

VOLUME 1

THE QUICK OVERVIEW

MALAYSIAN LEGAL SYSTEM

HANIS ALIAA BINTI RAMLEY

WAN NOR HAFIZA BINTI WAN SULAIMAN

RUHANA WATI BINTI IRAN



VOLUME 1

**THE QUICK OVERVIEW
MALAYSIAN LEGAL SYSTEM**



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WRITER

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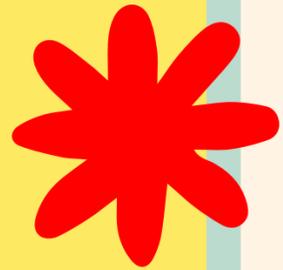
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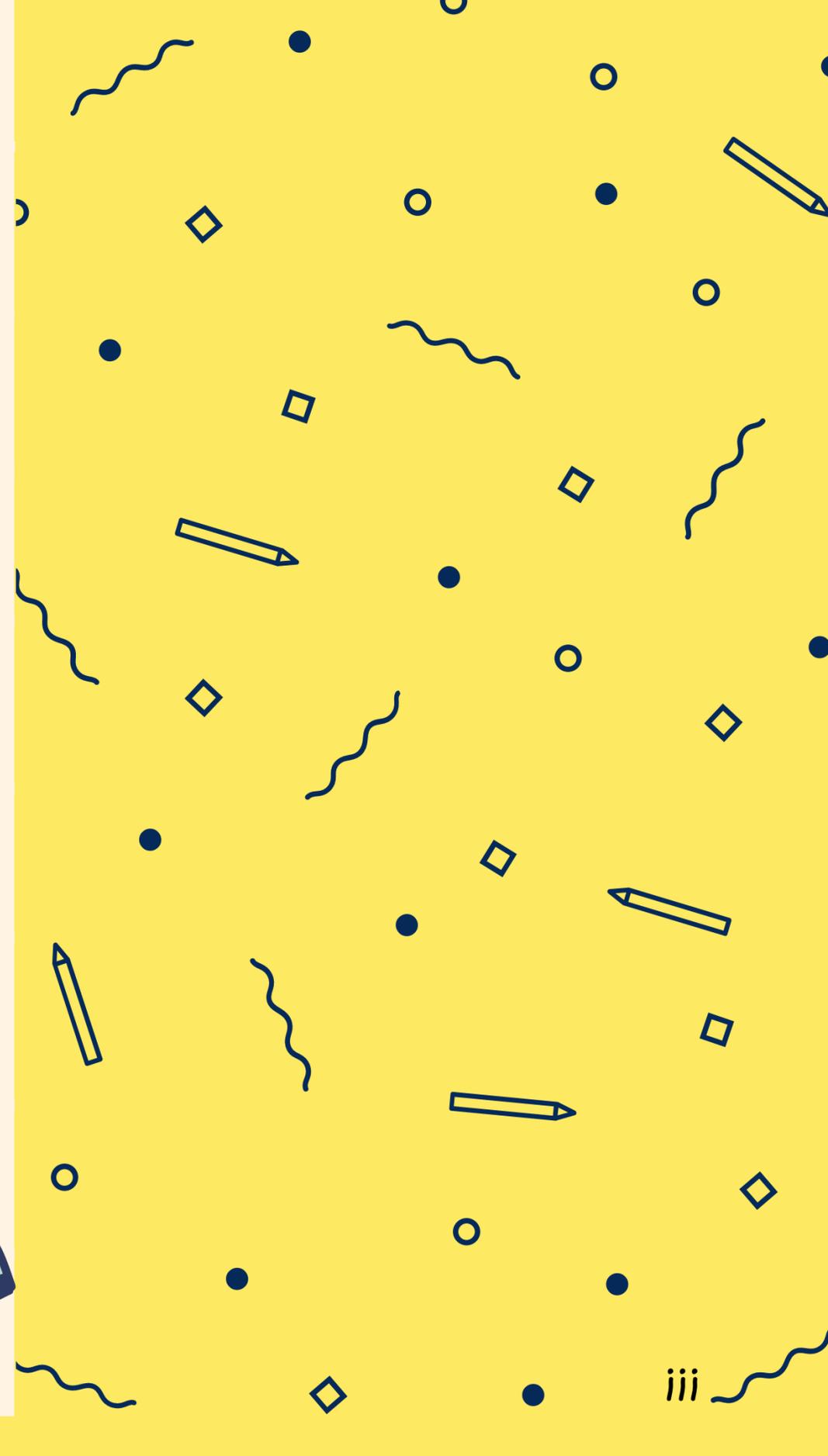
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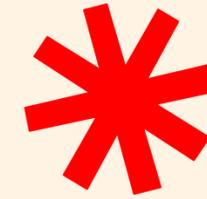
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Thank you to everyone of the family, friends, and those who helped in some way, whether morally, financially, or physically.

Thank you very much.



