

1 *HRH Sultan Azlan Shah: From Wig to Crown*

This volume is a collection of the reported judgments of cases heard and determined by His Royal Highness Sultan Azlan Shah, the Sultan of Perak, as a High Court Judge, as Federal Judge, as the Chief Justice of Malaya and as the Lord President of the Federal Court of Malaysia.

The reason for such a publication is self-evident. His Royal Highness was a Judge of the superior Courts of Malaysia for a period of some twenty years. He was, at the age of 37, the youngest Judge to be appointed to the High Court of Malaya. Further in the normal course of events, His Highness would have been the longest serving Lord President of the Federal Court of Malaysia (for a term of eleven years) had it not been for the sudden turn of events which persuaded him to relinquish the highest judicial office in Malaysia upon his ascension to the throne of the State of Perak. But what is most unique is that His Royal Highness is the first and, in all probability for some time to come, the only person to hold two of the highest constitutional offices: as head of the Judiciary, the Lord President of the Federal Court of Malaysia and as Ruler of one of the constituent states of Malaysia, the State of Perak. In addition, and it is of interest to note that it would only be a matter of time before His Royal Highness assumes the highest constitutional office in Malaysia, that of the Paramount Ruler, as the Yang di Pertuan Agong. Such indeed is a rare achievement.

His Royal Highness Sultan Azlan Shah was born on April 19, 1928 in Batu Gajah, Perak. His father, the late Sultan Yusof Izzuddin Shah, was the Sultan of Perak from 1948 to 1963. His Royal Highness re-

ceived his early education at the Government English School in Batu Gajah and at the Malay College in Kuala Kangsar. Thereafter, His Royal Highness read law at the University of Nottingham where he was conferred the degree of Bachelor of Laws. In 1954, His Royal Highness was admitted to the English Bar by the Honourable Society of Lincoln's Inn. On his return, His Royal Highness joined the Judicial and Legal Service of the then Federation of Malaya and served as the Assistant State Secretary of Perak, as First Class Magistrate and as President of the Sessions Court respectively. His Royal Highness subsequently was appointed to the following offices: as Federal Counsel and Deputy Public Prosecutor, Legal Adviser of the State of Pahang and later of Johore, as Registrar of the High Court of Malaya and subsequently as Chief Registrar of the Federal Court of Malaysia. In 1965, at the age of only thirty seven years, His Royal Highness was elevated to the Bench of the High Court of Malaya, an office he was to hold for the comparatively short term of two years, before his elevation to the Federal Court of Malaysia, as a Federal Judge. In 1979, His Royal Highness was appointed the Chief Justice of the High Court of Malaya, an office which he held until his appointment as the Lord President of the Federal Court of Malaysia on November 12, 1982.

His Royal Highness' meteoric advancement within the Judiciary in Malaysia is clear testimony of His Royal Highness' intellect and capabilities and of His Royal Highness' contribution to the development of Malaysian law. His Royal Highness has always been regarded as one of the most outstanding judges of the Malaysian Judiciary. During his tenure as a High Court Judge, Federal Judge, Chief Justice and as Lord President, His Royal Highness had the unique distinction in having some two hundred and eighty of his judgments reported in the Malayan Law Journal. In another two hundred reported cases His Royal High-

ness was a member of the Federal Court which heard and determine the cases. His Royal Highness heard and determined more than a hundred and fifty cases in the High Court, sitting as a High Court Judge at first instance whilst holding office as a Federal Judge.

The judgments delivered by His Royal Highness were always well received by the legal fraternity. His style was distinctive: he was concise, comprehensive and clear. He dealt with the questions of law involved in each case succinctly and was most forthcoming in his application of legal principles to the facts of the case.

The assessment of His Royal Highness' judgments in the various branches of the law are dealt with by the commentators in the various chapters of this volume. Suffice to say, the impact of His Royal Highness' judgments in most branches of the law was such that they contributed to the rapid development of Malaysian law since independence. His Royal Highness not only modified the application of the relevant English law to suit local conditions but where there were no corresponding local provisions, His Royal Highness in certain cases did not feel constrained to preclude the application of English law or practice. For example, in *Zainal Abidin bin Haji Abdul Rahman v Century Hotel Sdn Bhd*¹ the jurisdiction to grant Mareva injunctions as under English law was given recognition in the Malaysian legal system. In *Tan Swee Ho and Company Ltd v Ali Hussain Bros*² His Royal Highness broke new ground by recognising the existence of collateral contracts in Malaysia.

In cases where local provisions existed, His Royal Highness always applied them. In *Sigma Sawmill Co Sdn Bhd v Asian Holdings (Industrialised Buildings) Sdn Bhd*³ His Royal Highness applied section 66 of the

¹[1982] 1 MLJ 260.

²[1980] 2 MLJ 16.

³[1980] 1 MLJ 21.

