Is a body of judges in a legal system.
- Court is the place/proper channel where the public can address issues regarding to the law and constitution.
- Court is the symbol of justice.
- Article 121 (1) of the Federal Constitution (FC) provides jurisdiction of the court.
- The interpretation of laws made by the judges becomes precedent.
- Dual court systems: Civil Court and Syariah Court.
HISTORY OF JUDICIAL SYSTEM

- First Royal Charter of Justice 1807 – first statutory introduction of English Law in Penang.
- Established the Court of Judicature of Prince of Wales Island.
- Jurisdiction in all civil, criminal & ecclesiastical matters
- Second Royal Charter: introduced in Malacca (1826).
- Third Royal Charter (1855): enabled the reorganization of the whole court system.

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Law and a system of courts were well established long prior to the arrival of the British. For example, Melaka and Brunei maintained order using Islamic law and unwritten law based on tradition and custom.

Judges were appointed by the sultan of their state.

Before the creation of the Federated Malay States in 1895, chief judges heard appeals from the Islamic courts and further appeals were heard directly by the sultans in consultation with their religious advisors.
Under this system the ruler was the source of justice and supreme judicial authority.

The Islamic system of justice was slowly weakened under British rule due to the emphasis placed on separating religious and civil power and creating a formal bureaucratic state governed by written law.

William A. Graham, the first head of state government in Kelantan per the Anglo-Siamese Treaty of 1902, provides an illustrative example.
In violation of the treaty with the state ruler Graham worked to curb the power of Islamic courts by refusing police assistance in carrying out their orders and collecting evidence.

The marginalization of indigenous courts was formalised with the Judicial Commissioners' Regulations and Order in Council in 1896.

This legislation removed the power of the sultans to hear legal appeals and created the office of judicial Commissioner to carry out this function. The Federated Malay States Appeals Orders in Council of 1906 provided for appeals to the Privy Council in London.
BACKGROUND OF CIVIL COURT

- 1 April 1946 (Melayan Union): 1 standard court system.
- 1957: Judicial Department was established.
- 1995: Judicial Department was replaced by Legal Division under the Prime Minister’s Office
- Administration: Chief Registrar.

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FUNCTIONS

- Protector against violation of human rights of the individual and rights of the government.
- Vested with power to adjudicate, resolve disputes and sentence the offender – criminal and civil.
- Set out warrant of arrest.
- Hear appeal from lower court.
- Provide balance of power between executive and legislatures.
JURISDICTION

- To interpret the constitution and laws.
- To declare any federal or state laws as invalid.
- To declare any government action as invalid or illegal.
JUDICIAL INDEPENDENCE

- Neutral body: cannot be influenced by either Executive or Legislature.
- Judges in the Federal and High Court once appointed by the YDPA cannot be dismissed before retirement age unless there is valid circumstances to do so.
- Could not be dismissed unless with the endorsement of tribunal set up by the YDPA.
- The tribunal will be headed by the Chief Justice and at least 5 judges or ex-judges.
SERVICE

- Judges’ salaries: from Consolidated Fund.
- Judges’ salaries and other benefit may not be altered to his/her disadvantage after appointment.
- Could hold office until the age of 65.
- Service could be renewed for 6 months after 65.
- Judges’ conduct cannot be discussed in either House of the Parliamentary.
COURT STRUCTURE

Before Sebelum 1.1.1985:
1. Privy Council
2. Supreme Court
3. High Court of Malaya and High Court of Borneo.
   - 1.1.1985: all appeal to PC was abolished.
   - Supreme Court became the highest court of appeal, headed by Lord President.
CONTINUE

- 2 tiered court system: Supreme Court and High Court.
- Court of Appeal was established: reestablished 3 tiered court system.
- Supreme Court was renamed as Federal Court, headed by Chief Justice.
JURISDICTION

- Means the right to decide, types of cases/matters that can be tried in court.
- Types of jurisdiction: civil, criminal, original, appellate, supervisory, judicial review.
- The relevant laws:
  - Article 121(1), (A) of the federal Constitution.
  - Subordinate Courts Act 1948.
FEDERAL COURT (FC)

- **Members:** Chief Justice, President of Appeal Court, Chief Judge of High Court of Malaya and Borneo, 7 other judges
- **Quorum for proceeding:** 3 judges.
- **Jurisdiction:** Article 121(2), 128,130.
- **Highest judicial authority.**
- **Its decision bind other courts in the hierarchy.**
- **Proceeding:** must follow Section 74 Court of Judicature Act 1994.
Court session: according to the time and place determine from time to time by the Chief Justice.

