

NOTES ON LEGISLATION

SUBORDINATE COURT (AMENDMENT) ACT 1978 (Act A434)

Fundamental changes have been made in the structure of the subordinate courts by the Subordinate Courts (Amendment) Act, 1978, which came into force with effect from the 1st. July 1978.

It is proposed in this note to outline the changes as they affect the various Courts.

SESSIONS COURT

There will be only one type of Sessions Court in future. A Sessions Court shall have jurisdiction to try all offences other than offences punishable with death (section 63). A Sessions Court may pass any sentence allowed by law other than the sentence of death. (section 64)

Section 41 of the Dangerous Drugs Ordinance, 1952, as amended, provides that a Sessions Court shall have jurisdiction to try any offence under the Ordinance and power to impose the full punishment or penalty provided for such offence by the Ordinance or by any regulations made thereunder, other than the death penalty.

It might be noted that section 10 of the Firearms (Increased Penalties) Act, 1971 as amended by Act A427 of 1978 provides that notwithstanding any written law to the contrary, a Sessions Court shall have jurisdiction to try all offences under the Act, except offences under section 3 or 3A thereof, and to impose for any offence so tried the full punishment or penalty provided for the offence by the Act, except the penalty of death.

Subject to the limitations contained in the Act, a Sessions Court shall have jurisdiction to try all actions and suits of a civil nature where the amount in dispute or the value of the subject matter does not exceed twenty-five thousand ringgit. (section 65(1)).

The civil jurisdiction of the Sessions Court may be modified by agreement between the parties. Where the parties to an action or suit, which if the amount in dispute did not exceed the limit of the jurisdiction, would be cognisable by a Sessions Court have entered into an agreement in writing that the Sessions Court shall have jurisdiction to try the action or suit the Sessions Court shall have jurisdiction to try such action or suit, although the amount of the subject matter thereof may exceed the value limit of jurisdiction. Every such agreement shall be filed in the Sessions Court and when it is so filed the parties to it shall be subject to the jurisdiction of the Sessions Court (section 65(3) and (4)). The provisions in respect of counterclaims in the Sessions Courts, relinquishment of part

of a claim, prohibition of splitting claims and exceptions to jurisdiction contained in sections 66-69 of the Act are unchanged.

A Sessions Court shall have jurisdiction to hear and determine any action or suit for the recovery of immovable property and to make orders for possession and for payment of rent, mesne profits or damages. Such jurisdiction shall not however be exercised where there is a *bonafide* question of title involved or when the money claimed exceeds the sum of twenty-four thousand ringgit or where the rent in respect of the premises exceeds the sum of twenty-four thousand ringgit a year or two thousand ringgit a month (section 70).

A Sessions Court shall have jurisdiction to issue writs or warrants of distress for rent where the amount of rent to be distrained does not exceed twenty-four thousand ringgit (section 72).

A Sessions Court can grant relief by way of interpleader and order the sale of any property subject to interpleader proceedings subject *inter alia* to the condition that the person seeking relief is under liability for any debt, money or other movable property of which the amount or value does not exceed twenty-five thousand ringgit and for or in respect of which he has been or expects to be sued by two or more parties making adverse claims thereto. (section 73).

A Sessions Court in the States of Johore, Kedah, Kelantan, Negri Sembilan, Pahang, Perak, Perlis, Selangor or Trengganu may execute any judgment or order of a Muslim Religious Court having jurisdiction in the State in which the Sessions Court is situate, where the amount or value of the subject-matter exceeds five thousand ringgit and notwithstanding that it may exceed the pecuniary limit of the jurisdiction of that Court. (Paragraph 18(5)(a) of the Third Schedule).

COURT OF MAGISTRATE OF FIRST CLASS

Magistrates are still divided in Peninsular Malaysia into magistrates of the first class and magistrates of the second class.

Subject to the limitations contained in the Act a First Class Magistrate shall have jurisdiction to try all offences for which the maximum term of imprisonment does not exceed ten years imprisonment or which are punishable with fine only (section 85).

A First Class Magistrate may pass any sentence allowed by law not exceeding —

- (a) five years imprisonment;
- (b) a fine of ten thousand dollars;
- (c) whipping up to twelve strokes; or
- (d) any sentence combining any of the sentences aforesaid.

Provided that where by the law for the time being in force, jurisdiction is given to the Court of a Magistrate to award punishment for any offence in excess of the power so prescribed, a First Class Magistrate may award the full punishment authorised by that law.

Notwithstanding the above provisions, where a First Class Magistrate has convicted any person and it appears that by reason of any previous conviction or of his antecedents, a punishment in excess of that so prescribed should be awarded, then the First Class Magistrate may award the full punishment authorised by law for the offence for which the person has been convicted and shall record his reason for so doing. (section 87).

Section 41 of the Dangerous Drugs Ordinance, 1952, as amended, provides that a Magistrate's Court presided over by a Magistrate of the First Class shall have jurisdiction to try any offence under the Ordinance and power to impose the full punishment or penalty provided for the offence by the Ordinance or by any regulations made thereunder other than the death penalty and imprisonment exceeding five years.

