



UiTM LAW REVIEW

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BOOK REVIEW

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The Business Managers
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UiTM 40450
Shah Alam, Selangor
MALAYSIA

Telephone: +603-55164123
Facsimile: +603- 5508107
Email: darbi@salam.itm.edu.my

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UNIVERSITI TEKNOLOGI MARA (UiTM)

An Introduction

Universiti Teknologi MARA (formerly known as MARA Institute of Technology) is Malaysia's largest institution of higher learning. It had its beginnings in 1956 as Dewan Latihan RIDA, a training centre under the supervision of the Rural Industrial Development Authority (RIDA).

Nine years later Majlis Amanah Rakyat (MARA) Act, 1965 provided for a change of name from Dewan Latihan RIDA to Maktab MARA (MARA College). The Act also defined a new role for the MARA College – to train Bumiputras (literally it means “the sons of the soil” - ie the indigenous people) to be professionals and semi-professionals in order to enable them to become equal partners with other ethnic groups (ie the former migrants, especially the Chinese and Indians) in the commercial and industrial enterprises of the nation.

In 1967 Maktab MARA was renamed Institut Teknologi MARA (ITM) (or MARA Institute of Technology). In August 1999, the Institute was upgraded to university status and named Universiti Teknologi MARA (UiTM).

As part of the government's affirmative action policies, UiTM provides education and training in a wide range of sciences, technology, business management and professional courses to 56,408 full-time students in 2000. Another 3,156 have enrolled for off-campus courses. In addition, there are 7,725 students in distance-learning and flexible-learning programmes.

The main campus stands on a 150-hectare piece of land on a picturesque hilly area of Shah Alam, the state capital of Selangor Darul Ehsan, about 24 kilometres from the city of Kuala Lumpur.

The Universiti has also established branch campuses in the various states of the Federation: Sabah (1973), Sarawak (1973), Perlis (1974), Terengganu (1975), Johor (1984), Melaka (1984), Pahang (1985), Perak (1985), Kelantan (1985), Penang (1996), Kedah (1997) and Negeri Sembilan (1999).

The Universiti currently offers 184 programmes conducted by 18 Faculties. These programmes range from post-graduate to pre-diploma or certificate levels. More than half of these are undergraduate and post-graduate programmes, while diploma programmes account for an additional 39%. Some of the post-graduate programmes are undertaken in the form of twinning programmes, through collaboration with universities based overseas.

The following 18 Faculties currently run programmes in the University:

Accountancy; Administration and Law; Applied Science; Architecture Planning & Surveying; Art & Design; Business & Management; Civil Engineering; Education; Electrical Engineering; Hotel & Tourism Management; Information Technology & Quantitative Science; Mass Communication; Mechanical Engineering; Office Management & Technology; Performing Arts; Science; Sport Science & Recreation.

