

❁ Disclosure of documents:
Balancing public and private interests



“ In this country, objection as to production as well as admissibility contemplated in sections 123 and 162 of the Evidence Act is decided by the court in an enquiry of all available evidence.

This is because the court understands better than all others the process of balancing competing considerations. It has power to call for the documents, examine them, and determine for itself the validity of the claim.

Unless the court is satisfied that there exists a valid basis for assertion of the privilege, the evidence must be produced.

This strikes a legitimate balance between the public and private interest. ”



—Raja Azlan Shah FJ (as he then was)
BA Rao v Sapuran Kaur & Anor
[1978] 2 MLJ 146, FC at 150

❁ Rule of Law:

Government by laws and not by men



“ We must steadfastly keep on reminding ourselves all the time that we are a government by laws and not by men.

In a government of men and laws, the portion that is a government of men, like a malignant cancer, often tends to stifle the portion that is a government of laws.

Any branch of the government which disregards the supremacy of the law is seen to be acting discordantly with the constitutional system from which its legitimacy is derived.

The Constitution is the supreme law of the land and no one is above or beyond it. And the court is the ultimate interpreter of the Constitution: it is for the court to uphold constitutional values and to enforce constitutional limitations.

This is the essence of the Rule of Law. ”



—HRH Sultan Azlan Shah
*Checks and Balances in a
Constitutional Democracy*

HRH Sultan Azlan Shah

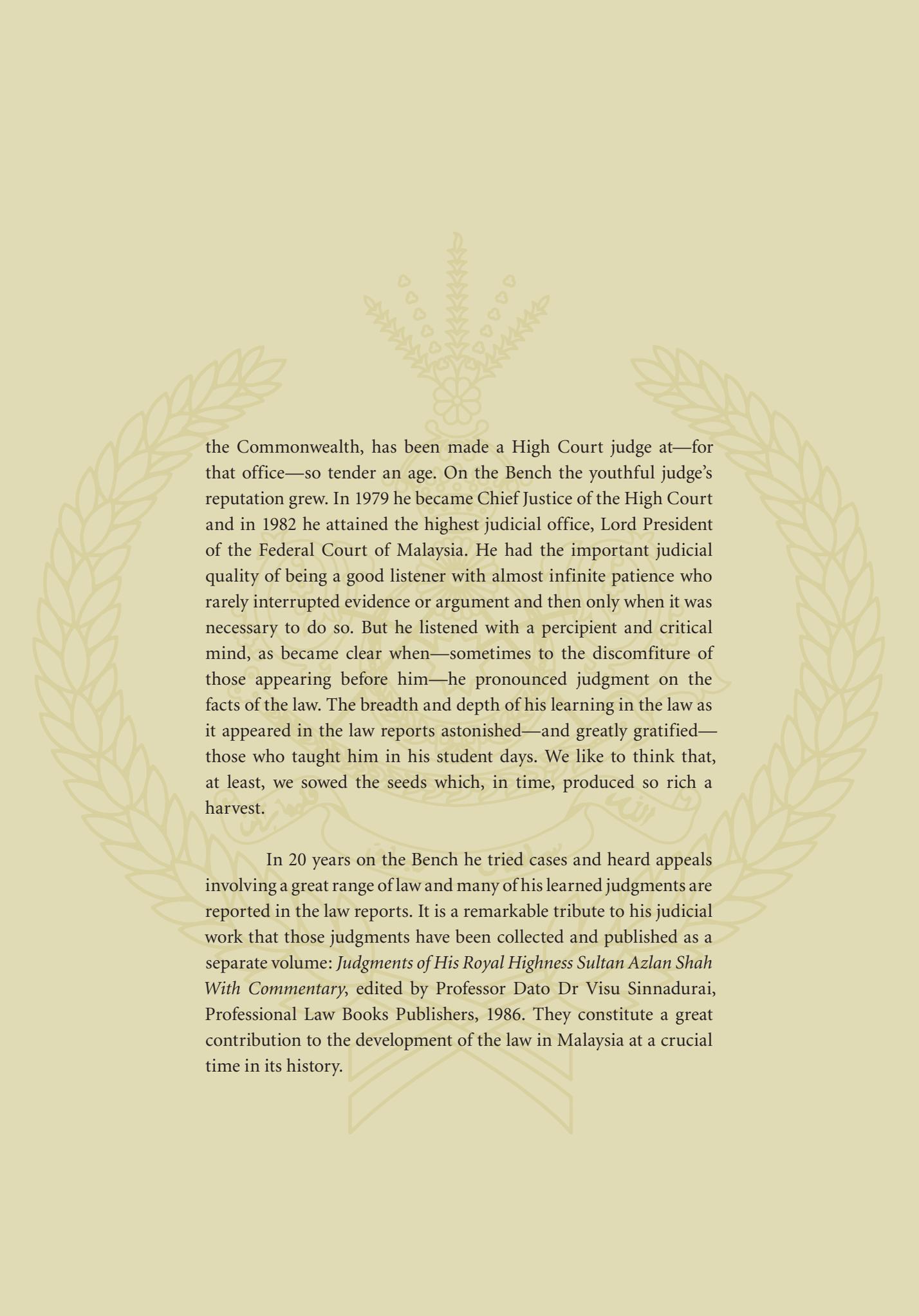
What others say ...