Section 118 of the Customs Act, 1967, as amended, provides that notwithstanding the provisions of any written law to the contrary, a court of the Magistrate of the First Class shall have jurisdiction to try any offence under the Act and to award the full punishment for any such offence.

Subject to the limitations contained in the Act, a First Class Magistrate shall have jurisdiction to try all actions and suits of a civil nature where the amount in dispute or value of the subject matter does not exceed ten thousand ringgit (section 90).

The civil jurisdiction of a Magistrate of the First Class may be increased by agreement between the parties. When the parties to an action or suit, which if the amount in dispute or value of the subject-matter thereof does not exceed the limit of the jurisdiction, would be cognizable by a Court of the Magistrate of the First Class, have entered into an agreement in writing that the Magistrate's Court shall have jurisdiction to try the action or suit, the Court of a Magistrate of the First Class shall have jurisdiction to try such action or suit, although the amount of the subject-matter thereof may exceed the value limit of jurisdiction. Every such agreement shall be filed in the Magistrate's Court and when it is so filed, the parties to it shall be subject to the jurisdiction of the Magistrate's Court. (sections 65(3) and (4) and section 93).

Sections 66 (Counterclaims in Sessions Courts), 67 (Relinquishment of Claim), 68 (Prohibition of splitting claims) and 69 (Exception to jurisdiction) are applicable *mutatis mutandis* to Magistrate's Courts. (section 93).

A Court of the Magistrate of the First Class shall have jurisdiction to hear and determine any action or suit for the recovery of immovable property and thereupon issue an order to put the plaintiff in possession of the property. There may be added to such action a claim for rent or mesne profits or damages. Such jurisdiction shall not be exercised when the money claimed exceeds the sum of twelve thousand ringgit or where the rent payable in respect of the premises exceeds the sum of twelve thou-

sand ringgit a year or one thousand ringgit a month. Moreover such jurisdiction shall not be exercised where there is a bona fide question of title involved. (section 70 and 93).

A Magistrate of the First Class shall have jurisdiction to issue writs or warrants of distress for rent where the amount of rent to be distrained does not exceed twenty-four thousand ringgit. (section 72 and 93).

Section 73 (Interpleader) and section 74 (Power to order sale shall unless security given) are applicable *mutatis mutandis* to Magistrate's Courts (section 93). Thus it would appear that a Magistrate of the First Class can hear interpleader proceedings where the amount or value involved does not exceed twenty-five thousand ringgit.

A Magistrate's Court presided over by a First Class Magistrate in the Federal Territory or the State of Johore, Kedah, Kelantan, Negri Sembilan, Pahang, Perak, Perlis, Selangor or Trengganu may execute any judgment or order of a Muslim religious court having jurisdiction in the State in which the Magistrate's Court is situate, where the amount or value of the subject-matter does not exceed five thousand ringgit. (Paragraph 18(5)(c)).

JUVENILE COURTS

The constitution of Juvenile Courts has also been altered. A Juvenile Court shall consist of a Magistrate of the First Class, assisted by two advisers. Save as modified or extended by the Juvenile Courts Act, 1947 (Act 90) the provisions of the Criminal Procedure Code shall apply to the Juvenile Courts as if Juvenile Courts were Courts of the Magistrate of the First Class. (section 4, Juvenile Courts Act, 1947).

Any child or young person or his parent or guardian aggrieved by any finding or order of a Juvenile Court may appeal to the High Court against the finding or order in accordance with any law for the time being in force regulating criminal appeals to the High Court from a Court of the Magistrate of the First Class (section 14, Juvenile Courts Act, 1947).

A Court of the Magistrate of the First Class, shall have the like power as is possessed by the High Court and a Sessions Court, to order the detention in a Henry Gurney School, up to but not after his attainment of the age of twenty-one years, of any person who has attained the age of seventeen but has not attained the age of twenty-one years at the date of making such order. (section 40, Juvenile Courts Act, 1947).

MAGISTRATES OF THE SECOND CLASS AND PENGHULUS.

