LEGAL DIGEST

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by Wan Mardiana Wan Musa

REGISTER YOUR RIGHTS!

An author wrote a best-selling book; a songwriter composed a hit song; a poet created beautiful poem; an engineer invented new technology; a designer designed a unique sculpture; and they wonder how to protect their hard work and effort as their masterpieces are being imitated?

Imitation has evolved from time immemorial. The first imitation was done by the son of Adam a.s. when he buried the dead body of his brother by imitating the sparrow's ways of burying its dead opponent. Therefore, this shows that imitation has indeed a nature of mankind.

The emergence of new technologies due to rapid globalization has enhanced the imitation activities. This has lead to increase of awareness among the inventors in protecting their works since the imitation products are not much different with the original ones.

Hence, the law has provided various protections covering different fields of work and masterpiece which include copyrights, patent, trademarks and industrial designs.

Now, the work of an artist can be protected under copyright law. In Malaysia, this kind of protection is governed by Copyright Act 1987 which mainly protecting artistic and literary works. Examples of such works are musical works, sound recording, films, and broadcasts and published editions. Thus, writers, composers, film directors are able to get protection under this law.

Meanwhile, the Malaysian inventors may seek legal protection under the law of patent from both Patents Act 1983 and Patents Regulation 1986. In order to be protected under these laws, the invention must be new, involves inventive steps and must be industrially applicable. Engineers who invented new technology and have satisfied those requirements may apply for patent protection.

The Malaysian Industrial Design Acts 1996 protects designs that are created based on industrial process or means, be it two dimensional or three dimensional. The design must be an article meaning that when it is done and completed, it has 'an appeal to and judged by the eye'. In other words the article is appreciated for its appeal and not for its function. Thus, if a designer designs a sculpture (three-dimensional) or if a designer designs rare and unique batik design (two-dimensional), he may seek protection under design law.

Trademark law serves protection for goods and services of industrial or commercial enterprises. It is governed under Trade Marks Act 1976 and Trade Marks Regulations 1997. Trademarks can be sign, emblem, letters, numbers, drawings or pictures which can be distinguished from other marks featuring in others products. Examples of trademarks are Coca Cola corporate logo, Coca Cola Bottle 1899 (which was Coca Cola vintage advertising), trademarks of love (trademarks which uses the word or image "love"), the word "Baby On Board" and many more. Interestingly in Malaysia, there was a case involving alleged trademark between McDonald and McCurry, where McDonald claimed that McCurry has infringed their trademarks on the word "Mc". However, the court refused to acknowledge that the suffix "Mc" belongs to McDonald alone.

In a nut-shell, if you love your effort and want your work to be protected, do affix your rights on them. By registering your work, you will benefit exclusive rights against others who try to infringe your work. Hence, to those who invent or design, do not wait, check your rights now!

Editor's Column

Dear friends and colleagues,

We are back! This time Legal Digest brings you various interesting articles that are very much related to our daily lives. Read about disciplinary actions that can be taken against UiTM staff under 'Akta 605' and also how to make a police report for road accidents. These are just two examples of articles that are featured in our 2nd volume. A total of 12 articles including 2 contributions from our students and 1 from a colleague in UiTM Kelantan have been submitted and edited for your reading pleasure.

The 2nd volume is also special because we are bidding farewell to our beloved sister, Farhah Abdullah (who is pursuing her PhD this December) and welcome aboard to Wan Mardiana Wan Musa (affectionately known as 'Dya') who joined the Law Department family in July 2009.

Thank you! Thank you! Thank you to everybody for making this 2nd volume a reality especially to my co-editors, Ernie and Farhah. Our gratitude also goes to Mr. Abd. Ra[illegible] without whom the Legal Digest would only be a fantasy.

Happy reading!

Jusniza

Knowing TAN SRI DATO' SERI ZAKI TUN AZMI

Tan Sri Dato' Seri Zaki bin Tun Azmi (born September 12, 1945 in Alor Star) is the sixth and current Chief Justice of Malaysia (2008-present). He was appointed by the King on October 21, 2008 after his predecessor, Abdul Hamid Mohamed, retired from office.

Zaki, who was previously a practising lawyer, was directly appointed as a Federal Court Judge on September 5, 2007—a first in Malaysian judicial history. Zaki is the son of former Lord President of the Federal Court Mohamed Azmi Mohamed. He was appointed as President of the Court of Appeal in December 2007.

Background
Early in his life, Zaki attended school in Sultan Abdul Hamid College in Alor Star, furthering his studies at Anderson School in Ipoh and finally in English College in Johor Bahru.

As Barrister-at-law and lawyer
Zaki became a Barrister-at-law through Lincoln's Inn in London, served at the Attorney General's Chambers from 1969 to 1970, and later served the subordinate courts from 1970 to 1973. In 1973, Zaki returned to the Attorney General's Chambers serving as a Federal Counsel and in 1976 he became a senior Federal Counsel under the Ministry of Home Affairs. Zaki was called to the Malayan Bar in 1983 and practised as a lawyer at Shahrizat Rashid & Lee beginning 1985.

As Federal Court judge
On September 5, 2007, Zaki was appointed as Federal Court judge. Later on December 11, 2007 he became the President of the Court of Appeal. Zaki finally became Chief Justice on October 21, 2008. Zaki began his job by announcing that he would get tough and take action against errant judges to prevent the image of the judiciary from being tarnished.

NOTE:
The **Chief Justice of Malaysia** *(Malay: Ketua Hakim Negara)*, also known as the **Chief Justice of the Federal Court**, is the office and title of the head of the Malaysian judiciary system. The title has been in use since 1994, and prior to this it was known as the Lord President of the Federal Court. The Chief Justice is the head of the Federal Court, the highest court of Malaysia. It is the highest position in Malaysian judicial system followed by the President of the Court of Appeal, Chief Judge of Malaya, and the Chief Judge of Sabah and Sarawak.

FETAL CHOICE:
WOULD YOU ABORT A DEFORMED FOETUS?

by : Rosmawati Abdul Rahman

Situation 1

"Ferial is a 39-year-old housewife who was in her 10th pregnancy when her doctor told her that her baby was deformed and would be partially paralyzed. She was told, however, that the handicap would not affect the baby's mental abilities but it would affect the child's ability to move. "Even though it was my 10th pregnancy, I clung to my baby and refused to consider abortion. When my family learned of the problem, they tried to convince me that there was no point in keeping a child that would suffer all its life and cause me to suffer as well. I refused to accept their arguments and continued with nonstop tears until the child was born. I lived between hope in God and fear that the child would die. Now, however, more than 14 years have passed and even though my son needs special care and is in a wheelchair, he's the smartest of my children and the most compassionate. He has a wonderful sense of humor, is cheerful and is the joy of the household. I thank God that I stood my ground and kept him because I believe it was the right choice. I'm glad I didn't listen to those around me who'd wanted me to have an abortion."

Situation 2

"Umm Abdullah is a 30-year-old government employee. Her doctor told her that because of a multitude of fetal deformities, she should terminate her pregnancy. "It was my first pregnancy, only a few months after my marriage. My doctor told me that my fetus had a number of deformities all over its body — in its heart, its brain and its spine. He asked me to consult other doctors and get their consent to an abortion but when I consulted them, none would advise me. In the end, I got an official report but still had to get approval from a Syariah committee. Finally, after two and a half months, I got its permission. "About aborting her fetus, Umm Abdullah said: "I was agreeable to the idea of an abortion because it would have been impossible for the baby to be born alive. If it had had only simple deformities, I would have carried on and gone through anything to help it and take care of it."

Many pregnant women find themselves in a terrible situation when they learn that the child they are carrying is deformed. What should the mother's position be? Should she abort the fetus in order to spare future pain and complications? Or should she accept the pregnancy and take care of the child, hoping that somehow the child will be able to overcome its deformities and handicaps? Women of course have differing opinions .What is important is the Syariah and the medical positions.

Under Syariah, if it is proven, beyond any doubt, by a trustworthy medical committee, that the foetus is deformed and that this deformity cannot be treated by the **specialists, then, abortion is permissible within the first** 120 days from the beginning of the pregnancy. This is **after taking into consideration the difficulties it would** face in life and the hardship this would present to the parents and also the burden of care it would place on the society.

If the soul has been breathed into the foetus and it has completed the 120 days, then it is not permissible to abort it, no matter what the deformity, unless continuation of the pregnancy would put the mother's life in danger. This is because after the soul has been breathed into the foetus, it is considered to be a person who must be protected, regardless of whether it is free of disease or not and regardless of whether there is hope of recovery or not.