*Professor JC Smith,
former tutor of HRH at Nottingham University:*

Oration by Professor JC Smith, CBE, QC, MA, LL.D., LL.D., FBA
for the Conferment of the Degree of Doctor of Laws *honoris causa*
on His Majesty Sultan Azlan Shah at the Congregation of the
University of Nottingham for the Conferment of Degrees
Nottingham, 11 July 1986.

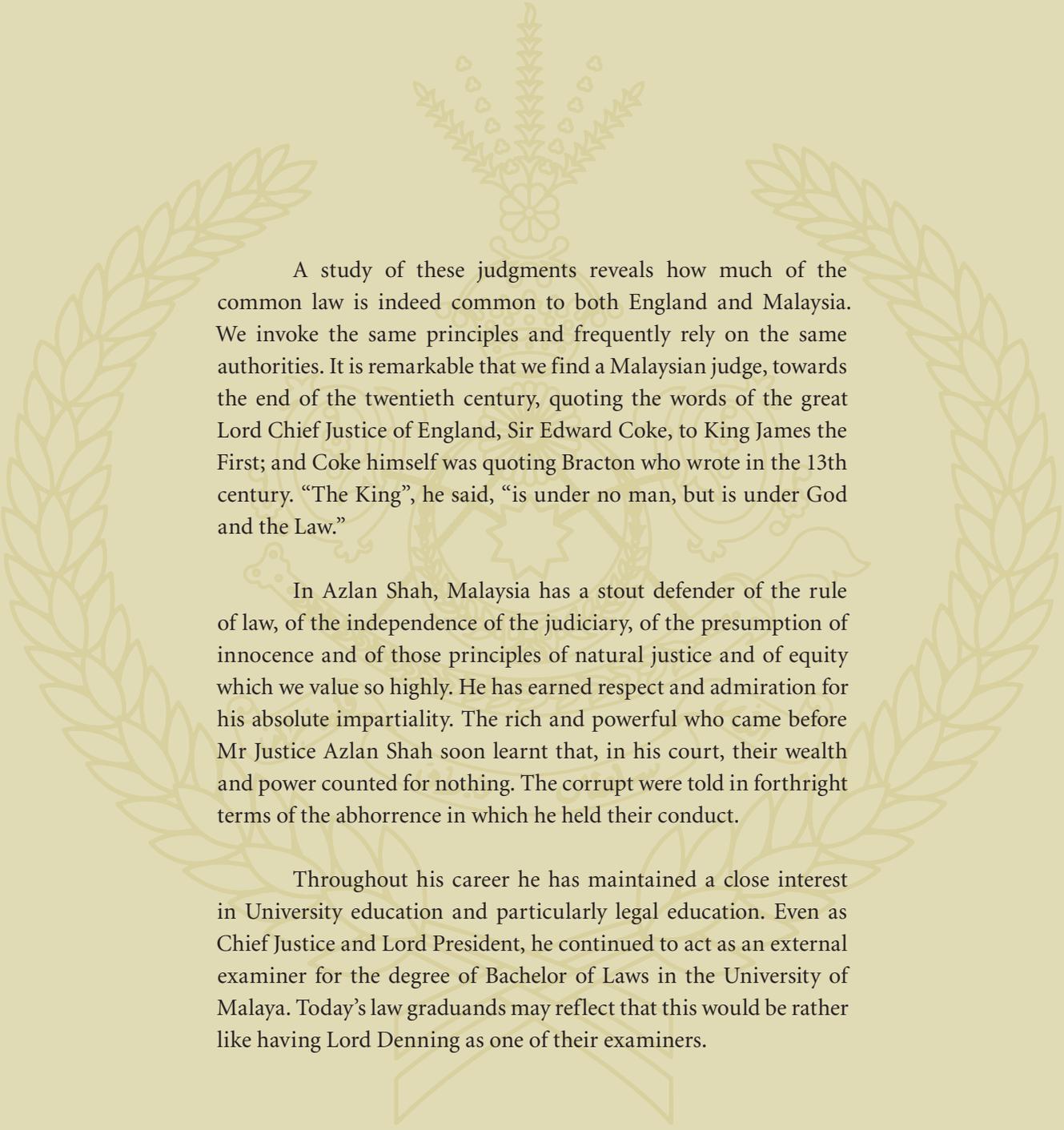
Chancellor, thirty-three years ago a young Malayan student stood before your predecessor to receive the degree of Bachelor of Laws. Today, he returns after a career in which he reached the very pinnacle of the legal profession in Malaysia. He returns as Sultan of Perak, as Deputy to the King of Malaysia and as himself, the Chancellor of a great University, the University of Malaya.

Azlan Shah was a cheerful and popular undergraduate in our Department of Law who took his legal studies seriously—but not too seriously. He was renowned for his athletic prowess, especially hockey, at which he represented not only the University but also the Northern Counties. After graduating he was called to the English Bar by Lincoln's Inn. On his return to Malaya he rapidly made his mark in the legal profession in a variety of offices—as a magistrate, a prosecutor and a legal adviser to governments. So successful was he that he was appointed to the High Court Bench at the early age of 37. Indeed it is believed that no one, before or since, anywhere in



the Commonwealth, has been made a High Court judge at—for that office—so tender an age. On the Bench the youthful judge's reputation grew. In 1979 he became Chief Justice of the High Court and in 1982 he attained the highest judicial office, Lord President of the Federal Court of Malaysia. He had the important judicial quality of being a good listener with almost infinite patience who rarely interrupted evidence or argument and then only when it was necessary to do so. But he listened with a percipient and critical mind, as became clear when—sometimes to the discomfiture of those appearing before him—he pronounced judgment on the facts of the law. The breadth and depth of his learning in the law as it appeared in the law reports astonished—and greatly gratified—those who taught him in his student days. We like to think that, at least, we sowed the seeds which, in time, produced so rich a harvest.