Preface



Malaysian Legal System e-book is a handy way provide students with an easy style and accessible to a basic knowledge of law. This e-book deals with topic in detail and has the following reader-friendly features. Learning objective briefly explain what to expect when going through in the text. They give an initial framework of reading.

The glossary by collection terms and their meaning are providing by the end of chapter to consistent the terminology and accelerating the translation process. A simple question will be given after the chapter to enhance the understanding and knowledge of student.

This e-book will be help and beneficial for the students and the readers.



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1.1 WHAT IS THE LAW?



Malaysia's legal system is founded on English common law, which Malaysia received as a result of a lengthy history of British occupation. A written Constitution based on the Westminster model lies at the heart of Malaysia's legal system. The Malaysian Federal Constitution lists the various government and administrative entities, as well as their respective powers and functions.



DEFINITION OF LAW

The system of legislative or customary laws acknowledged as binding by a community, according to the **Oxford English Dictionary**.

Law as a rule, or system of norms governing what members of a society or community may or may not do, according to the **Collins Essential English Dictionary**.

Law is also defined as any set of rules that govern the behaviour of people in a community, society, or nation in response to the need for consistency, fairness, and justice based on collective human experience.

Sir John Salmond (Jurisprudence); the body of principles that the State recognizes and applies in the administration of justice. In other terms, law is made up of norms that are recognized and enforced by courts of justice. Law is a set of rules that the government is responsible for enforcing.

A rule of action or procedure established by tradition, agreement, or authority, according to **The American Heritage Dictionary of the English Language**.

1.2 THE IMPORTANCE OF LAW?



1

Living with others necessitates social contact. This entails the interaction of people in a community who are aware of what is and is not acceptable behavior.

As a result, it is probably correct to state that law is a natural consequence of cohabitation.

2

The majority of people will believe that law is an important tool for regulating and protecting society's collective interests.

3

English Supreme Court Justice Donaldson: "Without the rule of law and the courts to enforce it, each of us would be free to bully and pressure our fellow citizens, and, perhaps more importantly, our fellow citizens would be free to bully and push us."

4

Law undoubtedly restricts the enjoyment of some personal liberty, a necessary sacrifice for societal cohesion to be maintained. Individual liberty frequently yields to community interests, and the law protects both the individual and the community as a result.

1.3 CLASSIFICATION OF LAW

THERE ARE SEVERAL WAYS TO CLASSIFY LAW. ONE OF THE MOST WIDELY USED METHODS IS TO DIVIDE LAW INTO THREE (3) MAIN CATEGORIES:



1. PUBLIC LAW

The law governing people's interactions with the government is known as public law.

- Constitutional law establishes the rights of individuals in the state and is separated into two categories.
- Criminal law codifies the different offences committed by individuals against the state and deals with issues such as the sovereignty of Parliament and citizens' rights. Its goal is to deter and punish criminals. As a result, criminal law places a moral obligation on individuals to not commit crimes. A crime is a state-inflicted violation for which the state punishes the perpetrator, with the public prosecutor bringing the case.

2. INTERNATIONAL LAW

International law can be defined as the body of law that is made up, for the most part, of the principles and rules of conduct that states feel obligated to follow and, as a result, do so in their interactions with one another. There are two types of international law:

- Public international law : is the law that prevails between states.
- Private international law: is a part of municipal law, as a result of which each country will have its own version; it consists of the rules that a judge must follow when the laws of multiple countries are in play. Often referred to as a "conflict of laws."

3. PRIVATE LAW

Private law is concerned with matters that affect the rights and duties of individuals among themselves. Basically, private or civil law is intended to give compensation to person injured, to enable property to be recovered from wrongdoers, and to enforce obligation. It covers areas such as:

- **Contract law:** is a branch of private law that regulates the rights and obligations arising from agreements.
- **Tort:** a legal claim based on a legal duty (i.e. offences against individual).
- **Trust:** The relationship between trustees and beneficiaries is governed by trust law.

1.4 LAW IN MALAYSIA



Peninsular Malaysia, Sabah, and Sarawak are all part of Malaysia, however they are not regulated by the same set of laws. There has been a concerted effort in recent decades to promote legal homogeneity throughout Malaysia.

The Parliament and the Federal Court are TWO (2) crucial ties that connect them:

- i. The Malaysian Parliament has the power to legislate for the entire country, and it does so.
 - ii. The Federal Court as the country's final appellate court.
- 

1.5 THE FEDERAL SYSTEM



Malaysia is comprised of thirteen states and three federal areas. There are two levels of government in a federal system: the central or federal government and the state government.

The federal government does not have complete control over state governments in a federal system. At the same time, a state government does not have complete authority over the laws and policies it enacts. Article 1 (1) of the Federal Constitution, our country's supreme law, establishes this system.

