

Malaysian Law

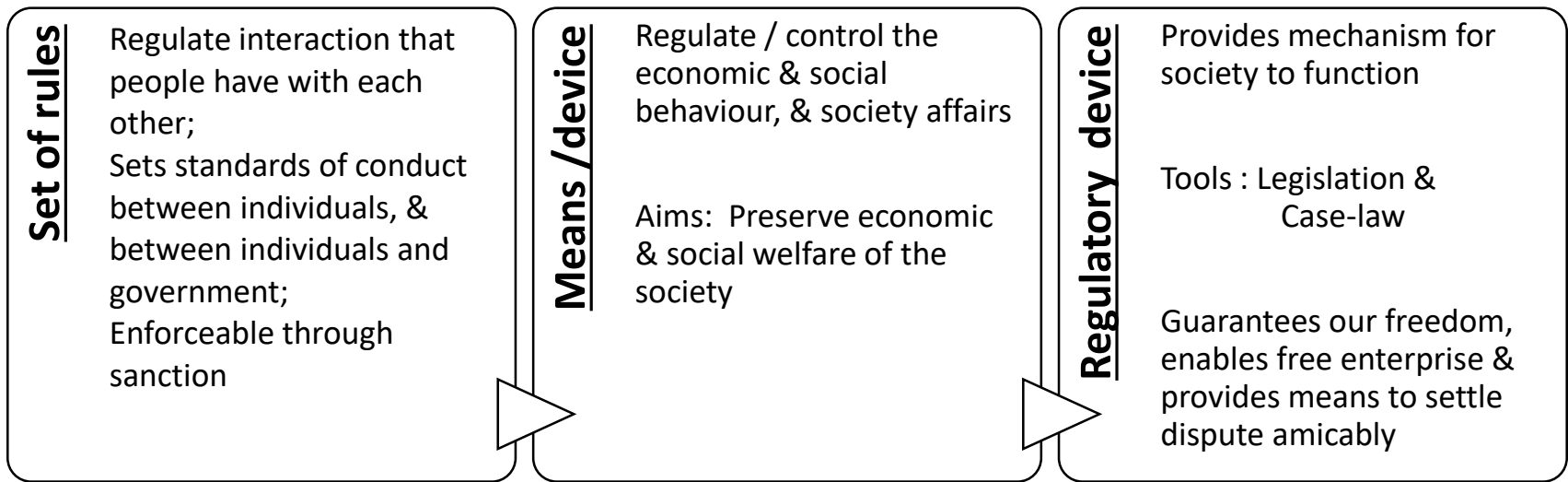
Week 1

Dr Zahira bt Mohd Ishan

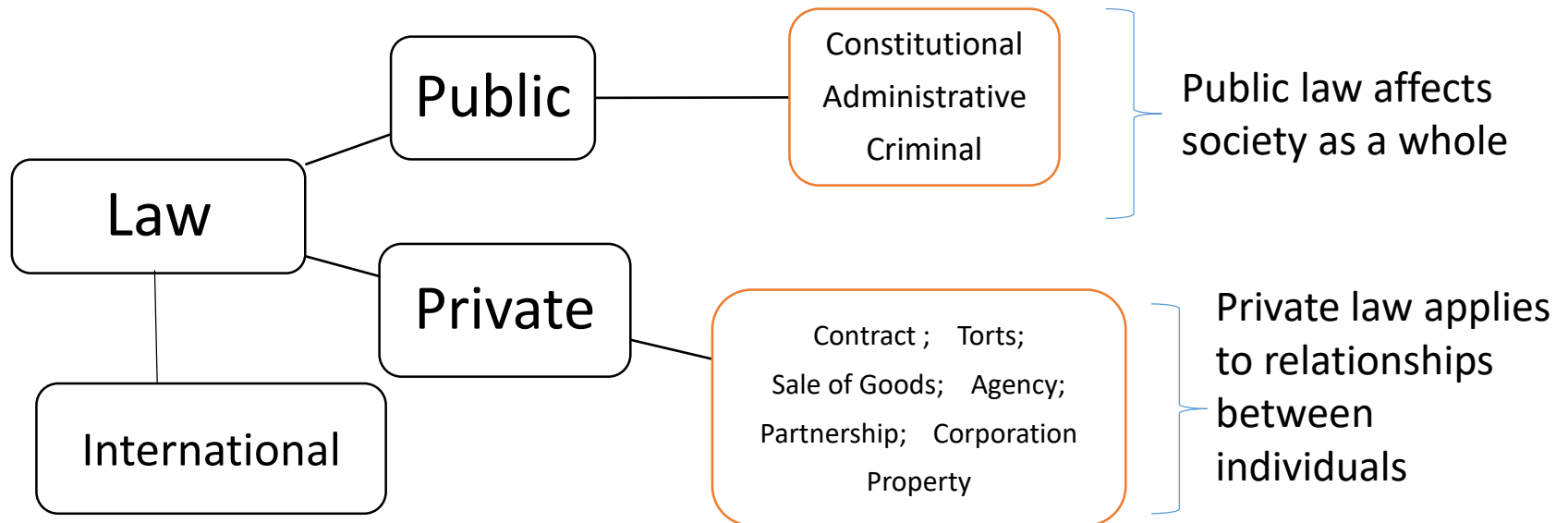
Content

Week 1: Malaysian Law

- Legal system
- Judiciary system
- Sources of law



Classification of Law



“Law is a general rule of conduct”

Legal System

- A legal system is **jurisdiction's basis of applying law** (Black Dictionary of Law).
- Malaysia inherited the English legal system (a.k.a. **common law** system) like other former British colonies {Australia, Canada, Singapore, India, Bangladesh, Nigeria and New Zealand}.
- Common law system: **legal principles** are developed by judges through case-law.

Creation of legal principles by judges:

- creation of new, or modification of existing, legal principle when facing new problem, or
- application of existing legal principle to identical or similar case at hand.

Note: In hearing the dispute, a judge will:

1- Identify the issue;

2- Determine the law from statute(s) and/or relevant legal principles from identical or similar cases decided previously;

3- Apply to law and/or legal principles to the current problem (the dispute); &

4- Conclude (Decision)

e.g:

Dispute: Whose price to follow,
buyer /seller? Background: self-
service store transaction



Dispute: Whose price to follow,
buyer /seller? Background: online
store transaction

Q: Search for the type of legal systems in the world. What are the difference(s) between legal system in other part of the world from Malaysia?

- Malaysia is one political unit but not governed by the same set of laws
- Uniformity in the law is not possible for all areas of the law.
- Two important links that unite West and East Malaysia are the **Parliament & the Federal Court.**