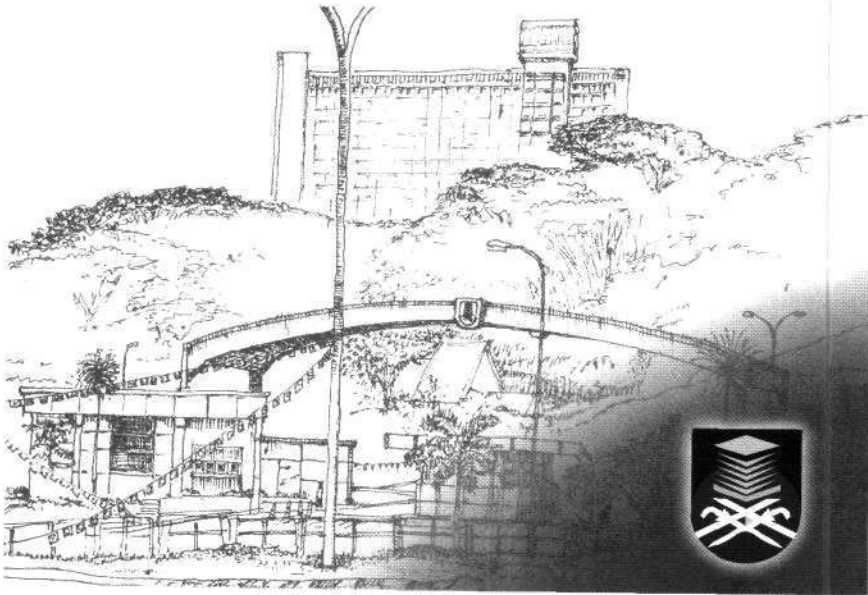
In addition to faculties there are 17 'academic centres' to cater various academic, business, technological and religious needs of the campus community. They are Extension Education Centre (PPL); Language Centre; Centre for Preparatory Education; Resource Centre for Teaching and Learning; Total Quality in UiTM (CTQE); Department of Academic Quality Assurance & Evaluation; Computer Aided Design Engineering Manufacturing (CADEM); Malaysian Centre for Transport Studies (MACTRANS); Text Preparation Bureau; Bureau of Research & Consultancy; Malaysian Entrepreneurship Development Centre (MEDEC); Islamic Education Centre; Centre for Integrated Islamic Services; Business & Technology Transfer Centre.

THE FACULTY OF ADMINISTRATION AND LAW, UiTM

The Faculty of Administration and Law (formerly known as the School of Administration and Law) was founded in 1968. It began as a centre offering British external programmes, the LLB (London - External) and the Chartered Institute of Secretaries (now Institute of Chartered Secretaries and Administrators). The only internal programme offered then was the Diploma in Public Administration and Local Government (DPALG). In 1978 the LLB (London - External) programme was terminated and replaced by the current internal LLB programme. The LLB is a three-year academic degree course based on the structure of the undergraduate law programmes normally offered in the British universities. Unlike most of the British LLB programmes, however, the LLB at the Faculty is conducted on a semester system. In 1982 the Faculty introduced a one-year LLB (Hons) programme towards which graduates of the LLB could advance their studies. The LLB (Hons) is a professional and practice-oriented programme that provides training to students for their career in the legal practice as Advocates and Solicitors. The delivery of the curriculum for this course adopts the method and strategy of simulated or experiential learning. Because of the unique experience it provides to students in their legal training this course has acquired wide recognition and acceptance among the Malaysian public.

The Faculty of Administration and Law enjoys strong connections with the legal profession, particularly the Malaysian Bar, and the industry. It takes pride in continually developing pioneering options in its degree programmes, both at the academic and professional levels. In 1995 the Faculty introduced the degree of Bachelor in Corporate Administration (Hons) to train young and bright Malaysians to hold office as Company Secretaries. In the pipe-line are some new courses - Bachelor of Law and Management (Hons), Bachelor of Administrative Science (Hons), Masters of Law and Executive Masters in Administrative Science.

The Faculty currently comprises some 70 academic staff from both the disciplines of law and administration. It has about 600 students reading for the LLB and LLB (Hons) and 500 students reading for the Diploma in Public Administration and Bachelor in Corporate Administration (Hons). The Faculty admits about 200 students each year.



Main Entrance to Shah Alam Campus

EDITORIAL NOTES

This law journal had a long period of gestation in the Faculty. There were several attempts in the past, by individuals or the faculty collectively, to bring about its parturition. It is no easy task to initiate an academic journal, regardless of the discipline it represents. It demands a high degree of commitment in time, energy and attention. It calls for an intense love of labour for scholarship among a critical mass of the faculty members, either in the editorial board or as article contributors. But, at long last, this journal has arrived.

Many factors led to this successful launch. The recent elevation of this institution to university status created its own impetus. Our strong law programme and its capable teachers demanded, and will benefit from, this specialist forum for academic debate and analysis. There is support within the legal profession and among our many distinguished alumni for such a journal, too. We are delighted by the synergy and collaborative goodwill the notion of a journal has evoked. So, we were able to marshal much expertise and experience to bring out this inaugural issue of the Journal.