Normally in Palace of Justice, Putrajaya.

Section 75 Court Judicature Act 1964: FC may conduct proceeding in circuit – Pulau Pinang, Ipoh, Kota Bharu, Johor Bahru, Alor Setar, Kuantan, Melaka, Kuching dan Kota Kinabalu
FC’S JURISDICTION

1. Exclusive and advisory jurisdiction – Article 128(1) Federal Constitution
   - To determine validity of law enacted by the parlimen and DUN.
   - To decide on dispute between federal and state government or dispute between states government.

   - To hear and determine appeal from any decision from the Appeal Court in its appellate jurisdiction in respect of criminal and civil matter (RM250,000 or more) decided by the High Court in its original jurisdiction.
3. Reference of constitutional question by High Court to FC.

- Article 128(2) of the Federal Constitution, Section 84 Court of Judicature Act 1994: FC has jurisdiction to determine constitutional question referred to it by the High Court.

- Judgments of FC binds all inferior court.
FC JUDGES

YAA Tun Arifin bin Zakaria (Dato' Lela Negara)
Ketua Hakim Negara Mahkamah Persekutuan
Malaysia
SSM, PSM, DUPN, SPCM, SPSK, SPMP, DPCM, DPMK
THE COURT OF APPEAL (CA)

- Created on 24.6.1994 to act as intermediary court between the High Court and the federal Court – giving the litigants more rights to appeal.


- Headed by the president.

Jurisdiction:
- To hear appeals in respect of criminal matters decided by the High Court in the exercise of its original jurisdiction.
- To hear criminal appeals against any decision made by the High Court in the exercise of its appellate jurisdiction in respect of criminal matters decided by the Session Court (SC).
To hear criminal appeals against the decision of the High Court in the exercise of its appellate jurisdiction in respect of any criminal matter decided by the Magistrate Court (MC) but the appeal is to be confined only to questions of law.

To hear appeals in civil matters where the amount or value of the subject matter of the claim exceeds RM250,000 and for claims less than RM250,000, with leave from the CA.
CA JUDGES
HIGH COURT (HC)

- Two HCs with coordinate jurisdiction and powers: HC in Malaya (HCM) and HC in Sabah and Sarawak (HCSS).
- Each headed by Chief Judge.
- The number of HC judges shall not exceed 47 in HCM and 10 in HCSS.
- Quorum for proceeding: 1.
- Judicial Commissioner: same immunity and power with judges.

Chief Judge of Malaya: YAA Tan Sri Dato' Seri Zulkefli bin Ahmad Makinudin
PSM, SPMP, DPMP, SMJ, PIS

Chief Judge of Sabah & Sarawak: YAA Tan Sri Datuk Seri Panglima Richard Malanjum
CIVIL JURISDICTION (ORIGINAL)

- Under section 23 of the Court of Judicature Act 1994, the HC shall have jurisdiction to try all civil proceedings where:
  
a. The cause of action arose;
  
b. The defendant/one of several defendants resides or has his place of business; or
  
c. The facts on which the proceedings are based exist or are alleged to have occurred; or
  
d. Any land the ownership of which is disputes is situated, but where all parties to a proceeding consent in writing, a case may be tried in at HC.
Section 24 of the Court of Judicature Act 1994, HC has jurisdiction in civil cases:

a. Jurisdiction under any written law relating to divorce and matrimonial causes;

b. The same jurisdiction and authority in relation to matters of admiralty as is had by the HC of Justice in England under the UK Supreme Court Act 1981;

c. Jurisdiction under any written law relating to bankruptcy or to companies;

d. Jurisdiction to appoint and control guardians of infants and generally over person and property of infant;