There are several views given by the scholars pertaining to the issue. **Jād al-Haqq, the late Sheikh Al-Azhar,** advised against abortion of deformed foetuses, but justified it in cases of very severe deformities and genetic diseases. This definition is quite vague as to the meaning of the term "severe". It allows aborting a deformed foetus only during the first 40 days of pregnancy. This limitation is quite problematic as it provides a solution only to parents who are aware of a possible problem due to genetic or other fetal risks and go through an early pre-natal test.[1]

Other scholars support this approach, such as Abul Fadl **Mohsin Ebrahim and Zallūm Muftīal-Qardāwī, They even** recommend not performing an abortion, since deformed foetuses can sometimes be cured in the womb. Sheikh **Nasr Farīd wāsil, the "muftī of the Egyptian lands" de**clared that a deformed foetus may be aborted if seventeen weeks of pregnancy have not yet passed.[2]

Sheikh Muhammad Ibn Saad Al-Majed stated that, "Whether the baby is deformed or not, it is not permissible to abort it if God has already given it a soul unless there is clear danger to the mother's life. And this is something that scholars have discussed and agreed upon. If the abortion is because the baby is deformed or illegitimate or any reason that would compel a woman to consider abortion, the only condition would be that it be done before the foetus has a soul. That is the only condition."

As a conclusion, all Muslims must always believe that everything that befalls them is a test from Allah and they must deal with it with patience because Allah knows best. However, there will always be some guidance on how to make the right decision. Hopefully, whatever the decision is, it will always bring us closer to Allah.

[1]Farhah Abdullah & Rosmawati Abdul Rahman, "Abortion, should we make it legal or not", Proceeding paper presented at National Conference on Child Law, 13th July 2008, based on the article "The Right not to be born".

[2]Ibid

ANDA STAF UiTM KE?

oleh : Siti Marina Amit

Jika jawapan anda kepada soalan di atas adalah YA, maka artikel ini khas untuk anda. Tahukah anda sebagai seorang kakitangan UiTM anda tertakluk di bawah sebuah Akta? Pada 1hb November 2000, telah digazetkan sebuah akta yang diberi nama Akta Badan-badan Berkanun (Tatatertib dan Surcaj) 2000 atau juga dikenali dengan Akta 605. Akta ini mentadbir perkara-perkara berkaitan dengan tatatertib dan pengenaan surcaj ke atas pegawai-pegawai badan-badan berkanun.

Apakah perbuatan yang boleh menjadi sebab tindakan tatatertib diambil terhadap anda? Secara amnya, kesalahan boleh dibahagi kepada 3:

1) Kesalahan Am;
2) Kesalahan Ekonomi;
3) Kesalahan ciri peribadi dan tatakelakuan.

Kesemua kesalahan tatatertib ini terkandung di dalam Jadual Kedua Akta ini.

Kesalahan Am

Seksyen 3 memperuntukkan tentang kesalahan-kesalahan am seperti berikut:

1) Membelakangkan tanggungjawab terhadap Universiti Teknologi MARA (UiTM) demi kepentingan sendiri;
2) Melakukan sesuatu yang mana kepentingan peribadi bercanggah dengan kewajipan terhadap UiTM;
3) Mencemar nama UiTM;
4) Kurang cekap;
5) Tidak jujur atau tidak amanah;
6) Tidak bertanggung jawab;
7) Membawa atau cuba membawa pengaruh atau tekanan luar bagi menyokong mana apa-apa tuntutan samada diri sendiri atau orang lain;
8) Ingkar perintah;
9) Cuai.

Kesalahan Ekonomi

1) ***Seksyen 4*** memperuntukkan bahawa seseorang pegawai tidak boleh tanpa kebenaran:
   - Mengambil bahagian dalam pengurusan atau apa-apa urusan pengusahaan komersil, pertanian atau perindustrian;
   - Mengambil upah apa-apa kerja dengan mana-mana institusi, syarikat, firma atau individu persendirian;
   - Sebagai pakar (samada memberikan laporan atau keterangan) samada secara percuma atau berbayar.

   Jadi, bagi mereka yang melakukan kerja luar, sebagai contoh mengajar di institusi pengajian tinggi awam/ swasta (IPTA/IPTS) lain (selain UiTM) atau memberi khidmat nasihat kepada institusi luar, maka anda dinasihatkan untuk mendapatkan kebenaran dari ketua jabatan. Kegagalan berbuat demikian boleh menyebabkan tindakan tatatertib boleh diambil terhadap anda sebagai penjawat awam.

2) ***Seksyen 7*** menghalang seseorang pegawai itu dari menerima atau memberi sebarang hadiah, dalam apa jua bentuk, semasa menjalankan tugas rasminya. Halangan ini diperpanjangkan kepada isteri atau suami pegawai berkenaan atau mana-mana individu yang mempunyai hubungan dengannya.

3) ***Seksyen 9*** meletakkan tanggungjawab bagi seorang pegawai untuk membuat pengisytiharan harta samada miliknya sendiri termasukkan juga harta isteri atau suami dan anak-anaknya.

   Bagi yang tidak berharta, jangan duduk diam sahaja kerana anda juga perlu membuat pengisytiharan bahawa anda tidak mempunyai harta. Bagi sebarang harta yang diperolehi atau dilupus selepas pengisytiharan dibuat, ianya mesti segera diisytiharkan kepada ketua jabatan.

4) ***Seksyen 10*** memperuntukkan bahawa ketua jabatan berhak untuk memanggil pegawai yang pada pendapatnya menikmati taraf hidup yang melebihi pendapatan rasminya dan dianggap melebihi pendapatan persendirian yang sah.

   Contohnya, pensyarah gred DM45 tetapi hidup mewah mengalahkan pensyarah JUSA, maka ketua jabatan berhak melihat samada pensyarah ini ada membuat sebarang perisytiharan pendapatan atau harta lain. Jika tiada dalam maklumat peribadi staf berkenaan maka ketua jabatan boleh memanggil anda untuk memberi penjelasan.

5) ***Seksyen 12*** tidak membenarkan seseorang pegawai meletakkan dirinya dalam keadaan keberhutangan yang serius. Seorang pegawai itu berada dalam keadaan keberhutangan yang serius bila hutangnya melebihi (6) enam kali pendapatan rasminya atau dia seorang bankrap yang belum lepas (belum discaj) dari kebankrapannya.

   Maka, dinasihatkan kepada semua untuk mengira hutang-hutang anda. Kalau melebihi enam (6) kali gaji bulanan anda maka anda dalam keadaan keterhutangan yang serius. Elok lah membuat laporan kepada Ketua Jabatan dengan segera.

6) ***Seksyen 14*** menghalang seseorang pegawai dari menjalankan aktiviti meminjamkan wang dengan faedah samada dengan atau tanpa cagaran.

7) ***Seksyen 15*** tidak membenarkan seorang pegawai itu dari melibatkan diri (membeli, menjual atau lain-lain aktiviti yang berkaitan) dalam pasaran niaga

hadapan, tempatan mahupun luar negara.

8) Seksyen 16 memperuntukkan bahawa seorang pegawai tidak boleh mengadakan, mengambil bahagian atau mengelola apa-apa cabutan bertuah, loteri kecuali untuk tujuan kebajikan.

Kesalahan ciri peribadi dan tatakelakuan

1) ***Seksyen 5*** memperuntukkan tentang etiket pakaian seorang pegawai. Bagi seorang pegawai UiTM, sila rujuk Pekeliling Pendaftar bil.30/2007, bagi mengetahui etika berpakaian yang betul.

2) ***Seksyen 6*** adalah mengenai kesalahan berkaitan dengan dadah. Seorang pegawai itu tidak boleh menggunakan, mengambil sebarang dadah berbahaya kecuali yang telah diberi oleh doktor yang bertauliah. Apatah lagi menyalahguna atau menagih apa-apa jenis dadah merbahaya. Kesalahan ini boleh menyebabkan anda dikenakan tindakan tataertib iaitu dibuang kerja!

3) Seksyen 18 melarang seorang pegawai dari membuat pernyataan awam (lisan atau bertulis atau dengan apa cara sekali pun):
   a) Jika ia akan mendatangkan mudarat kepada sebarang dasar, rancangan atau keputusan yang dibuat oleh UiTM atau Kerajaan;
   b) Juga tidak dibenarkan untuk membuat sebarang pernyataan awam jika pernyataan itu akan memalukan atau memburukkan nama UiTM;
   c) Membuat sebarang ulasan tentang kelemahan atau kelebihan sebarang dasar, rancangan atau keputusan yang dibuat oleh UiTM atau Kerajaan;
   d) Mengedar sebarang penyataan samada oleh anda sendiri atau orang lain;
   e) Memberi sebarang penjelasan mengenai sebarang peristiwa yang berlaku atau laporan yang melibatkan UiTM atau Kerajaan.

Larangan ini tidak terpakai jika kebenaran bertulis secara am atau khusus telah diberikan terlebih dahulu dari Menteri.