The Federal Constitution establishes the country's core characteristics, the government's form and powers, and the fundamental principles by which the country shall follow



1.6 PARLIAMENT, THE EXECUTIVE & THE JUDICIARY

The three branches of government are typically referred to as Parliament, the executive, and the judiciary. The legislature creates the law, the executive (government) enforces it, and the judiciary (courts) deals with any disagreements or violations of the law.





1. PARLIAMENT

The country's supreme legislature or law-maker is Parliament (Article 44). The Yang di-Pertuan Agong, the Dewan Negara (Senate), and the Dewan Rakyat make up Malaysia's parliament (House of Representatives).

The Dewan Rakyat has 222 members who were elected by their constituencies during the general election. There are 70 senators that have been appointed to the Senate.

The legislature is elected for a maximum of five years. However, it is frequently dissolved by the Yang di-Pertuan Agong on the Prime Minister's request before the end of the five-year period. Usually, this is done to clear the way for a general election.

Ordinarily, laws are passed by all three bodies functioning agreement. There are, however, certain exceptions to this rule. Article 150 empowers the Yang di-Pertuan Agong to declare a state of emergency if the country is threatened by a disaster. After issuing a proclamation, the Yang di-Pertuan Agong has the authority to make laws without the approval of the Dewan Rakyat and Dewan Negara.

2

THE EXECUTIVE

The executive branch of government is the government of the day. In the widest sense, a government's function is to carry out the laws passed by Parliament and to act in the people's best interests. The government is usually formed by any political party that has a majority in parliament in the Dewan Rakyat.

The hospitality industry is directly impacted by government policies and activities. The government introduced a number of statutes in this field in Parliament, including the Food Act of 1983 and the Tourism Industry Act of 1992. The Food Act's enforcement is the responsibility of the Ministry of Health. The Tourism Act is to be implemented by the Ministry of Tourism.

3



THE JUDICIARY

The judiciary's primary function is to decide cases based on existing law. Judges occasionally issue new interpretations that effectively result in the creation of new laws. There may be times when a judge is unable to identify an existing legal concept that applies to the case at hand, and he is compelled to 'make' legislation in order to reach a decision. The body of law developed by the courts is known as "common law," "judge-made law," or "case law."

1.7 MALAYSIAN JURISDICTION'S SOURCES

Sources of Malaysian Law



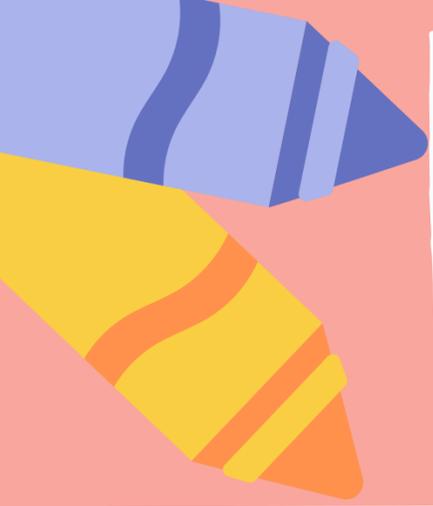
WRITTEN
LAW



UNWRITTEN
LAW



MUSLIM
LAW



1.

WRITTEN LAW

I. THE FEDERAL CONSTITUTION

The Federal Constitution, which is the country's supreme law. For example, the name, the Federation's states and territories, citizens, the Federation's religion, financial provisions, elections, public service, and etc.

4. THE STATE CONSTITUTION

Each state has its own constitution that governs the state's government. The Eighth Schedule enumerates the following provisions: ruler, executive council, legislative assembly, financial provisions, state employees, and constitutional amendment.

2. LEGISLATION

Refers to laws enacted by a body established for this purpose. Legislation is enacted by Parliament at the federal level and by the several state legislatures at the state level in Malaysia.

Ordinances are laws enacted by parliament prior to independence. Acts are those that were enacted after the country gained independence. Enactments are laws enacted by the state legislatures (with the exception of Sarawak).

Ordinances are Sarawak's legal system.

3. SUBSIDIARY LEGISLATION

The Interpretation Act of 1967 defines a proclamation, rule, regulation, order, notification, by-law, or other instrument as "any proclamation, rule, regulation, order, notification, by-law, or other instrument made under any Ordinance, Enactment, or other lawful authority and having legislative effect." Subsidiary legislation addresses details for which the legislature lacks the time or technical knowledge to enact legislation. Legislation just establishes the fundamental and major laws, leaving the details to those to whom they delegate legislative authority, such as the YDPA, ministers, and local governments.

1. ENGLISH LAW

Malaysian law does not include all of England's law and equity provisions - "Common Law, rules of equity, and statutes of general application shall be applied only to the extent that the circumstances of the states of Malaysia and their respective inhabitants permit, subject to such qualification as local circumstances render necessary," according to English Common Law.