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Section 24 of the Court of Judicature Act 1994, HC has jurisdiction in civil cases:

e. Jurisdiction to appoint and control guardians and keepers of the person and estates of idiots, mentally disordered persons and persons of unsound mind; and

f. Jurisdiction to grant probates of wills and testaments and letters of administration of the estates of deceased persons leaving property within territorial jurisdiction of the Court and to alter or revoke such grants.
CRIMINAL JURISDICTION (ORIGINAL)

- Under section 22 of the Court of Judicature Act 1994, the HC shall have jurisdiction to try all criminal offences committed
  a. Within its local jurisdiction;
  b. On the high seas on board any ship or on any aircraft registered in Malaysia;
  c. By any citizen or any permanent resident on the high seas on board any ship or aircraft;
  d. By any person on high seas where the offence is piracy by the law of nations.

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CRIMINAL JURISDICTION (ORIGINAL)

- The HC may passed sentence allowed by the law.
- Case involving capital punishment or death penalty will be tried in the HC:
  - Section 302 of the Penal Code – homicide amounting to murder.
  - Section 364 Penal Code – Kidnapping or abducting in order to murder.
  - Section 39B of the dangerous Drugs Act.
  - Offences under Firearms (increase penalty) Act
- Cases not involving the death penalty may be brought by the Attorney General to the HC under special circumstances.
APPELLATE JURISDICTION

The HC may passed sentence allowed by the law.

Case involving capital punishment or death penalty will be tried in the HC:

- Section 302 of the Penal Code – homicide amounting to murder.
- Section 364 Penal Code – Kidnapping or abducting in order to murder.
- Section 39B of the dangerous Drugs Act.
- Offences under Firearms (increase penalty) Act

Cases not involving the death penalty may be brought by the Attorney General to the HC under special circumstances.
REVISIONARY POWERS

• In respect of criminal proceedings and matters heard by the Subordinate Courts.
• Section 32 of the Court of Judicature Act 1994 provides that the HC may call for and examine the record of any civil proceedings before any subordinate court for the purpose of:
  ✓ Satisfying itself as to the correctness, legality or propriety of any decision recorded or passed and as to the regularity of any proceedings of any such subordinate court.
• Orders that can be made: new trial or as seems necessary to secure that justice is done.
The HC granted the wife’s (petitioner) petition for a divorce on the ground of the husband’s (respondent) adultery. The wife also applied damages against the co–respondent.

Based on Section 58(3)(b) of the Law Reform (Marriage and Divorce) Act 1976, the HC judge ruled that the element of damages depends on the circumstances and the losses suffered by the petitioner due to adultery.
After considering the fact that the wife had faithfully stand by her husband during good and bad time, and the co–respondent only came into the picture when the husband had established himself as a successful private medical practitioner, the judge was satisfied that the petitioner had suffered losses and means.

Damages to the amount of RM70,000 were ordered.
SAMPLE REVISED CASE

- On May 12, 2005, Ahmad Harizal then 18, was fined RM600 or 14 days jail by the Kangar Magistrate Court for dodging the National Service.

- **Facts:** he was forced to quit school while in his early teens to take on poorly paid piecemeal work to help out family expenses, and who, not only could not afford a lawyer but had to borrow RM7 to attend his own hearing. He needed to work, otherwise during the three months he would be away, his family could well starve, so he skipped the National Service.
The Magistrate sentenced him RM600 or 14 day imprisonment – to serve as lesson to the would be dodger of national service.

The family cannot afford to pay the fine so he had to serve his 14 days sentence.

However, the following day, the Kangar High Court released Ahmad Harizal on a RM500 bond for a year.

The fine was actually paid by the representative of the Perlis Chief Minister.
The National Training Act was amended in 2008.
The offence is now punishable with community service in not more than 240 hours.
OTHER JURISDICTION OF THE HC

- To review decision made by quasi judicial bodies.

- To issue a writ (a formal, legal written order):
  - **Writ of habeas corpus**: provides one of the most important protection for our liberties. It helps protect citizens from being held for no wrong doing.
  - **Writ of mandamus**: that commands an inferior tribunal, corporation, Municipal Corporation, or individual to perform, or refrain from performing, a particular act, the performance or omission of which is required by law as an obligation.
Writ of certiorari: commanding officers of inferior courts to submit the record of a cause pending before them to give the party more certain and speedy justice.
HC JUDGES

YAA Tan Sri Arifin bin Zakaria (Dato' Lela Negara)
PSM, SPSK, SPMP, DPCM, DPMK

YAA Tan Sri Datuk Seri Panglima Richard Malanjum
PSM, SPSK, SSAP, SIMP, SPDK, PGDK
SESSION COURT

The highest Subordinate Court.