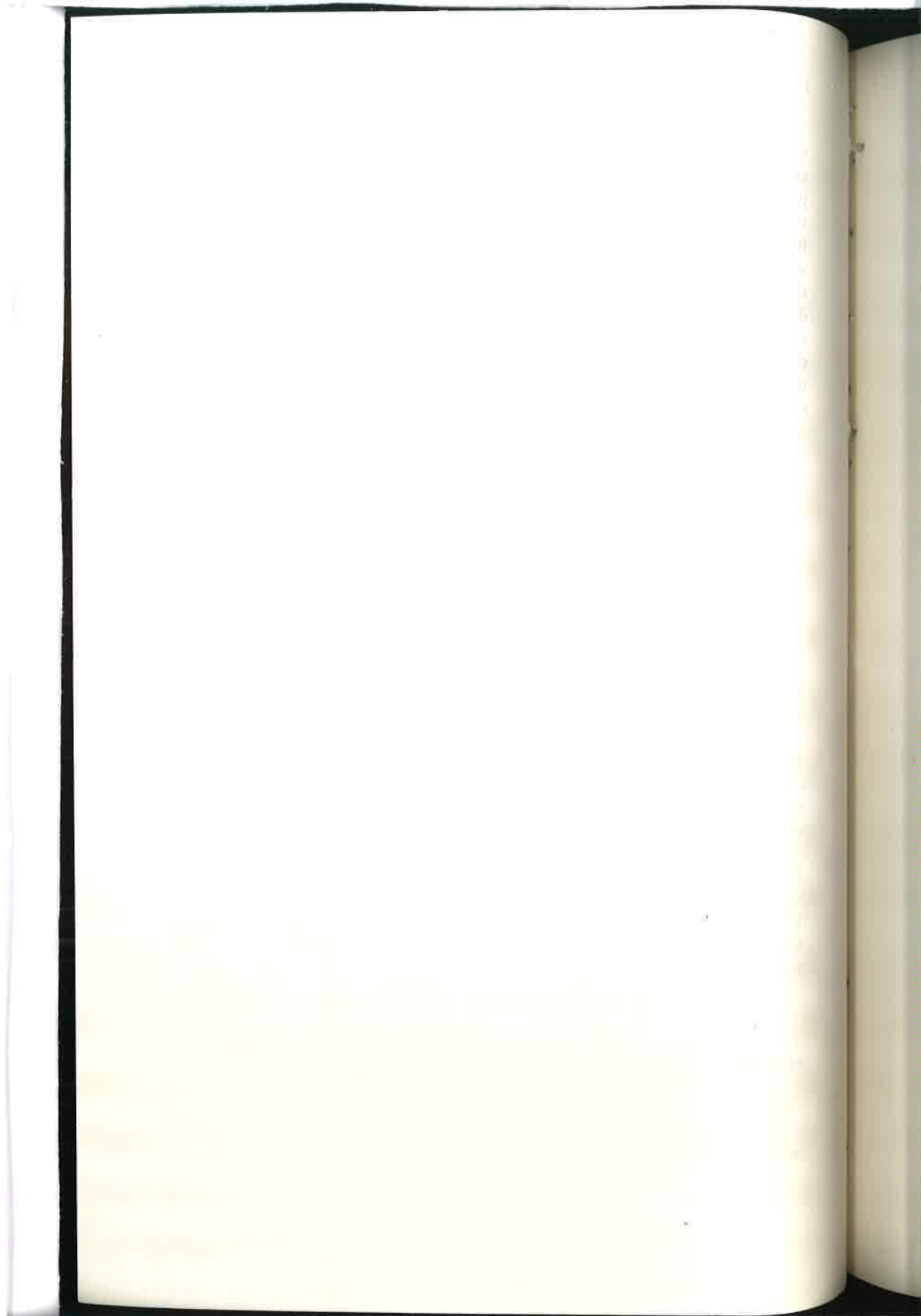
No alteration has been made in the jurisdiction and powers of Magistrates of the Second Class or of Penghulus.

APPEAL.

No amendments have been made to the Courts of Judicature Act, 1964.

relating to appeals from subordinate courts. In 1976 the Courts of Judicature Act, 1964 was amended by Act A328/76 to give the Federal Court jurisdiction to hear and determine any appeal made by the High Court in the exercise of its appellate criminal jurisdiction in respect of an appeal from a decision of a President of a Sessions Court who is conferred with special jurisdiction under subsection (3) of section 63 of the Subordinate Courts Act, 1948. As there will be no more Presidents with special jurisdiction, this amendment will no longer be effective. It is however suggested that the provision should be extended to decisions from Sessions Courts, so that the Federal Court can hear appeals from the High Court in the exercise of its appellate criminal jurisdiction from a decision of a Sessions Court.

Ahmad Ibrahim



LEGISLATION

The following list of Acts passed and revised in Malaysia is a continuation of the list of Federal Acts contained in Vol. 4, Part 2 [1977] J.M.C.L. 325-328.

FEDERAL ACTS PASSED

<i>Bil. Akta Act No.</i>	<i>Tajuk Ringkas/Short Title</i>
202	Akta Bank Kerjasama Rakyat Malaysia Berhad (Peruntukan Khas) 1978. Bank Kerjasama Rakyat Malaysia Berhad (Special Provisions) Act, 1978.
203	Akta Lembaga Kemajuan Kelantan Selatan, 1978. Lembaga Kemajuan Kelantan Selatan Act, 1978.

FEDERAL ACTS REVISED

<i>Bil. Akta Act No.</i>	<i>Tajuk Ringkas/Short Title</i>
197	Registration of Business Act, 1956 (Revised - 1978).
198	Public Authorities Protection Act, 1948 (Revised - 1978).
199	Investment Incentives Act, 1968 (Revised - 1978).
200	House to House and Street Collections Act, 1947 (Revised - 1978)
201	Betting and Sweepstake Duties Act, 1948 (Revised - 1978).
204	Bills of Exchange Act, 1949 (Revised - 1978).
205	The Presumption of Survivorship Act, 1950 (Revised - 1978).