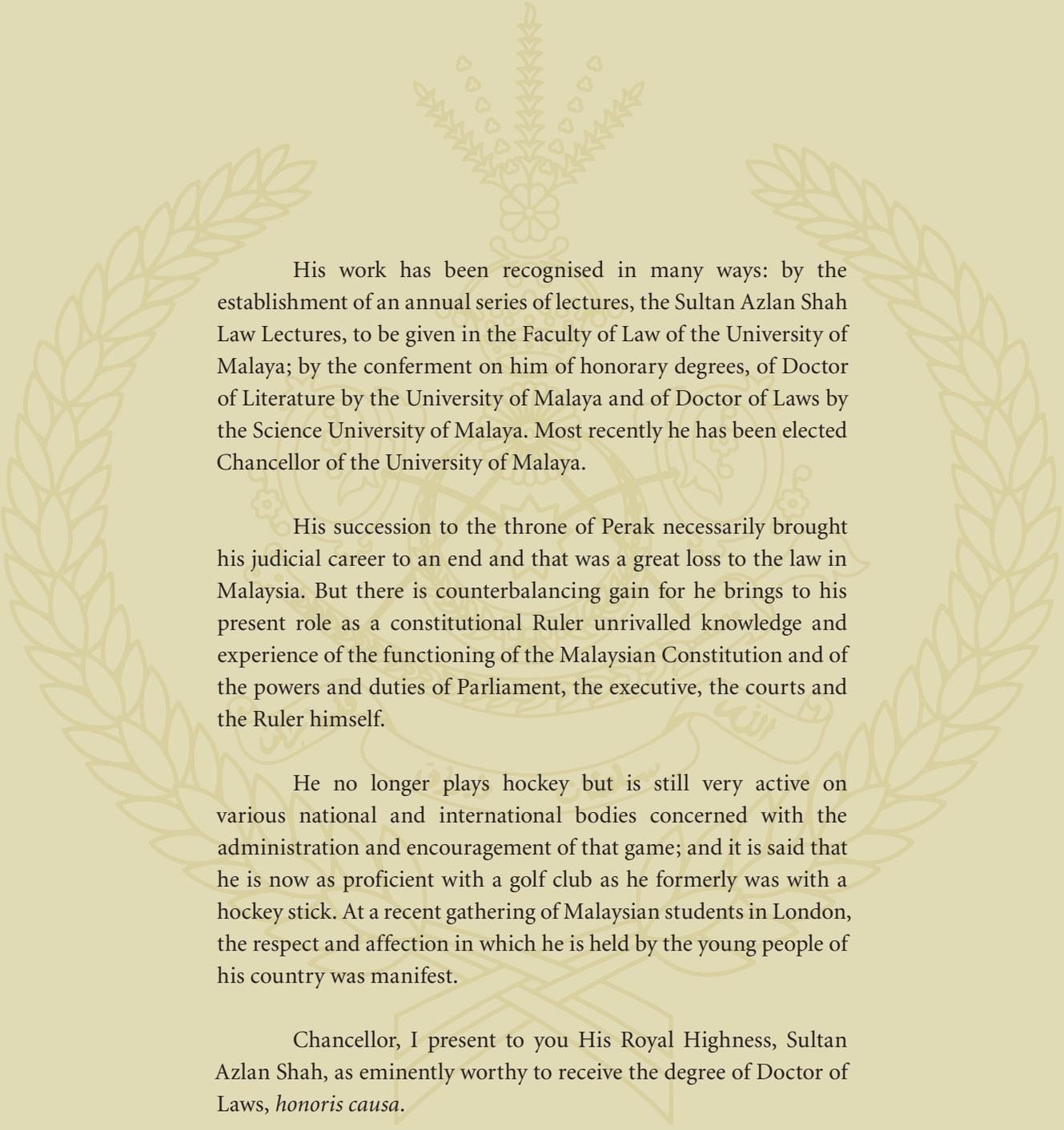
In 20 years on the Bench he tried cases and heard appeals involving a great range of law and many of his learned judgments are reported in the law reports. It is a remarkable tribute to his judicial work that those judgments have been collected and published as a separate volume: *Judgments of His Royal Highness Sultan Azlan Shah With Commentary*, edited by Professor Dato Dr Visu Sinnadurai, Professional Law Books Publishers, 1986. They constitute a great contribution to the development of the law in Malaysia at a crucial time in its history.



A study of these judgments reveals how much of the common law is indeed common to both England and Malaysia. We invoke the same principles and frequently rely on the same authorities. It is remarkable that we find a Malaysian judge, towards the end of the twentieth century, quoting the words of the great Lord Chief Justice of England, Sir Edward Coke, to King James the First; and Coke himself was quoting Bracton who wrote in the 13th century. “The King”, he said, “is under no man, but is under God and the Law.”