Pernyataan awam di sini bermaksud sebarang pernyataan, penjelasan atau ulasan yang dibuat kepada pihak media massa atau media elektronik termasuk laman web sosial seperti blog dan facebook menjadi tatapan umum atau orang ramai atau semasa memberi syarahan atau ucapan awam atau sebarang penerbitan (artikel di majalah / suratkhabar, buku).

4) ***Seksyen 20*** adalah larangan mengambil bahagian dalam politik. Tahap larangan terbahagi kepada 2:
   a) Kumpulan Pengurusan Tertinggi atau Kumpulan Pengurusan dan Professional tidak dibenarkan:
      i) membuat sebarang pernyataan awam berkaitan dengan apa-apa perkara yang menjadi isu parti-parti politik itu;
      ii) menerbit atau mengedar apa-apa bahan yang mengandungi pernyataan awam di atas;
      iii) merayu undi bagi mana-mana parti politik;
      iv) Bertindak sebagai ejen pilihan raya atau ejen tempat mengundi;
      v) Bertanding apa-apa jawatan dalam mana-mana parti politik;
      vi) Memegang apa-apa jawatan dalam mana-mana parti politik;
      vii) Memakai mana-mana lambang sesuatu parti politik;
   b) Kumpulan Sokongan walaubagaimanapun boleh bertanding atau memegang apa-apa jawatan dalam sesuatu parti politik setelah mendapat kelulusan bertulis dari Lembaga Tatatertib.

   Bagaimanapun, seksyen 20 tidak pula melarang mana-mana pegawai dari menjadi anggota biasa atau ahli mana-mana parti politik.

5) Bahagian 3 Jadual Kedua Akta ini memperuntukkan adalah merupakan satu kesalahan jika seseorang pegawai telah tidak hadir bertugas tanpa cuti atau kebenaran atau tanpa sebab yang munasabah.

   Jika anda tidak hadir selama tujuh (7) hari berturut-turut dan tidak dapat dikesan, maka Ketua Jabatan berhak untuk menghantar surat arahan bertugas ke alamat terakhir yang diketahui. Selepas itu samada anda hadir atau tidak , satu tindakan tatatertib akan dimulakan terhadap anda.

   Jika surat tidak dapat diserahkan atas sebab-sebab tertentu , maka satu notis akan akan dikeluarkan di dalam suratkhabar terpilih menghendaki anda untuk kembali bertugas. Jika anda masih gagal hadir dalam masa tujuh (7) hari dari tarikh penyiaran notis, maka anda disifatkan sebagai dibuang kerja.

   Jika mana-mana pegawai telah didapati bersalah atas mana-mana kesalahan tatertib,
   Seksyen 40 menyenaraikan hukuman-hukuman yang boleh dikenakan terhadapnya:
   a) Amaran
   b) Denda
   c) Lucut hak emolumen
   d) Tangguh pergerakan gaji (3,6,9 atau 12 bulan)
   e) Turun gaji (turun secara mendatar dan tidak melebihi 3 pergerakan gaji)
   f) Turun pangkat
   g) Buang kerja

   Bahagian 4 Akta adalah eksklusif berkaitan dengan Surcaj. Seseorang itu boleh dikenakan surcaj jika beliau menyebabkan UiTM terpaksa membayar sebarang wang yang tidak sepatutnya, atau menyebabkan sebarang harta atau barang simpanan UiTM musnah.

   Misalnya, jika anda telah mendaftarkan diri untuk menghadiri mana-mana seminar tetapi tanpa sebab yang munasabah, anda telah tidak menghadiri seminar berkenaan, tindakan anda itu boleh menyebabkan anda dikenakan surcaj oleh majikan terhadap perbelanjaan yang tidak sepatutnya dikeluarkan oleh UiTM untuk anda.

Penutup

Apa yang termaktub di dalam akta ini bukanlah sesuatu yang baru. Sebagai seorang insan, kita dituntut untuk menepati prinsip-prinsip moral tertentu seperti beramanah, bertanggungjawab, jujur, tekun, bersih, berdisiplin, bersyukur, berdedikasi dan budi pekerti yang luhur. Akta ini memberi penekanan betapa pentingnya seseorang penjawat awam itu mematuhi prinsip-prinsip moral berkenaan dengan memperuntukkan tindakan-tindakan tatatertib yang boleh diambil ke atas seseorang penjawat awam yang melanggar mana-mana peruntukan. Semoga penerangan akta ini boleh membantu para penjawat awam seperti kita di dalam menjalankan tugas-tugas hakiki samada sebagai kakitangan akademik atau sokongan dengan lebih berkualiti lagi. Bukankah motto kita kualiti komitmen kita...UiTM di hati kita!

How to Lodge a Police Report for Road Accident?

By Farhah Abdullah

Road accidents may happen at any time. When they occur, sometimes, there will be an involvement of police reports. Therefore, it is advisable that every road user understand the procedures involved when lodging a police report. A police report is a form of complaint can be made in one of the following ways:-

a) The complaint may be given orally by the complainant to the police officer who will record the complaint; or
b) The complainant may personally write the complaint in a form known as the Police Form 55

Borang Pol. 55

Pada..., pukul... pagi/petang/malam, ketika saya sedang memandu kereta saya Proton Saga warna putih nombor pendaftaran..... di KM 6, Jalan Pak Sabah, Dungun, sebuah kereta jenis Nissan warna kelabu metalik dengan nombor pendaftaran..... yang datang daripada arah depan secara tiba-tiba memotong sebuah kereta lain, telah melanggar kereta saya di bahagian hadapan. Kereta saya mengalami kerosakan akibat daripada perlanggaran berkenaan dan saya turut tercedera di bahagian lengan dan telah mendapatkan rawatan di hospital/klinik.... pada.... Inilah pengaduan saya.

Sample of Report using the Police Form 55

All reports made using either one of those ways mentioned above must be well written in ink to avoid being accidentally erased. Complaints can be made in any police station in Malaysia regardless of the place of where the accident actually occurred. Generally, report of road accident will involve three (3) stages namely:-

Stage 1: This refers to reports lodged by those who were involved in the road accident

Section 52 of the Road Transport Act (RTA) 1987 requires the parties involved in a road accident to make a report within 24 hours at any police station. As mentioned earlier, the reports can either be made in writing by the person(s) himself using the Police Form 55 or through the police personnel who is on duty. Alternatively, those who involved in a road accident may contact straightaway any police station by phone informing them about the accident and the police who received the call will write down the details. Also, the person(s) himself, if he still at the accident scene may write on a piece of paper the details of the accident and later hand it over to the police as a report.
The report must contain the following information:-

i. The date, time and place of the accident including any signs, landmarks which can be used to describe the scene where the accident happened;
ii. The parties involved including their vehicles' registration numbers, types and colours;
iii. The victims involved and their vehicles or any damage sustained by vehicles or any damage to public property;
iv. Other information obtained from own observation before, during and after the accident. The observation should be based on the actual occurrence (not on assumptions).

Stage 2: This refers to the police investigation on those who are involved in the road accident as well as the examinations on the vehicles and other findings

Once the report has been lodged, the complainant will be referred to the Investigation Officer. Investigation will be initially carried out by recording statements from witnesses, visiting the scene of accident, examining the vehicles and finally classifying the traffic offence. The classification of the traffic offence is based on facts and data collected from the investigation.

For light vehicles, if there is no injuries involved and with only slight damage, there is no need for further investigation. This type of case is classified as Refer to Insurance (RTA) and the complainant may make a civil claim.

However, if a serious accident happened involving light vehicles, further investigation will be carried out and an investigation paper will be drawn. After the investigation is completed and all evidences and data have been obtained, the party who is found guilty will be charged in Court.

Additionally, if the cases are compoundable, a notice of summons will be issued against the guilty party. The compound may be paid at C.O.P.S Traffic Counter (Compound Online Payment System).

Stage 3: This refers to the documented reports

All reports are documented and can be purchased at fixed rate shortly after the complaint is lodged or at any time not later than three (3) days after the date of complaint.
How to Claim for Vehicle Damage?
There are two (2) ways to claim damage on vehicle and these are:-

a) Claim from the your Insurance Company
Firstly, study your insurance policy. If it is a comprehensive policy, you may claim for any damage to your vehicle. Secondly, do check your excess clause so that the claim will not exceed the limit stated.
b) Claim from the Other Party's Insurance Company
If your insurance policy is comprehensive, you may either claim from your own insurance or from the other party's insurance company. However, if your insurance policy is a third party policy, you can only make claim from the other party's insurance company. For a third party policy insurance holder, it is advisable to engage a lawyer.

How to engage a lawyer?

You are free to choose your own lawyer but you must choose wisely. Once you have chosen a lawyer there is a warrant to be signed. This document is an approval that you have appointed the lawyer and authorizing him to act on your behalf.

