

MALAYSIAN LEGAL ESSAYS - A COLLECTION OF ESSAYS IN HONOUR OF  
PROFESSOR EMERITUS DATUK AHMAD IBRAHIM. By M.B.  
HOOKER. [Singapore: Malayan Law Journal. 1986. xxxii + 456  
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THIS book comprises an excellent collection of essays. It is a welcome addition to similar existing local collections.<sup>1</sup> It, however, comprises a hotchpotch; there are sixteen pieces in the instant volume that run the gamut, as shall be seen in due course. Notwithstanding this, there is, in fact, a central strand that has brought these essays in a variety of fields of Malaysian law together. As we are told in the preface itself,<sup>2</sup> the book was “published at the initiative of Mr. Al-Masor Adabi and Mr. Amir Mallal of *The Malayan Law Journal*” in honour of Professor Ahmad Ibrahim who distinguished himself both in the public service<sup>3</sup> and the academe,<sup>4</sup> and who, in fact, continues his scholarly pursuits as

<sup>1</sup> See, e.g., *Malaya Law Review Legal Essays* (Edited by G.W. Bartholomew, 1975); *The Common Law in Singapore and Malaysia* (Edited by A. J. Harding, 1985), and in the constitutional sphere, *The Constitution of Malaysia - Its Development: 1957 - 1977* (Edited by Tun Mohamed Suffian, H. P. Lee and F. A. Trindade, 1978); and, more recently, *The Constitution of Malaysia: Further Perspectives and Developments - Essays in Honour of Tun Mohamed Suffian* (Edited by F. A. Trindade and H. P. Lee, 1986).

<sup>2</sup> By the editor, M. B. Hooker: see p. iii of *Malaysian Legal Essays - A Collection of Essays in Honour of Professor Emeritus Datuk Ahmad Ibrahim* (Edited by M. B. Hooker, 1986), hereinafter cited as *Malaysian Legal Essays*.

<sup>3</sup> He was a former Magistrate, District Judge, Crown Counsel, State Advocate General and Attorney General in Singapore, as well as Singapore's Ambassador to the United Arab Republic.

<sup>4</sup> He was former Dean of the Faculty of Law in the University of Malaya.

the current Dean of the School of Law of the International Islamic University in Malaysia; again, in the words of the editor himself, the essays in this volume, written by Professor Ahmad's colleagues and former students, are "to mark his achievements in public service, law teaching and legal research over the past thirty odd years" and cover subjects "which have been and are of particular interest" to Professor Ahmad himself.<sup>5</sup> It is fitting, therefore, that the book begins with three pieces on the life and work of Professor Ahmad. The first, entitled "Introduction - Islamic and Malaysian Law: The Contribution of Professor Ahmad Ibrahim" and authored by the editor, Professor M. B. Hooker,<sup>6</sup> is a more general essay that focuses upon "the main features of Professor Ahmad's career".<sup>7</sup> The second, "Ahmad Ibrahim in the Service of Islam" by Al-Mansor Adabi,<sup>8</sup> is a very interesting biographical account of Professor Ahmad himself. The third piece is not strictly an essay as such; it is a "List of Works by Professor Ahmad Ibrahim" compiled by Datin Shaikha Zakaria - an impressive tribute to the scholarship of Professor Ahmad, detailing a total of 215 works comprising books, articles, and other published works. Datin Shaikha herself provides an extremely comprehensive and informative account of "The Legal Literature of Malaysia" later on in the volume<sup>10</sup> - an account that will prove an invaluable aid to the researcher of Malaysian law.<sup>11</sup>

The first substantive essay as such is that by Katherine O'Donovan entitled "Conciliation and Reconciliation on Divorce";<sup>12</sup> it is an interesting comparative account of the English and Malaysian positions with regard to conciliation and reconciliation on divorce, with particular focus on the former.

The next essay (by G. L. Peiris, entitled "The Privilege Against Self-Incrimination: Recent Trends in South-East Asian Law"<sup>13</sup>) is another piece set in a comparative context. It is a comprehensive overview of the rationale and scope (as well as the applicability) of the privilege itself. It also contains a wealth of information as well as references for the interested reader, and, perhaps more importantly, gives much food for thought for those who are interested in *law reform* in the area.