In Azlan Shah, Malaysia has a stout defender of the rule of law, of the independence of the judiciary, of the presumption of innocence and of those principles of natural justice and of equity which we value so highly. He has earned respect and admiration for his absolute impartiality. The rich and powerful who came before Mr Justice Azlan Shah soon learnt that, in his court, their wealth and power counted for nothing. The corrupt were told in forthright terms of the abhorrence in which he held their conduct.

Throughout his career he has maintained a close interest in University education and particularly legal education. Even as Chief Justice and Lord President, he continued to act as an external examiner for the degree of Bachelor of Laws in the University of Malaya. Today’s law graduands may reflect that this would be rather like having Lord Denning as one of their examiners.



His work has been recognised in many ways: by the establishment of an annual series of lectures, the Sultan Azlan Shah Law Lectures, to be given in the Faculty of Law of the University of Malaya; by the conferment on him of honorary degrees, of Doctor of Literature by the University of Malaya and of Doctor of Laws by the Science University of Malaya. Most recently he has been elected Chancellor of the University of Malaya.

His succession to the throne of Perak necessarily brought his judicial career to an end and that was a great loss to the law in Malaysia. But there is counterbalancing gain for he brings to his present role as a constitutional Ruler unrivalled knowledge and experience of the functioning of the Malaysian Constitution and of the powers and duties of Parliament, the executive, the courts and the Ruler himself.

He no longer plays hockey but is still very active on various national and international bodies concerned with the administration and encouragement of that game; and it is said that he is now as proficient with a golf club as he formerly was with a hockey stick. At a recent gathering of Malaysian students in London, the respect and affection in which he is held by the young people of his country was manifest.

Chancellor, I present to you His Royal Highness, Sultan Azlan Shah, as eminently worthy to receive the degree of Doctor of Laws, *honoris causa*.

❁ Common law of Malaysia



“ This is how the common law of every country works. Until statutory laws are introduced, in certain areas of the law, a corpus of unwritten laws continue to co-exist. The broad principles of law on a particular aspect of the law, once applied by the Malaysian courts, become part of the common law of Malaysia.

These broad principles are then, by judicial development of the law through adaptation and application, extended to situations to which they had not previously been applied. The process involves the gradual distilling of principles from the facts of concrete cases.

In a strict sense, it is not new law but merely the application of established principles adapting to the changing circumstances in any country.

Thus is the genius and the strength of the common law—it can adapt to changes to suit the needs without having the constraints which are attached to written laws. ”



—HRH Sultan Azlan Shah

Engineers and the Law: Recent Developments



“ The judiciary is only a part of our administration of justice. The fact is that the true responsibility for the effectiveness of judicial control lies with the legal profession which fosters and nurtures it. There cannot be an independent judiciary without an independent Bar. The judiciary cannot function without the legal profession and for the judiciary to remain independent, so must the profession. ”

—**HRH Sultan Azlan Shah**
The Legal Profession and Legal Practice

12

The Legal Profession and Legal Practice

A Selection of Speeches

✿ Integrity and independence of the Bar

Bar Council farewell dinner
Kuala Lumpur, 19 July 1984

The past one and a half years have seen many changes. It was only on 12 November 1982 that I was appointed Lord President. And 14 months later, by a twist of fate, I had to relinquish the post. It was with a feeling of sadness that I did it. I do miss the Bench and the lawyers, though not very much the law, as I still keep abreast with the law.

Indeed, not having to sit long hours listening or pretending to listen to you, not having to write judgments for which you always waited anxiously, not being saddled with the problems of missing files and burnt down court houses, I can now afford the luxury

of reading the law at my leisure and of reading the newspapers in greater detail especially on matters pertaining to law and lawyers.

Complaints against lawyers

Sad to say, there appears to be an alarming increase of complaints against lawyers, of lawyers being charged in court, of lawyers showing disrespect to the court, of lawyers flouting the rules of practice and etiquette. Indeed it appears that the indiscipline amongst lawyers have grown rather than abated. Of this, I am very much concerned, as I was before. I will not elaborate on this tonight, nor will I embark on any review of the complaints concerning the decline in the standards of professional services. Such complaints are almost entirely based upon individual cases and in most cases are made without hearing what the persons complained against has to offer by way of explanation. Be that as it may, in my view whilst these complaints remain unresolved, the lawyers will continue to be suspect. Rid yourselves of that criticism. I am satisfied that the Bar Council is aware of the complaints; it has an established machinery for the enforcement of professional standards and discipline.

I do not consider the legal profession in this country as overcrowded. In fact there is a shortage of lawyers both in the private and public sectors. No lawyer in this country is so poor as to be able to afford only a table under a tree as in some countries. In fact, young lawyers have posh offices in ultra-modern office complexes. It is the senior lawyers who continue to practice from the top floor of some double storey rent-controlled shophouses. I have no doubt that there is enough work for everybody to earn a decent living in an honest way.

The competition, if it really exists, is not for survival but for luxuries. The race is to get richer quickly — no matter how. There is indeed no necessity for any lawyers in this country to be dishonest. There is no excuse for anybody to flout the rules of practice and etiquette.

Role of an independent Bar

I like to say something, if I may, on the role of an independent Bar in controlling the abuse of power.