Claim for injury

What can be claimed if you are injured? You may claim for general damages or/and special damages. General damages are compensations for pain and suffering as a result of the injury. Special damages deal with specific monetary expenses incurred by the claimant due to the accident. Examples of monetary expenses are costs of repairing the vehicles and medical expenses.

STUDENT Contribution

Assalamualaikum dan selamat sejahtera kepada semua...

Nama saya Norshaheira Anuar. Terima kasih terlebih dahulu kepada Fakulti Undang-undang kerana memberi saya peluang untuk berkongsi pengalaman sepanjang hampir 5 bulan saya mempelajari subjek Legal Aspect in Food Service ini. Terima kasih yang tidak terhingga juga kepada pensyarah saya, Cik Ernie Melini yang pada saya seorang pensyarah yang sangat penyabar,paling sporting dan yang paling penting tidak pernah penat memberi tunjuk ajar kepada saya dan juga kawan-kawan yang lain.

Semasa saya kecil, saya pernah bercita-cita untuk menjadi seorang peguam, kerana kata ibu saya, saya sangat suka bercakap dan suka membantah apa yang orang lain cakap. Dan saya juga tidak menafikan saya mempunyai sifat yang sebegitu. Tetapi apabila saya memasuki alam persekolahan, dan saya mula mempelajari subjek sejarah, saya rasakan cita-cita saya untuk menjadi seorang peguam mula pudar sedikit demi sedikit kerana baru saya sedar bahawa untuk menjadi seorang peguam,saya perlu banyak membaca.

Tetapi apabila melangkah ke university dan berada di semester terakhir, saya diberi peluang untuk berada di kelas Cik Ernie Melini untuk mengambil subjek Legal Aspect In Food Service,perasaan untuk menjadi peguam kembali timbul dalam diri saya. Di sinilah saya mula memahami apa sebenarnya yang dimaksudkan dengan undang-undang kerana sebelum ini apabila saya mendengar perkataan undang-undang,di fikiran saya hanyalah peguam dan mahkamah.

Saya mula mempelajari apa yang dimaksudkan dengan undang-undang, jenis undang-undang yang terdapat di Negara kita dan bagaimana Negara kita mengamalkan dan melaksanakannya. Undang-undang tidak hanya terhad kepada jenayah dan salah laku, tetapi undang-undang juga diaplikasi dalam makanan dan minuman. Sebagai contoh, penjual yang menjual makanan dan minuman yang melebihi tarikh luput akan dikenakan hukuman kerana melanggar undang-undang. Begitu juga dengan pengusaha hotel dan restoran. Mereka perlu mengetahui undang-undang yang berkaitan dengan perniagaan yang mereka jalankan.

Legal Aspect In Food Service juga memberi peluang kepada saya dan rakan-rakan untuk megetahui dan memahami tugas dan etika yang ditetapkan oleh 'Acts of Parliament' di Negara kita. Saya juga mula mengetahui sumber yang membolehkan undang-undang Negara kita dibentuk.Selain itu,subjek ini turut memberi pendedahan kepada kami jenis-jenis perniagaan yang terdapat di Negara kita dan sekiranya sesuatu terjadi kepada perniagaan itu, apakah langkah-langkah yang boleh diambil untuk menyelamatkannya. Ini juga membolehkan saya membantu saudara-mara saya sekiranya mereka menghadapi masalah dalam meguruskan perniagaan mereka. Walaupun saya mungkin tidak boleh membantu secara keseluruhan, tetapi pengalaman saya ini mungkin berguna dan boleh diaplikasikan.

Topik yang paling menarik minat saya dalam subjek ini adalah 'Tort of Negligence' di mana saya mula mengenali jenis-jenis 'non-criminal wrongful' yang dilakukan oleh seseorang. Topik ini juga membolehkan saya mengetahui syarat-syarat yang perlu ada sekiranya seseorang itu mahu menyelesaikan masalah berkaitan kecuaian yang mengakibatkan kecederaan. Sesuatu yang paling menarik minat saya di dalam topic ini adalah berkaitan 'Res Ipsa Loquitor' dimana ia menceritakan bagaimana seseorang itu bersalah tetapi tiada bukti untuk mengatakan dia telah melakukan kecuaian.

Cik Ernie Melini memberi pendedahan yang sangat meluas mengenai subjek ini kepada saya dan kawan-kawan yang lain. Pengalaman beliau mempelajari subjek undang-undang sebelum ini sangat menarik minat dan meningkatkan pemahaman kepada kami semua dengan apa yang dimaksudkan dengan undang-undang. Dan yang lebih penting, subjek ini membolehkan saya dan rakan-rakan memahami apa yang dimaksudkan dengan akta dan seksyen-seksyen yang berkaitan kerana sebelum ini saya tidak begitu memahaminya.

Sebelum saya mengakhiri coretan pengalaman saya ini,saya berharap anda semua dapat memahami sedikit sebanyak mengenai undang-undang yang terdapat di Negara kita,bagaimana mereka mengaplikasikannya dan diharapkan anda semua boleh mendapat gambaran yang jelas apabila anda mula mempelajarinya nanti. Jutaan terima kasih kepada semua yang terlibat secara langsung dan tidak langsung dalam menyiapkan laporan ini.

STUDENT *Contribution*

Assalamua'laikum. My name is Mohd Aliff, a student from Hotel and Tourism Management Faculty. It is an honour to have this opportunity of sharing my experiences studying law with you. First of all, I would like to thank my law lecturer, Miss Ernie Melini who has helped me a lot throughout last semester. My gratitude also goes to all my classmates because without their contributions, I might not succeed in this course.

Studying LAW? Firstly, you have to understand what the word means. It is not about memorizing facts but understanding the concepts as well. If you do not understand, do not hesitate to seek help from your lecturers. They are not going to harm you. See, as simple as that!

The question is how can you cope with the subject? 100% effort and attendance is a must (if you are targeting for 4.00 GPA). Studying law is fun; this is what I noticed. You can learn about your rights as a citizen, customer etc. Therefore, keep reading! Learning does not end in the class. If your lecturer asks a question, make an effort to answer it. Do not be afraid to show off! It is better to make mistakes in class rather than in the exams. We do learn from mistakes, right? This is what I did. So, do not be shy. One more thing, practice, practice and practice! Nothing else I could say. Whatever exercises your lecturer gives you, do it. Do not delay; assignments, tutorials, past year questions etc, just do it! This is the important part because you will find your own loop-holes when answering tricky questions. Since law is about facts, rules, rights and regulations, some of you might find it hard, but believe me, they are interesting.

In answering law questions, there are a few simple tips that I would like to share. Firstly, never leave it blank! Secondly, find out what the question is all about and understand the instructions of the question. If you can write down the related cases or authorities, it is definitely an advantage for you. This will distinguish your answer with others. Do not ever forget the format in answering the problematic questions. Start with the issue and then explain the general rule. After that, move on with the application of the law and finally the conclusion. Thirdly, re-check your answer. It is vital not to get confused with the questions or the cases. Once you get confused, everything will mess up. Do not get me wrong. This is because sometimes the question might look similar to another topic when it is actually not! This is how the exercises have helped me out. It gave me ideas on how to tackle the questions. Again, practice more! In the end, you will find it easy. If you wish to learn faster, start a group discussion earlier. Do not wait until the study week because it will be too late! Find friends that are dependable and competitive in your class. Do you know why? Because you may know something he/she does not know and vice versa. It is a win-win situation. Try this out!

Finally, do not skip class! It is the key towards success. Your lecturers are really keen to help you if you are willing to give full commitment to the class. Remember, there is never an ending in learning. Says who? Definitely not me! It is Bladivostok. Have no idea of who he is? Google it! Welcome to 21st Century. I wish you good luck and all the best, guys!!!

Aliff

HMM...Am I protected by 'it'?

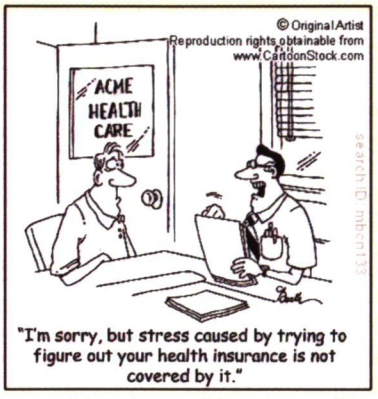
Written by: Ernie Melini

"In one sunny day, Aziz decided to enjoy the seaside view of Dungun. On the way to the beach, he met an accident with a lorry. His car crashed terribly and he was badly injured. Due to this accident, he had incurred loss- the costs of repairing the car and medical expenses. However, he is considered lucky because those costs were covered by his insurance policies".

Aziz is indeed lucky because he is smart enough to prepare himself against unexpected circumstances. In other words, he is wise to take insurance policies to protect himself. Nowadays, there are many people who think like Aziz and are conscious about the protection of their lives and properties. With the increase of awareness in the importance of insurance, various companies namely banks and the independent firms are ready to insure any kind of risk including protecting the love ones under the life insurance package. Therefore, the sound of having an insurance policy and its promises is just too good to be true. Is it possible? How does this exactly work?