<sup>5</sup> *Malaysian Legal Essays*, at pp. iii and 1.

<sup>6</sup> *Ibid.*, at pp. 1 to 14.

<sup>7</sup> *Ibid.*, at p. 1.

<sup>8</sup> *Ibid.*, at pp. 15 to 23.

<sup>9</sup> *Ibid.*, at pp. 24 to 38. And cf. Professor Ahmad himself who states in his book review of *Index to Singapore/Malaysia Legal Periodicals 1932-1984* (Edited by Molly Cheang, Sng Yok Fong and Carolyn Wee, 1986), [1987] 1 M. L. J. clxxv, thus: "I must thank the compilers and editors for recording my contribution to the *Otago Law Review*, as noted at p. 290 of the book. This was missed in M. B. Hooker (Editor) *Malaysian Legal Essays*, 1986."

<sup>10</sup> *Malaysian Legal Essays*, at pp. 335 to 378. The account covers legislation, law reports and digests, treaties, periodicals and monographic works.

<sup>11</sup> See, also, the writer's "Statement of Recommended Holdings of Malaysian Legal Materials", (1983) 25 Mal. L. R. 238. Insofar as the Singapore position is concerned, see G. W. Bartholomew, "Sources and Literature of Singapore Law" in *Malaya Law Review Legal Essays*, *supra*, note 1 at pp. 314 to 345, and by the same author, "Sources and Literature of Singapore Law", (1982) 2 Lawasia N. S. 1. See, also, Sng Yok Fong, "Statement of Recommended Holdings of Singapore Legal Materials", (1983) 25 Mal. L. R. 225. And see, generally, *Malaya Law Review - Index to volumes 1-21* (Compiled by Sng Yok Fong, 1981); Siti Hanifah Mustapha, *A Guide to Malaysian & Singapore Legal Periodicals* (1982); and more recently, *Index to Singapore/Malaysia Legal Periodicals 1932-1984*, *supra*, note 9.

<sup>12</sup> *Malaysian Legal Essays*, at pp. 39 to 60.

<sup>13</sup> *Ibid.*, at pp. 61 to 90.

The hotchpotch atmosphere of the volume continues with the next piece which deals with taxation; it is entitled "Double Taxation (Relief) Agreements: Scope and Relation to Municipal Law" by Arjunan Subramaniam.<sup>14</sup> It is not, however, a mere description of double taxation agreements but, rather, attempts "to consider in the light of recent tax cases dealing with the subject ... the scope and relation between such double taxation relief agreements and the Municipal law, that is, the [Malaysian] Income Tax Act, 1967".<sup>15</sup> This essay would be of interest to tax/revenue lawyers and of special help (especially to the uninitiated, such as the present reviewer) are the writer's conclusions.

The next essay, "Concurrent and Consecutive Sentences" by Mimi Ramadan Majid,<sup>17</sup> contains a valuable survey as well as analysis of the law<sup>18</sup> relating to concurrent and consecutive sentences in Malaysia.

The essay, "Land Tenure in Peninsular Malaysia: A Historical Review" by Judith Sihombing,<sup>19</sup> is a very valuable and detailed historical piece - especially having regard to the historical complexity involved *vis-a-vis* the different situations of the various states in the Malayan peninsula, particularly during the early days. The essay is also of interest to the Singapore legal historian simply because the writer deals with the position in the Straits Settlements as well.<sup>20</sup> The writer traces the development of land tenure in peninsular Malaysia from the situation existing prior to formal British intervention right up to the present.

