

BETUA HAKIM NEGARA
MAHKAMAH PERSEKUTUAN
MALAYSIA
KUALA LUMPUR



CHIEF JUSTICE
FEDERAL COURT
MALAYSIA
KUALA LUMPUR

K.H.N. 47

25 Mei, 1999

Yang Arif Hakim-Hakim Mahkamah Persekutuan/
Mahkamah Rayuan dan Mahkamah Tinggi

Yang Arif Pesuruhjaya Kehakiman

Hakim-Hakim Mahkamah Sesyen

Timbalan Pendaftar

Penolong Kanan Pendaftar

Majisteret.



Y.A. Dato'/tuan/puan,

Seksyen 3 Akta Undang-Undang Sivil 1956
(Disemak 1972)

Sukacita saya menarik perhatian Y.A. Dato'/tuan/puan kepada peruntukan seksyen 3 Akta Undang-undang Sivil 1956, yang mana sesalinan dilampirkan untuk mudah dirujuk.

2. Seksyen 3(1)(a)(b) dan (c) adalah jelas maksudnya. "Common law of England" dan "rule of equity" hanya boleh dipakai di Malaysia -

- i) jika tidak ada apa-apa undang-undang bertulis di Malaysia mengenai sesuatu perkara itu;
- ii) prinsip-prinsip "common law" di England selepas tarikh-tarikh yang disebutkan dalam perenggan (a) (b) dan (c) seksyen 3(1) itu tidak mengikat mahkamah-mahkamah di Malaysia;

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iii) pemakaian prinsip "common law" di England dan "rule of equity" itu adalah tertakluk kepada proviso kepada seksyen 3(1) itu, iaitu kepada adat resam dan budaya penduduk-penduduk di Malaysia.

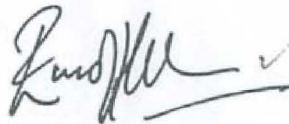
3. Majlis Privy (Privy Council) sendiri di dalam kes Lee Kee Choong v. Empat Nombor Ekor (N.S.) Sdn. Bhd., 1976, 2 M.L.J. 93, di muka surat 95 ada menyatakan -

"For present purposes it appears that the Civil Law Ordinance 1956, section 3, adopted English law as administered at its effective date, so that any subsequent march in English authority is not embodied."

4. Oleh itu janganlah kita terburu-buru untuk menerima pakai tanpa mengkaji dengan mendalam keputusan-keputusan yang dibuat oleh Mahkamah-Mahkamah di England selepas tarikh-tarikh yang ditetapkan oleh seksyen 3, Akta Undang-undang Sivil 1956 itu.

Sekian.

'BERKHIDMAT UNTUK NEGARA'



(TUN DATO' SERI MOHD.EUSOFF B. CHIN)
Ketua Hakim Negara Malaysia.

- s.k. Y.A.A. Presiden Mahkamah Rayuan.
- " Y.A.A. Hakim Besar Malaya
- " Y.A.A. Hakim Besar Sabah & Sarawak
- " Yg. Bhg. Ketua Pendaftar
Mahkamah Persekutuan.

4 Civil Law Act 1956 (s 3)

PART II
GENERAL

3 [Application of UK common law, rules of equity and certain statutes

(1) Save so far as other provision has been made or may hereafter be made by any written law in force in Malaysia, the Court shall—

- (a) in West Malaysia or any part thereof, apply the common law of England and the rules of equity as administered in England on the 7th day of April 1956;
- (b) in Sabah, apply the common law of England and the rules of equity, together with statutes of general application, as administered or in force in England on the 1st day of December 1951;
- (c) in Sarawak, apply the common law of England and the rules of equity, together with statutes of general application, as administered or in force in England on the 12th day of December 1949, subject however to subsection (3)(ii):

Provided always that the said common law, rules of equity and statutes of general application shall be applied so far only as the circumstances of the States of Malaysia and their respective inhabitants permit and subject to such qualifications as local circumstances render necessary.]

(2) Subject to the express provisions of this Act or any other written law in force in [Malaysia] or any part thereof, in the event of conflict or variance between the common law and the rules of equity with reference to the same matter, the rules of equity shall prevail.

[(3) Without prejudice to the generality of subsection (1)(b) and (c) and notwithstanding subsection (1)(c)—

- (i) it is hereby declared that proceedings of a nature such as in England are taken on the Crown side of the Queen's Bench Division of the High Court by way of habeas corpus or for an order of mandamus, an order of prohibition, an order of certiorari or for an injunction restraining any person who acts in an office in which he is not entitled to act, shall be available in Sabah to the same extent and for the like objects and purposes as they are available in England;
- (ii) the Acts of Parliament of the United Kingdom applied to Sarawak under sections 3 and 4 of the Application of Laws Ordinance of Sarawak and specified in the Second Schedule to this Act shall, to the extent specified in the second column of the said Schedule, continue in force in Sarawak with such formal alterations and amendments as may be necessary to make the same applicable to the circumstances of Sarawak and, in particular, subject to the modifications set out in the third column of the said Schedule.]

NOTES

Subsection (1) was amended by the Civil Law Ordinance (Extension) Order 1971 (PU (A) 424/71) s 3. The word within square brackets in sub-s (2) was amended by the same Order.

Subsection (3) was inserted by the Civil Law Ordinance (Extension) Order 1971 (PU (A) 424/71) s 3.