Insurance is known as a social device to give financial compensation for the effects of the misfortune. The effect of insurance is to spread the amount of losses over a whole group of people insured, by compensating the unfortunate few from the fund built up from the contributions of all members. Basically, there are many types of insurance one can get from the market which can be categorised by function, the classes of business and by law under the Insurance Act 1963. Thus, it depends on the individual's preferences of what kind of protection he seeks for. Once an individual has decided on the type of insurance he wants, there will be a contract of insurance between the insurer and insured. The insurer is the person who agrees to indemnify the insured i.e. the victim against a loss that may arise on occurrence of certain events. This contract will only be established once the insured receives a document called the 'policy'. The payment of the policy either in the form of lump sum or periodical amount is known as the 'premium' while 'risk' means the loss which is insured.

The contract of insurance is special in nature. This is because it is formed based on mutual trust and confidence between the insurer and the person being insured. In other words, it is said to be in the 'utmost good faith'. It means that, insurance contracting parties have a duty to disclose each other all information that lead to the decision of entering into the contract regardless whether it is requested or not. According to the legal view, the duty to disclose normally rests on the person who wants to be insured rather than the insurer. Examples of information that should be disclosed are the state of health of the person when applying for medical insurance or how many cars/houses the person has in order to be insured under property insurance. Wrong information given or lack of information will deter the policy holders getting insured.



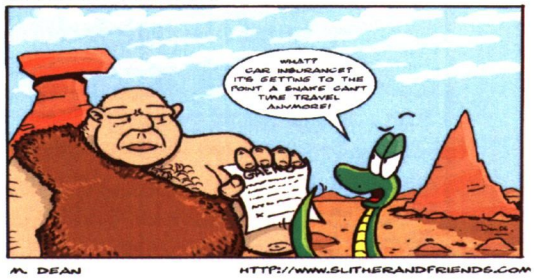
One of the popular questions that always rise among the insurance policy holders is that how much they may be insured. This actually depends on what type of insurance they are holding. For instance, fire insurance, a house of the policy holder can be insured only to the extent of actual loss. If the policy holder insured his house against fire for RM100,000, when the house is subsequently burnt down and RM50,000 is required to restore, the latter amount is payable and no more. In the case of involvement of third party during the unfavoured event, the insurer has a right against the third party who is responsible for the loss of the person insured. This likely to happen when there is a car accident caused by the negligence of third party. The insurer may fight on behalf of the insured but the insurer must make sure that the policy holder is insured first before claiming against the third party. Thus, it is crucially important that every policy holder study his insurance contract so that he will know what, when and how he is being insured.

Here are the suggested checks and balances of what a pre-insurance policy holders should take note before and after entering the insurance contract.

- Recognise which type of insurance i.e. its functions
- Be truthful when fill up the proposal forms in order to benefit from the ***'utmost good faith'***
- Make sure that you receive the document known as 'policy' once there is an agreement to contract of insurance
- Understand the policy- the premium, the risk i.e. what is covered and to what extent; and other exclusion clauses
- Do keep a good contact with the insurance agent i.e. the person who works on behalf of the insurance firm and who handles your contract

Finally, if those requirements have completed, there is nothing to be worried about but to feel safe and secured as the policy holder surely be protected!

SLITHER SHORT!



LEGAL MAXIM

Audi Alteram Partem - the rule of hearing or rights to be heard

Nemo Judex In Causa Sua or nemo judex in re sua - the rule against bias or no one may be a judge in his own cause.

Delegatus non potest delegare - a delegate cannot further delegate the power to someone else.

Bona fide and mala fide - good intention and bad intention

ANDA SEORANG PENGGUNA? ANDA TAHU APA ITU ADR?

oleh : Shahariah Harun

Umum mengetahui mahkamah sudah sekian lama berperanan sebagai forum penyelesaian pertikaian. Disebabkan mahkamah menghadapi banyak kes-kes tertunggak, situasi ini telah melambatkan proses tuntutan pengguna, Justeru,mahkamah bukan forum penyelesaian yang utama sebagai medan mengemukakan tuntutan di antara pengguna dan pihak penjual/pengeluar di atas sebarang ketidakpuasan hati terhadap barangan atau perkhidmatan.

Terdapat tujuh lagi mekanisme penyelesaian pertikaian alternatif *(Alternative Dispute Resolution)* atau **ADR** berperanan **menyelesaikan konflik pertikaian di antara pengguna dan** penjual di dalam menangani isu kepenggunaan di Malaysia. Sebagai contoh, Biro Pengantaraan Perbankan, Biro Pengantaraan Insurans, Institut Perniagaan Beretika Malaysia, Tribunal Hakcipta, Tribunal Tuntutan Pembeli Rumah, The Malaysian Co-Operatives Tribunal dan Tribunal Tuntutan Pengguna.

Kepincangan sistem mahkamah sebagai forum penyelesaian pertikaian pengguna dapatlah dirumuskan seperti berikut:

1. Kos mahkamah dari segi kewangan yang tinggi.
   i. **Terdapat fi mahkamah yang harus dibayar;**
   ii. Ketidakpadanan nilai barangan dengan kos prosiding mahkamah;
   iii. Rakyat harus menanggung bebanan dari segi kewangan dan masa atas ikhtiar mereka sendiri termasuklah kos perkhidmatan /nasihat peguam;
   iv. Terdapat risiko untuk kalah dalam kes dan terpaksa membayar kos pihak satu lagi(dan kos peguam sendiri);
   v. Terdapat juga kos testimoni pakar dan saksi;
   vi. Fenomena ini menyebabkan prosiding di mahkamah bukanlah satu medan yang wajar dan munasabah untuk menyelesaikan pertikaian memandangkan majoriti aduan pengguna hanyalah mempunyai kepentingan kewangan yang kecil.

2. Kos dari segi masa yang mengakibatkan kelengahan kes. Ini sebahagian besarnya berpunca daripada:
   i. Lambakan kes yang bertimbun dan tertangguh;
   ii. Prosedur bertulis, yang mana kebanyakan bidang kuasa mungkin berpanjangan.

3. Kompleksiti :
   i. pengendalian kes yang menitikberatkan keterangan dan prosedur;
   ii. prosedur keterangan yang menyusahkan dan sukar difahami oleh pengguna;
   iii. batasan masa bagi sesuatu tindakan;
   iv. penggunaan bahasa perundangan menggunakan terma perundangan yang sukar difahami oleh pengguna ('jargon)'; dan
   v. pematuhan kepada peraturan asas locus standi.

4. Prosedur sivil secara individu:
   i. prosedur tradisional yang tidak disuaikan dengan institusi prosedur 'mass' dalam kes bencana besar;dan
   ii. dalam mahkamah adjudikasi yang dicapai, lebih daripada pengantaraan atau konsiliasi.

5. Prosedur tradisional mahkamah mempunyai impak psikologi ke atas pengguna. Elemen seperti mahkamah juga kompeten dalam pengadilan jenayah, berpakaian jubah dan 'wig', menggunakan bahasa dan adat yang dianggap kuno mempunyai kesan negatif ke atas pengguna.

Terdapat pelbagai kaedah penyelesaian tanpa melibatkan penyelesaian di mahkamah iaitu kaedah timbangtara Mekanisme Penyelesaian Pertikaian Alternatif (ADR) iaitu penyelesaian pertikaian alternatif sebagai satu proses penyelesaian pertikaian.Objektif utama ADR adalah untuk menjimatkan kos , masa sekaligus membantu kedua belah pihak-pihak yang bertelingkah untuk mencapai satu persetujuan dalam bentuk perdamaian di antara mereka.

Keberkesanan sesebuah sistem alternatif (ADR) adalah bergantung kepada

i. komitmen tiga kelompok utama iaitu kerajaan, peniaga dan pengguna sendiri;
ii. pra syarat falsafahnya pula perlulah difahami bahawa semua jenis ADR merupakan satu kompromi;
iii. melibatkan situasi 'win-win' dalam penyelesaian sesuatu pertikaian, menyedari kewujudan BATNA (best alternative to negotiated agreement) ; dan
iv. prosedur pentadbiran yang menggalakkan ADR sebagai satu polisi.