As we all know running a government today is becoming increasingly complex. In its attempt to provide essential services to the public, abuse of power is inevitable in a system of government such as ours where the intervention of the State into the lives of the citizens can only be described as massive. It occurs at all levels, Federal, State and local. The fact that it attempts in good faith to represent the aspirations of its electorate only compounds the problem. The good faith of the democratic system is not in issue; its execution is. I can say with conviction that the extent to which that abuse has been held to tolerable levels is because we have an independent judiciary which can assert the rule of law over the agencies of government.

The judiciary, however, is only a part of our administration of justice. The fact is that the true responsibility for the effectiveness of judicial control lies with the legal profession which fosters and nurtures it. There cannot be an independent judiciary without an independent Bar. The judiciary cannot function without the legal profession and for the judiciary to remain independent, so must the profession. ...

❁ Close link between Malaysia and Singapore

Law Society of Singapore Dinner

Singapore, 5 September 1987

I must begin by saying how regrettable it was for us not to be able to attend your function here last year due to an unprecedented spate of public engagements.

The Raja Permaisuri and I are delighted to be present at your function tonight and to have this opportunity of meeting old friends and making new acquaintances. I like to thank you for the warm welcome and kind hospitality extended to us and also to your President for the kind words said about me.

I realise that both our countries are emerging from a rather stressful period, but happily the relationship between Singapore and Malaysia is getting back on the right track. Historically, our two countries are inexorably entwined and it is inconceivable that the leaders of both countries will seriously embark on divergent, much less antagonistic, ways over any thing which concerns our vital interests.

Geographically, we are as inseparable as Siamese Twins and we all realise that any disorders in one would automatically threaten the other. If social order breaks down in Singapore or she is absorbed by a system of government alien to us, Malaysia will suffer; the same holds true the other way round.

We have both inherited the common law from the British and practise it with an attainment that vindicates that reputable

system of law. The peoples of both countries observe cultures, and practise religions that have been agreeable and acceptable to them for generations.

In matters of trade and industry, we are not unmindful of the fact that Singaporeans ranks the foremost as foreign investors in Malaysia, which is of special significance in our present-day quest for foreign participation in our industries. We hope your entrepreneurs will continue to lead in the investment stakes in Malaysia for a long time yet to the mutual benefit of both countries. We must, therefore, allow good will and good sense to prevail at all times and in all matters that concern the peoples of both countries.

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The annual Bench and Bar Games between Singapore and Malaysia, held alternatively at Singapore and Malaysia, is an indication that we both desire the strengthening of that bond of friendship between ourselves and it augurs well for our future that this annual event is looked forward to with much enthusiasm by the legal fraternity on both sides of the causeway.

The more frequent exchange of visits by leaders and notable personalities of both countries will, I believe, contribute greatly towards improving and enhancing the trust and receptivity of the peoples of Singapore and Malaysia one towards another. Your

insistence and the special effort made to invite us to this important function of the year are also fully appreciated by us.

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Singapore has not diverted from its historical role as the busiest trading centre in this part of the world. You are placed in the strategic position on the busiest crossroads of Asia, and with an excellent harbour you have developed a most lucrative entreport trade. Well, those are your traditional assets. But it is your aim and desire to be the centre of high finance, investment and banking in the Asian region, and the efforts made to achieve this aim that is most praiseworthy and of tremendous significance. It is right that proper and stringent laws are passed to cope with this development.

Integrity, ethics and honour

As members of the legal profession, you have an important part to play in the new development of this renowned commercial centre. Those of you who specialise in the technicalities of corporate law, banking and high finance are equipped with the special knowledge of the law which this branch of the practice entails, but you should not forget, even for a moment, the basic requirements of integrity, ethics and honour which the profession requires of you.

You are fortunate, too, in having an excellent Bench, for which I have the highest regard, to back up a robust practice of the

Bar, and I am pleased to observe that you are acquitting yourselves creditably to the challenges that are now before you and in the days ahead.

Corporate failures

In the past couple of years or so, both our countries have seen spectacular corporate failures due in great measure to the brutal and savage recession. In my home State of Perak, once the biggest producer of tin, the closure of tin mines on a gigantic scale never encountered before in past history has caused government revenue to drop drastically to an all-time low and brought about colossal unemployment.

However, some corporate failures were not entirely due to the recession but rather the handiwork of muddled management, spendthrift directors and irresponsible and dishonest executives who caused dramatic losses with disastrous consequences. Many had invariably gone down the road of fraud in their desperation to save themselves and, in the process, lost not only their own money but other people's money, especially those of the banks and other financial institutions. ...

Responsibilities as lawyers

As lawyers, you are vulnerable in a manner that calls for the greatest vigilance in your dealings with your clients, eg in your role as solicitors. If you make improper use of any information acquired by virtue of your position with a view to gaining an advantage for yourselves or for any other person, you are liable to the company

for any profit made by you, not to mention the criminal liability you are exposed to. The provisions of the Companies Act and the Securities Industry Act 1986 are quite clear on these matters. The fact that there are no prosecutions so far does not mean there are no Ivan Boeskeys among us nor should this lead us to a presumption that insider trading is non-existent, as one speaker suggested at the Seminar organised by the Institute of International Research at Kuala Lumpur last April.

The Malayan Law Journal has deemed fit to give prominence to this subject by publishing two articles on it recently. In the March 1987 issue, an article was written by two enterprising lecturers of your National University on a comparative study of the laws pertaining to insider trading in Singapore, Malaysia, Australia, England and the United States,¹ while the May 1987 issue contained an article written by another member of your university dealing extensively with insider trading.²

The adage that honesty is the best policy has stood the test of time and should always be rigidly followed by everyone, both at the Bar as well as in corporate bodies.