Academic faculty at UiTM are part of the worldwide network of academia. We must participate in discussions and debates over issues that are not only of direct academic and professional concern but also of importance to the general public. A journal such as this facilitates reflective and disciplined participation. In doing so, it helps the Faculty, and the University, to undertake its noble role in serving the general community.

A learned journal is one of the major measures by which the weight and prestige of an institution are judged. It reflects the institution's maturity and ability to manage and conduct its specialist discipline. It reflects a confidence among its faculty to offer themselves to be evaluated in the open market place of ideas, and it serves notice of the faculty's readiness to serve the community at large. This Journal, in no small measure, marks the coming of age of the Faculty.

The Journal functions also as a meeting point for law teachers and practitioners who share a common interest in various areas of law. It provides them a source of information on the current and topical issues in their specialised areas. It creates a forum for the exchange of ideas and for engaging in discourse over sometimes intricate and often vexed legal issues. Much is gained by the legal fraternity, as well as the legal system, through such engagements and encounters.

Law teachers, as members of the broader academic community, are aware that it is no longer tenable for them to function solely within their traditional ivory towers, isolated from the reality of the world outside. For career and professional advancement, and for taking their rightful role in the community, no academic can confine

herself to her classroom or departmental audience. She must reach for a wider audience. The recognition (or lack of it) that she gains from her peers, both within and without the discipline, will speak for her standing and credibility in the community, both scholarly and otherwise. This Journal will serve as one channel for the Faculty members to reach that wider audience.

There are relatively few academic legal journals in this country. Most existing legal publications cater for the professional needs of legal practitioners. One ramification of this is that there are few discourses on theoretical and abstract legal issues. Yet these issues are important for the fuller appreciation and development of the law and the legal system, by the legislature, the reform bodies and the courts. This Journal will try to answer this need and stimulate discussions on issues that are of interest and relevance to the academic and broader communities.

The labour and skill required for this Journal to thrive will challenge the staff of the institution and the supporters of this initiative among the profession and the wider community. We hope the Journal sails well in fair winds.

Our wish is that Malaysia's legal profession, its legal academic circle and the many students and practitioners of law in this country and elsewhere will benefit from this forum for analysis and reform. We hope this Journal makes an important contribution to debate on vital legal matters in our society. We hope, too, that our quest for self-expression and critical reflection among the members of the legal academia will be assisted by this Journal. It is with great pleasure and some satisfaction at the completion of this worthy task that we complete this inaugural Editorial.

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Ketahui Undang-undang Kontrak dan Agensi di Malaysia

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*Oleh Mohd. Basir Bin Suleiman**

Undang-undang kontrak dan agensi merupakan undang-undang yang telah lama terpakai. Ia menyentuh berbagai aspek di dalam kehidupan seharian. Buku ini dapat dijadikan panduan untuk memahami undang-undang tersebut. Tidak keterlaluan jika dikatakan bahawa buku ini merupakan satu aset dan rakan kepada individu, samada mereka itu pelajar, pengguna (konsumer), peniaga, peguam atau sesiapa sahaja yang berminat mendalami bidang undang-undang.

Walaupun terdapat banyak buku yang menyentuh topik seperti ini, iaitu kontrak dan agensi, tetapi kebanyakan buku tersebut adalah terbitan di dalam bahasa Inggeris, justru itu, menurut penulis buku ini, beliau terpanggil untuk menambahkan bilangan buku bahasa melayu dalam genre ini.

Bahasa yang mudah telah digunakan untuk memberi kefahaman mengenai subjek yang dibincangkan. Penulis juga telah berjaya mengekalkan bahasa laras undang-undang yang menjadikan buku ini sesuai digunakan oleh pelajar yang mengambil mata pelajaran undang-undang kontrak dan agensi. Kejayaan tersebut dicapai melalui penggunaan contoh-contoh kontrak yang menjadi amalan masyarakat dalam kehidupan seharian.