Berdasarkan alasan-alasan tersebut, maka penyelesaian pertikaian alternatif (ADR) merupakan satu keadah penyelesaian yang efektif dan relevan di dalam menyelesaikan isu kepenggunaan berasaskan cirri-ciri ADR tersebut adalah:

1. bersifat kurang formal dari segi perlaksanaanya **dan yang paling signifikan ialah ianya mementingkan** hak-hak pengguna sebagai prioriti utama melebihi tanggungjawab menghadiri prosiding di mahkamah;
2. kurang bebanan dari segi kos masa dan masa jika dibandingkan dengan institusi mahkamah yang sedia ada;
3. kurang dari segi tuntutan masa seseorang individu untuk menghadapi persediaan proses tersebut;
4. penyelesaian dapat dicapai dengan lebih cepat serta menjimatkan dan membolehkan pihak -pihak yang bertelingkah meneruskan transaksi komersial mereka dengan segera;
5. suasana proses penyelesaian itu sendiri yang sangat kondusif dan 'businesss - friendly' yang menjaga nama baik dan kerahsiaan ('trade secret')perniagaan;
6. saling membantu dalam usaha untuk mencapai satu persefahaman yang dapat diterima bsecara responsif oleh kedua-dua belah pihak;
7. ianya dikendalikan oleh individu-individu yang mempunyai pengalaman dan kepakaran tertentu dalam aspek komersial dan industri professional seperti arkitek, jurutera awam, pakar sains ;
8. keputusan yang dicapai bukanlah berdasarkan teknikal perundangan semata-semata tetapi juga mengambil kira aspek amalan komersial yang menjadi asas hubungan antara pihak-pihak yang bertelingkah.;
9. bertujuan untuk menyeru penglibatan semua pihak dan memberi kesedaran kepada mereka bahawa proses ini adalah satu reformasi yang positif ke arah mencapai kata persepakatan yang lebih harmonis; dan
10. bersifat membantu dalam mengekalkan kestabilan sosial yang menjadi asas perpaduan kaum dalam masyarakat yang berbilang bangsa.

Justeru, penyelesaian pertikaian alternatif merupakan medan pengantara yang akan mudah diterima baik oleh semua pengguna di Malaysia (sudah popular di Negara Eropah).Walaupun kita agak terlambat jika dibandingkan dengan negara-negara maju., kelewatan bukanlah dijadikan satu alasan untuk **menafikan kredibiliti penyelesaian pertikaian alternatif (ADR)** sebagai satu instrumen yang terancang dan kreatif di dalam menyelesaikan pertikaian pengguna. Kesimpulannya, langkah untuk meningkatkan aplikasi keadah ADR ini seharusnya disambut baik oleh para pengguna dan mempraktikkannya apabila ingin mengemukakan tuntutan melalui kaedah ADR tanpa perlu bergegas ke mahkamah! *Salam 1Malaysia!*

LEGAL RIGHTS OF COPYRIGHT OWNERS:

ARE YOU AWARE?

by Syafini Muda@Yusof

The activities of academicians include teaching, writing and publication. Their ideas and findings are hugely published through journals, conference papers, articles or academic books. The issue raised here is whether they are aware of their rights and responsibilities under the Copyright Act 1987?

A study revealed that there is a lack of awareness on copyright protection and ts impact in Malaysia. (Nasir, et. al.2007) Therefore, the government of Malaysia has taken several actions to protect intellectual property rights such as "Sikap Tulen Campaign", setting up Intellectual Property Court and Intellectual Property Organization known as MyIPO to promote public awareness.

Copyright protection in Malaysia is governed by the Copyright Act 1987 (CA) which provides comprehensive protection for copyrightable works. The Act outlines the nature of works eligible for copyright (which ncludes computer software), the scope of protection, and the manner in which the protection is accorded.

The act confers protection on literary, musical and artistic works, films, sound recordngs and broadcasts. (s.7 CA). Looking at the rapid development of information technology which has challenged the traditional concept of copyright protection, the government seeks to update the law on copyright. The Amendment Act, which amended the Copyright Act 1987, came into force on 1st April 1999. Among other things, the endment Act makes unauthorized transission of copyright works over the internet an infringement of copyright. The definition of literary works now includes tables or compilations whether or not expressed in words, figures or symbols or whether or not n a visible form (s.3(g) CA).

The ownership of copyright vests initially n the author (s.26(1) CA). An author in relation to literary works means the writer or the maker of the works (s.3 CA). However, where the making of a work is commissioned or where a work is made by an employee in the course of his employment, unless there is any contrary agreement, the copyright in the work shall be deemed to vest in the person who commissioned the work or the employer (s.26(2) CA). The author's right is transferable by assignment testamentary disposition or by operation of law, in which case the assignee shall be the owner (s.27 CA).

The Copyright Act 1987 confers protection on works whose authors are qualified person or the work is made in Malaysia or the work is first published in Malaysia (s.10 CA). Copyright only protects works that have been written down, recorded or otherwise reduced to a material form. It does not protect deas. (Goodyear Tire & Rubber Co & Anor v Silverstone Tire & Rubber Co Sdn. Bhd. (1994)1 MLJ 348)

Generally, owner of copyright works have the exclusive right to:

- Reproduce the work in any material form (including photocopying, recording, etc.);
- Perform, show or play the work to the public (including performing a work live, or playing a recording or showing a film containing the work in a non-domestic situation);
- Broadcast the work;
- Communicate the work by cable and
- Distribute copies of the work to the public by sale rental or lending (s.13 CA)

Copyright subsists during the life of the author plus 50 years after his death. However, if a work has not been published during the life time of the author, copyright in the work continue to subsist until the expiration of 50 years, following the year in which the work was first published. In the case of a work with joint authorship, the life of the author who dies last is used for the purpose of calculating the copyright duration of the work (s.17 CA).

The copyright owner is entitled to seek an injunction, an order for delivery, damages or account of profit against the infringer in a civil action (S.37(1) CA). The High Court s empowered to award additional statutory damages to the copyright owner if it is satisfied that effective relief (by way of damages recoverable in common law) would not be available to the plaintiff (S.37(2) CA).

It is the criminal offence if a person who, during the subsistence of copyright in work, does any of the following acts:

a) makes for sale or hire any infringing copy;
b) sells, lets for hire or by way of trade, exposes or offers for sale or hire any infringing copy;
c) distributes infringing copies;
d) possesses, otherwise than for his private and domestic use, any infringing copy;
e) by way of trade, exhibits in public any infringing copy;
f) mports into Malaysia, otherwise than for his private and domestic use, an infringing copies;
g) make or has in possession any contrivance (i.e. equipment or implement) used or intended to be used for purposes of making infringing copies;
h) circumvents or causes the circumvention of any effective technological measures referred to in s.36(3);
) removes or alters any electronic rights management information without authority;
j) distributes, imports for distribution or communicates to the public, without authority, works or copies of works in respect of which electronic rights management information has been removed or altered without authority; (s.41(1) CA)

A person including a manager, a director or an officer of a limited company, or a partner of a firm, who is found guilty of an offences under s. 41 (1) (a) to (f) is liable to a fine not exceeding RM10,000.00 for each infringing copy or to imprisonment for a term not exceeding 5 years or to both; and for any subsequent offence, to a fine not exceeding RM20,000.00 for each infringing copy or to imprisonment for a term not exceeding 10 years or to both, while a person who is found guilty of an offence under s.41(1)(g) is liable to fine not exceeding RM20,000.00 for each contrivance or to imprisonment or a term not exceeding 10 years or to both, and for any subsequent offence, to a fine not exceeding RM40,000.00 for each contrivance or to imprisonment for a term not exceeding 20 years or to both. In the case of an offence under s.41(1),(h),(i) and (j), the offender is liable to a fine not exceeding RM250,000.00 or to imprisonment not exceeding 5 years or to both.

The Copyright Act also provides for the enforcement of the law by the Ministry of Domestic Trade and Consumer Affairs. Copyright owners shall lodge an official complaint supported by the necessary document to the Enforcement Division of the Ministry of Domestic Trade and Consumer Affairs if they suspect infringement. Immediate action will be taken by the said authority and they will conduct the necessary investigation and prosecutions.

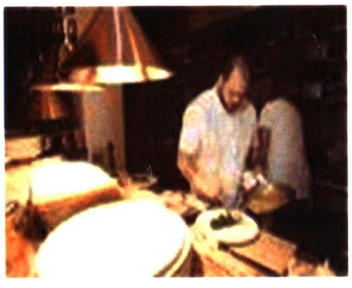
CONSUMERS' RIGHTS IN FOOD POISONING CASES

By :
Jusniza Abdul Jamal

Dining out should be fun and satisfying at the same time. But what if those nice experiences were followed by several episodes of vomiting and countless visits to the loo? We surely cannot erase those bad memories but we can do something to make sure that it does not happen again, at least after dining at the same place (God knows why you would eat at the same place again!).

Basically, you have two options if you suffered food poisoning after dining out. You can either take a civil action or initiating a criminal action under the Food Act, 1983 which is introduced to protect the public against health hazard and fraud in the preparation, sale and use of food. Some people would prefer a criminal action since it does not involve hiring a lawyer which can be costly. However, if you are interested in being compensated for your pain and suffering, then you should definitely take a civil action either under tort of negligence or law of contract.