- Parliament legislate & Federal Court acts as final court of appeal for the whole country

Doctrine of Separation of Powers

FEDERAL CONSTITUTION

LEGISLATIVE

- Parliament
- State Legislative Assembly

Role:

Legislator of the written laws
~ Create the statutes (Act) from the Bills

EXECUTIVE

- The Ministers & ministries at federal and state levels

Role:

Execute laws according to jurisdiction.
~ May create by-laws for effective execution of laws

JUDICIARY

- The Courts

Role:

Administer the law
~As watchdog to Legislative & Executive

- Implication if acted beyond the power / acted inconsistent to Federal Constitution:
 - the act is *ultra vires* & becomes unconstitutional, null & void

Eg:

Repco Holdings Bhd v Public Prosecutor [1997]

Menteri dalam Negeri & Ors. v Titular Roman Catholic Archbishop of KL [2013]

Judiciary System

Source of the Judiciary power

Role: Administration of The Law.

- The Federal Constitution provides the Judiciary with the power:
 - i. to **hear & determine** civil & criminal matters;
 - ii. to pronounce **legality of acts** of the other two bodies that run the country, namely **the Legislative & the Executive** [*read doctrine of separation of powers; PP v Kok Wah Kuan [2007]*]; &
 - iii. to **interpret** the Federal & State Constitutions

Note:

- **civil** & **criminal** jurisdictions [i.e. cases / matters that a court can hear] are established by **statute**.

The Judiciary

- Instituting/ defending a legal action (litigation) is time-consuming & costly due to the complex procedural rule within the court system.
- The higher the court in the court hierarchy, the greater the legal costs.
- Courts have both Courts higher in the court hierarchy can hear & decide more serious cases/matters.



