PP 10031/08/2014(-28256)



DATO' FAREED ABDUL GAFOOR

INTERVIEW WITH IMMEDIATE PAST PRESIDENT







LIAN BROTHERS ENTERPRISE (PUCHONG) SDN BHD (880416-U)

No. 8-1, Jalan Puteri 7/7, Bandar Puteri, 47100 Puchong, Selangor Darul Ehsan.
Tel: +603 8068 5388 / +6012 672 8982 Fax: +603 8068 9999 Email: lianbro@yahoo.com

Letter Head, Name Card, Envelope, Corporate Folder, Booklet, Bill Book, Note Book, Packaging Box, Money Packet, Invitation Card, Post Card, Greeting Card, Wedding Card, Newsletter, Table Tent Card, Book Mark, Non Woven Bag, Flyer, Brochure, Catalog, Calendar, Paper Bag, Sticker, Poster and more





AdRem
Journal Of The Selangor Bar
Volume 1, 2020
PP 10031/08/2014(-28256)
Cover Hendon Mohamed
Dato' Fareed Abdul Gafoor

FROM THE EDITOR'S DESK

The year 2020 has been challenging, as lots of uncertainties were brought upon. This generation has never dealt with such a pandemic that forced everyone to embrace new changes in their daily life. The Covid-19 pandemic has brought a "new norm" where we have to wear masks, comply with the movement restrictions, embrace digitalisation, reduce mass gatherings, limit social activities and contact sports.



Due to the challenges last year, the AdRem magazine could not be published. Initially, the previous Selangor Bar Committee delayed the publication because they wanted the members to approve the digitalising of the AdRem magazine. However, after much deliberation it was decided that all law firms, including branch offices under Selangor Bar would be provided with a hard copy of the magazine. A digitalised copy will also be provided for the members. However, we were then faced with the COVID 19 pandemic, which resulted in the enforcement of movement control laws. Due to this, the publication of the magazine was further delayed.

With the restrictions caused by the distressing consequences of the COVID-19 pandemic, the Malaysian courts put several measures in place to allow the continuance accessibility to justice. The rules of court were amended to include service of court papers by electronic means, virtual hearings and the restrictions on adjournment of the trial. It is clear in the context of Digital Age all members and stakeholders of the justice system must accept the "new normal" and acclimatise themselves to the reality that technology is increasingly crucial.

The AdRem magazine this term had interviewed four senior members of the Malaysian Bar. Firstly, Puan Hendon Mohamad who is the past President of the Bar Council and at present longest serving member of the Bar Council. Secondly, the former immediate past President of Bar council, Dato' Fareed Abdul Gafour. Thirdly, the past immediate Chairman of Selangor Bar, Mr. Bernard Scott. Last but not least, the current Chairman of Selangor Bar Mr. Murali Velautham. I am positive that their views, experience and knowledge portrayed in the interviews shall be helpful and shall provide inspiration to the members of the Selangor Bar.

We have also carried several articles that we believe will be beneficial knowledge to our members. These articles include, "The rise of the machine in our legal world, "The Federal court's decision in Tirumeniyar", "Constitutional Amendment needed to prohibit elected representatives from getting involved in business" and "MCO and RMCO: Overstaying in Malaysia".

Lastly, I would like to request more members to contribute articles in the future to ensure the continuity of this magazine. I would like to thank the Selangor Bar Committee members for their support, especially Mr Biliwi Singh for assisting in the interviews and all those who have contributed to the articles.

Dato' Rajpal Singh

Editor AdRem



Articles and photographs found within this publication are efforts of Sub-Committee of the Selangor Bar. If you are interested in contributing to it, please cal Mr. N.K. Thinnagaran at +603-5519 6219 or email to secretariat@sgorbar.org. However the Publication Sub-Committee reserves the right not to publish them or edit them according editorial policies and space constraints.

The views expressed by the authors are the responsibility of the authors and are not those of the Selangor Bar.

www.selangorbar.org

The Selangor Bar Committee 2020 - 2021



Sitting (Left to Right) Alvin Neo A.G. Kalidas (Bar Representative) Murali Velautham (Chairman) Gabriel Susayan (Honorary Secretary) Dato' Suraj Singh

Standing (Left to Right)

Amara Binti Abu Shantini Koshy Richard Teh Eugene Roy Joseph Shanmugahananthan Shanker Sundaram Vasudevan Appu Kokila Vaani Vadiveloo N.K. Thinnagaran (Executive Secretary) Nurul Muhaniza Binti Hanafi

Editorial Board

Editor: Dato' Rajpal Singh

Editorial Board Members: Biliwi Singh, Jeyaseelen Anthony & Balan Nair Advisors: S.S. Muker, S.Ravichandran

Advertising Sales Enquiry: N.K. Thinnagaran (+603-5519 6219 or secretariat@sgorbar.org)

All payments towards the advertisements booked are to be crossed and made payable to "Selangor Bar Committee" at least a week prior to publication deadline. Advertisement material to be submitted two weeks before production.

Secretariat Staff



Sitting (Left to Right) Khairul Nizam Bin Abdul Samad Shariza Binti Mohamad N.K. Thinnagaran Vasantha Kumari S. Gunaalan

Sitting (2nd row - Left to Right) Sree Kumare Farizan Binti Abdul Satar Priya Dharshini

AdRem is the offical publication of the Selangor Bar Committee. For correspondence through post:

The Editor

39-1, Jalan Bola Jaring, 13/15 Section 13, 40100 Shah Alam, Selangor Darul Ehsan, Malaysia

Communication

Tel: +603 5519 6219 Fax: +603 5519 9037 Email: secretariat@sgorbar.org

Design & Layout

Ermes Design & Advertising

Tel: +6012 303 9818 E-mail: edmondlee.2643@gmail.com

Print Production

Lian Brothers Enterprise (Puchong) Sdn Bhd

No. 8-1, Jalan Puteri 7/7, Bandar Puteri, 47100 Puchong, Selangor Darul Ehsan.

Tel: +603 8068 5388 / +6012 6728982 Fax: +603 8068 9999

Email: lianbro@yahoo.com







ARTICLES

SBC ACTIVITIES

63 Buka Puasa with Orphanages

19 The Rise of the Machine in our Legal World

29 The Two Contract Approach Revisited

Constitutional Amendment needed

to prohibit elected representatives

from getting involved in business

- 64 Criminal Law Conference
- 65 Get Together & Conveyancing Hi-Tea
- 66 AGM 2019
 Dialogue Session with
 Bar Council Office Bearers
- 70 RMIT Student Visit
- 71 Members' Night 2019
- 73 Fraterniy Dinner 2019
- 82 Pertandingan Penghujahan Mahkamah
- 83 Film Festival

MEETNGS

- 67 Meeting with Chief Police of Selangor
 Meeting with Pengarah of the
 Selangor Courts
 Meeting with PPN
- 68 Meeting with the Selangor Judges
- 69 Conveyancing Meeting 2019

SPORTS ACTIVITIES

- 74 Selangor Law Shield 2019
- 77 KL Bar VS Selangor Bar
- 80 Interstate Bar Games
- 81 Team Building

84 ANNUAL DINNER & DANCE

FORUM / TALKS



In post independent Malaysia a wannabe lawyer intending to read law had to beyond our shores to the United Kingdom because there were no institutions of higher learning here offering legal education. If you came from a poor background this compounded the problem because overseas education was out of reach of most people.

"My passion for the law took root in the early 60's when I started reading all the murder trials being reported in the local press. I must have been around 12 years old then. There was no TV back than so the only entertainment were books and the newspapers," she said.

A bemused Hendon recalled how she was marched off to bed at 9pm every night by her brother who was already a dentist but she would continue her reading secretly by torchlight which eventually ruined her eyesight.

Not satisfied with newspapers she turned to the local library for her diet of reading material and devoured Shakespeare, Charles Dickens, Enid Blyton, books related to the law and anything she could lay her hands on

"I was raised in a kampong and I went to a rural Malay school where the medium of instruction was in Malay. So my brother made me read the English newspapers to improve my diction," she said.

"Both my parents hadn't been to school. My mother was Japanese and my father half Arab and half Bugis. My father worked at the palace of the Sultan of Johor and we were just ordinary kampong folk. I was ninth out of 11 siblings but I was privileged because my elder brothers who were very high achievers in school watched over me. At that time the racial divide which is now so palpable was never there. You won't believe it, most of the simple kampong folk spoke passable English despite the lack of formal education".

Hendon recalled how her elder brother who was the dentist in Muar used to visit them regularly and used to keep tabs on her progress in school and was disappointed upon scrutinising her school report card on one occasion.

"That's it. You coming with me to Muar to attend the English medium school there. The school I was attending in the kampung was a ghostly Malay school. That was my leap from a kampung school girl to an urban sophisticated school called the Sultan Abu Bakar in Muar".

Hendon found herself out of her depth in Muar as the environment was totally different. The teachers were from England and the subjects were taught in English.

"English language was divided into grammar, dictation, spelling and literature and the going was tough for the first two or three months. They were very particular when it came to pronunciation and we laboured at it endlessly. I was in a class of

80 students but the teachers did not make us feel that we were not good enough. They did not admonish us if we did poorly but would put in the extra mile with the weaker students", she said.

Upon completing her Senior Cambridge examinations she pursued her Higher School Certificate and passed those too. "My elder brother had hoped I would study medicine and was disappointed when I told him my heart lay in the law"

She continued, "My brothers, by this time another three who had joined the elder one in their respective professional fields: one became an engineer and the other two a teacher and an accountant-got together to see how I could fund my legal education. They said it would take six to eight months for some sort of plan to come to fruition and in the meanwhile they secured a temporary teaching post for me teaching primary school students".

Hendon said the two years of teaching she put in were very rewarding besides earning her some much needed money. "

"After my HSC results were published someone told me I should try applying to the law faculty of the University Malaya in Singapore. The dateline had passed by then but I sent in my application nevertheless. I was pleasantly surprised when they invited me to come over for a visit despite that all applications had closed. I was to see the Professor LA Sheridan the first Dean of the Faculty of Law. I fumbled across the Causeway and

found myself at the law faculty", she said with a laugh.

The interview went well, but not before Hendon went through the ordeal of writing down why she wanted to read law. Hendon drew on her wealth of reading Shakespeare under the glare of a torchlight and scribbled away whatever that came to mind including the antics of Portia in the Merchant of Venice. All the reading paid dividend and within seven days of her interview and she was accepted into the University.



Then began the arduous task of preparing to enter university with the meagre funds her family had. Her brother and elder



sister rushed to Johor Baru and scrambled enough money and clothes for her journey into university life.

"So many people came to my assistance including my brother's friends from the medical fraternity with money and encouragement. I had to put up in the hostel as it would have been impractical to commute daily from Singapore," she pointed out.

At the time Hendon entered university there were only two hostels for girls and they were divided for the Malays and non-Malays. "I felt a little uneasy when I was placed with the Malay girls because I grew up in a multi-racial atmosphere at home because my siblings were married to Chinese and other races but I began to adjust slowly. The Malay girls did not wear tudung back then so it wasn't too bad," she recalled.

She continued, "All in there were about 30 Malay girls from the various faculties. A girl called Azizah from Negeri Sembilan and I were the only two from the law faculty and the rest were from the sciences and arts and looked down upon us. You

could sense the culture of the Malays even back then: staunch in religion but yet permissive in social habits and dressing. They were not ultra conservative as they are today".

Hendon recalled that the hostel and dining hall became eerily silent around the 25th of every month as most of the girls made a beeline to the treasury office to collect their scholarship allowance leaving her to fend for herself as she had none.

"Azizah was the lucky one as she enjoyed such a scholarship from the Negeri Sembilan State Government. With scholarship funds in hand Azizah would be busy shopping and she hardly attended lectures. About eight months into the course she lost interest and left the faculty leaving me as the only Malay girl in the law faculty."

Among her contemporaries at the university Hendon can count the likes of Tommy Koh (who later went on to become an international lawyer, diplomat and Singapore's Permanent Representative to the United Natons), Dr. Teoh Soo Nyan, Tengku Zuri and Tan Sri Lamin Yunus as her classmates. She said Sheridan had a very warm personality and ensured all the students participated in the activities of the faculty even if they came from impoverished backgrounds.

Upon completing her university Hendon returned to Johor and through her brother's contacts found herself in the chambers of

a Singapore lawyer -Omar Salleh who had a branch office here.

"He was quite a colourful character who practiced criminal law. He did not own a car and traipsed all over Johor courts in a taxi. He would holler to me in the office that he was off to Kluang or Segamat and that I was to get his files ready for him. To him I was no more than a legal clerk. Probably the thought of a woman present in the legal world was alien to him and held a dim view of the whole episode," she said with a laugh.

Her pupil master did not just stop there. He instructed his staff to introduce Hendon to filing documents in court- a job usually undertaken by the filing clerk. In court she found that no one entertained her and had to queue with the rest. To add injury to insult the court staff made a jibe at her when they enquired whether she was the new litigation clerk of the firm.

"When I told the court staff I was a pupil they enquired whether I read law in England and when I told them I graduated from Singapore they laughed and said, "oh sini pun ada". Later the chief clerk apoligised to me and after that they were done with the ribbing and bullying", she said.