2. JUDICIAL DECISIONS

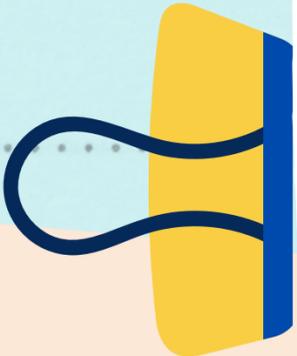
The High Court, the Supreme Court, and the Judicial Committee of the privy Council have all issued judicial decisions. Precedents are "decisions taken by judges in similar situations in the past."

3. CUSTOMS

Malaysians have their own customs. In Malaysia, the courts have legal authority over family law issues such as marriage, divorce, and inheritance. Prior to the implementation of the Law Reform (Marriage and Divorce) Act 1976, Hindu and Chinese customary law applied to Hindus and Chinese, respectively.

2.

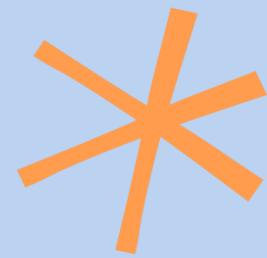
UNWRITTEN LAW



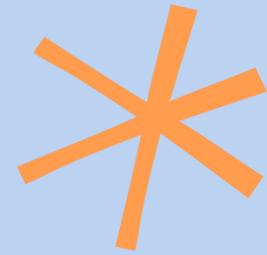
3. MUSLIM LAW

The Federal Constitution grants states the authority to administer Muslim law. The state's Muslim religious leader (with the exception of Penang, Malacca, Sabah, and Sarawak). The Sultan is the leader of the Federal Territories. The Yang di-Pertuan Agong is the leader of Penang, Malacca, Sabah, Sarawak, and the Federal Territories. The Syariah Courts are the courts that enforce Islamic law in the country. Only Muslims are subject to Muslim Law.

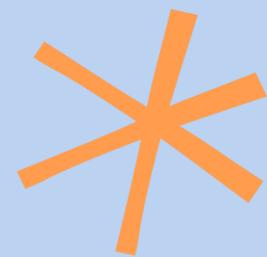
1.8 THE COMMON LAW



The common law of England, as opposed to local customs, refers to the broad principles that apply to the entire country. Malaysian law includes English common law and equity rules that are appropriate to local conditions.



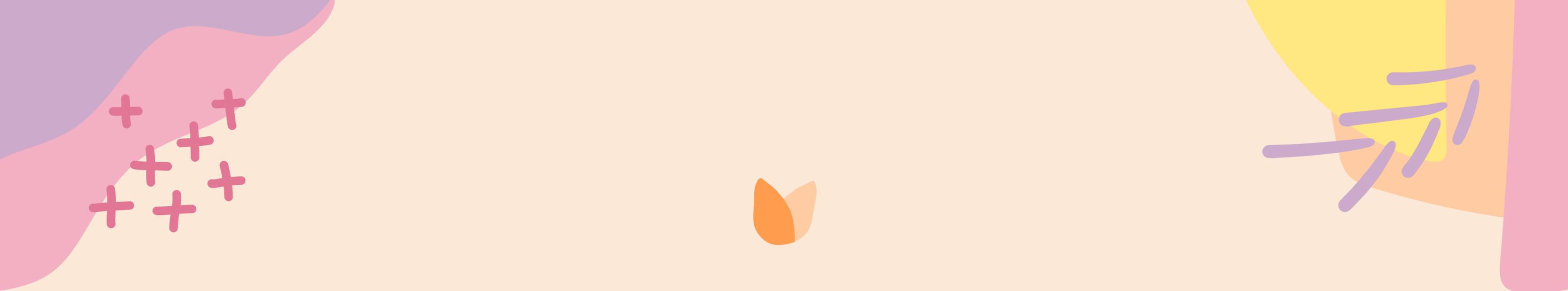
In West Malaysia or any part of it, implement English common law and equity rules as they were administered in England on April 7, 1956. In Sabah, use the English Common Law and equity rules, as well as statutes of broad application, as they were administered or in force in England on December 1, 1951. In Sarawak, implement English common law and equity rules, as well as statutes of broad application, as administered or in force in England on December 12, 1949.



The Malaysian Common Law can be found in court decisions. The decisions of the High Court, Supreme Court, former Federal Court, and Privy Council are legally binding.



1.9 LEGISLATIVE PROCESS



Parliament enacts legislation by introducing a Bill that is approved by both the Dewan and the Yang di-Pertuan Agong.





THREE (3) VARIOUS TYPES OF BILLS



PUBLIC BILLS

Bills in the public interest, such as national security, public order, and taxation

PRIVATE BILLS

These are bills that deal with local or private issues.

HYBRID BILLS

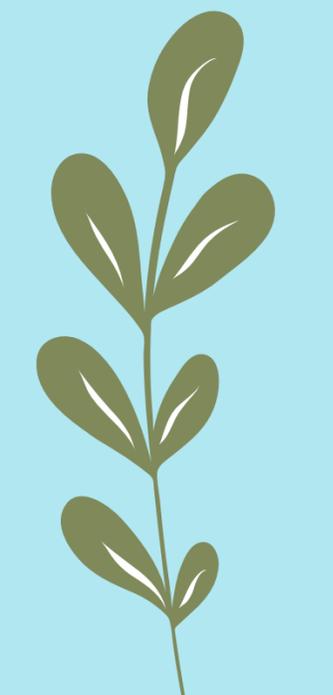
Bills dealing with matters of public concern that also touch the interests of some private bodies or individuals.