The essay immediately following also deals with land law but, unlike Sihombing's piece, is more technical and doctrinal. It is entitled "Position of a Purchaser of Land Pending the Registration of His Transfer" by Khaw Lake Tee<sup>21</sup> who has, in fact, recently co-authored a sourcebook on Malaysian land law.<sup>22</sup> The essay comprises two main parts. The first deals with the methods of protecting a purchaser's claim to an unregistered interest;<sup>23</sup> the second deals with some problems and risks facing purchasers pending registration from the point of view of both the time lapse between execution of the contract and registration<sup>24</sup> as well as adverse claims.<sup>25</sup> The writer also deals with the problems facing the purchaser with regard to execution proceedings by the vendor's judgment creditors.<sup>26</sup>

<sup>14</sup> *Ibid.*, at pp. 91 to 110.

<sup>15</sup> *Ibid.*, at p. 91.

<sup>16</sup> *Ibid.*, at pp. 109 to 110.

<sup>17</sup> *Ibid.*, at pp. III to 137.

<sup>18</sup> And *cf.* (with regard to the Singapore position *vis-a-vis* sentencing in criminal cases generally) Peter English, "Sentencing in Singapore", (1981) 23 Mal. L. R. 1.

<sup>19</sup> *Malaysian Legal Essays*, at pp. 138 to 173. And see the author's *National Land Code A Commentary* (1981) as well as David S. Y. Wong, *Tenure and Land Dealings in the Malay States* (1975).

<sup>20</sup> See *Malaysian Legal Essays*, at pp. 147, and 166 to 168. See, also, W.J.M. Ricquier, "Land Law and Common Law in Singapore" in Chapter 8 of *The Common Law in Singapore and Malaysia*, *supra*, note 1.

<sup>21</sup> *Malaysian Legal Essays*, at pp. 174 to 212.

<sup>22</sup> See Teo Keang Sood and Khaw Lake Tee, *Land Law in Malaysia - Cases and Commentary* (1987).

<sup>23</sup> *Malaysian Legal Essays*, at pp. 175 to 189.

<sup>24</sup> *Ibid.*, at pp. 189 to 193.

<sup>25</sup> *Ibid.*, at pp. 193 to 209.

<sup>26</sup> *Ibid.*, at pp. 209 to 212.

Professor M. P. Jain's "Administrative Law in Malaysia"<sup>27</sup> is an interesting as well as comprehensive and updated overview of the multifarious facets of administrative law in Malaysia.<sup>28</sup> The essay is particularly valuable (in this reviewer's view at least) having regard to the writer's discussion and analysis of local developments as well as case-law.

The next piece, "Islamic Fiscal and Property Laws in Malaysia" by Abdul Majid Mackeen,<sup>29</sup> is a valuable contribution, especially in light of the relative paucity of published works in the area. It is written in the style of a commentary upon a piece of legislation that is taken as representative of the laws of the various states in Malaysia, viz, the Administration of Islamic Law Enactment of the State of Perak.<sup>30</sup>

Immediately following is also an essay on Islamic law<sup>31</sup> that should be of particular interest to Singaporeans. It is written by Professor R. H. Hickling and is entitled "The Influence of Islam on Singapore Law".<sup>32</sup> The piece traces its subject from the early history of Singapore through the case-law as well as the various statutory developments, right up to the situation that exists in present-day Singapore. It is written in the author's usual highly elegant as well as readable style - which, of course, is a bonus for the reader himself. The essay itself contains many comments that go beyond mere description and technical analysis; an example is the following comment on the various descriptions of early Singapore:<sup>33</sup>

"Nevertheless, we must administer a caution. Most of the reports we possess of those days come from western sources: and western eyes saw things differently from those of the Malays. Indeed, it is difficult to assess the exact legal situation obtaining in the Penang of 1786 or the Singapore of 1819, for all too often British observers have put a gloss upon events and, like bewitched lovers, seen rather what they wished to see than what actually existed. And in this context, let us not forget that what an alien judge decides, or observes by way of *obiter*, has truth only in relation to itself, it is not necessarily, or indeed probably, an illustration of a local truth."