As time went by her pupil master Omar Salleh started taking her to all the exotic sounding courts in Johor such as Mersing, Endau and Yong Peng and introduced to all the lawyers they met.

"He had such wonderful communication skills and he would be greeted by almost everyone from the gardener upwards in all the courts we visited. These people skills are not taught in law school and it is such a pity," she said.

Throughout the duration of her pupillage Hendon did not receive any allowance and expenses were from her own pocket.

"For the first three years of my practice I caught the bus to work from my kampung house. It was a green bus that transported me from the kampong and deposited me at my office just across the central market. Then after my third year my brother got me my first car- a Volkswagen. I had to break the news to my regular bus driver Pakcik Tam by telling him "tak payah waiting esok" because I had a brand new car. Nowadays chambering students drive Porsches to office".

Still recalling with fondness her first Beetle (Volkswagen) Hendon recalled it was a pride of joy for the whole kampung because a local girl had it made it big.

"My mum said she knew I was nearing home in the car when Blacky-the family dog — and incidentally we had two dogswould start barking at the sound of the engine. My mother was a deeply religious woman but yet she would wash the dogs every fortnight. That's how liberal Muslims were back then," she said casting her mind to an era bygone.

At the end of her pupillage Omar Salleh

told Hendon he could not retain her as he was more of a Singapore based lawyer but knew someone who could absorb her. He introduced Hendon to Abdul Rahman who was Tun Ismail's brother who was running a successful practice in Johor Baru.

She continued, "Abdullah was a kind man but a stickler for discipline and I worked for him right up to the 70's doing mainly criminal work".

"One day when I was just nine months into practice the court registrar -one Mr. Rangam handed me a file and told me it was an assigned case and that I was to take the brief. It was a trial by jury where a husband suspecting the infidelity of his pregnant wife slit open her stomach", she recalled the ghastly incident.

Midway the case, looking forlorn and lost she heard the voice of David Marshall behind her. "Good morning young lady. You are looking lost. I recounted my predicament to him and how I had been handed the file while I was so junior. He gave me some pointers and will you believe it: he sat throughout the trial for the next four days and passed me notes from the back of the court and encouraged me by saying I could get my client off. At the end of the trial the jury returned a verdict of not guilty. You should have seen the reaction of the whole court that day. They celebrated the victory with teh tarik all around" she said with a smile.

Hendon said in those days legal aid cases



were done on a pro bono basis and gratitude of the people who came and hugged and thanked counsel who handled their cases was priceless.

Hendon said Abdul Rahman was inspiring and compassionate. She remembers the eve of one Hari Raya when she had been with him for almost three years.

"He told me to see him before I left for home. I went in to wish him and he hew slipped me an envelope and said it was hard when the firm was not earning much but he was grateful for my service. Later when I opened the envelope there were three \$100 bills. That was a princely sum in those days and tears were streaming down my face as I left for home".

Harking back to the early days of her practice Hendon recalled what she and lawyers of her generation did was not so much for reward had so much of passion for the profession and reaping rewards was furthest from the mind. She recalled the take home pay of a lawyer was about \$300 to \$400 the same as a school teacher.

Hendon was of the view that times have changed drastically and the social media was partly to be blamed as people have become more materialistic and money minded.

She told **Ad Rem** how she bumped into a lawyer from one of the northern states whose staple income was derived from the Yayasan Bantuan Guaman Kebangsaan (YBGK).

"She had been in practice for about 12 years and she was targeting work from the YBGK because she felt it was honest work which paid well and at the same time she could avoid facing the ire of judges daily in court or endure the stress of conveyancing work".

Hendon also pointed that back then that phrases such as ethics and etiquette were not as hackneyed as they are today. Junior lawyers learnt good manners from the senior lawyers, a majority who were British.

"There was this one occasion when I took the front seat in Tun Azmi's court very early one morning before it went into session. By 8.45 am it was packed and when Tun Azmi came up to the Bench he glared at me from above and sat down. I looked behind me and saw the senior lawyers mostly from Singapore shaking with laughter. Sheepishly I went to the back of the court. It was an unspoken rule the front row was reserved for senior counsel".

She said at the same time senior lawyers never flexed their muscles at the juniors and always treated them as their equals.

Hendon mused that in 60's the toilets had two horizontal long mirrors installed in them and when Omar Salleh, her pupil master came down from Singapore to the courts, the first thing he did would be to dash off to the toilet. She didn't know the significance of all this until one day she

caught sight of David Marshall preening himself before the long mirrors.

"He was adjusting his wig and also his winged collar on which were mounted the bands. The trick was after fastening the knot of the bands the loose bit of string was not supposed to be visible and the lawyers wanted to appear prim and proper. Of course nowadays most youngsters use the Velcro bands which are basically fix-ons".



Hendon recalled how Omar would harp on her going to the ladies to make sure she was immaculate from head to toe and that not even a wisp of hair on her head was out of place. "Now I encounter all sorts of hairdos in court. I have told off juniors that I may be old but I am not old fashioned and that they should be neat and tidy and not let unleash unruly mops of hair all over the place".



Hendon recalled call days to the Bar were special occasions steeped in time honoured traditions. Hendon was called to the Bar at the Johor Baru High Court in 1963 together with the State Legal Advisor Dato' Jackson. "Afterwards we were invited by the Judge into chambers for a chat and some advice. It was such special and beautiful ceremony".

Hendon recalled that up to recently call to the Bar in some of the states outside Kuala Lumpur were warm and personal with parties hosted in the court and in some instances alcoholic beverages being served for those who wanted to partake of it.

After four years of whirlwind practice in Johor Hendon suddenly went out of circulation and the reason was marriage.

"My husband worked with the government in Kuala Lumpur and I was in Johor. He didn't object to me carrying on working in Johor but my brother would have none of it and insisted I could not enjoy the best of both worlds," she said.

She revealed that it was her husband's second marriage and he already had two sons from the previous marriage and the two young boys came under her wings

"For the record my husband was a Sikh and his first wife had walked out on him leaving him with the two children. They were about 13 and 14 which was a crucial age and I was not sure they would adjust to me. Having worked in volunteer homes before where I had taken care of children from broken families I knew the importance of caring for them myself and was prepared to sacrifice my career".

Hendon took the sabbatical for four years to tend to her stepsons and a son she had with husband, a decision she does not regret. Despite only one spouse working the couple managed on one salary and made ends meet.

"Then tragedy struck because my husband suffered a major heart attack and suggested that I return to practice. I met some people I knew and I was back to work and left my son in daycare with some trusted neighbours. By then preparations were already being made by father-in-law to move to Sydney with my stepsons".

Within six months of her returning to work her husband passed away in 1980. "My husband had left behind about Rm75,000 in the account of each of my stepsons - money he had saved for them the day he started working, and I insisted the money be used for two boy's education in Australia".

Hendon said she was very close to both her stepsons and never distinguished them with her own son with her husband. "In fact if you put all the boys side by side you couldn't tell the difference. My stepsons and my husband's other family members are still in close touch with me".

On her marriage to her Sikh husband she said it was a short but a very good marriage and they were a close knit family. "I told him there was no need for him to convert to Islam because marriages in Singapore could be sanctified without

any party converting but he embraced Islam for me".

She continued, "In accordance with the wishes of the family we even had a ceremony in the Muar Sikh Temple. A concerned priest told me I could sit on a stool for the sake of comfort but I insisted to sit on the floor in front of the Grant Sahib- the holy book of the Sikhs. I told everyone it was no big deal and I would go into any temple as there was only one God, and continued going to the temple with my husband's family even after his death".



Hendon recalled her brush with work for the Bar Committee came with her stint in the chambers of Abdul Rahman in Johor in her first years of practice there.

"One day he told me to accompany him to a meeting of the Johor Bar Committee. At that time I didn't even know what the functions of a Bar Committee were". Hendon trundled along to the Johor Baru Court Bar Room where the Committee met without a clue as to what she was getting into. Once there Abdul Rahman introduced her and tasked her to record the minutes which she later transcribed by typing them manually back in the office. Later, enriched with all this experience and after moving to Kuala Lumpur Hendon was elected by the Kuala Lumpur and Selangor Bar (as it was then known) as it's Secretary: and thus began her forays into the higher echelons of the Bar Council ending with her achieving the highest office of President in 1995.

Hendon looked back and recalled the year 1987 when Manjit Singh Dhillon was the Vice-President and she a Committee Member. "He told me that the Annual General Meeting was two weeks away and that he was going for President and suggested I became the Secretary of the Bar. These things were so informal back then, unlike now where every detail is recorded.

"My advice to young entrants to the Bar is develop your communication skills because it is asset when dealing with the Bench and members of the public".

Hendon was of the view that a young lawyer should be exposed to a broad spectrum of practice for at least the first five years before venturing into a specialising.

"You will be amazed by the number of friends and contacts you establish and the

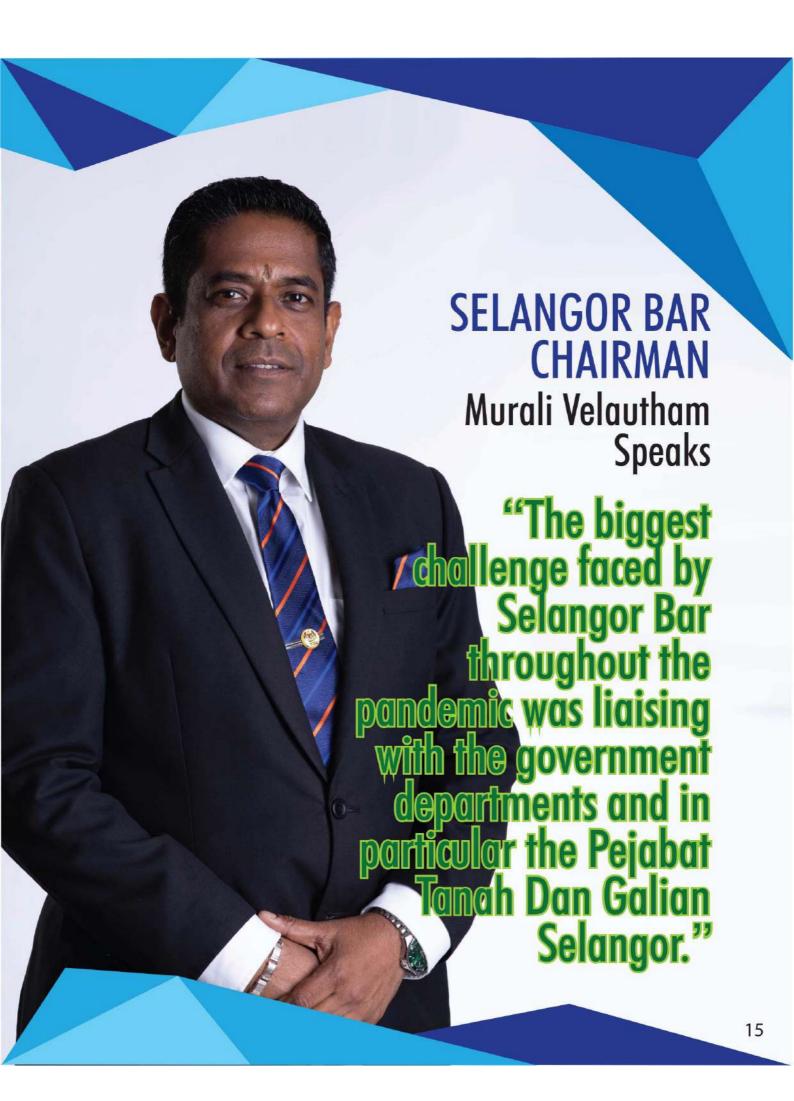
exposure you receive when you do general work in the beginning. I remember that my first piece of conveyancing work I handled was after I had been in practice for 18 years. It went smoothly for me because I already knew the solicitor for the other party. I recall a lawyer who told me she regretted she had never done litigation because she did not know the opposite number in a matter who was being difficult in granting an extension of time to complete the transaction."

Hendon stressed that the cornerstone of the Malaysian Bar as envisaged in Section 42 of the Legal Profession Act 1976 was to act without fear or favour.

"I hate to say this but sadly religion has taken centre stage in our lives today and I think it is about time we at the Bar seize the initiative and put matters right. I don't think we will be offending anyone but correcting a wrong".

She continued, "We had the likes of Raja Aziz Addruse who faced a lot of difficulties as the President during his tenure but he ignored all opposition and acted in the interest of the people. I don't think there is any other profession like ours".

Hendon said she would be liked to be remembered as the President that promoted oneness and a united Bar. "The bonding between members and mankind in general is a legacy every lawyer should strive to achieve. At the end of the day lawyers never retire and die- they just lose their appeals."



ARM Can you name one person who has had a tremendous influence and impact on you as a Chairman?

No one except the Almighty. I have been guided and inspired by God in all my decision making and undertakings for Selangor Bar.

What are the most important decisions you had to make as a Chairman in the Selangor Bar Committee?

The most important decisions that I had to make were due to the pandemic. Most of the decisions and actions taken by my Committee and I have been rooted in and centered around the outbreak of Covid-19 pandemic and the subsequent nationwide lockdown.

