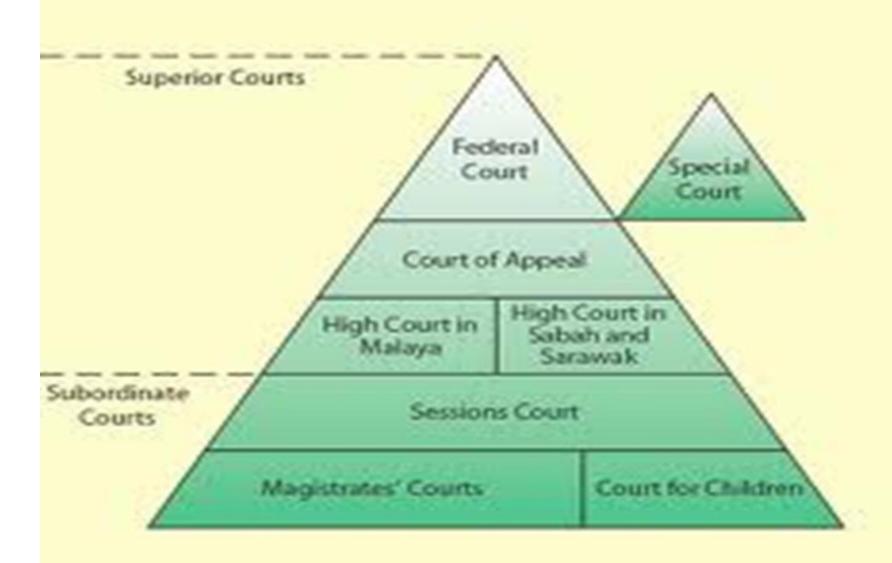
Lesson 8 &9: Judiciary

1. Courts in Malaysia may be divided into Superior Courts & Subordinate Courts.

- 2. Superior Courts consists of:
 - (1) Federal Court
 - (2) Court of Appeal
 - (3) High Courts.

- 3. Subordinate Courts consist of:
 - (1) Sessions Courts
 - (2) Magistrates' Courts
 - (3) Court for Children.
- 4. Superior Courts have unlimited jurisdiction, but Subordinate Courts have limited or prescribed jurisdiction.





SUBORDINATE COURTS

Court for Children

- Established in 2001 (to replace the Juvenile Court).
- "Child" means a person below the age of 18 (but for criminal proceedings, the child must be above 10)

Reason

because the Malaysian criminal law provides that a child under 10 years of age cannot commit crime.

i.e. This is under a presumption that a child under 10 is incapable of understanding the nature and consequence of his act.

The Court for Children is presided over by a Magistrate who is assisted by 2 advisers appointed by the Minister, one of whom must be a woman. Only court officials, parties to the case, parents/guardians, lawyers & witnesses are allowed to be present.

 Court for Children may try all offences except offences punishable with death. If a child is found guilty of an offence, he shall not be imprisoned, but among others, may either be:

(i) be sent to an approved school or a Henry Gurney School;

(ii) be discharged upon his executing a bond to be of good behaviour;

(iii) if a male, be whipped with not more than 10 strokes of a light cane within the Court premises and in the presence of the parent or guardian.

Magistrates' Courts (147)

 Presided over by a Magistrate (First Class or Second Class).

General Jurisdiction

 To trial civil & criminal cases, issue summons, writs, warrants, order (adjournment/remand/bail), conduct inquiries of death, etc.

Specific Jurisdiction

First Class Magistrate

 <u>Civil Matter</u> – has jurisdiction to try all actions where the amount in dispute / value of the subject matter does not exceed RM100,000-00.

Criminal Matter

1. may try all offences punishable with up to 10 years of imprisonment.

2. may try offences under s.392 (robbery) and s. 457 (lurking house-trespass at night or housebreaking at night) of the Penal Code.

Note: The maximum punishment for these 2 offences (S.392 & S.457) are 14 years imprisonment.

Specific jurisdiction

Second Class Magistrate

- Civil Matter
- may try all actions where the Plaintiff seeks to recover a debt / liquidated demand in money not exceeding RM10,000-00.
- Criminal Matter
- may try all offences punishable with up to 12 months' imprisonment.

Sessions courts (73)

- The highest of the subordinate courts.
- Presided over by a Sessions Court Judge.

Jurisdiction

Civil matter:

(1) Has unlimited jurisdiction to try all civil actions in respect of motor vehicle accidents, landlord and tenant, distress.