The following essay, dealing with the legal literature of Malaysia,<sup>34</sup> has already been discussed above; the essay immediately following also focuses on yet another aspect of Islam; it is entitled "The State and the Shariah" by Razali bin Haji Nawawi, and contains an interesting as well as informative examination of the relationship between Islam and politics.<sup>35</sup>

The joint essay, "Contracts in Contravention of the Forest and Moneylenders Legislation" by Dato' Professor Visu Sinnadurai and Phillip Koh Tong Ngee,<sup>36</sup> would be of special interest to readers interested in contract law. It is a very erudite discussion and analysis

<sup>27</sup> *Ibid.*, at pp. 213 to 262.

<sup>28</sup> See, also, the author's *Administrative Law of Malaysia and Singapore* (1980).

<sup>29</sup> *Malaysian Legal Essays*, at pp. 263 to 290.

<sup>30</sup> No. 11 of 1965.

<sup>31</sup> And for a recent general account, see M. B. Hooker, *Islamic Law in South-East Asia* (1984).

<sup>32</sup> *Malaysian Legal Essays*, at pp. 291 to 334.

<sup>33</sup> *Ibid.*, at pp. 296 to 297.

<sup>34</sup> See, *supra*, note 10.

<sup>35</sup> *Malaysian Legal Essays*, at pp. 379 to 392.

<sup>36</sup> *Ibid.*, at pp. 393 to 430.

of the rather vexed area of statutory illegality set in a distinctively local context, and covers a variety of interesting points. These include, for example, the observation that the “uncompromising attitude” of the courts with regard to violation of the Sabah forest legislation overlooks commercial realities such as the enlistment of capital and expertise,<sup>37</sup> resulting in a suggestion by the authors that the courts concerned adopt a more liberal attitude, *i.e.* that they consider as valid contracts where the licensee concerned retains control over the use of the licence.<sup>38</sup> There is, to take another interesting example, an exhortation on the part of the authors that there be an increased recognition of the Malaysian Contracts Act rather than a mere following of the common law;<sup>39</sup> this is especially so with regard to section 66 of the Act just mentioned which “is a wide provision which has no direct parallel under English law”.<sup>40</sup> This essay - in the reviewer’s view at least - is also valuable in that it points the way toward an awareness of *local* development in the law or at least the possibilities thereof; in this regard, one must, it is submitted, begin with more specific and detailed studies first, such as the instant essay just considered.

It is, perhaps, only fitting that the final essay is authored by the editor himself, Professor M. B. Hooker. The essay, entitled “The Oriental Law Text: with reference to the Undang-undang Melaka and Malay law”,<sup>41</sup> focuses upon various aspects of the undang-undang Melaka, including the problems of variations in manuscripts and dating, not to mention problems of interpretation itself. It is also worthy to note the author’s argument that an oriental law text is *sui generis*;<sup>42</sup> in his view:<sup>43</sup>

- “... an oriental law text must be discussed  
 (a) as an entry in its own right and  
 (b) as part of general jurisprudence.”

Of especial interest to the present reviewer is Professor Hooker’s discussion of legal historiography and (especially) the attendant ethnocentricity of the colonialists themselves.<sup>44</sup>

To review a book such as this is no mean task, especially in the light of the variety of areas covered. Whilst reviewing the book, I have been all too conscious of my limitations, especially with regard to my lack of expertise. What I have sought to do, however, is to give the reader an indication of the content of the various essays and (hopefully) a flavour of the volume as a whole which, is, in my view, wholly palatable. It is a book that the uninitiated, as it were, can freely dip into and learn much, and clearly contains something for everyone, including even experts in the particular fields considered. It is a volume that would be a more than welcome addition to the shelf of any judge, lawyer, academic or student who is interested in legal scholarship.

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<sup>37</sup> *Ibid.*, especially at p. 398.

<sup>38</sup> *Ibid.*, at pp. 398 to 399.

<sup>39</sup> *Ibid.*, at pp. 420 to 421.

<sup>40</sup> *Ibid.*, at p. 422.

<sup>41</sup> *Ibid.*, at pp. 431 to 456.

<sup>42</sup> *Ibid.*, at p. 432.

<sup>43</sup> *Ibid.*, at p. 433.

<sup>44</sup> *Ibid.*, at pp. 446 to 449. And see, also, Professor Hickling’s remarks at *supra*, note 33, and the accompanying main text.