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In the context of Singapore as a centre of the business and financial world, the country's reputation for financial integrity is of paramount importance and, as members of the Singapore Bar, it is incumbent on you to maintain, or even enhance her image.

1 See Ter Kah Lang and Catherine Tay Swee Kian, "Comparative Study of the Regulation of Insider Trading in Singapore, Malaysia, Australia, England and the United States", [1987] 1 MLJ *ciii*.

2 See, Walter Woon, "Insider Trading and the Abuse of Corporate Information", [1987] 1 MLJ *cxv*.

One way to do this is to help suppress the incidence of corporate crimes. By exemplary conduct, you can demonstrate clearly that the likeness of such crimes have no place in the repertoire of your daily practice.

I must apologise for having addressed you on the depressing subjects of crime and recession on an amiable and pleasant occasion such as this. I must admit that a discourse of this nature is hardly conducive to good digestion after such an excellent meal. You must, however, agree that, with these twin subjects hitting the headlines almost everyday, they must necessarily command our serious concern.

However, looking broadly at the economic horizon, I see that the revival of growth is becoming more apparent day by day in Singapore as well as Malaysia and I share the optimism of pundits in this field that the abominable recession will gradually work its way out as the ill-wind Typhoon Thelma dissipates itself. ...

Changes in the Malaysian legal system

Official launch of the books Hickling, *Malaysian Law*,
and Salleh Abas and Sinnadurai, *Law, Justice and
the Judiciary: Transnational Trends*

Kuala Lumpur, 12 January 1988

Since Independence in 1957, Malaysia has undergone several changes. There has been much development not only in areas of trade, commerce and education but also in the field of law. Over

the past few years, we have seen not only the establishment of law schools in the country for the training of lawyers but also some changes in the Malaysian legal system.

This is particularly so with the abolition of appeals to the Judicial Committee of the Privy Council in London and the establishment of the new Supreme Court of Malaysia, making it the final court of appeal. Legislation has also been introduced by Parliament in many cases to keep abreast with these developments and in certain cases to reflect the local conditions prevailing in the country. Laws which were found not suitable to the Malaysian people have been replaced by new laws.

It is no doubt true that to a very large extent, the Malaysian legal system and the laws applicable in Malaysia particularly before Independence were based on the English model. There can be no denying that every country, especially one which has broken its ties with colonial rule, would want to establish a corpus of law which truly reflects the aspirations and the identity of its people. It is therefore the duty of everyone who is involved not only in the administration of the law, but also in the enactment and implementation of it (and I may add in legal education as well), to ensure that steps are taken towards the development of a corpus of law which reflects these aspirations.

It is on this ground that the basic law of the country, the Constitution of Malaysia, has in the past 30 years been amended 30 times by Parliament to take into account certain changes which have been deemed to be expedient and necessary.³

In the area of personal laws, the Law Reform (Marriage & Divorce) Act 1976⁴ has provided a uniform law to be made applicable

3

Editor's note:
See the notes at the end
of chapter 1.

4

Act 164.

to all persons not professing the Muslim faith. Polygamous marriages by persons not professing the Muslim religion have now been abolished. Likewise, legislation similiar to the Islamic Family Law (Federal Territories) Act 1984⁵ has also been introduced by some States of Malaysia in an attempt to unify the Islamic family law particularly in respect of marriage, divorce, maintenance and guardianship.

These are merely two illustrations which I cite to indicate the changes in the laws introduced by Parliament to reflect the identity of the nation. Government policy, through the National Language Acts of 1963 and 1967,⁶ to unify the various races in the country through the medium of a common language, the National Language, and its use in the area of the law, is yet another incidence of this change.

It is not only the duty of members of Parliament and academics to contribute towards the development of Malaysian law but also that of the judges. After all it is only through written judgments of the courts which are made available to lawyers and to the public that the present position of the law on a particular issue is stated or clarified.

It would, however, be naive to think that changes to the law or the legal system may be made with great speed. Lawyers generally are regarded as a conservative lot: this may be a hangover from their training. All law students are taught to analyse and critically

5
Act 303.

6
Revised 1971, Act 32.

examine a problem before a suitable solution may be found. I should, however, caution that this should not be used as an excuse for not wanting to adapt to changes.

One major obstacle which most Malaysians have encountered, be they lawyers or lay persons, has been the lack of legal materials on Malaysian law. This has proved to be a great handicap for the proper understanding of Malaysian law.

However, I am happy to note that over the recent years, and particularly lately (as this present occasion indicates), there has been a steady progress in the writing and publication of books on Malaysian law. Furthermore, the efforts made by institutions like the Dewan Bahasa dan Pustaka to publish books in Bahasa Malaysia is a step in the right direction.

I would also like to point out that it is not only the duty of members of Parliament and academics to contribute towards the development of Malaysian law but also that of the judges. After all it is only through written judgments of the courts which are made available to lawyers and to the public that the present position of the law on a particular issue is stated or clarified. ...

In the ultimate analysis, it is the judgments of the courts, rather than the views of textbook writers, that state the current position of the law. In *Henry v Geopresco International Ltd*,⁷ Roskill LJ observed: “However distinguished the authors and editors of these textbooks, the law must be taken to be as laid down by the courts, however much their decisions may be criticised by writers of great distinction.” ...