We even had to resort to the press to make some strong statements regarding the issues with Pejabat Tanah Dan Galian Selangor in particular to make changes to ease the pressure faced by our members.

What is the biggest challenge as a Chairman have you faced so far

and what are the characteristics you believe a leader should possess?

The biggest challenge faced by Selangor Bar throughout the pandemic was liaising with the government departments and in particular the Pejabat Tanah Dan Galian Selangor. Every Pejabat Tanah Dan Galian in Selangor had their own sets of rules and there was no uniformity in all the Pejabat Tanah Dan Galian process. The Pejabat Tanah Dan Galian Selangor also considered holding dialogue with the Selangor Bar Committee before making any decisions and this lead to many problems and frustrations faced by our members.

As a first time Chairman for the Selangor Bar Committee what advice would you give to someone going into leadership for the first time?

A good leader is a person who does not think and act as an individual but takes into consideration the interest of all the people who have entrusted him with the job for the group. He

should not shy away from going down to the ground and getting his hands dirty and must be prepared to make unpopular decisions for the benefit of the members. My advice would to be real and true to your self because when one decides to be lead any organisation one would have already mapped out what needs to be done along the way there will be a lot of challenges but one cannot let these challenges to change your views from the onset. Even if hard decisions had to be made for the betterment of the members, one should not hesitate or take a step back.

What are you doing to ensure you continue grow and develop as a Chairman for the Selangor Bar Committee?

I believe that the Committee has to work as a unit and not on an individual basis. I believe that our current sub-committee chairpersons have given their best with the current pandemic situation which to a great extent has hampered the activities of sub-committees. The way forward for Selangor Bar Committee, it must work as a cohesive unit.

What advise you would give to the young members of the Bar?



My advice to the young members to the Bar is please do not harp on your youth as a handicap which would equate to a right for young members to make mistakes and stunt your career growth. This should not be the norm as when one comes out to the real world



to practice. Be it young or old, one should equipped with be sufficient knowledge to discharge one's duty as an advocate and solicitor. One should also keep abreast with the recent amended laws and landmark case laws court decisions.



How do you juggle between your work and being the Chairman of the Selangor Bar?

Proper time management, discipline and sacrifices in completing the task at hand.

What are your future plans to the Selangor Bar and its members?

We need to move abreast with technology and with the times and at the same time not to forget that all decisions made should be for the benefit of the Selangor Bar members all other factors are in secondary. I hope to change the mindset of the Government bodies to ease the work of our members and this is an uphill task which has to be done for the benefit of our members.



No doubt there will be many out there, like me, who would have at some stage of their lives entertained fleeting fantasies of how law and order would look like in a dystopian futuristic world-courtesy of Hollywood. Will we one day encounter the iron clad "Robo-Judges" on hot wheels going around the city sentencing offenders or would policing take the shape of psychic beings with prophetic gifts to foretell future crimes like in the Sci-Fi movie -The Minority Report? Though my mind-drifts may sound far-fetched, but rapid advancement of technology in Big Data, machine learning (MI) and Artificial Intelligence (AI) portends such a world. A few of months ago, it was reported that AI was used to aid a judge in the sentencing of two drug related cases in Sabah.

But before all of us start running for refuge in a fall-out shelter, fearing that Judgement day is upon us, please let me assure you with utmost faith and confidence that Skynet has not taken control of the Palace of Justice and our courtrooms are still safe and secure in the hands of wise and learned "human" judges and lawyers- at least for now.

But, why do we need Al in our legal system in the first place? The simple answer – Efficiency. An efficiency that would be able to provide easy access to justice with minimal time and cost to resolve any legal disputes.

Legal proceedings may sometimes involve arduous and protracted filing and submission of documents as well as presentation of arguments by litigants. And in some cases, adjournments could take-up months or even years to resolve cases. Based on the statistics from the Office Of The Chief Registrar Federal Court Of Malaysia website, there is a backlog of nearly 338,000 criminal and 117,000 civil cases as of March 2020.

With this quantum of case-backlogs, our courts are not only expected to dispose-off cases swiftly at a machine paced speed, but at the same, require writing sound judgments with great legal acumen. It seems as if we expect our legal professionals to almost have inhuman capabilities when discharging their duties to save the world from the tyranny of any delayed justice. Unfortunately, we are bound by human limitations – we can call to memory only certain amount of data at a time and need to switch-off to rest our minds and bodies to recuperate. If not, we will simply burn-out and malfunction.

So, here is where Artificial Intelligence can help.

Al is the technological buzzword that is globally revolutionising the world we live in. From hospitality to transportation sectors, all have in one way or another been disrupted by Al and/or its subsets machine learning (ML) and Big Data analytics. The legal sector is no exception.

The efficiency gaps in the legal sector, both in the private practices or public institutions, have birthed new opportunities for start-ups in the field of Legal Technology or Legal-Tech. NATURAL LANGUAGE PROCESSING (NLP) The legal sector mainly encompasses generation and review of textual data such as contracts, summons etc. Hence, there is an increasing demand to efficiently execute these functions with clockwork precision and at lightning speed.

In order to capitalise on such demands, search engines such as ROSS Intelligence, leveraged on Watson, an AI platform created by IBM, to automate legal processes using natural language processing. Some of its functions include to conduct searches and procure legal information from citations to assist in creating full legal briefs.

Other start-ups such as LexCheck, Clearlaw, Klarity, Pactly and Lawgeex have also joined this bandwagon and automated the labourious task of reviewing contract documents using Natural Language Processing (NLP) to identify potentially problematic clauses. It was reported that in 2018, Lawgeex was pitted against 20 US lawyers and emerged as the champion in terms of accuracy and the time taken to vet through a non-disclosure agreement (NDA) for any associated risk.

Al could also be useful in electronic discovery processes or E-Discovery- to inspect and gather relevant documents at pre- trial stage. With a Court Order, one could gain access to relevant documents that are restricted and are in the possession of the opposing party in a dispute. The relevant documents may be in the form of electronic data like emails, databases, word processed documents, metadata and Al could be used to sift through gigabytes of data and only provide relevant information covered by the discovery order. Thus, providing protection from undue

exposure while saving time and cost.

The uses of AI in this respect has been transforming the business processes in the legal sector from automated document management systems to autonomously capturing and comprehending relevant information using NPL.

PREDICTIVE ANALYTICS

Another higher level of Al that is gaining traction but simultaneously drawing a lot of flak due to its controversial uses in the legal sector is Predictive Analytics. Al with predictive analytics capabilities utilises statistical analysis to predict outcomes derived from historical data.

In the US, COMPAS, an acronym for Correctional Offender Management Profiling for Alternative Sanctions is a tool used to predict risk of recidivism amongst criminal offenders. A similar tool also exists in the UK called HART – Harm Assessment Risk Tool. ProPublica, a non-profit news portal, alleged that based on their assessment of COMPAS, they observed that the system was bias in relation to ethnicity of offenders. COMPASS is said to rate black defendants as more likely to be a recidivist as compared to white defendants.

In this respect, the power of AI is not only confined to offenders but can also be used to provide track records of judges and predict the most likely outcome of a case before a particular judge based on his/her personal preferences, pattern of judgment, political or religious inclination etc. This can also be applied to lawyers as well. By gaining knowledge of this kind of intelligence, appropriate strategies can be employed to ensure a better chance of winning a case.

CONCLUSION

Although many would agree that Al could bring about efficiency in the legal sector, but one must remember that the legal sector has the one of most direct impact on human lives. By a stroke of a pen or in this instance by a stroke of a key, someone may be sent off to prison for years or worst still, he could be sentenced to be deprived off his very life.

So, the question is – do we want to leave these life-changing decisions up to arcane workings of a machines? But some say, YES. The machines are not influenced by anyone and devoid of any emotional attachments. Their decisions are only based on hard facts or data and thus will be consistent to avoid disparity in the sentencing of different Courts. But we must take cognisance of the fact that AI are based on the algorithms they are built on, the quantity and quality of data programmed into them. As the saying goes, garbage in garbage out.

A White Paper by the European Commission (EC) on Artificial Intelligence in February 2020 singled out lack of trust as a main factor that is holding back the broader acceptance of Al. The lack of trust in Al system stems from the opaqueness of the inner workings of the systems and the evolution of the Al system.

The EC report on Safety and Liability of Artificial Intelligence, Internet of Things and Robotics raised some concerns regarding the legislative framework to govern the use of Al in Europe in terms of safety. The report revealed that the current legislative framework in terms of safety does not;

 Explicitly address human oversight in the context of Al self-learning products and systems

- 2. Explicitly address the risk to safety due to faulty data.
- 3. Explicitly address increased risks from lack of transparency of algorithms
 Based on the above, I would like to leave you with this conundrum by letting Al into our legal system, are we going to let a machine tell us what to do without the certainty of knowing what it is telling us is right or wrong?







What are the challenges that you faced in your first year in office?



The biggest challenge as the Chairman of Selangor Bar was trying to lead a body of members of the State Bar with diverse legal practises ranging from sole proprietorships to big firms with branches within the state. Our membership has now surpassed the 7100 mark and to cater and to appease such a diverse group of members is a monumental task. No doubt I am open to criticism on my stand and my views in my capacity as the Chairman. I have learned to accept that it is impossible to please everyone. There are times when decisions have to be made which are not popular but are necessary which may or may not go down well with the general body of members of the Selangor Bar, For instance I for one am personally against turning to the media to ventilate any problems faced by the members. I am against explaining to the public at large through the media of issues pertaining to members which are best dealt with internally.



What are the most important decisions you make as a Chairman in Selangor Bar Committee?



As the Chairman of the Selangor Bar Committee, there were times I had to decide on contagious issues. This is more so when the committee members are split in their decisions. The Selangor Bar Committee works on the principle majority votes but our discussions always for aim unanimity in decision making. No matter what: once a decision is made the committee stands united on that decision.



What are the characteristic you believe a leader should possess?



The Chairman of Selangor Bar holds a very highly esteemed position in the eyes of the members of the Selangor Bar. The Selangor Bar is the second largest state Bar in West Malaysia. As I said earlier, currently we have more than 7100 members ranking second only to the Kuala Lumpur Bar. The Chairman of the Selangor Bar must be able to relate to the members across boundaries of size of their legal practice race and religion. He be able deal with issues affecting a sole proprietor to those faced by the larger legal practices which require different solutions and different approaches. He must be humble with a big heart, always ready to listen and be able to be impartial yet firm in his decision making. He must be prepared to accept praises as well criticism which may come in equal measure. He must be able to accept members who will like or dislike him for the most surreal reasons in equal numbers. Above all he be patient and understanding in order to deal with stresses that come with the turf. Having a sense of humour will be a great asset.

Adrem

Can you name a person who has had tremendous impact on you as the Chairman?



As the Chairman of Selangor Bar, I work with a committee, and each and every one of my committee member is very important because we all have a role to play. Of course, I take advice from the Bar Representative who is my predecessor. But I'm also guided by number of past Chairmen of Selangor Bar who have provided me with tremendous moral and emotional support as well as valuable advice in carrying out my duties as Chairman.



As a first time Chairman for Selangor Bar Committee, what

advice would you give to someone going into leadership for the first time?



My advice is to be open to suggestions and ideas to improve the running of the State Bar while not being bound by the "usual way of doing things" as we are moving into the industrial revolution 4.0. I strongly believe a leader must be able to lead into new technologies and revolutionary way of doing things. This does not mean that "the usual way of doing things" is to be discarded. To put it simply we have to move with the times by adapting the old into the new.





Adrem

What are you doing to ensure that you continue to grow and develop as the Chairman for Selangor Bar Committee?



I am constantly reminded that as the Chairman, membership demands requires strong leadership. I am off the view that as the Chairman I must be open enough to accept constructive criticism and at the same time being on guard to check my own conduct and attitude so that my committee will be able to be more vocal in coming forward with new ideas and initiatives for the betterment of the members of the Selangor

Bar. I am also reminded it is necessary for the Committee to constantly update its social skills to better interact with members flung across the 11 districts. I am also reminded of the sizeable number of members who are engaged in the corporate and conveyancing world and who have never stepped into the court room and whose needs differ from those of the litigators.



What advice would you give to the young members of the Bar.



I believe that young members of

the Bar today have grown up in a different generation where their upbringing saw the rapid rise of the computer internet and smart phone technologies. Ethics of the profession must be maintained by the young members who are more concerned about what they should be entitled to do rather than what they are obligated to do as the members of the Bar. Nevertheless, young members now form a majority at the Bar and their ideas and innovations will spur the Bar forward. It's something to welcome.

How do you juggle between your work and being the Chairman of

work and being the Chairman of Selangor Bar?



It is difficult to juggle the responsibilities as the Chairman and the running of a small legal practice. The demands of practice requires personal attendance to clients by their lawyers. Having said that there can only be one Chairman of Selangor Bar at any given time so I am sometimes caught between a rock and a hard place. I have to prioritise my responsibilities but I go by the principle that once I have committed to serve the Bar my commitment is a hundred per cent and that's

the motto I live with.



What are your future plans for Selangor Bar and its members?