CRIMINAL JURISDICTION

1. Section 63 & 64 of the Subordinate Courts Act 1948: SC has jurisdiction to try all offences other than offences punishable with death.

2. May pass any sentence allowed by law including life sentence but not death sentence.

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CIVIL JURISDICTION

1. Section 65 of the Subordinate Courts Act 1948 provides SC with:
   a. Unlimited jurisdiction to try all actions and suits of civil nature in respect of motor vehicle accidents, landlords and tenant and distress.
   b. Jurisdiction to try all other actions and suits of a civil nature where the subject matter does not exceed RM250,000.

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SAMPLE CASE: PETER NG HOCK GUAN & YEAP HUI LENG V LEE CHOOON LIM & KOH GIN JEE

- Summon case no. 5-53-651-2004 in Kota Bharu SC.
- Plaintiffs claim damages for assault and battery inflicted by the defendants.
- Cause of argument that led to the action: vandalism of a car.
- The judge ordered for general damages of RM100 to be paid to each plaintiff, aggravated damages RM15,000 each and 8% interest per annum for both damages.
Magistrates are divided into First Class and Second Class Magistrates, the former being legally qualified and having greater powers. Second Class Magistrates are now not normally appointed. Magistrates have the powers to hear both criminal and civil matters.

1. **CRIMINAL JURISDICTION**

   - Section 85 of the Subordinate Courts Act 1948: A First Class magistrate shall have jurisdiction to try all offences for which the maximum term of imprisonment provided by law does not exceed 10 imprisonment or with fine only.
Sentencing jurisdiction

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

(a) 5 years imprisonment;
(b) a fine of RM10,000.00;
(c) whipping up to 12 strokes; or
(d) any sentence combining any of the sentence aforesaid.

However, in some cases e.g. under the Dangerous Drugs Act 1952, Customs Act 1967 and Betting Act 1953 the Magistrate may impose a fine higher than RM10,000.00.
2. **CIVIL JURISDICTION**

- Section 90 of the Subordinate Courts Act 1948: A First Class magistrate shall have jurisdiction to try all action and suits of a civil nature where the amount in dispute or value of the subject matter does not exceed RM25,000.

- The Magistrates' Courts also hear appeals from the Penghulu's Court.
SAMPLE CASES

- *Cheong Ah Cheow v PP* [1985] 2 MLJ 257 and the case of *PP v Yap Sin Peng* [1986] 2 MLJ 66 wherein the Magistrate had awarded the maximum RM20,000 fine in both cases respectively, and these decisions were upheld.
MAGISTRATE’S COURT (SMALL CLAIM)

- To hear cases where the calm is not more than RM5000.
- The action is initiated and brought to the court by the plaintiff himself – no legal counsellor, to reduce the trial cost.

Example: S 336, 337 & 338 Penal Code—Punishment for act which endangers life or personal safety of others, causing hurt… & causing grievous hurt.

Punishment: 3 months OR RM500 OR both; 6 months OR RM1000 OR both; 2 years OR RM2000 OR both.
TYPES OF CLAIM

1. Collecting debt.
2. Property claim valued at not more than RM5,000.00
3. Payment of service.
4. Rent
5. Property damage claim.
6. Failure to perform (artist) claim.
SPECIAL COURT

- Established in 1993: Article 182(1) of the federal Constitution.
- Comprise of Chief Justice of FC who shall be the Chairman, the Chief Judges of the HCs and 2 other judge of FC or HC appointed by the Conference of Rulers.
- For the purpose of conducting proceedings by or against the YDPA or the Ruler of a state in his personal capacity.
- Exclusive jurisdiction to try all offences committed in the Federation (YDPA) or state (Ruler) not withstanding where the cause of action arose.
JUVENILE COURT

- Established under the Child Act 2001 to try offenders between the age 10–18 years.
- **Section 2** of the Act defines “Child” as a person under the age of eighteen years, and for the purposes of criminal proceedings, means a person who has attained the age of ten.
- **Section 11(2)**: Comprise of magistrate, assisted by 2 advisers chosen from a panel of persons resident in the Federal Territories or State as the case may be, nominated by the minister or State Authority respectively.
Advisers shall inform and advise the Court with respect to any consideration affecting the punishment or other treatment of any child or young person brought before it.