*Contracts Act when dealing with the rights of the parties under an illegal contract rather than merely relying on accepted English legal principles. Indeed, earlier in **Dorothy Kwong Chan v Ampang Motor Ltd and Another**⁴ Raja Azlan Shah J, as he then was, refused to follow the then existing English law on the position of a dealer in a hire purchase transaction. His Lordship said that for commercial expediency and for ‘... the mercantile needs of this country ...’ the dealer had to be treated as an agent of the finance company. His Royal Highness thus was able to create and develop a corpus of Malaysian legal principles hitherto in its infancy.*

*It should perhaps be pointed out that in many of his decisions His Royal Highness did not feel compelled to adhere to the strict application of the law alone. Many of His Royal Highness’ decisions are influenced by the principles of Equity. Thus His Royal Highness not only applied the law but also administered justice in the cases heard and determined by him.⁵ In **Kersah La’usin v Sikin Manan**⁶ His Royal Highness held that a purchaser of land who had gone into possession under a sale and purchase agreement had an interest in the land even prior to the registration of the memorandum of transfer.⁷*

Other notable features which one may discern from His Royal Highness’ judgments is his concern and high regard for upholding justice. In many of his decisions His Royal Highness took great pains to point out that no person was above the law nor was anyone entitled

⁴[1969] 2 MLJ 68.

⁵See, *Citibank NA v Ooi Boon Leong and Others* [1981] MLJ 282; *Mercantile Bank Limited v Official Assignee of the Property of How Hau Teh* [1969] 2 MLJ 196.

⁶[1966] 2 MLJ 20.

⁷see also *Munah v Fatimah* [1968] 1 MLJ 54 and *Chik binti Abdullah v Itam binti Saad* [1974] 1 MLJ 221. But see *Sidek bin Haji Muhamad and 461 Others v Government of the State of Perak and Others* [1982] 1 MLJ 312 where His Royal Highness held that squatters on government land had no right either at law or in equity.

to any special consideration. In Ismail v Hasnul⁹ Raja Azlan Shah J as he then was said:

The practice in all courts has been that a subpoena may be issued against anybody, be he a Minister of the Government or a non entityInjustice will arise if equals are treated unequally.

Again in Public Prosecutor v Tengku Mahmood Iskandar and Another¹⁰ His Royal Highness had observed:

... there is only one kind of law in the country to which all citizens are amenable. With us, every citizen, irrespective of his official or social status, is under the same responsibility for every act done without legal justification. This equality of all in the eyes of the law minimises tyranny.

Similarly, in Public Prosecutor v Datuk Haji Harun bin Haji Idris No 2¹¹ His Royal Highness in passing sentence on the former Chief Minister of the State of Selangor on a corruption charge, though mindful of the public position held by the accused, refused to take into consideration these extraneous factors and reiterated:

I repeat what I had said before. The law is no respecter of persons.

The high ideals and standards which is expected of a judge, the importance of the law as a means to administer justice and its role as an instrument for social change was highlighted by His Royal Highness in his speech delivered on his elevation as a High Court Judge in 1965. His Royal Highness said:

The ceremony this morning is without parallel in that two new judges have been installed at the same time. The reason being, among other things, to enable us to perform our judicial function as soon as possible. Be that as it may,

⁹[1968] 1 MLJ 108.

¹⁰[1973] 1 MLJ 128.

¹¹[1977] 1 MLJ 15.

I would like to express my deep appreciation of the kind words of welcome extended to me.

Whatever little experience I have had on the Bench in the lower courts, as a law officer, and in both the Registries of the High Court and Federal Court would never be adequate to guide me in my high office. I have, therefore, to rely on the Bar to assist me in the days to come. No doubt they would not flinch in their duty; no doubt that cordial relationship which exists between Bench and Bar would be shown in my Court. For my part, I shall endeavour to do justice, not only to the accused but also to the State. Lest we forget, justice, not only means the interests of the accused but also the interests of the State. I would give the assurance that in the exercise of my judicial function I would uphold the absolute independence of my judgment. The independence of the judiciary remains a cornerstone in the structure of our system of government to-day. It not only guarantees that justice will be done and judgments firmly based on truth; it is also an indispensable condition of the rule of law.

It has been said that a good many things are expected of a judge. He is required to exhibit complete impartiality. He must display simultaneously dignity and humility, wisdom and decisiveness. He must be at one and the same time a cold and remote figure, a stranger to the joys and sorrows of human life, but somehow also a man of the world, showing an awareness of the problems of contemporary society. Since Merdeka the tempo of social changes in our country has accelerated beyond all imagination. Indeed, in practically all the emergent and developing countries one of the paramount problems is the adjustment of traditional and static social and legal institutions to the needs and demands of societies aiming at economic development and social advancement. The stated aims of these new societies are more often than not incompatible with the existing structures of land law, of tribal, kampung or family organisation. The task of the modern judge is therefore heavier and nobler. He must take an active part in the adaptation of law to such changes. Towards this end, I shall strive to do.

The speech itself clearly illustrates the values which His Royal Highness himself aspired to achieve whilst

sitting on the Bench. As the judgments contained in this Volume manifestly indicate, His Royal Highness during his twenty years as a High Court Judge, Chief Justice of Malaya and Lord President of the Federal Court of Malaysia clearly achieved most, if not all, of his aspirations.