I am concerned for the future of Selangor Bar and its members as our membership is increasing exponentially and the demands on the Secretariat and the Committee is ever increasing. As is with the Malaysian Bar Council, there may come a time when the Chairman will have to fully devote his time to the Bar to the point of giving up his practice in order to be effective across 11 districts in Selangor ranging from Petaling Jaya, Rawang, Banting ,Kuala Selangor and Sungai Besar. This term was a year of consolidation and focusing on members needs. In the previous last four years Selangor Bar focussed on the acquisition and renovation of its new buildings. Selangor Bar proudly manages three adjacent buildings with brand new facilities such as a more modern conference hall, a bigger and more spacious library and pleasant more work environment for the secretariat staff and legal aid centre. This year the Selangor Bar Committee was able to focus on various areas

of practise and issues relating to such as touting and other ethics related matters. If I'm elected for a second term it is my desire that the bread and butter issues of members be given priority in light of the general economy of the country which is very encouraging. It is also my hope to see and engage with members and get them to be involved in the various committees of the Selangor Bar and in our talks and forums. Sports will be in the fore front as a healthy mind and body most important in profession which is getting ever stressful.





1. At the outset, it must be mentioned that an employee being carried in a motor vehicle belonging to his Employer and who is also the Insured, (i.e. one who paid and taken out the motor insurance policy for the vehicle) with the vehicle driven by another employee and is involved in an accident with or without involving another vehicle, faces an uphill task to claim an indemnity i.e. damages for bodily injuries or his family if he dies, for dependency or loss of support, from the said vehicle's Insurers.

14-04-2011.

The Insurers, will conveniently refer to one standard clause in their policy of insurance which states:

"The Insurers shall not be liable in respect of:

i) death or bodily injuries to any person in the employment of the Insured arising out of and in the course of such employment.

- ii) death or bodily injury to any person (other than a passenger carried by reason of a in pursuance of a contract of employment) being carried in or upon entering or getting on to or alighting from the motor vehicle......"
- 3. In <u>Letchumanan Gopal v Pacific & Orient Insurance Co</u> (2011) 5 CLJ 866, the family of Kanisan deceased secured judgment in the Sessions Court. But the Insurers claimed they are not liable and the family members i.e. Plaintiff then filed a Recovery Action against the Insurance Company, which was granted in the Sessions Court but the High Court and Court of Appeal rejected their claim and referred to the clause in the policy which is as follows:-

'Death of or bodily injuries to any person (other than a passenger carried by reason of or in pursuance of a Contract of employment)....."

- 4. NOTE: It is also further assumed that other clauses are similar to the standard policy clauses and terms in a Commercial vehicle policy in Letchumanan's case, since the Court of Appeal did not refer or note down other clauses/terms.
- 5. No further leave to appeal to Federal Court was undertaken. It is a fact in Letchumanan's case, that deceased Kanisan, was carried on the M/lorry belonging to Jagoh Angkat S/B by its driver one Katurajah. Kanisan and others seeking casual/daily work usually wait around the Exit / Entrance gate of the facility/factory seeking the driver's consent to carry them to the lorry's destination to unload the bags of cement and they would be paid by the consignee / buyer of goods and not Jagoh Angkat, the lorry owner nor its driver.
- 6. In Saw Poh Wah v Ooi Kean Heng & Anor (1985) 2 MLJ 387 the plaintiff being carried in the motor vehicle suffered injury as a result of the negligent driving of the authorised driver. Both the Plaintiff and authorised driver were employees of the second Defendant the owner of the vehicle. The question before the High Court was whether the third-party insurer of the vehicle was liable to cover the losses suffered by Plaintiff. The standard clauses appear in the insurance policy issued to the vehicle.
- 7. The High Court Judge Syed Agil Barakbah allowed the Plaintiff's claim on the principle there were two separate coverages in his 1985 decision. The judge stated that while the coverage against the employer fails due to plaintiff being an employee, but there exists a separate cover for the authorised driver, since Plaintiff is not an employee of the authorised driver, the learned Judge followed Richards v Cox (1942) 2 All ER 624, and two Singapore judgments in arriving at his decision, BUT he was reversed by the Federal Court, and no grounds of judgment were written, thus the Federal Court's reasons or arguments for its decision are unknown.

8. <u>Saw Poh Wah</u> ruled supreme from 1985, hence the injured or family of deceased are precluded from claiming against the employer's vehicle Insurers, but must look at alternative indemnity venues, like SOCSO Personal accident policies, Workmen's compensation (in Singapore) etc.

But fortunately with Tirumeniyar's decision in Federal Court the position has been drastically changed.

Issues in Tirumeniyar

9. The serious issue that arose in Tirumeniyar was whether as per the usual / standard clauses in a motor vehicle insurance policy and the statute especially Section 91 (1) (aa) and (bb), RTA 1987, the authorised Driver being negligent (in causing injuries / death) ought to be indemnified for the damages suffered by an employee of the Insured (i.e. employer) or those carried in the motor vehicle, on the finding that they are not employees of the Authorised Driver. As per the clauses and the Statutory provisions, the injured employee or family of the employee who died, is barred from claiming against the employer who is also the insured owner of the motor vehicle, since alternative means or statutory provisions for compensation for such employees/claimants exists, as seen above.

OR, as per the House of Lords decision in <u>Digby v General Fire & Life Assurance Corporation Ltd</u> (1942) 2 All ER 319, is it settled authority that in a policy such as that in question, there is not one contract of insurance only but <u>there is one with the policy holder and one also with each person driving on his order or with his permission.</u>

- 10. In Malaysian Motor Insurance Pool v Tirumeniyar A/L Singara Veloo (2019) 1 LNS 1564, the five (5) member panel, of the Federal Court subsequent to an exhaustive study of several English authorities especially Richards v Cox (1942) 2 All ER 624 ('Richards') and Digby v General Fire & Life Assurance Corporation Ltd (1942) 2 All ER 319 (Digby) AND the Malaysian case of Saw Poh Wah v Ooi Kean Heng & Anor (Asia Insurance Co Ltd as Third Party) (1985) 2 MLJ 387, plus two Singapore ones, which are Chan Kum Fook & Ors v The Welfare Insurance co Ltd (1975) 2 MLJ 184 and China Insurance co Ltd v The Lain Lee (1977) 1 MLJ 1 concluded that there are indeed, two contracts in such vehicle insurance policy.
- 11. The Federal Court, appreciated that the High Court Judge Syed Agil Barakbah in <u>Saw Poh Wah</u>, relied on <u>Richards v Cox</u> and the two Singapore cases referred above i.e. Chan Kum Fook and China Insurance. But the Federal Court, on appeal reversed the learned Judge's correct approach, No written judgment is available except same editorial notes. It is indeed significant that the Federal Court in Tirumeniyar did declare this earlier decision of the Federal Court is no longer good law. (See para 91 of the grounds of judgment).



And without a written judgment, the reasons for the Federal Court's reversal of the High Court's decision Saw Poh Wah are unknown. Further the Supreme Court in <u>United Oriental Assurance S/B v Lim Eng Yew (1991)</u> 3 MLJ 429, declined to follow the Federal Court's decision in <u>Saw Poh</u> Wah.

It can be presumed that there was some agitation against Saw Poh Wah, earlier on, i.e. years ago in 1991.

12. The Federal Court in Tirumeniyar thus found the present position as follows:-

(the paragraph numbers are as per the Grounds of Decision).

"The Malaysian Position"

- "(45) In our view, the 'two Contract approach adapted by the Court of Appeal in <u>Richards</u> (Supra) and <u>the House of Lords in Digby</u> (Supra) <u>is correct, in that there may be two separate enforceable coverages in respect of the policyholder on the one hand and the authorised driver on the other, though the overall coverage must still be subject to the limitation and exceptions contained in the policy."</u>
- (46) We think the starting point in addressing why the "two contract approach" ought to be considered correct is based on Section 91 (3) of the RTA which reach:
 - "(3). notwithstanding anything...... shall be liable to indemnify the person or class of persons specified in the policy, in respect of any liability....."
- (47) The effect of the above provision is to by-pass the requirement of privity of contract. Before the existence of such a provision, such an arrangement vis-à-vis an authorised driver would have been unenforceable for want of privity. (See <u>Vandepitte v Preferred Accident Insurance Corporation of New York (1933) AC. 70</u> at pages 81-82. However, after the <u>introduction of the above provision an authorised driver gained the right to claim indemnity notwithstanding that he has paid no consideration towards the policy. See: <u>Tatersall v Drysdale (1935) 2 KB 174 at page 182. 5) 2 KB 174 at page 182.</u> That is the general rule."</u>
- 13. The sole question put to the Court was as follows:-

"Where a Contract of Insurance reproduces or substantially incorporates the exclusion of liability provided for under clauses (aa), (bb), (cc) of the proviso to Section 91 (1) RTA 1987, are those exclusions to be interpreted as applying equally to authorised drivers without the need for express exclusion of such liability".

(see para 3 of the grounds of judgement)



- 14. It must be noted, on the Court of Appeal's decision, in allowing the recovery action, the Insurers concerned by Consent Judgment paid the judgment sum to the injured Plaintiff i.e. Tirumeniyar.
- 15. The issue, the Federal Court declared is the following:
 - "(11) the issue before this Court in relation to the question of law posed, is whether the Plaintiff is liable to indemnify the 1st Defendant (Insured company and owner of the m/lorry) in the light of the exceptions under the Insurance Policy read together with the statutory exceptions under the RTA."
- 16. The Court referred to the various clauses in the policy, which are pari materia/common clauses, found in all motor insurance policies. In Tirumeniyar, the Insurers were Malaysian Motor Insurance Pool.

"Section II - Liability to Third Parties

- 1. The Pool will subject to the limits of liability indemnify the Insured in the event of accident caused or arising out of use of the motor vehicle......which the insured shall become legally liable to pay in respect of:
 - a) death of or bodily injury to any person
 - b) damage to property
- In terms of and subject to the limitations of and for the purposes of this Section the Pool will indemnify any Authorised Driver who is driving the Motor vehicle provided that such Authorised Driver.
 - Shall as though he were the Insured observe and fulfil and be subject to the terms of this Policy in so far as they can apply.
 - ii) is not entitled to Indemnity under any other policy.

Exceptions To Section II

The Pool shall not be liable in respect of:

- ii) death of or bodily injury to any person in the employment of the Insured arising out of and in the course of such employment.
- iii) death or bodily injury to any person (other than a passenger carried by reason of or in pursuance of a contract of employment) being carried in or upon entering or getting on

to or alighting from the motor vehicle....."

- 17. The Court then observed the relevant Sections in the RTA 1987, especially Section 91(1).
 - "91(1) In order to comply with the requirements of this Part, a policy of insurance must be a policy which:
 - a) is issued by a person who is an authorised insurer....
 - b) insurance such person or class of persons as may be specified in the policy.....

Provided that such policy shall not be required to cover:-

- aa) liability in respect of the death arising out of and in the course of his employment of a person in the employment of a person insured by the policy or of bodily injury sustained by such a person arising out of and in the course of his employment: or
- bb) except in the case of a motor vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, liability in respect of the death of or bodily injury to persons being carried in or upon or entering......"
- cc) any contractual liability.
- 18. It is rather explicit that Sections 91(1) (aa) and (bb) are similar to clauses i.e. Section II <u>AND</u> Exceptions to Section II in most insurance policies issued to motor vehicles.
- 19. In Tirumeniyar, the Federal Court proceeded with the issue, that the case is concerned only with Exception (II) of the Insurance Policy which corresponds with Section 91 (1) (aa) (Para 15 of the grounds of decision).
- 20. As observed earlier, the court considered favourably Syed Agil Barakbah's decision of Saw Poh Wah in the High Court and the two (2) Singapore decision of <u>Chan Kum Fook</u> and <u>China Insurance</u>. Briefly in Chan Kum Fook, the facts were the first and second Plaintiffs were employees of the company i.e. the Insured. They were injured as a result of the negligence of one Yong Chan Seng the authorised driver who was also an employee of the Insured Company. <u>The policy excluded any indemnity to employers</u>. The main issue that arose was whether the insured was liable to indemnify the 1st and 2nd Plaintiff's vis-à-vis the authorised driver.

Tan Ah Tah J, stated that it is clearly stated in Clause 2 in Section II of the policy that the Insurance Company will indemnify any Authorised Driver.....

21. In China Insurance the facts too were identical with similar clauses in the policy. The policyholder

was the employer of both the authorised driver and the other person riding in the motor vehicle. The other person died due to the negligence of the authorised driver. The Singapore Court of Appeal following Richards v Cox affirmed the High Court's decision that Insurers are liable to indemnify the authorised driver, as the said other person (who died) was not his employee.

22. In consequence, the integrity of the Federal Court's decision in <u>Saw Poh Wah</u> and the absence of written grounds has rendered it, not good law anymore. Tirumeniyar, it could be safely concluded has absolutely reversed the Malaysian Position vis-a vis Saw Poh Wah which held us in thrall, all these years in the face of well-reasoned U.K and Singapore judgments.

