

Hierarchy of courts essay



Explain the hierarchy of courts in Malaysia. Discuss in details. Law is defined as any system of regulations to govern the conduct of the people of a community, society or nation. It is the governmental response to society's need for both regularity, consistency and justice based upon collective human experience. A statute, ordinance, or regulation enacted by the legislative branch of a government and signed into law, or in some nations created by decree/judgement without any democratic process.

This is distinguished from “ natural law” which is not based on statute, but on common understanding of what is right and proper (often based on moral and religious precepts as well as common understanding of fairness and justice). “ by-laws“ is a generic term for any body of regulations for conduct, including specialized rules (military law, uniform building), moral conduct under various religions, and for organizations The court is bound to follow its prior or past decisions or the decisions of a court of the same level or equal or coordinate jurisdiction or decision of higher courts.

This practice of courts is called the doctrine of binding precedents. The doctrine is to be observed by courts in the hierarchy. The Malaysian court system is organized in a hierarchy like a pyramid with the subordinate courts at the base and the superior courts at the top of the hierarchy. The Judiciary of Malaysia is largely centralized despite Malaysia's federal constitution, heavily influenced by the British Common Law and to a lesser extent Islamic law, and is mostly independent from political interference. There are generally two types of trials, criminal and civil.

The hierarchy of courts begins from the Magistrates' Court, Sessions Court, High Court, Court of Appeal, and finally, the Federal Court. The jurisdictions of the courts in civil or criminal matters are contained in the Subordinate Courts Act 1948 and the Courts of Judicature Act 1964. Article 121 of the Constitution provides for two High Courts of coordinate jurisdiction, the High Court in Malaya, and the High Court in Sabah and Sarawak. Thus this creates two separate local jurisdictions of the courts for Peninsular Malaysia and for East Malaysia.

The highest position in the judiciary of Malaysia is the Chief Justice of the Federal Court of Malaysia which also known as the Chief Justice of Malaysia, followed by the President of the Court of Appeal, the Chief Judge of Malaya, and the Chief Judge of Sabah and Sarawak. The superior courts are the High Court, Court of Appeal, and the Federal Court, while the Magistrates' Courts and the Sessions Courts are classified as subordinate courts. Federal Courts The Federal Court is the highest court in Malaysia. Article 122 of the Federal constitution provides that the Chief Justice of the Federal Court is head of the Malaysian Judiciary.

He is appointed by the Yang di-Pertuan Agong who can acts on advice of prime Minister, after consulting the conference of Rulers. The appointments of the other seven judges of the Federal Court are appointed by the Yang di-Pertuan Agong acting on the advice of the chief Justice of the Federal court. Judges appointed must be below 65 years old. Every proceedings in the Federal Court shall be heard and disposed by three judges or such greater uneven number of judges as the Chief Justice may in any particular case

determine. In the absence of the Chief Justice, the most senior member of the court shall preside.

The court has original jurisdiction in the same matters exercised by the High Court. In dispute between states or between the Federation and any state, the court shall provide declaratory judgments. In deciding matters on constitutional issues the High Court can stay its proceeding and forward the constitutional issues to the Federal Court. The Federal Court shall determine the constitutional matter in the same way as an appeal to the Federal Court. The Federal court has appellate jurisdiction in both criminal and civil matters.

The Federal court have jurisdiction to hear and determine any appeal from the decision of the Court of appeal in respect of any criminal appeal decided by the High Courts in its original jurisdiction subject to any rules regulating the proceedings of the federal Court. Court of Appeal Under article 122A of the Federal constitution the President of the Courts of Appeals is the head of the court. He is appointed by the Yang di-Pertuan Agong after consulting the Conference of Rules. There are ten judges in the Court of Appeal and they are appointed by the Yang di-Pertuan Agong after consulting the Chief Justice of the federal Court.

The Court of Appeal generally hears all civil appeals against decisions of the High Courts except where against judgment or orders made by consent. In cases where the claim is less than RM250, 000, the judgment or order relates to costs only, and the appeal is against a decision of a judge in chambers on an inter pleader summons on undisputed facts, the leave of the Court of Appeal must first be obtained. The Court of Appeal also hears

appeals of criminal decisions of the High Court. It is the court of final jurisdiction for cases which began in any subordinate courts.

High Courts of co-ordinate jurisdiction and states namely the High Court of Malaya and High Court of Sabah and Sarawak. Each of the High Courts shall consist of a Chief Judge and not less than four other judges. Presently there are 47 judges in the High Court of Malaysia and 10 for the High Court of Sabah and Sarawak. A person qualified for appointment as a judge of the High Court must be a citizen and 10 years preceding his appointment he has been an advocate of the courts or member of judicial and legal service of the Federation or legal service of the state or both.