1.10 STRUCTURE OF THE COURT

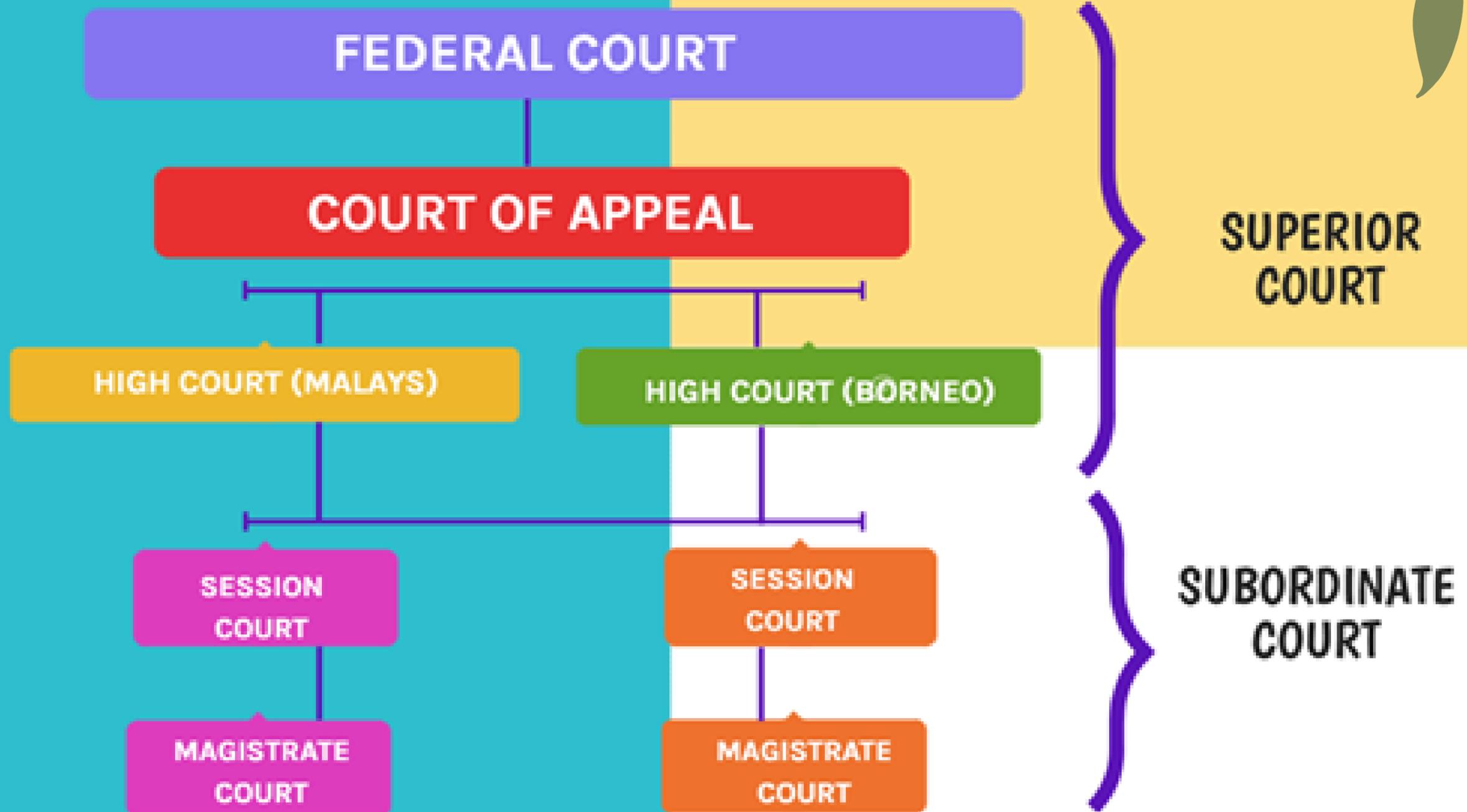


In terms of power, the courts are organized in a hierarchical system. Depending on the nature of the claims and their monetary values, cases commence (start) in several courts.



As a result, a fundamental understanding of the court's structure is important.

THE MALAYSIAN COURT STRUCTURE





1 FEDERAL COURT

Civil appeals from the Court of Appeal are heard by the Federal Court. Criminal appeals from the Court of Appeal are also heard by the Federal Court, but only when the case was heard by the High Court in its original jurisdiction.