The case of Letchumanan Gopal v Pacific & Orient Insurance & Co Sdn Bhd (2011) 5 CLJ 806

23. The salient facts in Letchumanan are:

- a) The issue before the Court of Appeal was a Recovery Action. The claimants (i.e. family/dependents of Kanisan deceased) succeeded in the Sessions court in securing damages against Syarikat Jagoh Angkat Sdn Bhd the M/lorry owner (insured) and their driver one Katurajah, subsequent to full trial.
- b) The Insurers, defendant herein, refused to settle the judgment sum, on the grounds they are not liable, as per policy terms/clauses, thus recovery action was filed naming Insurers of the M/lorry as defendant.
- c) The Sessions Court allowed the Recovery action but the High Court and Court of Appeal held in favour of the Insurer.
- d) the facts, briefly are as follows:
 - Jagoh Angkat's driver one Katurajah, had taken onto his motor lorry, one Kanisan, on the way to the buyer/consignee of his load of bags of cement. Kanisan and other casual/daily workers would often wait at the Exit/Entrance gate of the cement factory, waiting to be taken on board the lorry to unload the cement bags at its destination. Wages for unloading would then be paid by the buyer/consignee and NOT Jagoh Angkat, who too, have no knowledge of Kanisan nor his work.
- e) Along the journey, the M/lorry met with on accident and Kanisan died. His family members sued for dependency etc. against Jaguh Angkat Sdn Bhd and the Lorry driver Katurajah.
- 24. The defendant Insurers resisted the claim against them by pointing out <u>Clause (III) under Exceptions to Section II</u>



Exceptions to Section II

"..... that P & O shall not be liable in respect of:

Death of or bodily injury to any person (other than a passenger carried by reason of or in pursuance of a contract of employment)"

NOTE: it is presumed that all policy terms and clauses are similar here and as in

Tirumeniyar due to the strict statutory provisions as per Section 91 (1) (aa), (bb) and (cc) of the RTA 1987, which all insurance policies ought to

provide for commercial vehicle policies.

AND FURTHER NOTE: The Court of Appeal, did not refer to or note down any other clauses, in

the relevant policy with the exception of the above, since they referred

to the policy annexed in the Record of Appeal.

- 25. The High Court and later on 14-04-2011 the Court of Appeal agreed with the Insurers contention and dismissed the claimants appeal.
- 26. Admittedly, the deceased Kanisan was not an employee of Jagoh Angkat, Sdn Bhd, the policy holder, whereas the Plaintiff in Tirumeniyar was one. But in pursuance of the two-contract- principle enunciated in Tirumeniyar, as seen above, why couldn't the authorised driver, Katurajah herein, assume the role of policyholder too. Katurajah, willingly allowed Kanisan to come abroad his M/lorry and was carrying him to its destination i.e. to the buyer of the load of cement bags, when the accident occurred.

Notwithstanding the fact that Kanisan is certainly not an employee of Jagoh Angkat Sdn Bhd which owns the m/lorry, the Authorised Driver willingly consented to Kanisan being carried. Obviously the deceased Kanisan is not on employee of the Authorised Driver.

- 27. The Federal Court in Tirumeniyar made the following findings (in the following paragraphs numbered as per its grounds of judgement)
 - "[69] A plain reading of section 91 (1) (aa) indicates that section is intended to exclude liability to employees. We will address the rationale behind this shortly. It expressly excludes death or bodily injury of a person insured by the policy whereby such death or injury arose 'out of and in the course of his employment'. This suggests that the person suffering death or bodily injury was for all intents and purpose an 'employee' of the insured.
 - [70] Sections 91(1)(bb) however is less than clear. Reading it carefully, it exempts coverage for



death of or bodily injury to persons being carried in or upon or entering or getting onto or alighting from the motor vehicle at the time of the occurrence of the event out of which the claims arise. But the said section contains an exception to the exception. So, under (bb), coverage must still be afforded to passengers carried:

- (i) for hire or reward; or
- (ii) by reason of or in pursuance of a contract of employment
- [71] The stark difference between sub-subsections (aa) and (bb) is that the former deals with persons 'actually' in the course of employment of the insured policyholder while the latter deals with those persons carried by the insured in pursuance of a contract of employment but who may or may not necessarily be in employment of the insured. It should also noted that subsection (aa) does not at all use the word 'passenger' whereas (bb) does.
- [72] Thus far all the cases we have cited in support of the interpretation of the present Insurance Policy dealt with what we consider actual employees of the policyholder. They concerned the contractual counterpart of section 91(1) (aa) in Exception (ii) Izzard v Universal Co Ltd (1937) 3 All ER 79 ('Izzard') is an apt illustration of Exception (iii) which is considered the contractual counterpart of section 91 (1) (bb).
- [73] The facts in <u>Izzard</u>, though complicated, were shortly these (as modified from the headnotes). The assured owned a motor vehicle insured against commercial risks but not against passenger risks. The policy contained what is essentially Exception (iii) of the present Insurance Policy which was also a reflection of section 36(1)(b)(ii) of the English Road Traffic Act 1930. That statutory provision is materially the same as our section 91(1) (bb) of the RTA 1987.
- [74] The controversy arose in the following way. The assured agreed to do haulage work for a company of builders. The agreement was that the assured agreed to transport the builders from the workmen's homes on the condition that the assured was to be paid for each journey notwithstanding whether the workers were actually transported or not. It so happened that in one of those journeys, the assured met with an accident resulting in a workman's death. The widow was awarded damages against the assured resulting in his bankruptcy. The widow then made a claim for indemnity against the insurance company.
- [75] As is apparent from the facts the workman was clearly not an employee of the policyholder. In this sense the English equivalent of section 91(1)(aa) would not have been applicable. That is why the House of Lords turned their attention to our equivalent

of section 91(1)(bb). The argument by the insurers was that based on the facts of this case, the phrase 'contract of employment' ought to be limited to instances where there was a contract of employment with the insured and not with some other party. Their Lordships logically rejected this view because doing so would render the distinction between the two Exceptions superfluous in that there would essentially be no difference between the two provisos. To quote Lord Wright (at page 83), the distinction between what is essentially our provisos (aa) and (bb) is as follows and it warrants the most careful consideration:

"It seems clear that provisos (b) and (c) [respectively and substantively Exceptions (ii) and (iii)] of the policy are intended to reproduce and follow the statutory terms. The former of these provisos seems calculated to exclude the necessity of covering claims which would fall within the Workmen's Compensation Acts, though it is true that these Acts would not embrace every case of death or injury to an employee arising out of or in the course of the employment. For instance, there might be such cases where the employee, by reason of the amount of his wages or salary, or otherwise, was outside the provisions of the Acts. It may be that, for some reason, the legislature thought and these cases were infrequent, and might be disregarded. But the second proviso is on a different footing. The general purpose of that statutory provision is to exclude from the compulsory insurance passenger risk in general with the exception in the first place of passengers carried for hire or reward. This is the form of passenger risk which, as already explained, is offered in the respondent company's proposal form under the heading of passenger risk. It need not be further discussed here. But the meaning of the other head is that on which the dispute here has turned."

[Emphasis added]

28. In Letchumanan the COA, decided in the Headnotes as follows:-

- "(1) The modern test in determining if one is under a contract of service is dependent on whether the person is part and parcel of an organisation, in other words, whether the person is employed as part of the business. The deceased was not under a contract of service to Jagoh. The deceased was then a mere passenger. P & O could thus not be liable for his death.
- (3) The liability and recovery actin were distinct from each other. The former was a claim founded in tort whereas the latter was based on a statutory right provided under the provisions of the RTA. For this reason alone it would be unjust to bar the insurers from raising afresh the issue of its liability even to the extent of adducing evidence on the same issue at the recovery action stage.

- (4) P & O was not a party in the liability action. Thus a final determination of this issue could not be said to have been made by the trial judge in the liability action....."
- 29. It is submitted that the Coram in Letchumanan comprising Abdul Hamid Embong JCA; Kang Hwee Gee JCA, and Abdul Malik Ishak JCA; failed to consider the serious issues involved on employer-employee position, when super imposed on the policy clauses and the relevant statutory provisions of the RTA 1987, especially on the contentious issue of a person who is not an employee being carried on the motor vehicle by its Authorised Driver, and who is later injured/dies, which gives rise to the claim.

However, it must to be admitted that the COA panel, was deliberating a 'Recovery Action' against Insurers, and the issue of employer-employee situation but the position of the Authorised Driver carrying a person to work i.e. unload the load at its destination ought to have been seriously deliberated.

Abdul Malik Ishak JCA, went on an exhaustive exercise in deliberating the employer-employee and independent Contractor's position and referred to several local and English decisions or this subject, but missed the words for the trees.

It could be ventured to state, that the law on this issue was not placed in its proper perspective and Letchumanan Continues to place Serious obstacles to legal practitioners, who are seeking for clarity and finality.

- 30. Para 71 of this Federal Court's grounds are rather explicit. The significant words are:
 - "......While the latter deals with those persons carried by the insured in pursuance of a contract of employment but who may or may not necessarily be in the employment of the insured."
- 31. It is the submission of this writer that the clear implications now after Tirumeniyar's decision are that Letchumanan's claim against Insurers ought to have been allowed. The COA, went to great lengths to explain the employer-employee situation vis-a-vis the contract of employment position but failed to bring their attention to the issue at hand i.e. the two-contract situation in a commercial vehicle insurance policy.
 - In short, the Authorised Driver, under the two contract principle has assumed the position of policy holder and thus enjoys rights, similar to the policy holder i.e. he is authorised to carry any persons he deems fit and proper, in pursuance of a contract of employment and could seek to be indemnified by the Insurers if any claim for damages is directed against him or his employer.
- 32. In one 1991 decision (United Oriental Assurance Sdn Bhd v Lim Eng Yew (1991) 3 MLJ 429) the Supreme Court did take cognizance of the two policies in one document approach. In this claim,



the Plaintiff at the time of accident was being <u>carried as a passenger in the said lorry pursuant to a contract of employment between him and the lorry owner</u>. Here the Insurers of the lorry were held liable for the damages to be paid to Plaintiff, as a result of the negligent driving by the lorry driver.

- 33. Subsequent to referring to the clauses and terms in the commercial vehicle policy, and <u>Richards</u> v Cox (1942) 3 All ER 624 Gunn Chit Tuan SCJ, who wrote the grounds of judgement quoted as follows (at page 5).
 - "It was held that there is in effect two policies in one document, a policy insuring the owner of the vehicle and a policy insuring the driver. The owner of the vehicle would not have been able to recover against the underwriters because the policy did not cover his liability to his own servant, but as the terms of policy insured the driver himself, and as the injured person was not a servant of driver, nevertheless the driver was covered by the policy and was entitled to an indemnity by the insurance company against the damages which he had to pay".
- 34. Gunn Chit Tuan, SCJ also pointed out that Lord Goddard CJ, in Lees v Motor Insurers Bureau (1952) 2 All ER 511, had followed Richards v Cox and affirmed it as the correct position subsequent to referring to the English Road Traffic Act 1930 which was in parimateria with our earlier Act of 1958 (Sec. 75 (1)(b)(i)(ii) and the present 1987 Act i.e. Section 91(1) (aa) and (bb) read together with the clauses in the insurance policy which are in the common format for all commercial vehicle policies, as set out and examined earlier.
- 35. The Supreme Court Judge also referred to <u>Izzard v Universal Insurance Co Ltd (1937) AC 773</u> and agreed with the findings of Lord Wright of the House of Lords which were:
 - "I think the Act (the language of which is the same as that of the policy) is dealing <u>with persons</u> who are on the insured vehicle for sufficient practical or business reasons and has taken a contract of employment in pursuance of which they are on the vehicle as an adequate criterion of such reasons."
- 36. But in Tan Keng Heng's Case (1978) 1 MLJ 97, the Privy Council pointed out on the facts as found, the deceased forester who was taking a lift was certainly not on the lorry for business reasons but for personal reason i.e. for his own personal convenience. In that case, there was no term of the forester's contract of employment, express or implied, which required or entitled him to travel on appellant's lorry and therefore the Insurers were rightly held not liable under the policy.
- 37. Arrayed against the above discussion, can we conclude that Letchumanan has to same extent shot down.



- a) It is rather explicit now, that the two-contract approach has been well settled and Saw Poh Wah has been relegated to the dustbin.
- b) The question is, whether the lorry driver Katurajah has assumed the role of policyholder in the same terms as his employer (i.e. the lorry owner and Insured) when he consented & took Kanisan (deceased) onto his lorry to carry out the work of unloading the cement bags at the buyer's / consignee's shop or store, who in turn will pay Kanisan for his services.
- It must be understood that Kanisan (deceased) was not an employee of the lorry owner nor the lorry driver.
- d) But more importantly, the fact remains, Kanisan was carried on the lorry for employment purposes by the lorry driver i.e. more pertinently "....... In pursuance of a contract of employment."
- e) The Federal Court in Tirumeniyar quoting Lord Wright in <u>Izzard v Universal Co Ltd (1937) 3 All ER 79</u> stated: (para 76)

"(76) At the same page, Lord Wright continued to opine (at line 5)
I think
the Act is dealing with persons who are on the insured vehicle for sufficient practical
reasons, and has taken a contract of employment in pursuance of which they are, on the
vehicle as an adequate criterion of such reasons. But there is no sufficient ground for holding
that this criterion should be limited to employees of the insured person. Such employees, if
injured or killed, would ordinarily fall under exception (i), though I am not prepared to say
that there might not be, in certain events, an employee of the assured who could claim as a
passenger."