⁷
[1975] 2 All ER 702,
CA, at 718.

❁ Changing face of legal research

Official launch of Lawsearch

Kuala Lumpur, 14 April 1989

Today is indeed a red-letter day for all persons involved in the development of Malaysian law. This evening we witness the arrival in Malaysia of computer technology in the field of law. With the rapid advancement of computer technology in almost every other profession, it is inevitable that such progress should spread to what is commonly regarded as the most conservative of all professions, the legal profession.

Computers are only a tool for legal research and should not be regarded as a substitute for diligent and thorough research on the part of the lawyers.

Legal research conducted by the conventional methods of indices and texts is tedious and time-consuming. It involves an enormous consumption of a lawyer's most valuable asset—time. The need for a speedy and accurate information retrieval system was often lagging in the area of law. The introduction of *Lawsearch*, a computerised on-line research facility, will indeed enable lawyers now to gain access to a vast repository of the texts of statutes and judicial opinions within a much shorter time. A particular point of law which may otherwise take a few hours of research may now be obtained within a few minutes.

It should, however, be borne in mind that computers are only a tool for legal research and should not be regarded as a substitute

for diligent and thorough research on the part of the lawyers. One has heard of stories of lawyers who have relied solely on computers and have made submissions with great confidence in court that there were no legal precedents on a particular point of law as the lawyer was unable to obtain any case from his computer. There are others who have submitted well over 200 cases, the names of which have all appeared on the screen of their computers in support of a simple proposition of law. Such slavish (some would say “hooked”) and indiscriminate reliance on the computer alone is no substitute for the lawyers’ duty to the court to present well prepared arguments supported by relevant authorities through proper research. As all of us know, good arguments presented by lawyers in court make good law through the judgments of the court.

Good arguments presented by lawyers in court make good law through the judgments of the court.

Decisions of other Commonwealth countries

One major advantage of legal research through the electronic database system is the accessibility of case law from other common law jurisdictions. With electronic legal research, American, English and New Zealand case law are available to lawyers through *Lexis*. With the introduction of *Lawsearch* and its link-up with *Clirs*, lawyers now can have access to Australian case law as well. The law must develop and grow. We should not be insular but expand our horizon by looking at case law of other common law jurisdictions as well. We should then adopt what is most suitable to us in the Malaysian context.

In the case of *Raja Mokhtar bin Raja Yaacob v Public Trustee, Malaysia*,⁸ I observed:

Although decisions of Commonwealth courts are not binding, they are entitled to the highest respect.

In that case I pointed out that the court should apply the law relating to pensions in quantum of damages claims as stated in an English and an Australian case so that the common law and its development would be homogenous in the various parts of the Commonwealth.

The law must develop and grow. We should not be insular but expand our horizon by looking at case law of other common law jurisdictions as well. We should then adopt what is most suitable to us in the Malaysian context.

Again in *The Chartered Bank v Yong Chan*,⁹ in delivering the judgment of the Federal Court, I observed:

I have been greatly assisted by two Commonwealth cases which seem actually to cover the point. I realise that both these cases do not bind this court, but I know of no reason why I should not welcome a breath of fresh air from the Commonwealth.

In this particular case, too, the Federal Court relied on two English and Australian cases. ...

8
[1970] 2 MLJ 151 at 152.

9
[1974] 1 MLJ 157, FC
at 160.

✿ Integrity and ethics

Bar Council Dinner
Kuala Lumpur, 15 December 1989

Although I am no longer actively involved in the daily administration of justice, yet all matters relating to it are of immense interest to me. I have, therefore, observed with disquietude and concern for some time now that, in the pursuit of material wealth, there has been a regrettable tendency on the part of some lawyers to not only violate the ethics of the profession, but also to indulge in downright criminal activities, fraud and criminal breach of trust being the most prevalent.

These twin evils, dealt with under the Penal Code, pose the greatest danger and temptation facing the profession today, obviously, for the simple reason that practitioners are placed in such vulnerable propinquity to these crimes. It must be distressing to open the newspapers to find the commission of crimes by members of the Bar in roaring headlines often enough these days.

Apart from knowledge, integrity is the most valuable trait of a lawyer and it must remain steadfast with you in the face of constant bludgeoning from temptation.

Apart from knowledge, integrity is the most valuable trait of a lawyer and it must remain steadfast with you in the face of

constant bludgeoning from temptation. In the words of the notable English scholar, Samuel Johnson, “Integrity without knowledge is weak and useless, but knowledge without integrity is dangerous and dreadful.” The adage that honesty is the best policy has stood the test of time and should be rigidly followed at all times.

The profession must openly condemn the criminal conduct of their errant members and indicate to the public that it is greatly concerned with the rapid derogation of its good name as an honourable profession. It should have been clear to the profession and a timely warning to would-be lawyers that there are no short cuts to success and it is not a profession for those whose sole aim is to gain material wealth.

The profession must openly condemn the criminal conduct of their errant members and indicate to the public that it is greatly concerned with the rapid derogation of its good name as an honourable profession. It is not a profession for those whose sole aim is to gain material wealth.

There is also a need to be vigilant against the tendency among yourselves to violate the ethics of the profession by placing priority of your own interests over your clients’, of accepting more work than you can handle, of being overtly concerned over your fees, instead of expeditiously handling your clients’ affairs, or by acquiescing to or ignoring the delaying tactics employed by the other side without caring or showing concern for your clients’ interests. ...

