

INTRODUCTION

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Judge of the Federal Court of Malaysia.

1 It is a singular honour and privilege to be invited to write the introduction for this unique edition of the *Singapore Academy of Law Journal*, as guest editor. This stems from the fact that the journal is widely recognised as a publication reflecting the forefront of current legal thought and education in the region.

2 This particular special edition is unique in that it represents the spirit of collaboration and co-operation between the judiciaries of Singapore and Malaysia in publishing articles reflecting contemporary legal thought and progress in our respective jurisdictions in selected areas of the law. We have, in Malaysia, recently published a special edition of the *Journal of the Malaysian Judiciary* comprising scholarly articles by prominent judges and authors from Singapore, on the law and legal thinking in the jurisdiction. We were particularly gratified that the renowned and erudite Honourable Judge of Appeal Andrew Phang was guest editor, as well as a contributor, for our special edition. This resulted in a meticulously chosen and authored series of articles providing a comprehensive review on important current legal issues in Singapore. There is little doubt that the special edition of the *Journal of the Malaysian Judiciary* will be greeted with great enthusiasm throughout the legal profession in Malaysia.

3 The seeds for a stronger collaboration between the two judiciaries were initially sowed by the Chief Justice of Singapore, the Honourable the Chief Justice Sundaresh Menon and our previous Chief Justice of Malaysia, The Right Honourable Tan Sri Datuk Seri Panglima Richard Malanjum, towards the end of 2018. One of the rewards of such collaboration is this special edition, to which we are honoured to contribute. This exchange of legal knowledge and awareness is attributable, more particularly to the Honourable Judge of Appeal Judith Prakash and the Honourable Justice Belinda Ang Saw Ean, who first mooted the idea of these publications in each of our jurisdictions.

4 I am deeply grateful to them and Justice Phang for the considerable thought and deliberation that went into this, making this idea a reality.

5 The specialist authors whom we invited to contribute largely determined the selection of topics in this publication. These authors represent a segment of our foremost legal thinkers in a variety of fields, which, we trust, are of interest to the members of the legal profession in

Singapore. The hallmark of these articles is that each of them bears its author's own individual mark of distinction.

6 The range of articles in this special edition encompasses, *inter alia*, a classic account of the development of legal concepts in the courts in Islamic banking by Justice Datuk Setia Zawawi Salleh and Dr Mohd Johan Lee, who both possess considerable expertise and experience in the field, in terms of adjudication and academic writing respectively. We are equally fortunate to receive a contribution from one of our foremost ex-judges, Dato' Mohd Hishamudin Yunus, now the Chairman of the Competition Commission of Malaysia, in the form of a digest of recent developments in competition law, which is a relatively new area of law in this jurisdiction.

7 A special note of gratitude is owed to Datuk Emeritus Professor Dr Shad Saleem Faruqi whose renown as a constitutional expert is unparalleled in this jurisdiction. His textbook, essays and treatises on constitutional law are foundational and comprise necessary reading for any serious reader of constitutional law. For this special edition, his article narrating the history of how the courts have dealt with this area of the law over the years, is extraordinary and exceptionally honest. Our other notable writer in this field is the legendary Dato' Ambiga Sreenevasan who was assisted by Jo-Ann Ding. Ambiga is an eminent barrister and vigorous advocate for the protection of human rights. Their narration of, and commentary on, case law in the field of human rights, is both coherent and comprehensive and provides a valuable study of contemporary legal thought and progress on this subject.

8 Two of our leading members of the Bar, Dato' Loh Siew Cheang and Rabindra S Nathan, found time, notwithstanding their extremely busy schedules, to author articles on company law and insolvency law in Malaysia. Their respective analyses of these areas are reflective of the current state of the law in Malaysia, given the introduction of the Companies Act 2016¹ some three years ago. It is evident from the references made to Singapore law in their articles, that the adoption of principles and reasoning in case law from this jurisdiction is persuasive and highly respected in Malaysia.

9 We are deeply indebted to Associate Professor Chee Keong Low and Tak Yip Low who have written on a subject of fundamental importance and relevance, namely, the introduction of the concept of corporate criminal liability on commercial organisations and their associated persons for failing to prevent bribery under s 17A of the

1 Act 777.

Malaysian Anti Corruption Commission Act 2009² which will take effect from 1 June this year. The article provides a meticulous overview of the legislative intent and scope of the section, followed by available defences, before considering judicial pronouncements from the UK. They are of relevance to postulate how enforcement might ensue, as s 17A is based on a similar provision in the UK Bribery Act 2010.³

10 We are fortunate to be able to include a contribution from Dr David Fung Yin Kee, one of our most eminent practitioners from the Sabah Bar, to write on the law of contract in relation to the oft utilised but sometimes misunderstood decision of *Berjaya Times Square Sdn Bhd v M-Concept Sdn Bhd*.⁴ His scholarly and critical analysis of the decision and its boundaries provides useful insight both in relation to the application of the decision as well as to the future development and evolution of this area of contract law in Malaysia.

11 I wish to convey my appreciation and gratitude to each of the contributors to this edition, as well as The Right Honourable the Chief Justice of Malaysia Tan Sri Tengku Maimun binti Tuan Mat and the Managing Editor of the *Journal of the Malaysian Judiciary*, Justice Tan Sri Idrus bin Harun, who were most gracious and helpful in encouraging the production of this edition.

12 I particularly wish to express my deepest gratitude and indebtedness to Justice Phang and Elizabeth Sheares for their considerable patience and understanding, as well as seamless assistance in terms of editing, in ensuring the production of this special edition.

13 I must also thank Rachel Jacques and Dr Noradura binti Hamzah who assisted us with editorial corrections in Malaysia.

14 I end by following on from what I said at the outset of this introduction, namely, that it is a considerable privilege and honour to collaborate with the Singapore judiciary in the production of this special edition. The amity and solidarity of the bond that exists between our two judiciaries is a rare and precious affiliation. The special editions published in each of our jurisdictions reflect the importance placed by both the judiciaries of Singapore and Malaysia in fostering continued judicial co-operation and collaboration. As I said in the preface to our special

2 Act 694.

3 c 23.

4 [2010] 1 MLJ 597; [2010] 1 CLJ 269.

edition of the *Journal of the Malaysian Judiciary*, this can only contribute positively to regional reciprocity, unity and comity.