The Judge of the superior courts will hold office until he attains the age sixty months later with approval of Yang di-Pertuan Agong. Before appointing a judge for the High Court or for the Court of Appeal or the Federal Court, the Prime Minister must consult the Chief Judge or the President of the Court or the Chief Justice accordingly. The two High Courts in Malaysia have general supervisory and revisionary jurisdiction over all the Subordinate Courts, and jurisdiction to hear appeals from the Subordinate Courts in civil and criminal matters.

The High Courts have unlimited civil jurisdiction, and generally hear actions where the claim exceeds RM250, 000, other than actions involving motor vehicle accidents, landlord and tenant disputes and distress. The High Courts hear all matters relating to: the validity or dissolution of marriage (divorce) and matrimonial causes, bankruptcy and matters relating to the winding-up of companies, guardianship or custody of children, grants of probate, wills

and letters of administration of estates, injunctions, specific performance or rescissions of contracts, legitimacy of persons.

The High Courts have unlimited jurisdiction in all criminal matters other than matters involving Islamic law. The High Courts have original jurisdiction in criminal cases punishable by death. Cases are heard by a single judge in the High Court, or by a judicial commissioner. While High Court judges enjoy security of tenure, judicial commissioners are appointed for a term of two years, and do not enjoy similar protection under the Constitution. An application for a judicial review is applied in this court. The Magistrates' Courts and Sessions Courts in Malaysia have jurisdiction in both criminal and civil matters

Sessions Courts Yang di-Pertuan Agong may by order constitute as many Session Courts as he may think fit and to assign local limits of jurisdiction. Each Session Court shall be presided over by a Sessions Court Judge appointed by the Yang di-Pertuan Agong on the recommendation of the Chief Judge. Sessions Court shall ordinarily be held at such places as the Chief Judge may direct but should necessity arise, they can be held at other place within the limits of their jurisdiction. A person appointed as a Sessions Court Judge must be a member of the Judicial and legal service of the Federation.

Sessions Court shall ordinary be held somewhat like the former Quarter Sessions in England, the Sessions Courts have jurisdiction to try offences which are not punishable by death. They are presided over by Sessions Court judges (formerly Sessions Court Presidents). The Sessions Courts also hear all civil matters of which the claim exceeds RM25, 000 but does not exceed

RM250, 000, except in matters relating to motor vehicle accidents, landlord and tenant and distress, where the Sessions Courts have unlimited jurisdiction. Magistrates' Courts

Magistrates Court may be constituted by order of the Yang di-Pertuan Agong and be assigned local limits of jurisdiction. The Yang di-Pertuan Agong may on recommendation of the Chief Judge appoint fit and proper person to be Magistrates for the Federal Territories and the State Authority may on the recommendation of the Chief Judge appoint any fit and proper persons to be Magistrates in and for the States. No person shall be appointed a Magistrate unless he is a member of the Judicial and Legal Service of the Federation.

Magistrates are divided into First Class and Second Class Magistrates, the former being legally qualified and having greater powers. Second Class Magistrates are now not normally appointed. The Magistrates' Courts hear all civil matters of which the claim does not exceed RM25, 000. In criminal matters, First Class Magistrates' Courts generally have power to try all offences of which the maximum term of imprisonment does not exceed 10 years or which are punishable with fine only, but may pass sentences of not more than five years imprisonment, a fine of up to RM10, 000, and/or up to twelve strokes of the cane.

The Court for Children The Child Act 2001 has repealed the Juvenile Courts Act 1947. The Court for Children, previously known as the Juvenile Court, hears cases involving minors except cases carrying the death penalty, which are heard in High Courts instead. Cases for children are governed by the Child Act 2001. A child is defined as any person below the age of 18. The

Special Court The Special Court was established in 1993 to hear cases of offences or wrongdoings made by a Ruler.

A Ruler includes the Yang di-Pertuan Agong (King), the sultans of monarchical states in Malaysia, the Yang di-Pertua Negeri, and the Yang di-Pertuan Besar, i. e. : the head of states of Malaysia and its component states. Prior to this, a Ruler was immune from any proceedings brought against them in their personal capacity. [2] Syariah Courts There is a parallel system of state Syariah Courts which has limited jurisdiction over matters of state Islamic (sharia) law. The Syariah Courts have jurisdiction only over matters involving Muslims, and can generally only pass sentences of not more than three years imprisonment, a fine of up to RM5, 000, and/or up to six strokes of the cane.