- (2) may try all actions where the amount in dispute / value of the subject matter does not exceed RM1million except the following (i.e. For the following cases, even if the amount concerned is less than RM1million, the case has to be tried in the High Court):
- Most land matters
- Enforcement of trusts
- Legitimacy
- Guardianship / custody of infants
- Validity or dissolution of marriage
- Grant of Letters of Administration/Probate etc.

• Criminal Matter

may try all offences other than offences punishable with death.



SUPERIOR COURTS

High Courts

- High Courts in Malaysia is divided into:
 - (1) High Court in Malaya &
 - (2) High Court in Sabah and Sarawak.
- High Court in Malaya
- Consists of 15 High Courts
- Perlis High Court of Kangar
- Kedah- High Court of Alor Star
- Penang High Court of Penang

- Perak High Court of Ipoh High Court of Taiping
- Selangor High Court of Shah Alam Kuala Lumpur – High Court of Kuala Lumpur Negeri Sembilan – High Court of Seremban
- Melaka High Court of Melaka
- Johor High Court of Bahau
 High Court of Muar
- Pahang High Court of Kuantan
 High Court of Temerloh
- Terengganu High Court of Terengganu
- Kelantan High Court of Kota Bahru

High Court in Sabah & Sarawak

Consists of 10 High Courts

Sabah – High Court of Kota Kinabalu

High Court of Sandakan

High Court of Tawau

High Court of Labuan

Sarawak- High Court of Kuching

High Court of Sibu

High Court of Miri

High Court of Sri Aman

High Court of Bintulu

High Court of Limbang

- High Court in Malaya consists of a Chief Judge and maximum 60 judges.
- High Court in Sabah and Sarawak consists of a Chief Judge and maximum 13 judges.
- Every proceeding in the High Court shall be heard by a single Judge.

For administrative purposes, the High Court of Malaya is organized into divisions, example:

- commercial division
- criminal division
- civil division
- family division
- appellate & special powers division.

Judges Qualifications

A person is qualified for appointment as a judge of the Superior Courts (HC, CA, FC) if:

- (a) he is a citizen;
- (b) for 10 years he has been an advocate or a member of the Judicial & Legal Service (or sometimes one and sometimes another).

Tenure of Office of Judges

All judges of the Superior Courts shall retire at the age of 66, or not later than 6 months after they reach 66 years old if the YDPA consents.

Resignation of Judges

A judge may resign at any time by tendering his resignation to the YDPA.

Removal of Judges

A judge of the Superior Courts can be removed if he or she:

- (1) breaches the Judges' Code of Ethics; or
- (2) is physically or mentally unable to carry out his or her duties.

To remove a judge, either the PM alone, or the Chief Justice after consulting the PM may initiate the removal process by representing to the YDPA reasons why the judge should be removed.

The YDPA must then set up a tribunal consisting of at least 5 serving or retired judges of the Superior Courts or any other Commonwealth countries to decide if the judge should be removed.

If the tribunal decides the judge should be removed, they recommend this to the YDPA, who then directs the judge be removed.

Court of Appeal

- 1. Established in 1994.
- 2. Consists of the President of the Court of Appeal and 32 other judges.
- 3. Sits at the Palace of Justice in Putrajaya.
- Every proceeding in the Court of Appeal must be heard by 3 or more (odd number) judges.
- 5. Has jurisdiction to hear civil or criminal appeals from the High Court. 27

6. The Court of Appeal is the <u>final</u> court of appeal on matters decided by the High Court in its appellate & revisionary jurisdiction.

Federal Court

- 1. Established in 1/1/1985 (Then known as Supreme Court & renamed as Federal Court in 1994).
- 2. The highest judicial authority in the country. Headed by the Chief Justice (previously known as the Lord President).
- 3. Prior to 31/12/1984, Malaysia highest judicial authority was the Privy Council.
- 4. Every proceeding in the FC must be heard by 3 or more (odd number) judges.

Before 1985

1985-1994

1994 – now

Privy Council Federal Court High Court

Supreme Court High Court

Federal Court Court of Appeal High Court

(3 tier)

(2 tier)

(3 tier)

Jurisdiction

The FC has the following jurisdiction:

- To hear civil and criminal appeals from the Court_of Appeal.
- 2. To hear dispute between State and Federal Government.

- 3. To pronounce on the validity of any law as being in excess of powers.
- 4. To give opinion (in open court) on constitutional question referred to it by the YDPA.

31