- 38. The Federal Court as observed earlier in para 71 Supra at line 3, after distinguishing subsection (aa) & (bb) opined:

As is apparent from the facts the workman was clearly not an employee of the policy holder.

(See para 74 and 75 in Tirumeniyar)

40. Taking Lord Wright's words in Izzard (Supra) Our Supreme Court in <u>United Oriental Assurance v</u> <u>Lim Eng Yew (1991) 3 MLJ 429</u>, readily accepted:

"I think the Act is dealing with persons who are on the insured vehicle for sufficient practical or business reasons and has taken a contract of employment in pursuance of which they are on the vehicle, as the adequate criterion of such reasons."

And it was further expounded in Tirumeniyar (para 88) "............ where the Privy Council held in <u>Tan Keng Heng v New India Assurance (1978) 1 MLJ 97</u>, that the words "by reason of his contract of employment" must be read in Conjunction with the words in pursuance of."

An exhaustive examination of the above clearly indicates that in Letchumanan's case the widow or family members ought to succeed in their claim against the lorry driver, who in turn should succeed in seeking an indemnity from the Insurers of the lorry.



Adrem

What prompted you to run for Council Presidency?



I was the incumbent Vice-President, so the only road ahead was the Presidency. When I came into the Council I was the Penang Bar Chairman. Then I became the Bar Representative for Penang, and at the end of my first term as the Bar Representative I was actually persuaded by some of my colleagues in Council during the time to offer myself to serve as an office bearer. So into my second term as the Penang Bar Representative I offered myself to become the Treasurer. Step by step it was a natural progression all the way to the Presidency.

Adrem

What was your biggest challenge in your first term as a President?



The biggest challenge I think was the elephant in the room something which we all did not expect and by that I mean is the Lexis Nexis impasse. I dare say it's a challenge and an unprecedented encounter because the Bar never experience being sued over a contract. We are in consultations with senior lawyers, past Presidents, experts in the field to find a solution to resolve the matter, which includes attempting to mediate and resolve the matter amicably.

Adrem

Have you and the Council managed to overcome it?



We are still in the throes of litigation but from the views expressed by our legal team of lawyers the outlook is positive and we will take it from there.

Adrem

Did you or the Council try to mediate or stop this whole process from ending up in court?



Oh yes of course we explored all the avenues and reviewed the entire contract and endeavoured to approach them for a way out but it was to no avail.

Adrem

What is your bucket list for changes to the Malaysian Bar and the Bar Council?



From the aspect of the Malaysian Bar Council I must say we have to raise the standards and quality treating serious confronting us. Time and again I have to reign in the focus and ensure the thinking of Council members does not get side-tracked as it often does. We have to avoid getting mired in trivial issues and concentrate on serious matters facing us. With regards to the members at large I must say the picture is bleak. The standards at the Bar are declining and it is very dismaying to watch. Members of the Judiciary have cried out aloud to me and one Judge has gone so far to say things "dah banyak rosak". This is evident not only amongst the fraternity of the

Bar but also amongst the ranks of the Prosecution and the lower court benches. When we compare ourselves to other jurisdictions in the region we always tend to pick Singapore as the benchmark and many feel we fall short of them. To me this is not the solution. There is no alternative but to go back to the basics i.e., the law school.

Adrem

So you are suggesting the practitioners have to keep pace with the law and improve themselves constantly?



That is surely the case and this is a wake up call for everybody-myself included. We do conduct many programmes and seminars and workshops and large number of lawyers do participate but then how much can you learn in a short space of time? I was in Brunei recently to attend the opening of a legal year there. There are many Malaysian lawyers practising there and they told me the workload of cases are phased allowing evenly breathing space. I was told they would handle a case and the next one on their list would be 10 days away. This gave them ample time to manage and prepare their briefs. This luxury of time that they enjoyed translated into the quality and depth of the case that they were able to present. Here in Malaysia you have counsel burdened with cases every two or three days rendering their quality of work ultimately suffering.

The other malaise afflicting is that Malaysian lawyers take on too many cases-more than they can handle and needless to say that adds to the problem. But do we have a choice? Clients more often than not haggle over fees and squeeze us out. Whereas in other jurisdictions, the haggling is less severe. My lawyer friend who does running down matters in Brunei is able to charge up to B\$15,000-00 for legal opinions alone. A Malaysian lawyer will kill for RM2000 an opinion. Sadly that is the glaring disparity we are seeing here as our lot have been short changed more often than not.



Adrem

Speaking about the structure of fees and fee scale it has been a while since we revised it. Will we see some efforts to restructure the fee scale in your term?





We will address this issue in due course. If you look Schedule 6 of the Remuneration Order of the Legal Profession Act 1976, the item on general matters is broadly based there is nothing to guide practitioners in terms of billing specifications to base their fees. I need to study the Sabah & Sarawak model. There even for a simple matter of issuing a letter of demand their scale base is attractive to say the least in comparison to what we are charging over here. We are studying the many facets of it and have to take into account the sentiments of the Bar and members of the public and as to whether they are receptive to such changes.



Despite the Solicitors Remuneration Order with the fee scale in place discounts are still dished out by conveyancing practitioners. So it appears there is no justification for maintaining such a scale?



It is no secret that solicitors tend to give the discounts. However, our hands are tied in terms of calling at law offices to check their billings since the Court has ruled that Bar has no such power. The only clients that end up paying the full scale fee it seems are one's own relatives because they feel embarrassed to demand the discount!

Adrem

With regards to the amendments to the Legal Profession Act 1976 initiated by your predecessor we understand that you are going full steam ahead with to have it tabled in Parliament. What are the strengths and weaknesses being addressed?



It is the weaknesses in the Act that we are tightening. It has to be modernised to keep with the times. The basic structure of the Act is intact and so now were in consultation with members of the Bar and other stakeholders including the universities as to the areas where improvements are desirable. I have met up with the Attorney General to discuss the introduction of the Bill in Parliament and he has assured me that it would make its way in the House as soon as the loose ends are tied and we hope its passage will be smooth and without much incident. And I must put on record to say that Attorney General Tan Sri Tommy Thomas was most helpful in cutting out the red tapes. I am also thankful to the drafting team at Attorney General's Chambers who had work tirelessly together with the Bar in finalising the Bill.



How do you rate you current team in the Council?



I think quite few of them new comers to the Council and they require a bit of exposure to the meetings and to soak in the culture. The first few meetings were short and sweet but



gradually as time went on the hours became extended as participation became more robust and meaningful. Overall I'm satisfied and we are getting into the stride of things minus the few hiccups we had earlier. Most of the Council members are cooperative and helpful. We have a mixture of very senior members like Puan Hendon, Datuk Roger Tan, Karen Cheah, Andrew Khoo and many newcomers, bringing into counsel a myriad of experience.

Adrem

Last year some quarters criticised you and the Bar Council that you did not intentionally take a stand on some issues sensitive such as the khat and the unilateral conversations by the Selangor State Government. Is this a fact or fiction?



The khat issue was just at in its infancy stage. What has that got to do with the Malaysia Bar. Our duty is to uphold the Rule of Law. This is a question of national education policy for the politicians to grapple with. It wouldn't be appropriate for us in the Bar Council to comment on it. In as far as the conversion cases in Selangor were concerned we tried to gather as much information as we could before deciding on our next course of action, but to no avail. The Bar Council has an important role to play and we cannot be seen as jumping the gun and issuing inaccurate press releases and then having to back pedal and apoligising

public for to the misquoting. Whenever we come out with a press statement you will note it is never followed up with corrective statements later because our secretariat is extremely guarded, painstakingly researching vetting before releasing it to the press. I must admit that I do get impatient at times as members will be pressing me for the statement from the Bar. We have always been consistent in our rule of law stand and have remained so. However the landscape has changed in terms of response time due to the advent of social media and internet where issues crop up very frequently and needed to be addressed, where sometimes we are criticised for being slow in response. I have mentioned earlier, we have a process in place before a statement is issued. We are not a media organisation to react immediately as matters unfold. We have so much on plate in carrying out our regulatory functions, practitioners' matters and related issues. The President does not have the luxury of time to just wait in front of the computer to immediately jump and respond as and when an issue crop up. Members need to understand that.



How does the process of issuing a press statement form the Bar Council works?



I will usually condense my points and forward to the Secretariat.

Based on these points they come out with the first draft. Sometimes, when there is need, the various Committees or individual lawyers are asked for their input. For instance if we are going to say something about Earth Day the respective Committee will be asked to come up with some pointers which will be incorporated in the draft. The drafting team will go through it with a fine toothcomb paying particular attention language and content before coming back to me. That is why it takes so long, between conception and issuance.



You are in favour to err on the side of caution in this respect?



I agree that we should not act or react in haste although the temptation is always there to retort immediately. As in the conversion cases in Selangor we did not have enough information to come up with a credible statement. Anything falling short of accuracy punctuated with "if"s" and "but's" will be unsafe. You can take the case of the Islamic cleric and preacher Zakir Naik who had raised a furore here.

I wanted to issue a press statement after his allegedly inflammatory discourse in Kelantan but there was a red line there. The police were conducting their investigations and anything uttered by us would have been pre-mature. The second parameter we had to be cautious about was the lack of information of



the Red Notice by the Indian Authorities and the Interpol. So we had to tread carefully here with not transgressing the rule of law foremost in our minds. Until the Red Notice, is issued, as a permanent resident, he has a right to remain here. However the moment the Red Notice is issued and the Government doesn't deport we would definitely come out with the press statement.

Adrem

The view held by some quarters in the Zakir Naik case is to let loose cannons alone. They are attention seekers and by responding to them we would enhancing their cause further. Would you agree with that?



I fully subscribe to that theory as long as he has not transgressed any Malaysian law. From the aspects of the rule of law he is fully protected as a permanent resident. Rightly or wrongly he might be a fugitive elsewhere but here as far as the law is concerned he is accorded the full protection by it. The moment a Red Notice is issued the Malaysian Government is obliged to send him on his way and if they don't, that is when we come in with our statement. The public must understand our role in civil society and differentiate us from political parties and Non-Government Organisations (NGO"s). From my experience many quarters have and will try to use the Bar to advance their own interest which is unrelated to our role. One senior member texted me to issue a press

statement to call Tun Dr Mahathir Mohamad to handover the premiership to Dato' Seri Anwar Ibrahim. The member even threatened me to propose a motion of no confidence at the AGM if I do not do so! I welcomed that! Another organisation requested the Bar to consistently highlight their plight.

The press must also desist from highlighting inflammatory and irrelevant incidences. Recently there was this case where a Malay man got into an altercation with a Chinese man after a motor accident. Words like "Cina Kurang Ajar" and "Melayu Celaka" were exchanged and posted on Facebook by unrelated and carried people bv mainstream media but at the end both went to prison and after spending time in prison together, it is now reported that they have become best of friends. To highlight incidents such is really unnecessary and serves no purpose. It's good to be proud of your heritage and individual identity but why should we be constantly harping that this chap is Malay, Chinese, Indian or Punjabi. We don't need this. Instead the press and media should play its role to remind us of our contributions in nation building and to celebrate differences and not just play on sensationalism to boost its readership. It is downright misery for me when I see these sort of reports in our on a regular basis, especially in the online media.



The question of the abolishment of capital punishment has taken centre stage in recent times. What is the stand of the Bar Council on this?



Our stand at the Bar Council is for total abolishment, but if you ask my personal view I think we should resume discussions on the subject because capital offences are of the most serious kind and you can't just let people off like that.



So what you are saying instead of total abolishment of capital punishment it should be left to the discretion of judges?



That's my personal view.



Is the Malaysian Bar and its members ready for the fourth industrial revolution and what steps are being taken to meet the new challenge?



Artificial Intelligence is coming in a big way and we have to prepare ourselves to meet these changes head on. Take the case of the Practicing Certificate, there was so much resistance from members of the Bar but over time it has been accepted and became so easy and seamless. Next on the cards is to install a system where you pay everything online. We have to adapt to changes and there is no two ways about it. The one thing which will benefit everyone is online hearings

which you can do from anywhere. But it has its downside. I started practice in 1996 and after concluding our court business we went to the canteen to get to know the senior lawyers and make friends but now that rapport is slowly disappearing. Those friendships forged in that manner stood me and many others in good stead and anytime I needed help I just had to make a call and members of the Bar reached out. Now most senior lawyer do not know their juniors at the Bar. For the past three years I have hardly put up an appearance at the Penang Bar and I see so many fresh faces these days. Penang is a smaller Bar compared to KL and Selangor and it's too bad they don't know me and I them. So these days when I am in court I have to smile at them otherwise I fear they will say our President is "sombong".



Your first term as President is coming to an end. What would you say were your major achievements?



I put down all my achievements as those of the Malaysian Bar as it wasn't the initiative of one person, but rather a combined effort of many minds. We have carried out some members-centric initiatives and have planned for even more. For instance, with the option to pay some negligible extra premium, law been benefits has now care increased the from initial RM30,000-00 to RM50,000-00 and up to RM80,000-00. This will go a long way in assisting the family during the initial period after the passing of a member until the Estate matters are finalised. There is more flexibility in members asking for an advance of their law care benefit if they are seriously ill, which was unheard in the past.