Buku ini dibahagikan kepada 16 bab. Setiap bab menerangkan mengenai unsur-unsur perlu dalam mewujudkan kontrak serta agensi. Dalam membincangkan unsur-unsur berkontrak, penulis kadang-kadang memilih untuk mengengahkan teknik

* Pensyarah, Fakulti Pentadbiran dan Undang-undang, Shah Alam, LLB (Hons) Universiti Teknologi MARA, Malaysia.

persoalan sebagai sub-topik. Pendekatan tersebut dapat menarik perhatian pembaca kepada isu yang hendak diperkatakan, tanpa perlu membaca keseluruhan teks untuk mencari dan mengenali isu yang dibincangkan.

Bab 1 membincangkan tentang prinsip undang-undang kontrak yang terpakai di Malaysia.

Bab 2 adalah menyentuh tentang pengertian kontrak iaitu takrif kontrak dan pengenalan ringkas unsur-unsur penting pembentukan kontrak.

Bab 3 hingga bab 7 menerangkan mengenai empat elemen sah kontrak iaitu tawaran dan penerimaan, balasan, niat dan keupayaan.

Bab 8 pula penulis mengupas pengertian kontrak 'boleh batal'. Kontrak menjadi boleh batal apabila seseorang itu tiada kerelaan bebas untuk berkontrak. Lima elemen kontrak 'boleh batal' telah dibincangkan di sini iaitu elemen-elemen paksaan, pengaruh tidak wajar, tipuan, salahnyataan dan khilaf.

Bab 9 membincangkan tentang pelepasan kontrak manakala bab 10 pula adalah tentang remedi yang boleh didapati apabila berlakunya mungkir kontrak.

Didalam bab-bab yang seterusnya pula, penulis menyentuh tentang undang-undang agensi di Malaysia. Bab 11 adalah pengenalan kepada undang-undang agensi di mana diberikan definisi siapakah ejen dan siapakah prinsipal.

Bab 12 menceritakan tentang pembentukan hubungan agensi, iaitu antara lain, perlantikan seorang ejen dalam sesebuah agensi yang sah.

Bab 13 adalah mengenai jenis-jenis agensi dan kuasa seseorang ajen.

Bab 14 membincangkan tentang tugas seorang ejen terhadap prinsipalnya dan tanggungjawab seorang prinsipal kepada ejennya.

Bab 15 pula menerangkan tentang jenis atau kategori prinsipal dan apakah kesan kontrak yang dibuat oleh ejen menurut jenis atau kategori prinsipal ini.

Bab 16 adalah bab yang terakhir dan ia menyentuh penamatan hubungan agensi. Penamatan agensi dibahagikan kepada dua iaitu melalui tindakan pihak-pihak yang berkenaan dan juga melalui operasi undang-undang.

Contoh-contoh kontrak dan agensi yang diamalkan oleh masyarakat, didalam kehidupan seharian mereka, merupakan tunjang kekuatan buku ini. Pengolahan yang baik oleh penulis, dapat menyedarkan pembaca bahawa perlakuan mereka yang dianggap biasa dan remeh dalam kehidupan seharian, sebenarnya, mempunyai konotasi undang-undang khususnya undang-undang kontrak dan agensi. Penulis

juga telah memaparkan fakta kes secara terperinci tetapi mudah dan ringkas untuk menerangkan sesuatu isu.

Akhir kata, buku ini sangat sesuai digunakan oleh bukan sahaja pelajar undang-undang tetapi juga oleh golongan yang tidak berkecimpung didalam bidang undang-undang kerana mereka akan dapat mempelajari cara bagaimana satu-satu kes itu menjadi teras kepada undang-undang.