Let us first examine the provisions of the Food Act, 1983 to find out the protections afforded to the consumers in food poisoning cases. After a police report has been made by the victim, an authorised officer will be sent to the eatery in question to make an inspection. Section 3 of the Act empowers the officer to enter any premises to examine such food and procure samples for analysis. If the owner or person in charge of the premise fails to give any assistance to the authorised officer, he or she is considered as committing an offence and may be subjected to an imprisonment for term not exceeding one year or fine or both sentences under section 4(3) of the Act.



Secondly, section 10 of the Act provides that the Director General may order premises or appliances to be put into clean and sanitary condition. He may also order closure of any premise selling or preparing food for a period not exceeding 14 days if he is of the opinion that the premise fails to comply with the sanitary and hygienic requirements, thus hazardous to health. Upon conviction, such owner of the premise may be imprisoned for a term not exceeding five years or fined or both. This is provided for by section 11 of the Food Act, 1983.

Section 13 further provides that any person who prepares or sells food which is poisonous or harmful or otherwise injurious to health, may be subjected to an imprisonment for a term not exceeding ten years or a fine not exceeding RM100,000 or both upon conviction. From these sections, it can be seen that the penalties imposed are severe enough to hinder the owners from contravening this Act.

On the other hand, the victim of food poisoning can also take a civil action against the owner of the premise for failing to take a reasonable care in making sure that the food is safe for human consumption. This is called an action under tort of negligence. 'Negligence' is defined in Winfield and Jolowicz on Tort (13th edition, p.72) as 'the breach of a legal duty to take care which results in damage, undesired by the defendant, to the plaintiff.' Basically, before a legal action can be maintained, the plaintiff must fulfil the three elements of negligence.

Firstly, a neighbourhood relationship must be established to show that a duty of care is owed to the victim in question. According to Lord Atkin in Donoghue v. Stevenson (1932) A.C.562, 580, 'neighbours are persons who are so closely and directly affected by our acts or omissions...' Examples of this kind of relationship are the relationships between doctors and patients or between restaurateurs and diners. If a restaurateur was negligent in preparing the food, the diners are likely to suffer from food poisoning. Therefore, the diners are entitled to take a legal action since they are directly affected by the restaurateur's negligence.

The second element of negligence is a breach of duty which can be defined as the failure to take care of our neighbours. The defendant's act must fall below the standard of a reasonable man to qualify as a breach of duty. Here, a 'reasonable man' means an ordinary man who is not expected to have any particular skills such as that possessed by a surgeon, a lawyer or a plumber unless he is actually one. In most cases, if the defendant can prove that he had taken all reasonable steps or precautions in order to avoid injury to the plaintiff, no legal action can be taken against the defendant since no breach of duty had been committed.

Finally, the plaintiff must be able to show that he had suffered some kind of injury as a result of the breach of duty by the defendant. The injury might either be a bodily harm or property damage. There must also be a direct and immediate foreseeable connection between the breach of duty and the resulting injury so that a reasonable person could foresee the potential danger of the careless act. In other words, it must be proven that the breach of duty was indeed the cause of the injury and not some other contributing factors in order for the plaintiff to win a lawsuit.

An action under tort of negligence is a very practical approach since it entitles the victims who are not privy to the transactions to have a remedy against the wrongdoer. This means that even though we did not purchase the food, we can still be compensated for the injury suffered. However, an action under tort excludes rights to take action for disappointment or mental suffering which are only available under law of contract.

Legal Jokes

Joke 1 :
Question: What's the similarity between a lawyer and a dentist?
Answer: Both do filing and extraction.

Joke 2 :
Judge: Order!!! Order in the Court!!!
Prisoner: Ham and cheese on rye, please.

Joke 3 :
Prisoner: All I want is justice!!!
Judge: I'd like to help you, but all I can give you is ten years.

ANDA & TRIBUNAL TUNTUTAN PENGGUNA MALAYSIA (TTPM)

Oleh : Noorimah Binti Misnan

Undang-undang pengguna dalam jualan barang dikawal oleh dua (2) akta iaitu Akta Jualan Barang 1957 dan Akta Perlindungan Pengguna 1999. Tribunal Tuntutan Pengguna Malaysia (TTPM) di tubuhkan di bawah Akta Perlindungan Pengguna 1999 dan mula berkuatkuasa pada 15 November 1999. Tujuan utama penubuhannya ialah memberi kemudahan kepada pengguna untuk menuntut gantirugi dengan cara yang mudah, murah dan cepat. TTPM adalah di bawah Kementerian Perdagangan Dalam Negeri, Koperasi dan Kepenggunaan dan mempunyai pejabat di semua ibu negeri di Malaysia.

TTPM terdiri daripada Pengerusi dan Timbalan Pengerusi yang merupakan pegawai daripada badan kehakiman dan perundangan dan tidak kurang daripada lima (5) ahli lain yang dilantik oleh menteri.

TTPM merupakan sebuah badan bebas untuk mendengar dan mengadili tuntutan pengguna. Ia bukanlah seperti mahkamah yang membicarakan kes tetapi lebih kepada badan pengantara untuk menyelesaikan pertikaian dengan cepat dalam bentuk rundingan. Sebelum wujudnya TTPM, para pengguna terpaksa mengemukakan tuntutan mereka di mahkamah sivil yang mana ia mengambil masa yang lama untuk diselesaikan. Selalnya, prosiding tuntutan kecil yang didengar di Mahkamah Majistret untuk nilai tuntutan tidak melebihi RM5000. Walaupun mahkamah tuntutan kecil ini merupakan satu kemudahan kepada pengguna untuk menyelesaikan pertikaian, namun ia tetap terikat dengan prosedur perbicaraan di mahkamah dan penggunaan bahasa mahkamah yang asing dan kurang difahami oleh masyarakat.

TTPM mempunyai bidang kuasa untuk mendengar dan mengadili tuntutan tidak melebihi RM25,000. Jenis-jenis tuntutan yang boleh dibawa ke tribunal ialah produk dan perkhidmatan berkualiti rendah, iklan barang yang mengelirukan, harga yang mengelirukan, tuntutan membaiki barang rosak, harga barang yang tidak munasabah, barang tidak sama dengan contoh atau sampel dan barang tidak selamat digunakan.

Tuntutan terbahagi kepada dua (2) kategori iaitu barang dan perkhidmatan. Di antara contoh-contoh tuntutan berkaitan **perkhidmatan** ialah butik dan dobi, khidmat kecantikan, pakej perkahwinan dan program pengurusan berat badan yang tidak memuaskan hati pelanggan, manakala tuntutan terhadap **barang** seperti cermin mata, telefon bimbit, jam tangan, barang kemas, computer dan pakaian.

Bidang kuasa tribunal adalah terhad kepada suatu tuntutan yang berasaskan pada suatu kausa tindakan dalam masa tiga (3) tahun. Ini bermakna pihak penuntut perlu memfailkan tuntutan dalam masa tiga (3) tahun sejak berlakunya perlanggaran hak tersebut. Tribunal tidak mempunyai bidang kuasa untuk mendengar apa-apa tuntutan berkaitan kes jenayah (kecederaan diri atau kematian),harta pusaka, tanah dan harta.

Pengguna yang hendak memfailkan tuntutan di tribunal hendaklah mengikuti prosedur-prosedur yang telah ditetapkan.

1. Pihak yang menuntut perlu mengisi Borang 1 yang boleh di dapati secara percuma di pejabat tribunal setiap negeri. Borang yang telah lengkap diisi dalam 4 salinan boleh difailkan di pejabat tribunal dan yuran yang dikenakan ialah RM5.00 sahaja.
2. Setelah tuntutan difailkan, tribunal akan menghantar 2 salinan Borang 1 kepada penuntut dan 1 salinan kepada pihak penentang.
3. Jika pihak penentang bersetuju dengan tuntutan, pihak yang menuntut perlu menarik semula tuntutannya di tribunal. Sebaliknya, jika tidak setuju dengan tuntutan tersebut, pihak penentang boleh memfailkan pembelaan atau mengemukakan apa-apa tuntutan balas dengan mengisi Borang 2 dalam 4 salinan beserta yuran sebanyak RM5.00. Ini hendaklah di lakukan dalam masa 14 hari selepas ia menerima tuntutan dalam Borang 1.
4. Notis pendengaran akan dikeluarkan oleh Setiausaha atau Penolong Setiausaha Tribunal dalam Borang 4 yang menyatakan tarikh, masa dan tempat pendengaran tuntutan kepada pihak yang menuntut dan penentang sekurang-kurangnya 14 hari sebelum tarikh perbicaraan.

