms of social situations in Malaysia may be different from
the Britain, where the Common Law is originated, and the differentiation of the borderline
between defamatory and non-defamatory statements may be quite subjective. Any statement
with published evidences available to all people regardless of official secret regulations, are non-
defamatory if justified by majority people within the society. If the statements are merely
rumours and lies, hurting the feeling and the reputation of the aggrieved without published
evidences, then it is defamatory. For all cases of defamation, it may as well provide a
transparency online search website that allows the public to vote in order to determine any
statement is defamatory or not with all material facts available for everybody to view, a form of
freedom of speech recommended for Malaysian public rather than suppressing the human rights
by detaining those dissidents. Let people choose themselves, to get objective viewpoints.
Conclusion: The small law project for commenting on various potential flaws in Malaysian acts may assist the government in the improvement of legal system by amending or deleting certain problematic clauses available in the written laws, if agreed by those legal professionals and those directly affected by the legislation. However, the recommendations and comments provided above may not necessarily be accepted by the authority but merely the personal private investigation of the matter arises.