The hearing is closed to the public: to protect the identity of the juvenile from public exposure.

Sections 91–97: If found guilty, the juvenile will not be convicted of the offence or imprisoned but he will be sent to a reform school until attains the age of 21 or he can be released on bail. For capital offences, the child shall be detained in prison at the pleasure of the Ruler.

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Established by virtue of the provisions in the Federal Constitution that specified the jurisdiction of the state to administer Islamic law: Schedule 9, List 2, para 1.

Article 121(1) of the Federal Constitution provides that the Civil courts shall have no jurisdiction in respect matters within the jurisdiction of the Syariah Court.

Laws relevant: states’ enactment.

To try civil and criminal offence committed by the Muslims.
Civil cases involving administration and Islamic family law pertaining to matters such as marriage, divorce, zakat, inheritance, etc. according to the principles of Shariah evidence and justice.

With regard to criminal laws, the jurisdiction of the Shariah laws is limited and confined to offences in respect of polygamous marriage, close proximity, indecent dressing, and behaviour, violation of the ‘pillars of Islam’ (not fasting during Ramadan, not attending Friday prayers, desertion by either spouse), and apostasy.
Every state has their own enactment.
The application of Islamic family law is based on the Islamic jurisprudence (expansion of syariah principles) of the four mazhab: Shafi‘e, Hanbali, Maliki dan Hanafi.
In certain fields of law, there is a definite conflict of jurisdiction between the Syariah Courts and the Civil Courts:

1. Application for Grant of Letter of Administration of a Muslim can only be made in the Civil Courts despite Article 121 (1A).

2. Action against unnatural offences (e.g., sodomy) committed by a Muslim is brought in the Civil Court although such offences are provided in both Syariah Law and Civil Law.

3. Court Order from the Syariah Court is not enforceable in the Civil Court and may not even be enforceable in a Syariah Court in another state in Malaysia.
JABATAN KEHAKIMAN SYARIAH MALAYSIA

- A central agency that is competent to realise the standardisation of the Islamic legal system to uphold justice.

OBJECTIVES:

- Establishing Islamic Laws relating to the administration of the Uniform Court for adoption in the states.
- Ensure that all states use the Service Gunasama Shariah Officer of General Federation.
- Ensure that the cases handled by the Syariah Appeal Court fair, efficient and orderly.
Facilitate the use of information technology systems to facilitate widespread Islamic judicial administration.

Developing a resource center for use by public officials and related legal and judicial system of syariah.

Mobilizing resources and research related to the legal system of Shariah judicial system for the promotion of judicial management and the Islamic Shariah Court of Malaysia.

Implement training requirements for all officers and employees of the syariah legal and judicial institutions throughout the country.
JURISDICTION

- **SYARIAH APPEAL COURT**
  - Hear appeal from Syariah High Court’s decision.
  - Review case records – to ensure justice is done.

- **SYARIAH HIGH COURT**
  - Hear appeal from the Lower Syariah Court pertaining to release, conviction, punishment.
  - Hear appeal in which the claim made is not less than RM1000. E.g. maintenance case.
SYARIAH LOWER COURT

To try criminal case punishable with not more than RM2000 or 1 year imprisonment or both.

To try civil case where the claim is not more than RM50,000 or cannot be valued by money.
COURT MARTIAL

- A court-martial is a military court for trying offenses under army, navy or other armed service rules and regulations.
- Such offenses must not only be committed by a member of the military, but must also be done in the course of military service, either while engaged in a service-connected duty or while in uniform.
- **High Court**: hear case pertaining to military officer ranking staff-sargeant and above. Presided by Leftenan Kolonel, assisted by 2 Mejar/Kapten
- **Lower Court**: hear case pertaining to military officer ranking below staff-sargeant. Presided by Mejar, assisted by 2 Kapten.
SAMPLE CASE

- Sergeant N. Tharmendran of the Royal Malaysian Air Force (RMAF), who has been indicted in civil court over the theft of two jet engines belonging to RMAF, is also being court martial for alleged dishonest misappropriation of public property and also faces an alternative charge of accepting stolen property.