❁ Evolving a Malaysian Nation

Official Opening, 12th Malaysian Law Conference

Kuala Lumpur, 10 December 2003

The theme of the Conference “Evolving a Malaysian Nation” provides an opportunity for all present today to reflect on the essential features of our system of government, and what we had decided upon as our constitutional system, 46 years ago in August 1957.

The Federal Constitution: A foundation for the future

We then embarked on a journey as a constitutional democracy with the full realisation that we were a multi-racial people with different languages, cultures and religion. Our inherent differences had to be accommodated into a constitutional framework that recognised the traditional features of Malay society, with the Sultanate system at the apex as a distinct feature of the Malaysian Constitution.

Thus there was produced in August 1957 a unique document without any parallel anywhere. It adopted the essential features of the Westminster model and built into it the traditional features of Malay society.

This Constitution reflected a social contract between the multi-racial peoples of our country. Thus matters of citizenship for the non-Malays, the Malay language, and special privileges for the Malays and the indigenous peoples of Malaysia were safeguarded

and given the added protection of requiring the consent of the Conference of Rulers before changes could be effected to them.¹⁰

Further, there was afforded to the peoples of Malaysia certain fundamental rights as embodied in Part II of the Federal Constitution, which now is officially referred to by the Human Rights Commission of Malaysia Act 1999¹¹ as the human rights provisions of Malaysia.

By checks and balances in our Constitution we had sought to establish a system of government based on laws and not of men. This is the essential characteristic of the rule of law, that all powers are subject to laws.

By these checks and balances in our Constitution we had sought to establish a system of government based on laws and not of men. This is the essential characteristic of the rule of law, that all powers are subject to laws. As I had previously observed in the *Sri Lempah* case,¹² “every legal power must have legal limits, otherwise there is dictatorship ... every discretion cannot be free from legal restraint; where it is wrongly exercised it becomes the duty of the courts to intervene”.

It is fundamental in this regard that the Federal Constitution is the supreme law of the land and constitutes the grundnorm to which all other laws are subject. This essential feature of the Federal Constitution ensures that the social contract between the various races of our country embodied in the independence Constitution of

¹⁰
See Article 159(5).

¹¹
Act 597. See section 2.

¹²
[1979] 1 MLJ 135 at 148.

1957 is safeguarded and forever enures to the Malaysian people as a whole for their benefit.

The Judiciary: Cornerstone of our legal system

The cornerstone of our legal system is the judiciary. Much has been said about the judiciary and the role of judges. But it deserves repetition that the essential quality of any judiciary is its independence, integrity and strength.

The essential quality of any judiciary is its independence, integrity and strength. |

I had occasion to observe in a public lecture entitled *The Right to Know*¹³ in 1986 on the independence of the judiciary as follows:

Judicial independence in any democratic country is an existing fact as every lawyer and politician knows. The judges are independent of all—the executive, Parliament and from within themselves—and are free to act in an independent and unbiased manner. No member of the Government, no Member of Parliament, and no official of any Government department has any right whatever to direct or influence the decisions of any of the judges.

Judges are not beholden politically to any government. They owe no loyalty to ministers. They have longer professional lives than most ministers. They, like civil servants, see governments come and go. They are “lions under the throne” but that seat is occupied in their eyes not by Kings, Presidents or Prime Ministers but by the law and their conception of the public interest. It is to that law and to that conception that they owe their allegiance. In that lies their strength.

13
At Universiti Sains
Malaysia in Penang. See
chapter 3 above.

Judges have to be accountable for their conduct on and off the Bench. The fact that judges sit in public and give reasons for their decisions distinguishes them from mere administrative officials. Thus the proceedings of every court are exposed to public and professional scrutiny. It is this transparency that inspires confidence in the public. In this regard, I agree with what was said by Lord Atkinson on this subject so many years ago: “the public trial is the best security for the pure, impartial and efficient administration of justice [and] the best means of winning public confidence and respect”.¹⁴ Thus our justice system is rooted in public confidence. It is a sacred trust entrusted to the judges to do justice.

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Legal profession: Need for integrity, professionalism and dedication

As regards the legal profession, I wish to emphasise that in our rapid growth to attain developed status, the public is entitled to be served by competent and skilled lawyers. Malaysian lawyers must be second to none in their professionalism and competence. They must increase their skills, and acquire further knowledge, especially in the area of finance and corporate affairs, if they are to compete on an equal footing with foreign lawyers.

Further, lawyers must at all times ensure that they discharge their duties with a high level of integrity, professionalism, and dedication. I am confident that our lawyers will rise to the occasion and meet these challenges.

¹⁴
Scott v Scott [1913] AC
417 at 463.

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professionalism, and dedication.

Ladies and Gentlemen, it now gives me great pleasure to officially declare open the 12th Malaysian Law Conference. I wish all participants a happy three days of deliberation at the Conference.



No man may be condemned unheard

“ In my opinion, the rule of natural justice that no man may be condemned unheard should apply to every case where an individual is adversely affected by an administrative action, no matter whether it is labeled judicial, quasi-judicial, or administrative or whether or not the enabling statute makes provisions for a hearing. ”

—Raja Azlan Shah FJ (as he then was)
Ketua Pengarah Kastam v Ho Kwan Seng
[1977] 2 MLJ 152, FC at 154