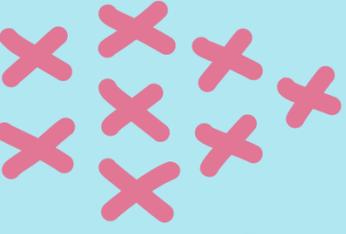
2 COURT OF APPEAL

The Court of Appeal considers appeals from the High Court's judgements in civil and criminal cases.



3 HIGH COURT

The High Court has the authority to hear all criminal matters. With the exception of motor vehicle accidents, landlord and tenant disputes, and hardship, the High Court usually handles civil cases where the demand exceeds RM1,000,000. The High Court is required to hear certain cases, such as probate, divorce, bankruptcy, and trust enforcement. The High Courts also hear civil and criminal appeals from subordinate court decisions.



4

SESSIONS COURT

All civil claims valued more than RM100,000 but less than RM1,000,000 are heard by the Sessions Court. The Sessions Court, on the other hand, can consider any case involving a motor vehicle accident, a landlord-tenant dispute, or distress, regardless of the monetary value. On the other hand, even if the claims do not exceed the RM1,000,000 limit, some cases cannot be heard by the Sessions Court.

The Sessions Court, for example, cannot handle cases involving estate probate and administration, divorce, guardianship or custody of minors, or bankruptcy. The High Court is required to hear these cases.

Since 1 March 2013, the Sessions Court has been able to try all actions for specific performance or rescission of contracts, as well as cancellation or rectification of instruments, up to a value of RM 1,000,000.

Within a monetary limit of RM 1,000,000, the Sessions Court can also grant injunctions and make declarations. The Sessions Court has the authority to try all criminal matters, except those punishable by death, and to impose any sentence permitted by law, except the death penalty.



5

MAGISTRATES' COURT



The Magistrates' Court is a court that hears cases. The Magistrates Court has a monetary jurisdiction of RM 100,000.

there are **TWO (2)** classes of Magistrates: First Class Magistrates can hear all civil claims up to RM 100,000, while Second Class Magistrates can only hear civil claims up to RM 10,000.

In criminal matters, the Magistrates Court can only try offences that carry a maximum sentence of ten years in prison or a fine only. The Magistrates Court can impose a penalty of up to five years in prison, a fine of up to RM 10,000, or a whipping of up to 12 strokes, or any combination of the above.

Procedure for Small Claims:
The small claims procedure can be used by an individual (not a company) who has a claim of less than RM 5,000. This is done by completing Form 164 (Summons and Statement of Claim), which is available at the Subordinate Courts Building upon request. The case heard by the Magistrates Court, but there will be no legal representation.



6 OTHER TRIBUNALS AND COURTS



1. **Syariah Court:**
When the parties are Muslims, the Syariah Court has jurisdiction over matters relating to Islamic law.

2. **Native Court:**
Only Sabah and Sarawak have Native Courts. It deals with 'native customs' in cases where the parties are natives.

3. **Industrial Court:**
The Industrial Court hears cases involving labor issues and employee dismissals. Due to the fact that it is not strictly a civil court, its procedures are less formal. The Court's decision

4. **Consumer Claims Tribunal:**
The Consumer Protection Act of 1999 established the Consumer Claims Tribunals. The Tribunal hears claims involving alleged violations of the Act. The Act only applies to consumer transactions, which limits the Tribunal's jurisdiction. A claim has a monetary limit of RM 25,000. A claim that exceeds this limit can be heard by the tribunals provided both parties agree in writing that the Tribunal should have jurisdiction to hear and consider the case. There is no provision for legal representation. However, any party can bring a family member or friend to the hearing, or in the case of the seller or supplier, a full-time paid employee.

GLOSSARY 😊

TERM

Act

Law that is enacted by Parliament after independence

Bills

Is a plan for a possible new law that normally presented to Parliament by the Minister responsible for the particular portfolio.

Common
Law

Legal principles lay down by the courts, as opposed to laws passed by parliament. Also known as "judge-made" law.

GLOSSARY 😊

TERM

Constitution The supreme law of a country that lays down its foundational characteristics, the form and power of its government, and the fundamental principles that the country should follow.

Custom A practice that has been accepted over a long period and generally followed.

Custom Rules and regulations made by the relevant Minister pursuant to a parent Act.

GLOSSARY 😊

TERM

Delegated Legislation	Rules and regulations made by the relevant Minister pursuant to a parent Act.
Executive	The government of the day.
Federal system	A system of government where power is divided between the central government and state governments.
Judiciary	A system of courts of law for the administration of justice.

GLOSSARY 😊

TERM

Jurisdiction Power or authority. When we say that a court has jurisdiction to hear a matter, it means the court has power to try the case.

Legal system A system of law that a country follows. When we say that "Malaysia follows the common law tradition" it means that our legal system adopts the English model. Where many laws are not codified into statutes.