- In his court martial, the sergeant has been charged under Section 61(b) of the Armed Forces Act 1972 and section 88 of the same act, whereby he can be jailed up to two years, if convicted.

- The court panel headed by Major Zainal Abidin Abdul Aziz, the prosecution was handled by military prosecutors Capt Zaharuddin Che Zahari and Capt Ahmad Azam Soip.
The court of a penghulu, or Malay village head, has the power to hear civil matters of which the claim does not exceed RM50, where the parties are of an Asian race and speak and understand the Malay language.

The Penghulu Court’s criminal jurisdiction is limited to offences of a minor nature charged against a person of Asian race which is specially enumerated in his warrant, which can be punished with a fine not exceeding RM50.

In Sabah and Sarawak, there are no Penghulus’ Courts, but there are instead Native Courts having jurisdiction on matters of native law and custom.
INDUSTRIAL COURT

- **Objective:** Established for creating a harmonious industrial environment through the process of arbitration and the decisions of the Court (Award) consistent within Industrial Relations Act 1967.

- **Functions:**
  1. To hear and hand down decisions or awards in industrial disputes referred to it by the Minister or directly by the parties.
  2. To grant cognisance to the collective agreements which have been jointly deposited by the employers/trade union of employers and trade union of employees.
Subordinate Court’s Rules 1980
High Court’s Rules 1980
In HC trial begins with **writ of order** to order the defendant to appear before the court.
The defendant must express his attendance by giving **memorandum of attendance** to the Registrar’s Office.
CIVIL PROCEDURE

By virtue of Order 5 rule 1 of the Rules of High Court, there are 4 proscribed modes of commencing an action in the High Court, namely;

1. **Writ (of Summons)** – Generally for those actions involving hotly contested facts;

2. **Originating Summons** – Generally faster and easier disposed of than writ, as no witnesses are called. For those actions based mainly on construction of written law and documents (such as contracts and wills).

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3. **Originating Motion** – Similar to originating summons, the only real difference is that originating motion is used when the law so mandates it.

4. **Petition** – Used generally when the law requires it, known especially for certain actions such as for divorce (that one petitions for divorce is somewhat common knowledge).

- By virtue of Order 4 rule 1 of the Subordinate Court Rules, there are 3 modes of commencing an action in the subordinate courts, namely by way of summons, originating application and petition respectively.
Plaintiff prepares Statement of Claim – serve to the defendant.

Defendant prepares Statement of Defense and can Counter Claim.

Plaintiff answers the defendant Statement of Defense and can make Counter Defense.

Disclosure of documents by both parties.
SAMPLE STATEMENT OF CLAIM

In the Sessions Court in the State of Johor, Malaysia
Summons No. _______________

Between

A

Plaintiff

And

B

Defendant

Statement of Claim

1. On 1.1.1997, the Plaintiff lent a sum of RM50,000 to the Defendant
2. the form in which the money was lent
3. the rate percent per annum of interest charged
4. the date contract of repayment was made
5. the amount repaid
6. the amount due but unpaid
7. the date upon which such unpaid sum became due
8. the amount of interest accrued due and unpaid
The pre-trial phase occurs before the case actually goes to trial.

Both parties may attempt to settle their differences out of court before proceeding with a civil trial.

If a settlement cannot be reached, both parties will move forward, contacting possible witnesses and preparing for the actual trial.
Within 1 month after the serving and exchanging of pleading, plaintiff must apply the summon for direction to settle any interim application, disclosure and perusal of document, amendment of writ and pleading, disclosure of expert report, place of heating and mode of hearing.
HEARING

- A civil court hearing usually involves a certain amount of money needing to be paid for damages which have occurred.
- A court hearing is that which takes place in a court room for the reason of resolving any sort of legal conflict.
- 2 ways to prove facts: witness and document.
- Witness gives his testimony in 3 stages:
  - Examination in-chief
  - Cross examination
  - Re-examination
SIMPLE /BRIEF HEARING

- Hearing can be brief if the defendant do not have defense that merit the trial. This approach is normally applied court action originate with writ except in the following cases:

1. Written defamation
2. Oral defamation.
3. Habeas corpus.
4. Breach of promise to marry.
5. Fraud
The purpose of awarding damages is to compensate the Plaintiff for the loss suffered due to the Defendant’s breach of contract.