Semua perbicaraan di hadapan tribunal adalah terbuka kepada orang ramai. Semasa perbicaraan, kedua-dua pihak tidak boleh diwakili peguam dan mereka perlu mengendalikan sendiri kes mereka. Perbicaraan dibuat di hadapan Presiden yang berperanan membantu pihak-pihak dalam menyelesaikan tuntutan ini. Jika pihak yang menuntut adalah seorang yang belum dewasa, atau seorang yang tidak berupaya, ia boleh diwakili oleh sahabat karib atau penjaganya dengan kebenaran Presiden Tribunal. Jika pihak penentang adalah sebuah syarikat atau firma, ia boleh diwakili oleh seorang pekerjanya yang digaji sepenuh masa.

Selain itu, kedua-dua pihak berhak untuk mengemukakan keterangan, memanggil mana-mana saksi atau mengemukakan apa-apa dokumen, rekod atau bahan bukti sokongan lain bagi menyokong hujah kes masing-masing. Tribunal akan membuat keputusannya yang dipanggil *"award"* dalam tempoh enam puluh (60) hari dari hari pertama pendengaran bermula di hadapan tribunal.

Di dalam pendengaran yang dijalankan, tribunal boleh membuat satu daripada award yang berikut atau lebih :-

1. supaya suatu pihak kepada prosiding itu membayar wang sebagai ganti rugi kepada mana-mana pihak yang lain;
2. supaya barang dibekalkan atau dibekalkan semula;
3. dalam kes kerosakan barang, tribunal boleh memerintahkan supaya barang yang dibekalkan diganti atau dibaiki;
4. jika harga barang telah dibayar kepada penjual, tribunal boleh memerintahkan supaya supaya harga tersebut dibayar balik kepada pengguna;
5. supaya mana-mana pihak mematuhi syarat perjanjian dalam jual beli tersebut;
6. supaya wang diawardkan untuk memberikan pampasan bagi apa-apa kerugian atau kerosakan yang ditanggung oleh orang yang menuntut;
7. supaya kontrak itu diubah atau diketepikan pada keseluruhan atau sebahagiannya;
8. supaya kos (tidak melebihi RM200.00) untuk atau terhadap mana-mana pihak dibayar;
9. supaya bunga dibayar di atas apa-apa jumlah wang atau award kewangan pada kadar tidak melebihi 8% setahun;
10. di samping itu, tribunal juga ada kuasa untuk menolak tuntutan yang dibuat.

Keputusan tribunal adalah muktamad dan rayuan tidak dibenarkan. *Award* dari tribunal seolah-olah dikeluarkan oleh mahkamah magistret dan pihak-pihak yang gagal mematuhi award ini selepas 14 hari boleh dikenakan penalti jenayah iaitu denda tidak melebihi RM5000.00 atau penjara tidak melebihi dua (2) tahun atau kedua-duanya. Jika kegagalan ini berterusan, boleh dikenakan penalti RM1000.00 sehari. Walaubagaimana pun, pihak-pihak yang tidak berpuas hati dengan keputusan tribunal boleh memohon 'semakan kehakiman' di Mahkamah Tinggi supaya Mahkamah Tinggi menyemak semula keputusan yang telah dibuat oleh tribunal.

Kesimpulannya, pengguna mesti peka dengan kemudahan untuk membuat tuntutan melalui TTPM. Terbukti, tribunal merupakan pengantara yang efisen kepada para pengguna di samping mengurangkan kebergantungan pengguna kepada mahkamah sivil untuk menuntut ganti rugi. Segala maklumat berkaitan TTPM boleh didapati dengan melayari laman web Kementerian Perdagangan Dalam Negeri, Koperasi dan Kepenggunaan *(http://tribunal.kpdnhep.gov.my/portal/index.php)*.

The Cloak of Without Prejudice: Is it really a privilege?

By Putri Syaidatul Akma M. Adzmi, UiTM Kelantan

What is 'Without Prejudice'?

Have you seen a letter labelled as 'without prejudice'? Or, have you attended a meeting that is said to be made 'without prejudice'? What does it mean by the word 'without prejudice'?

The word 'without prejudice' have been used time and again in letters written between parties in disputes and while trying to discuss and make settlements of various issues, for example, loan defaulters trying to make settlement with the bank or parties in breach of agreement with another trying to make amends and 'settle' the matte amicably. In actual fact, the word 'without prejudice' connotes the meaning in itself quite literally.

Under Common Law, it is settled law that the ordinary meaning of 'without prejudice' is without prejudice to the position of the writer or the maker of the statement if the terms he proposes are not accepted.

According to Declan McGrath (2001) in his article, 'Without prejudice privilege', is the privilege granted in respect of any communication with a settlement in mind so as to encourage the *'litigants to settle their differences rather than litigate them to finish'*. Thus, the privilege is exercised with a view to promote the public interest for settlement of disputes to enable the parties to engage in a full and frank discussion without any fear that anything said or done in the course of the settlement negotiations may be used to their prejudice and admissible in the court of law.

This is also settled law in Malaysia wherein the courts in Malaysia have made constant reference to the English cases that propounded the principle that the litigant should be given the opportunity to settle their disputes outside courts and thus be free from any fear of any statement made by them being used in court against them. Unless and until such cannot be achieved, then only should the litigant refer to the court of law as last resort.

Therefore, when a communication is made without prejudice, the same is prima facie (which is very loosely to mean sufficient evidence) not admissible in the court of law and cannot be used against the maker of the statement who is exercising his rights under the without prejudice cloak.

How do I use it?

Time and again, the English courts have emphasised on looking at without prejudice in its ordinary meaning and its primary purpose, that is, to facilitate a free discussion of compromise proposals by protecting the proposals and discussion from disclosure in the proceedings

Not only that the English courts ruled that *'... the without prejudice rule applies to exclude all negotiations genuinely aimed at settlement, whether oral or in writing, from being given in evidence ...'* But this rule seems to also be the position in Malaysia.

Thus, in order for a claim of privilege to succeed, the party claiming it must establish that the communication in question was made (1) in a good faith attempt to settle a dispute between the parties, and (2) with the intention or at least containing any terms to suggest settlement of that disputes and that, if negotiations fails, the communication shall not be admissible as evidence in case the matter went to court. Recent scenario have also included the without prejudice privilege in settlement via arbitration and mediation.

Although as a matter of prudence whenever a communication wished to be privileged, the word 'without prejudice' should be stated. However, case laws have established that this is not necessary. In Section 23 of the Malaysian Evidence Act 1950 it has been provided that, though it may be made expressly, it is also sufficient for the court to make an inference of the parties' intention from the contents of such communication.

Section 23 of the Malaysia's Evidence Act 1950 provides that,

> *'In civil cases no admission is relevant if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the court can infer that the parties agreed together that evidence of it should not be given.'*

It also seems that, in English courts, for a without prejudice privilege to operate, it does not require it to be made expressly. It has been held that, as long as there is clear intention from the parties and/or surrounding circumstances that they are seeking for a settlement, without prejudice will be inferred.

It should also be noted that, in case of a dispute about whether a particular statement is covered by the privilege or not, the Judge may, if he sees fit, examine the letter in order to determine the question.

For example, in a case where a party is said to be in breach of his contractual terms with the other party, they may use without prejudice negotiations to possibly try and settle their differences. The word 'without prejudice' need not be used but rather the intention of the parties will play particular importance. Usual scenario would be when a party, in default of a loan wish to make settlement as to the mode of payment of their loan. In this scenario, it must be bear in mind that the party in default may be said to be regarded not in the position to settle the matter as there is already the element of admission to the debts. Thus, leaving no further issues that needed to be settled. This is different in a scenario whereby the parties disputed the debt in itself and wish to settle without any admission to liability. In such a case, there is a possibility to hide behind the cloak of without prejudice during the settlement negotiations.

Is it really a privilege? When will it be admissible in Court?

However, just like any other general ru of law, this without prejudice rule is not absolute and thus it will be subjected to few exceptions in such a case, any statements or correspondence made, though made without prejudice, will be admissible as evidence.

Judicially, it has been observed in various cases that the courts have allowed its admissibility wherein the court will look into the circumstances of the matter and the communication to look into the true sense of its meaning to see if the communication is actually made without prejudice.

Among the exception is when the parties consent and/or waive their rights to object to its admissibility or disclosure of such privileged communication. The Court may also accept the admissibility of the without privilege communication when it has reached to its compromise so as t prove the terms of the agreement.

Thus, in essence, the mere usage of the word 'without prejudice' does not in itself accorded the protection under the law but rather the substance and the intention of the parties that will be determined before the cloak of without prejudice can be accorded by the court.

Therefore, though without prejudice in this sense can be regarded as an avenue for a litigant to make settlement out of court, but, care must be placed to ensure the intention of the parties that they are entered into the negotiation with settlement in mind. Thus, the failure of such negotiation will enable them to hide behind the cloak of without prejudice. But, in cases where the parties are able to reach to a compromise, they cannot hide behind the cloak of without prejudice.