Many members get into problems while carrying out their practice but they don't know where to turn to. In cases where partnership disputes crop up we have mediators to resolve them. Then there are members who face disciplinary actions or civil suits who do not know what to do or who to turn to. We have asked for volunteers who are willing to help members with this initiatives and we now have a directory from that. These initiatives For me the most important thing is that we are always working towards how to assist our members to overcome the trials and tribulations in their professional lives.

We have also planned out counselling initiatives for members who need such assistance. We are finalising the implementation with Lembaga Kaunseling Malaysia and will be rolling it out soon. These initiatives, might sound small, but it will benefit members directly.

The first thing we did once we took office was to visit all the state Bar. There were whisperings that the Bar Council was more interested in playing politics and didn't care about the welfare of members. But that

was exactly what we were doing by visiting all the states to evaluate and gather feedback on the welfare of the members and their needs. The conflict with LexisNexis has consumed so much of our time and energy which could been put to better use. Much time was also taken up with the amendments to the Legal Profession Act but then that effort was for the good of the Bar.



We at Selangor Bar are placing a lot of emphasis on sports and the promotion of a healthy lifestyle. What the programmes the Malaysian Bar has in this area?



The Malaysian Bar is very active in the arena of sports but at the same time it also depends on individual interest and participation. Sporting and social activities are medium to foster friendship and camaraderie within the fraternity.



Recent statistics have been quite sobering because we note that many members are dying at a relatively young age-mostly from cardiovascular diseases: some were only in their fifties. Will the Malaysia Bar look into creating wellness and preventive health clinics?



At the time being there are plans afoot. But your suggestion is good and worth exploring. Perhaps at the state Bar level they can conduct medical talks and hold clinics to promote wellbeing and educate members on living a healthy lifestyle.

Maybe it's about time the Malaysian Bar invests in some form medical assistance where members can go for all paid medical check- up. An early intervention may save lives ultimately.

I have taken a personal interest in this matter and am looking at all the available avenues there are which will benefit members mutually. An early intervention will not only save lives but also reduce the pay-outs by us to families which may or may not be helpful in the long run because they would have lost their bread earner.

There is a school of thought amongst the younger members of the Bar that active participation in sporting activities especially when representing the Bar in games should be counted as CPD points. Would you support such a proposal?

ACREM

We have tabled this at the Bar Council and voted against the idea. The rationale of the CPD is for the continuous education of lawyers and cannot be mixed with other non-educational matters such as sports. Perhaps we can look at giving some other incentives for representing the Bar at games and sporting activities.

If you are re-elected for the next term what are your plans for the Bar? Being the President for one term is not sufficient time to achieve any goals.

The past eight months went by very quickly. My only drawback was travelling to and fro from Penang. Coping with the work- load is not a problem no matter how big the issue is: but travelling and not getting enough sleep is taking its toll. I mean I wake up 4 am and come here and after meetings I go back on the last flight or the next day. My family has been understanding and has not complained.

The Malaysian Bar acquired its own building a while ago but we are yet to move in. What is holding us up?

Adrem

We are already moving in as we speak. We encountered niggling problems with adjustment of space and weight bearings for the library which has to accommodate all the books and materials as well as the staff. We decided to move the entire operations in one go rather than piecemeal. I don't want a nightmare of collapse of the library 20 years down the road. Then there would be questions asked as to who was the incompetent President when the library was relocated. We had to make sure the safety aspects of the building was satisfactorily attended to. I cannot emphasise enough the importance of prioritising the safety of a building. When you go for a meeting in any office in the United Kingdom the first thing they will brief is about safety. I saw the same thing happen in Brunei when we were there and it is about time we adapted this culture here. As for the present building which houses the Malaysian Bar shall remain with us because it is prime property in a strategic location. It is a valuable asset and we must resist the temptation to dispose it.



It is a known fact that Selangor Bar has been the biggest contributor to the YBGK. Now that you have been appointed to the Board is there any way you can assist Selangor Bar with the payments due to its members who have been waiting for a number of years now? At the last audit we were owed about RM720,000.



The YBKG has been in a state of limbo for some time. There were no meetings held between the various stakeholders and the control of management remained vested largely in the hands of the Director. When the new Attorney General came on board the process of appointment to the Board was put into the hands of the Minister and as you know ministerial process is long and winding. I have now come on board and I intend to put into motion changes to the system. We hope to see some improvement in the near future.



Is there any message that you may have for the Selangor Bar.



I am a proud member of Penang Bar but I am also a member of Selangor Bar. I observe Selangor Bar is a very robust and active Bar. The emails I receive from your team is very encouraging. Overall as President of the Bar I have close to 20,000 members to watch out for. However



capable and good you are you must not remain too long in your position.

The position of President is now limited to a two year term after which the President vacates and makes way for others. To people hustling for positions whether as Chairmen or committee positions your true intention should be to serve and

infuse new ideas not secure a trophy position. One should not be a seat warmer and I had the unenviable task of removing some committee members who had been around for too long which naturally irked and upset them. I removed them not because I disliked them or had an agenda but I feel we have to draw from the pool of 20,000 members especially some young blood who can bring new ideas into the Bar and to give others a chance to serve. I hope I will not be misunderstood for having stepped on some delicate toes.

Since early 2020 the Malaysian and the Selangor Bar were overtaken by two intervening events namely the sudden end of the tenure of the Malaysian Bar President Dato' Abdul Fareed Abdul Gafoor and the advent of the Covid-19 pandemic. This inter- view was at the tail end of his presidency.

Post interview questions that were posed to Dato' Fareed after he had stepped down as President



Why did you not seek re-election as President?



At the last council meeting during my presidency I informed the council that I would not be seeking re-election as the very frequent travelling from Penang had taken a toll on me and it would not be fair to the Bar and its members if one cannot serve the Bar optimally.



Are there any regrets throughout your Presidency. Something which you regret not able to achieve?



The only regret I have is that the LexisNexis issue had somewhat taken considerable amount of time and energy which could have focused towards serving the members better.



By Jaya Seelen Anthony

The Government's move to get elected representatives to declare their asset's is most laudable and a timely move. However the same can't be said for the recent appointment of elected representatives into the board of Government Link Companies (GLC's). The government seems to have forgotten the National Feedlot Corporation (NFC) scandal, Port Klang Free Trade Zone (PKFZ) fiasco and more recently the 1MDB scandal where elected representatives and politicians

were linked in some way or another.

These scandals have raised many concerns about transparency and good corporate governance in business ventures and its importance in promoting an honest sustainable corporate culture in Malaysia.

The constitutional requirement in Article 48(1) (c) of the Federal Constitution provides that elected representatives in Parliament are prohibited from holding any office of

profit. If a Member of Parliament (MP) is found to hold an *office of profit* before the election then the election is null and void and if the MP is found to hold an office of profit after election then the seat becomes automatically vacant.

However, the meaning of an 'office profit' under the Constitution is a position in the public service where an income is derived. For all and intents and purpose this definition is too restrictive and is not keeping up with times. Society and politics has changed a great deal since 1957. Today any public office wields power in the sense that MPs especially those in government have an advantage in influencing the procurement of business contracts and businessman are often attracted to this, thereby offering them lucrative positions as directors in their companies.

There nothing stopping elected is representatives from setting-up companies to bid for lucrative government projects and tenders and in most cases they would have an unfair advantage over the other bidders because of the power that they wield from their position as an MP in the government for e.g. if they are Ministers and Deputy Ministers in a particular government ministry. The Federal Constitution was drafted in 1957 and the drafters of the constitution would not have envisaged a situation like this at that time. As such the meaning of office of profit in the Federal Constitution should not only

include positions in the public service but also positions in the corporate sector.

With this in mind, I believe that the Federal Constitution must be amended to state that elected representatives, senators included are not allowed to hold any position in any company as directors be it executive or non - executive directors which may expose them to derive profit from business ventures and be in a position of business patronage.

They must also be made to declare their interest in any company before offering themselves as a candidate. If the candidate has an interest in any company then he is disqualified from standing for elections unless the candidate relinquishes his or her position in the company.

Today we continue to see many of political leaders in the boards of companies (GLC's included) as independent directors, non-independent directors, all deriving profit in some way or another. One only needs to peruse annual reports of these companies to realize this.

The reason for such an amendment is quite obvious as it is clear that business should be left to the businessmen as MP's are not businessman. They are voted into Parliament by the people to serve only the people and not any business venture. That should be the message the Constitution has to put forward.

Elected representatives should only be concerned with proposing legislative changes in Parliament, debating on proposed legislation, raising the aspirations and wants of the people in Parliament and serving their constituents. They are paid to do the job. An amendment like this would weed out candidates for public office who come into politics, merely to seek monetary gains. I will go so far as to say, that even State Constitutions must be amended to include such a provision to apply to candidates seeking election to the State Legislative Assembly and also to serving elected representatives in the State Assemblies.

A study conducted by two American academics in 1974 about our elected representatives found that:

"Malaysian MP's consider it their responsibility to represent the voters and the special interest groups in their constituencies, to educate their constituents about development programs, to listen attentively to complaints, to attend meeting in their constituencies at which suggestions can be processed, and to communicate back to the centre those matters that resist settlement at local levels".

The conclusion of the study above clearly highlights the role of an MP. It is important for potential MP's and serving MP's to realize this and stay away from business ventures.





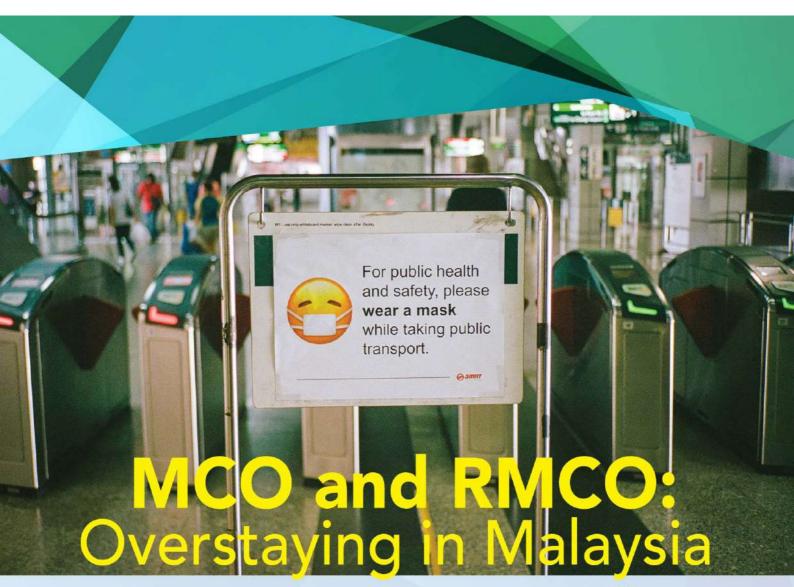
LORD's 1974
THE GARDENS MALL
RTW . MTM . Bespoke
F-218, 1st Floor Lingkaran Syed Putra,
Mid Valley City 59200, Kuala Lumpur.
M: +6012 222 1876



LORD'S 1974
PARKSON ELITE (PAVILION KL)
RTW . MTM . Bespoke
Level 5, Pavilion KL, 168 Jalan Bukit Bintang,
Bukit Bintang, 55100 Kuala Lumpur.
M: +6012 7100 189



LORD's Tailor BANGSAR SHOPPING CENTRE Bespoke . RTW (Limited) F18 & F19, 1 st Floor, 285 Jalan Maarof, Bukit Bandaraya, 59100 Bangsar, Kuala Lumpur. M: +6012 304 3188



By Yallini Munusamy

On 16 March 2020, the Prime Minister of Malaysia announced the implementation of the Movement Control Order ("MCO") effective throughout Malaysia from the 18th of to the 31st of March 2020 ("Period") as a preventive measure in response to the Covid-19 pandemic that was spreading rapidly in the country. This order imposed travel bans as well as the closure of all private and government sectors except for those associated to essential services. On the 7th of June, Prime Minister Muhyiddin Yassin announced that the Conditional Movement Control Order would end on the 9th of June as the nation would be moving forward into the Recovery Movement Control Order ("RMCO") phase between 10th of June and 31st of August.

Immigration Guideline & FAQ

Since the implementation of MCO, many foreigners in Malaysia are struggling with the dilemma of being stranded in Malaysia with an expired pass or visa. The main issue to be discussed, is the matter of foreigners being arrested and charged for overstaying their visas and passes in Malaysia during the MCO period.

The Malaysian Immigration Department and the Ministry of Foreign Affairs have issued a guideline dated 17 March 2020 ("Immigration Guideline") and a FAQ dated 22 March 2020 ("MFA FAQ") to

address immigration-related queries during this MCO period. As of 25 March 2020, there are no further changes to the Immigration Guideline and MFA FAQ to address the Extended Period.

The Immigration Guideline and MFA FAQ provides that;

- (i) Foreigners with long term pass holder such as PKS, employment pass, student pass, dependent pass and long term social visit pass (MM2H) whose pass is expiring during this MCO period can either leave Malaysia without renewing the pass or they may renew the current pass within 14 days once the MCO period is over.
- (ii) For foreigners whose short-term visa in Malaysia has expired during this Period, they will be granted exemption. They are required to visit the Malaysian Immigration Department after the Period to extend the visa.
- (iii) Foreigners who have overstayed the visa period are allowed to leave Malaysia during the MCO.
- (iv) Foreign citizens who are unable to return to their home countries (due to lockdown) can apply for Special Pass from the Immigration Department immediately after the Period is over, subject to them having valid travel documents.