Q: Show a diagram of hierarchy of courts in Malaysia.

Explanation:

(a) **Federal Court**

The Federal Court hears appeals from the Court of Appeal.



(b) **Court of Appeal**

The Court of Appeal hears appeals from the High Court relating to both civil and criminal matters.



(c) **High Court**

- i- CIVIL JURISDICTION
- ii- CRIMINAL JURISDICTION
- iii- APPELLATE JURISDICTION



(d) **Session Court**

- i- CIVIL JURISDICTION
- ii- CRIMINAL JURISDICTION

Note: **The High Court**

i- **CIVIL JURISDICTION**

May hear all civil matters but generally confines itself to matters on which the Magistrates and Sessions Courts have no jurisdiction (eg divorce & matrimonial cases, appointment of guardians of infants, the granting of probate of wills and testaments & letters of administration of the estate of deceased persons, bankruptcy & other civil claims where the amount in dispute exceeds RM1 mil).

ii- **CRIMINAL JURISDICTION**

May hear all matters but generally confines itself to offences on which the Magistrates and Sessions Courts have no jurisdiction (eg offences which carry the death penalty)

iii- **APPELLATE JURISDICTION**

May hear appeals from the Magistrates and Sessions Courts in both civil and criminal matters.

Amount in dispute in any civil matters must exceed RM10k except where it involves a question of law.

(d) **The Sessions Court**

i- CIVIL JURISDICTION

(empowered by Subordinate Courts Act 2010)

- May hear any civil matter involving motor vehicle accidents, disputes between landlord and tenant & distress actions.
- The Sessions Court may also hear other matters where the amount in dispute does not exceed RM1 mil.
- for the specific performance or rescission of contracts or for cancellation or rectification of instruments.
- grant an injunction and to make a declaration, whether or not any other relief, redress or remedy is or could be claimed.

ii- CRIMINAL JURISDICTION

Jurisdiction to try all criminal offences EXCEPT those punishable by death.



Q: Briefly explain the Magistrate Court's jurisdiction.

Choice of Dispute Resolutions

“Parties to business contracts often do not anticipate the likelihood of conflicts arising in the course of their relationship”

- ***Court***

- Litigation / lawsuit having lawyer to represent.
- One win, the other lose; expensive; lengthy process; public knows.

- ***Tribunal (part of civil justice system)***

- Less formal & faster than court.
- Panel of experts to judge evidence. Chairman usually with certain level of legal training.

- ***Alternative Dispute Resolution***

- Any means of settling disputes outside court in a cooperative manner.
- Eg:
 - Negotiation
 - Mediation
 - Conciliation
 - Arbitration



Q: What is a tribunal for? List the available tribunal in Malaysia.

Wk 1 (2)

Sources of Malaysian law

Meaning of 'Sources'

1. Historical sources: non-legal factors like religious beliefs, local custom & opinion of jurists that have influenced the development of law
2. **Legal sources:** the legal rules that make up the law
3. Places where the law can be found like textbook, law reports & statutes

Sources of Malaysian law

1) Written Law

- Federal & State **Constitutions**
- **Legislation:**
Act /Enactment/
Ordinances (Statute)
- **Delegated** /Subsidiary
Legislation / By-law

*International
treaties &
Conventions*

2) Unwritten Law

- **Judicial decisions** of superior courts
- **Principles of English law:**
section 3(1) of the Civil Law Act 1956 :courts shall apply the **common law** of England & the **rules of equity** as administered in England on 7/4/1956; Sabah (1/12/1951) & Sarawak (12/12/1949)
- **Customs** of local inhabitants

3) Islamic Law (Syariah)

- Apply to Muslim only
- In business:
particularly in in
areas of banking
& finance

Judges do not decide cases arbitrarily.

Judicial precedent

- A judgment / decision of a superior court cited by another court as an authority for the legal principle embodied in its decision.
- 'Following a precedent' means a question has to be resolved in a certain way today because a similar question has been so decided before.

a.k.a. 'stare decisis' (to stand by a decision)