Damages is that sum of money which will put the party who has been injured or who has suffered, in the same position as if the contract had been properly performed.

**TYPES OF DAMAGES**

1. **Compensatory damages** for actual, proven out-of-pocket costs associated with the injury.
AWARD IN CIVIL CLAIM

2. Discretionary damages for mental anguish and pain and suffering, which are not definitive.

3. Expectation damages for what an injured party reasonably anticipated receiving from an uncompleted transaction.

4. Foreseeable damages for what a breaching party knew or should have known of when a breached contract was formed.

5. General damages for what the law presumes follows the type of injury that is the basis of the lawsuit.

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6. Liquidated damages which are agreed upon by parties to a contract upon entering into the agreement to be paid in the event of a later breach.

7. Punitive damages awarded in addition to actual damages to punish defendants for their wanton, reckless, malicious, or deceitful conduct.

8. Restitution damages returned to an injured plaintiff from the defendant who would otherwise be unjustly enriched at the plaintiff’s expense.
CRIMINAL PROCEDURE

3 cara si tertuduh/suspek boleh dihadapkan ke mahkamah:

1. **saman oleh mahkamah (majistret)** – dokumen yang menyatakan pertuduhan

2. **warkan tangkap** – perintah kepada polis/orang persendirian yang diberi kuasa

3. **tangkapan tanpa waran** – contoh: kesalahan menghadiri perhimpunan yang menyalahi undang-undang, melakukan kerosakan, pemalsuan, memiliki alatan memecah rumah, memiliki harta curi, cubaan melepas diri drpd tahanan yang sah, orang yang sedang melakukan perbuatan mengganggu keamanan, orang yang tidak boleh memberikan penerangan yang memuaskan mengenai dirinya dll.

SA’ODAH AHMAD/JPMPK/FEM/UPM
CONTINUE
ACCUSED APPEAR BEFORE THE COURT S173 (A) CPC

- ‘Appearance' means the accused is either out on bail or being summoned and appears before the court on his own wish.
- ‘Brought to the court' means accused has to be brought from custody.

LANGUAGE USED BY INTERPRETER

- Case: Fong Hung Sium—chief clerk of High Court was asked to interpret from Hokkien to Hainanese. Accused did not fully understand Hainanese dialect & chief clerk did not swear in for his solemn duty.

SA’ODAHAH AHMAD/JPMPK/FEM/UPM
CONTINUE

- Spenser–Wilkinsin J said: Duty of interpreter is not only to make sure he & accused understand one another, but to inform the court if there is any difference of language which may cause difficulty.

WHEN CHARGE IS READ & EXPLAINED

- If accused is facing several charges, each charge must be read & explained separately. Then, plea must be recorded separately as well.
- Does the judge need to explain consequences of pleading guilty (PG)?
CONTINUE

3 views:

a. If charge is difficult or technical in nature, magistrate need to explain the consequences of PG. (as held in Koh Mui Keow, Low Hiong Boon)

b. If consequences of PG involves forfeiture of subject matter/vehicle used in commission of crime, magistrate need to explain (as held in Petrus).

c. There is no need to explain the consequences of PG because it is not mandatory for the judge to explain (Suriyadi J in Rogayah Che Man).
PLEA MUST BE MADE BY ACCUSED'S OWN MOUTH

- It is ideal that accused make plea by his own mouth & not through his counsel (*R v. Tan Thian Chai*)

- In *Chin Ban Keat*, plea was made by counsel on behalf of accused. But, counsel's authority to do so was not disputed in this case

IF ONE ACCUSED PG & CO–ACCUSED CLAIM TRIAL?

- Court must enquire whether prosecution/defense want to call the accused who PG as witness.
If they still want to call him as witness, then sentence must be postponed. If they do not require him as witness, it is in the interest of justice not to postpone the sentence.