Legislation Laws that are enacted, i.e. statutes

GLOSSARY 😊

TERM

Legislature	The institution with the power to make law
Parliament	The representative body with the power to make law.
Precedent	A court decision that can be cited as an example to resolve similar question of law in a subsequent case.
Ordinances	Law that are enacted by Parliament before independence.
Statute	Law enacted by Parliament



REVISION QUESTIONS



Question 1:

MATCH THE RIGHT EXAMPLE

WRITTEN LAW

UNWRITTEN
LAW

MUSLIM LAW

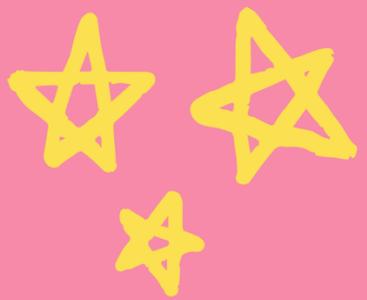
COMMON LAW

JUDICIAL
DECISION

IN FORCE IN
ENGLAND

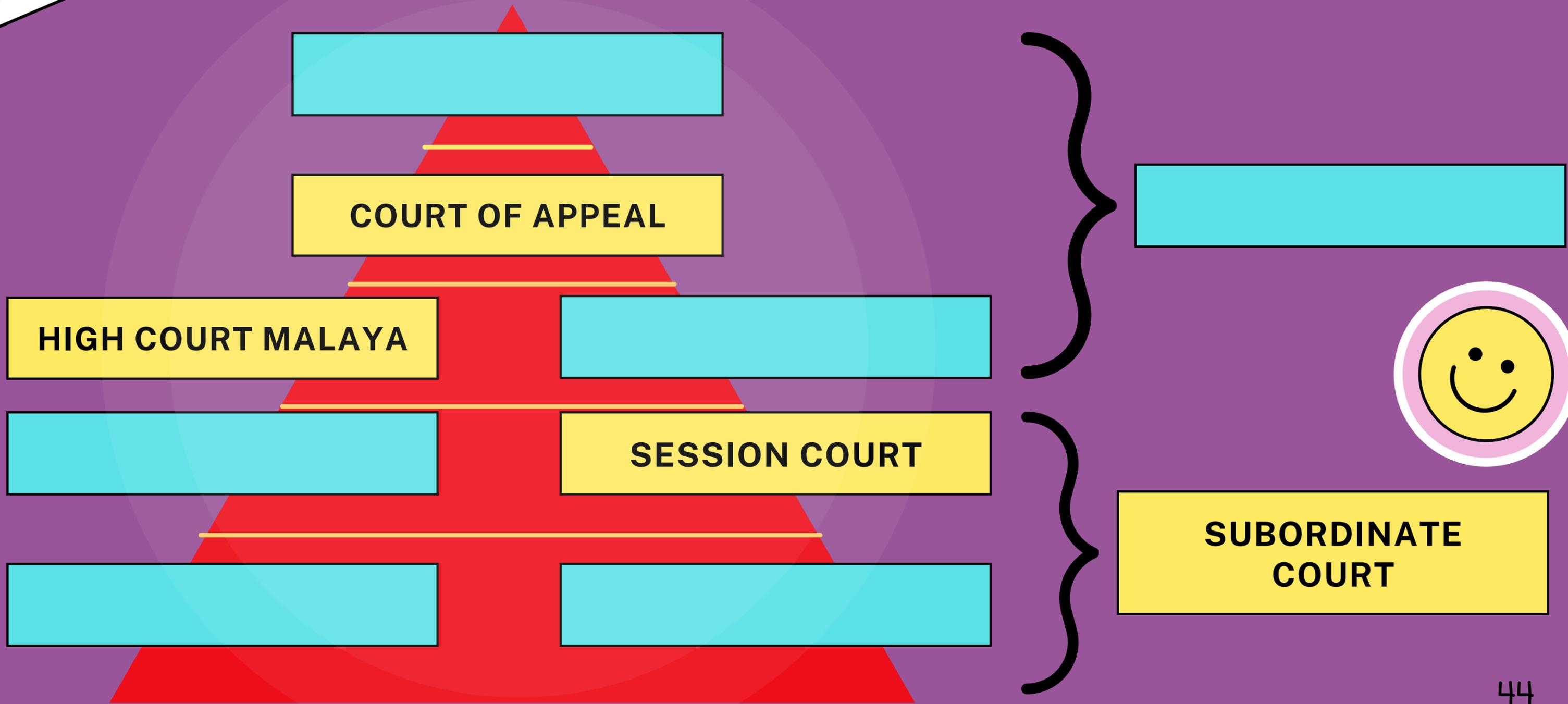
THE STATE
CONSTITUTION

SYARIAH
COURT



Question 2:

FILL IN THE BLANKS



Question 3:

Choose the right answer

- 1 A practice that has been accepted over a long period and generally followed
- 2 Law enacted by Parliament
- 3 Law that are enacted by Parliament before independence.
- 4 The government of the day.
- 5 Is a plan for a possible new law that normally presented to Parliament by the Minister responsible for the particular portfolio.

