

**HOW LAW DEVELOPED BY DIFFERENT JUDICIAL SYSTEM-A
COMPARISON STUDY BETWEEN THE ENGLISH AND MALAYSIAN
LEGAL SYSTEM WITH PARTICULAR REFERENCE ON DEFENSE OF
PROVOCATION.**

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ABSTRACT

Law could be developed via many ways and means. One of the ways is through decisions made by courts. This applied in both criminal and civil cases. In murder cases, there are various defences available for the accused in order to escape the death penalty. One of the defences open for the accused is that whilst doing the act (killing), he was deprived of his self control due to provocation received by him from the deceased. Provocation is recognised under the common law system (United Kingdom) whereby if it successfully pleaded, the crime of murder will be mitigated to manslaughter and the death penalty will be replaced with a lesser punishment which usually will be imprisonment for a period that shall be determined at the discretion of the court. In Malaysia, the defence of provocation was encoded as an exception to murder. The workability of this defence is similar to the common law whereby if an accused succeeded in pleading this defence, he will be guilty for culpable homicide not amounting to murder and shall be punished with imprisonment. Though provocation is recognised in United Kingdom and Malaysia, but the way the merits and evidence brought by the accused differs in both countries whereby in United Kingdom, the sitting judge shall determine on question of law and the jury shall decide on question of fact and pass their verdict. In Malaysia, the sitting judge shall be the sole determiner on both question of law and fact. This different judicial system had contributed in the development of the law on provocation. It is hoped that this research shall give a clear view on the development of such law by the different judicial system.

TABLE OF CONTENTS

Acknowledgement	ii
Abstract	iii
Contents	iv
List of Statute	vii
List of Cases	viii

CHAPTER ONE: INTRODUCTION

1.1	Background	1
	1.1.1 Title of the research	1
	1.1.2 General idea on provocation	1
	1.1.3 The elements of provocation	2
	1.1.4 The judicial system that determine question on provocation	3
1.2	Problem Statement and Research Question	5
1.3	Objectives of the Research	6
1.4	Research Methodology	7
1.5	Scope and Limitations of the Research	8
1.6	Significant of the Research	8

CHAPTER TWO: LITERATURE REVIEW

2.1	Introduction	10
2.2	Literature Review	10
2.3	Conclusion	14

CHAPTER THREE: DEFENCE OF PROVOCATION AS PROVIDED UNDER THE PENAL CODE OF MALAYSIA

3.1	Definition of provocation	15
3.2	Historical development on the law of provocation	16
3.3	Types of Provocation	18
	3.3.1 Grave provocation.	18
	3.3.2 Suddenness of provocation	19
	3.3.3 Cumulative provocation	19
	3.3.4 Directed provocation	20
	3.3.5 Self-induced provocation	21
	3.3.6 Lawful Provocation	21
3.4	Elements that needed to be satisfied in raising provocation	22
	3.4.1 Grave and Sudden	22
	3.4.2 Link between Provocation and the <i>actus reus</i> of killing	23
	3.4.3 No Cooling off Period	23

3.4.4 Retaliation Must Be Proportionate	24
3.4.5 Reasonable man Test	24
3.5 The development on the law of provocation on cases analysis	25
3.5.1 Introduction	25
3.5.2 Analysis of decided cases	25
3.5.3 Conclusion	37

CHAPTER FOUR: DEFENCE OF PROVOCATION AS PROVIDED UNDER THE HOMICIDE ACT OF ENGLAND.

4.1 Introduction	39
4.2 Types of provocation:	40
4.2.1 Provocation by mistake of fact.	40
4.2.2 Self-induced provocation.	40
4.2.3 Provocation by a lawful act.	41
4.3 Elements that needed to be satisfied in raising provocation	42
4.3.1 Reasonable man test	43
4.3.2 Loss of self- control	47
4.4 Cases Analysis on the Development of Law of Provocation in United Kingdom	50
4.5 Development of Law of Provocation in United Kingdom	53

CHAPTER FIVE: COMPARISON BETWEEN UK AND MALAYSIA ON THE DEVELOPMENT OF LAW OF PROVOCATION.

5.1 Introduction	58
5.2 Comparison.	58

CHAPTER SIX: RECOMMENDATION AND CONCLUSION.

6.1 Introduction	65
6.2 Recommendations	65
6.2.1 To refine on the elements of provocation under Malaysian law.	65
6.2.2 To give more power to the assessors.	65
6.2.3 To include physical assault as one of the act of provocation.	66
6.3 Conclusion.	66
Bibliography	67
Appendices	68