It is safe to say that these guidelines provided by the Malaysian Immigration Department and the Ministry of Foreign Affairs clearly allow foreigners to stay in Malaysia until the end of MCO period to renew their relevant pass or visas. On 31st March 2020, the Director General of Immigration, Malaysia issued an official letter to address the issue of overstaying by foreigners in Malaysia during the MCO period. The letter states that in accordance to the implementation of MCO, foreigners with visiting pass that had expired on January, February, March and April 2020 will be exempted from being blacklisted by the department.

By looking at the guidelines and the letter issued by the Malaysian Immigration Department and the Ministry of Foreign Affairs, it is obvious that foreigners are safe from being arrested or charged in court for overstaying in Malaysia during this MCO period.

Unfortunately, even though there are guidelines and a letter providing safeguards for foreigners regarding to the issue on overstaying in Malaysia during MCO period, there are still foreigners being charged in Court for this matter.

As we are familiar with the news, whereby during the MCO period, many locals and even foreigners are arrested and charged in Court for breaching the MCO regulations. However, some foreigners are charged with an additional charge of overstaying in Malaysia, under Section 15(1) of the Immigration Act even though the guidelines and the official letter issued by Director General of Immigration have been put in place.

The Covid-19 (Coronavirus) pandemic is an unprecedented crisis whereby various sectors in Malaysia are facing new and troubling challenges and adapting to the new norms. Many police officers, public officers including the deputy prosecutors were not made aware of the guidelines and safeguards governing the issue of overstaying in Malaysia during this

MCO period. It is unjust for the foreigners to be charged with the additional charge of overstaying in Malaysia whereby, if convicted, will be liable to a fine of not less than RM 10,000 or to imprisonment for a term not exceeding five years or both. The punishment is much more severe in comparison to the punishment for breaching MCO regulations. Moreover, in accordance to the guideline stated in the official letter issued by the Director General of Immigration, these individuals are supposed to be protected.

RMCO

During the phase of RMCO, most sectors are allowed to resume operations and this has definitely eased the various challenges and difficulties faced in the legal field. However, during this time, there are still cases where foreigners are being charged in Court for overstaying in Malaysia.

On 19th June 2020, Senior Minister Datuk Seri Ismail Sabri said that Immigration Offices are open during Conditional Movement Control (CMCO), and all foreigners with expired visas must arrange to renew their visas immediately, if they want to stay longer in Malaysia, as Immigration services have resumed. Hence, the question here is whether in the last phase of MCO, RMCO, will the official letter issued by the Director General Immigration which provides exemption to visas that had expired on January, February, March and April 2020 from blacklisted by the department, prove to be a safeguard to the foreigners.

In my opinion, the official letter issued by the Director General Immigration is to ensure that foreigners are protected during MCO with the borders and most sectors being closed, as they

have no means to renew their visas. In the current situation, as stated by Senior Minister Datuk Seri Ismail Sabri, as the Immigration Office is back to operations, foreigners are allowed to renew their visas. Hence, the official letter issued by the Director General Immigration will no longer provide safeguard to foreigners with expired visas.

Conclusion

As stated earlier, Covid-19 is an unprecedented crisis, it is causing massive and still unknowable new challenges and in various sectors in the country. The legal sector in Malaysia had also been affected by it. Therefore, in order to mitigate the impact, we all should play our parts in ensuring that justice is upheld.

Buka Puasa with Orphanages 24.05.2019





















Criminal Law Conference

20.07.2019

































Get - Together & Conveyancing Hi-Tea

20.11.2019











AGM 2019











Dialogue Session with Bar Council Office Bearers 18.7.2019





Meeting with Chief Police of Selangor 9.5.2019













Meeting with Pengarah of the Selangor Courts

23.10.2019







Meeting with PPN

31.10.2019





Meeting with the Selangor Judges

















Conveyancing Meeting 2019

15/04/2019

18/04/2019

26/04/2019



Meeting With Jabatan Insolvensi Negeri Selangor



Meeting with Klang Land Office



Meeting with LPPSA

24/04/2019



Meeting with Biro Bantuan Guaman

24/04/2019



Meeting with Klang Land Office



Meeting With Bangi Hulu Langat Land Office

27/06/2019



Meeting with PTG Shah Alam

03/07/2019



Meeting at LHDN Shah Alam

13/09/2019



Committee Meeting

04/11/2019



Committee Meeting at Empire Subang

Attend Seminar At SSM



RMIT Students Visit

18.06.2019





















Members' Night 2019 27.04.2019















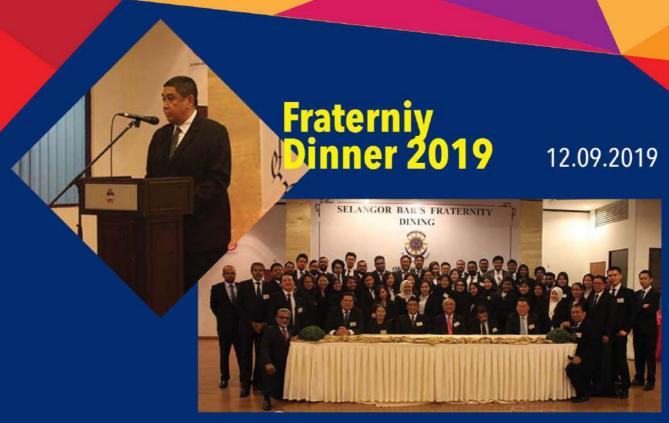








































































































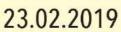






















































































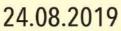


































































17.11.2019



Pertandingan Penghujahan Mahkamah







































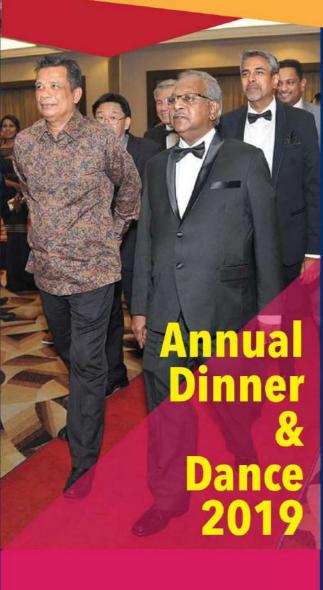
































































Talk on 'Introduction to Drafting Pleadings In Contested Divorce and Judicial Separation Proceedings' by Honey Tan Lay Ean and Matt Wong Chong Ee 02 & 03.03.2019













Talk on 'Legal Translation' by Lisa Khalilah Binti Khalili

05.03.2019







Talk on 'Suing the Revenue: Essential Tax Law Principles for Malaysian Lawyers by Anand Raj, Abhilaash Subramaniam and Sharon Lau Foong Yee 20.03.2019







Talk on 'Thoughts and Wisdom as Judge and Counsel' by Dato' Seri Hishamudin Yunus

22.03.2019







Talk on 'Modes of Execution by Sonia Jayantkumar Shah

28.03.2019







Talk on 'Defending An Accused in A Drug Trafficking Charge' by T. Vijayandran 12.04.2019







Talk on 'Construction Industry Payment & Adjudication Act 2012 ("CIPAA")' by Dr. Sivasangaran Nadarajah 17.04.2019







Talk on 'Competition Law-A New Chapter in Enforcement and Practice' by Dr. Vince See Eng Teong 23.04.2019







Talk on 'The PAM Standard Form of Building Contract 2018' by Dr. Teng Kam Wah 24.04.2019







Talk on 'Actual vs Artificial Intelligence & Overview of Intellectual Property' by Eugene Roy Joseph

09.05.2019







Talk on 'Court Martial: An Overview' by Major (R) Hj Azman Hi Zakaria

20.06.2019







Talk on 'Liquidated Damages Clauses' by Dr. Teng Kam Wah







Talk on 'The DVA from the Survivor's Perspective' by Melissa Akhir

28.06.2019







Talk on 'Introduction to Real Property Gains Tax (With Recent Amendments)' by Rajagopal Nadassan 25.07.2019







Talk on 'Introduction to Drafting Pleadings In Contested Divorce and Judicial Separation Proceedings' by Honey Tan Lay Ean and Matt Wong Chong Ee 27 & 28.07.2019













Talk on 'Fintech & Al: The Future Ahead' by Mohamed Ridza Abdullah

02.08.2019







Talk on 'The changing Landscape in Land Acquisition/Faber Union: A Scientific Formula for Computing Damages for Late Delivery? by Oh Saw Khim 08.08.2019







Talk on 'So, You Want to be a Criminal Defence Counsel?' by KA Ramu

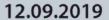
11.09.2019







Talk on 'Running Down - Accident Cases' by Jeyaseelen Anthony









Talk on 'An Anthology of Conveyancing Fraud And Liabilities of Solicitors' by Nicholas Chang Chen Seng 20.09.2019







Talk on 'Sales and Purchase Agreement: Sub-Sales' by Officers of Malaysian Department of Insolvency, Selangor 25.09.2019













Talk on 'State of Statelessness' by Annou Xavier **26.09.2019**





Talk on 'Police Investigation Process' by V. Jayamurugan 27.09.2019



Talk on 'Digital Evidence' by Annou Xavier 10.10.2019





Talk on 'SOLVENCY DECLARATION pursuant to Companies Act 2016 (What Why Who When & How) by Lim Kien Chai 11.10.2019



Talk on 'Practical Aspects of Lawyers: Things young lawyers need to do to prepare for or enhance practice' by Lee Tatt Boon

17.10.2019







Talk on 'Human Rights' by New Sin Yew

18.10.2019







Talk on 'Jenis-Jenis Penceraian di Mahkamah Syariah' by Muhammad Izhar Bin Mohd Salehuddin

31.10.2019













Talk on 'A Psychological Potpourri -A New Recipe Towards Well-Being' by Dr. Paul Jambunathan

02.11.2019













Talk on 'Basics of Cross Examination in Civil & Commercial Trials' by Brendan Siva

07.11.2019







Talk on 'Committal Proceedings in Family Matters' by Matt Wong Chong Ee

20.11.2019





Talk on 'Conditional Fees-Policy and Practice Consideration' by Su Tiang Joo 27.11.2019







Talk on 'Islamic/Conventional Banking-Risk Zones Involved in Financing Documentation (based on decided cases)' by Kalathevy Sivagnanam 28.11.2019







Talk on 'Practical Approach to Compulsory Land Acquisition' by Ann Chuah Siew Ean 06.12.2019



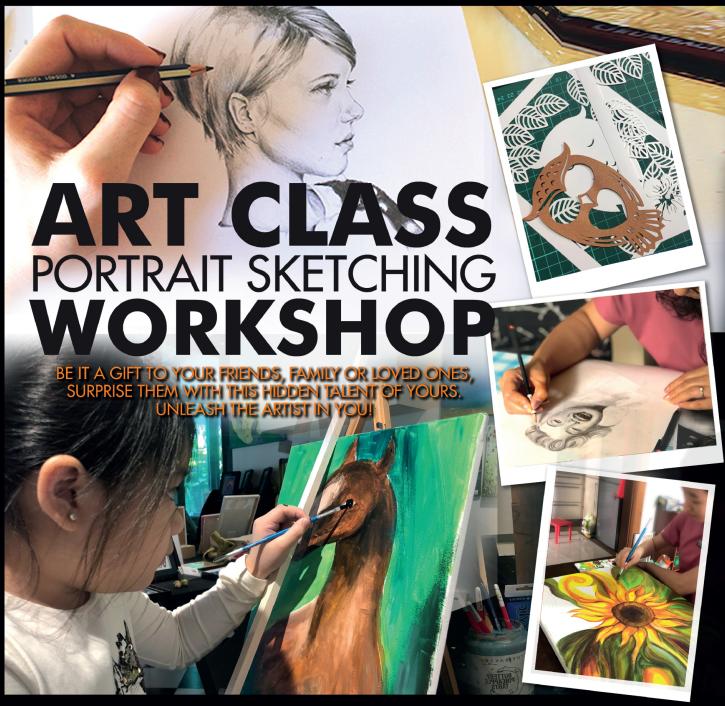












New norm is to paint at your own place with ease as we bring all the art supplies and assist you in learning and painting. Painting course of 4 sessions or monthly session. You can choose to learn charcoal drawing, sketching, watercolor painting, acrylic painting or paper cutting.

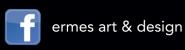
ART CLASS PACKAGES

a) Four sessions / Monthly b) Two classes c) One class / Workshop

Art supplies includes easels, high quality stretched canvas, acrylic colors, watercolour paper, watercolour paints, sketching pencil and sketch papers.

Note - our classes are limited to 4 students to maintain a positive learning environment.











Registered Job Seekers

> 16000 Social Media Connections



CVs in Our Database



1000

Successful Placements



Searchable Resumes



450000

Web Hits Per Month

* As shown in the statistics above, our brand has a 10 year track record with good online traffic that offers a high level of visibility to any job advertisement.

For more details, please visit our website at www.elawyer.com.my or call 03-2389 3331 (Thasha).