Ordinances

Custom

Executive

Bills

Statue

**SCAN ME FOR
MORE EXERCISE**



ANSWERS

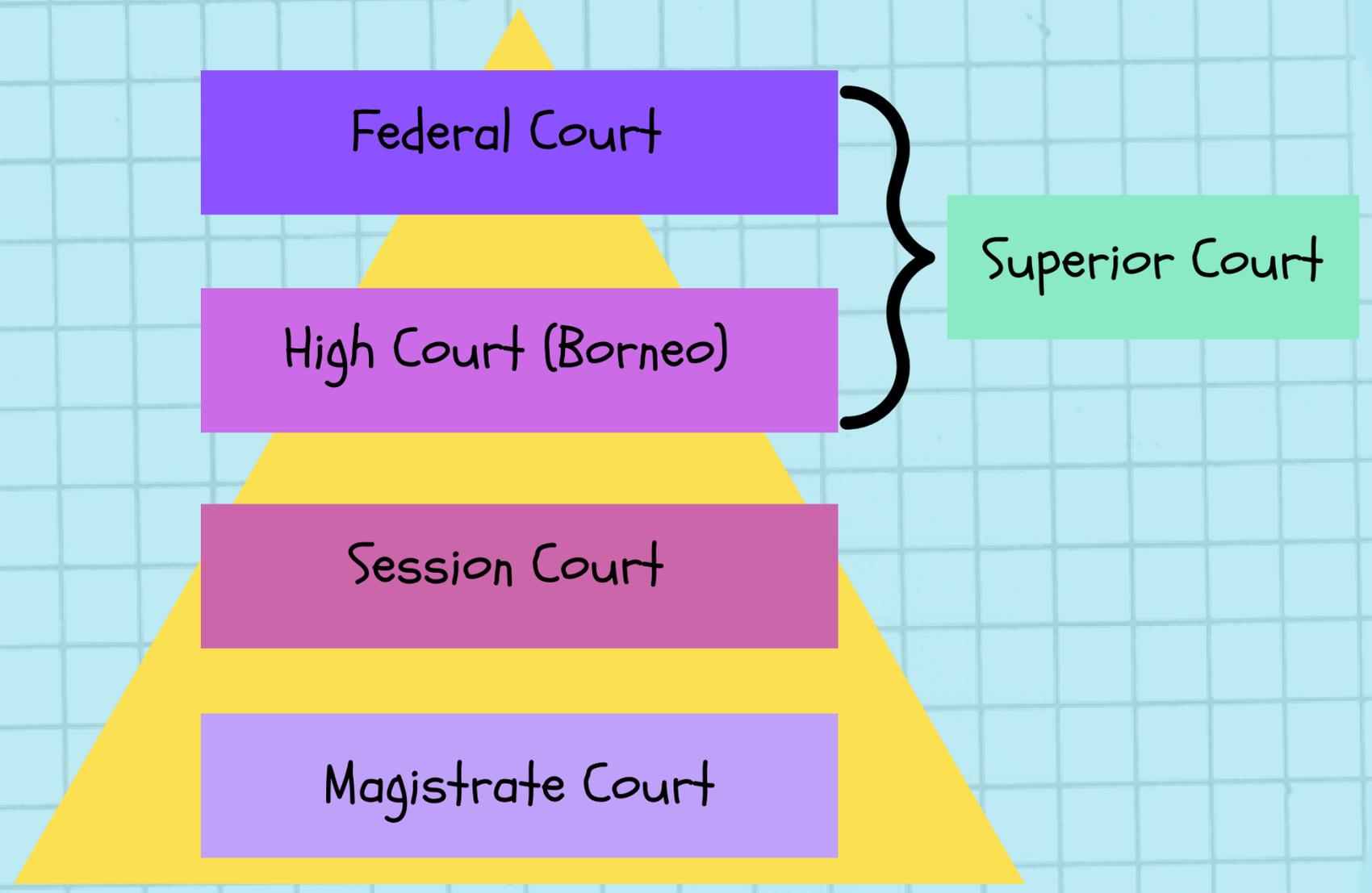
QUESTION 1

- | | | | |
|----|---------------|--|------------------------|
| 1. | Written law | | The State Constitution |
| 2. | Unwritten law | | Judicial Decision |
| 3. | Muslim law | | Syariah Court |
| 4. | Common law | | In force in England |

QUESTION 3

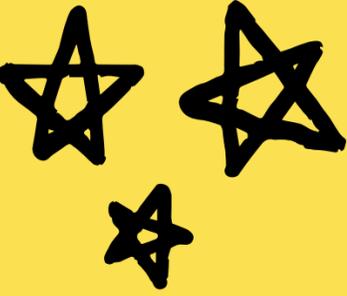
- | | | | |
|---|-----------|---|-----------|
| 1 | Custom | 4 | Bills |
| 2 | Statue | 5 | Executive |
| 3 | Ordinance | | |

QUESTION 2





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