IF ACCUSED PG. S173 (B) CPC
- After PG is recorded, PO will tender a brief statement of facts. The court must be satisfied that the plea is completely unreserved, unequivocal and unqualified.

IF ACCUSED CT. S.173 (C) CPC
- S173 (c): If the accused CT, court shall proceed to take all such evidence as may be produced in support of the prosecution.
When witnesses are called, each of them will be subjected to 3 stages of examination s173 (e) CPC. But if witnesses are hostile, PO can initiate impeachment proceedings against them (proceeding to disregard the witness).

CLOSING OF PP’S CASE.

When PO is done calling witnesses, PO will inform that the prosecution is closing its case. It is a practice of PO to offer to the defense, witnesses whom statement have been recorded but not been called as witnesses.

This is to avoid adverse presumption under Illustration (g) to S114 EA.
Adverse presumption can only be drawn if there is withholding or suppression of evidence. (Munusamy v PP).

**SUBMISSION OF NO CASE TO ANSWER.**

- Normally done by defence counsel to persuade the court not to call on accused to enter defense.
- Seah J in Ong Khoon Seng case said:
  1) There is no express provision in CPC permitting defense counsel to make submission of no case to answer at close of PO's case.
  2) But the practice in this country has always been to allow defense counsel to make such submission.
In **PP v H Parnaby**, the judge refused to hear a submission of no case to answer by defense counsel because the evidence given by PO was overwhelming. It is the discretion of judge to allow submission of no case & not a matter of right.

**DECISION TO ORDER ACQUITTAL OR CALL ACCUSED TO ENTER DEFENCE S173 (F) CPC**

The court would have to decide whether there is a case to call on the accused to enter his defense (Junaidi Abdullah). It depends whether the prosecution satisfied the standard of proof required.
CONTINUE

DECISION TO ORDER ACQUITTAL OR CALL ACCUSED TO ENTER DEFENCE S173 (F) CPC

- The court would have to decide whether there is a case to call on the accused to enter his defense (Junaidi Abdullah). It depends whether the prosecution satisfied the standard of proof required.

- The court must act on presumptions:
  a) That all such evidence of primary fact is true, unless it is so inherently incredible that no reasonable person would accept it as being true.
b) There will be nothing to displace those primary facts.

**WHEN COURT CALLS THE ACCUSED TO ENTER HIS DEFENCE, 3 OPTIONS FOR THE ACCUSED GIVEN BY THE COURT S173 (H) (A):**

1. To give sworn evidence in witness box (effect: liable to be cross–examined)
2. To give unsworn statement from dock (effect: no right to cross–examine because it does not constitute evidence).
3. To remain silent (effect: no right to cross–examine because it does not constitute evidence).

SA’ODAH AHMAD/JPMPK/FEM/UPM
WHEN THE COURT CONVICTS, ACCUSED CAN PLEA IN MITIGATION

- S173 (m)CPC stated that the court ‘shall pass sentence according to law’.
- Main factors to be considered before sentencing are:
  1. If A is main offender.
  2. If A has previous records and A admits the records as correct.
  3. If offences committed previously were of similar nature as the present offence.
CONTINUE

4. whether the sentences imposed previously had any deterrent effect on A

5. If A is a persistent offender
   - In **PP v Jafa Daud**, A had numerous previous convictions. So magistrate should not found the quantity of 0.21g heroin as a mitigating factor. High Court extended imprisonment.

DISCHARGE

2 types:

1. Discharge not amounting to acquittal (effect: it is not a final order and PP can still re-arrest the accused person.
2. Acquittal (effect: it would bar PP from prosecuting on the same facts)

THERE ARE 4 GROUNDS FOR MAGISTRATE TO ORDER A DISCHARGE

- When the charge is groundless s173g.
- When accused behaved good s173A (ii) (b).
- When PP informs the court that PP will not prosecute accused.
- Where there are defects which affect the jurisdiction of Court.
CONCLUSION

- Court is the enforcement of law agency.
- Court administered justice and interpreting the law.
- There is a dual system judiciary in Malaysia.
- Court’s jurisdiction is based on its hierarchy.
- Courts have civil and criminal jurisdiction.
- There is a difference in the civil and criminal procedure.