

MALAYSIA:

SOME PROBLEMS OF CHILD AND FAMILY LAW IN A PROGRESSIVE PLURALIST SOCIETY

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A visit to Malaysia is a delight for a comparative family lawyer, especially one who adores satay, nasi goreng and biryani.

The country itself is an unlikely amalgam of two land masses separated by 700 km, containing thirteen States of widely differing cultures. West Malaysia is by far the more populous, East Malaysia the larger geographically. In East Malaysia, a rich country (Brunei) is sandwiched as an independent enclave between the two States which do belong to Malaysia (Sarawak and Sabah). In the Malay Peninsula the port of Singapore, which geographically belongs to West Malaysia, ceded from the Federation in 1965, and is a separate country.

The population of Western Malaysia consists mainly of three racial groups, Malays, Chinese and Indians. Within these groupings are a host of racial and religious sub-groups. Indians alone might be Muslim, Punjabi, Sikh, Tamil, Hindu, Buddhist or even Christian. In the Eastern part of the Federation, there is an even more complex mix of native people.

The country is one of the few monarchies that remain in the world, and surely the only one with a rotating kingship! The King is elected, rather in the manner of the Holy Roman Emperor, by Sultans of each State. And these Sultans themselves wield considerable power in their own States. The King is by no means a figure-head, and has considerable political power. This has the potential to lead to conflict with the democratically elected political leaders. The same is true of the Sultanates.

The potential for political tension caused by the admixture of racial groups, and the present Government's aggressive policies which favour certain of those groups (and one in particular, the so-called "Bumiputras") is beyond the scope of this article. It may, however, have important ramifications for family and child policy. The constitutional element that most significantly affects family law is the provision that Islam is the official religion of the country, albeit that other religions may be freely practised. For Islam is more than a set of religious principles - it is a way of life.

The present Government is pursuing a vigorous and even ruthless policy of Islamicization of the country. This means inevitably that Muslim law will come into collision with more liberal values embodied in the other sources of law which govern the workings of families.

SYSTEMS OF LAW

The three most important legal sources in Malaysia are Muslim law (based on the teachings in the Koran, and interpretations thereof), Customary Malay law (*adat* in Malay) and the common law, introduced by the British settlers.

Marriage and Divorce in Malaysia are governed by two codes - (1) Muslim Family Law; (2) Law for non-Muslims, based on the English common law, and generally to be found in modern statutes modelled on English or British Commonwealth legislation. In several respects the two systems clash.

The law applicable in Juvenile Courts, however, does not bear these differences. The Juvenile Courts Act applies regardless of whether the alleged offender is Malay, Chinese, Indian or belongs to any other race.

MARRIAGE

Non-Muslims

In general, marriage for a non-Muslim is a civil ceremony conducted by a registrar. But a priest or minister of a recognized religion may act as Assistant Registrar. Marriage is permissible at 18 for both parties, but permission may be granted for a girl of 16 to marry under that age. The range of marriages prohibited by consanguinity is quite large, and includes aunt/nephew and uncle/niece. But an exception is made for Hindus only (a rather rare example of special treatment for this minority ethnic group). There are also quite severe restrictions on marriage to affines (severe, that is, in comparison to Australia, where affinity as a bar to marriage has been completely abolished). But, again, consideration is given to recognized religion, usage or custom, so permission may be granted by the Chief Minister.

Young people under 21 must also obtain their father's consent; the age of majority has been reduced to 18 for contractual purposes, but for no other. Only if the father is dead is the mother's consent necessary - an extraordinary remnant of the common law *patria potestas*. There are elaborate provisions for cases where the parents are divorced or separated or are both dead. This branch of law, which has fallen completely into desuetude in Australia, has some significance in Malaysia. Although it is perhaps a blunt instrument, it is at least capable of putting a brake on hasty

teenage marriages.

Unlike in Muslim Family Law, only monogamous marriages are permitted in civil law.

Muslims

The marriage laws affecting Muslims are very different. They are complex and are based on the Koran, but modified in many ways by custom.

Marriage in Islamic law is not a sacrament but a contract - indeed, a contract of sale, so that some dowry [*mas-kahwin*], payable by the husband, is necessary as consideration. In Malaysia, this is usually nominal. The absence of religious ceremonial does not affect the validity of the marriage, but it is usual for a Kadi (Muslim judge) to be present, and indeed for an elaborate, colourful ceremony to take place. Capacity exists at the age of puberty, which was not defined in the Koran, but is now set at 18 (male) and 16 (female), with power in the court to permit marriage under those ages. Usually, a guardian's consent is necessary for the validity of a marriage of a virgin girl. A man may not marry his aunt or his niece; neither is marriage between first cousins permissible. There are quite strict taboos on marriages with affines.

Most significantly, Muslim law requires that a Muslim woman marry only a Muslim man. If a man falls in love with a Muslim woman, he must convert to Islam, in order to marry her. The rule is not so strict for a Muslim man, who normally must marry a Muslim woman, but may be permitted to marry a *kitabiyah*, that is to say, a follower of some acknowledged, orthodox religion, such as Judaism or Christianity.

Polygamy is a tenet of Islamic Family Law, but there are practical restrictions. In some States, a Kadi may give permission, in others, the Shariah court must grant consent. Consent will only be given if the man can show that he can support all his wives. In any case, **four** is the maximum number.

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DIVORCE

Divorce in Malaysia is also governed by two distinct provisions.

Non-Muslims

Divorce by consent, after two years of marriage, is allowed, provided that proper provision is made for the wife and children. Conversion of a non-Muslim to Islam is also a ground for divorce.

The usual ground for divorce, however, is irretrievable breakdown of the marriage, and this is shown by proof of a number of circumscribed circumstances: (a) adultery, which the other spouse finds "intolerable"; (b) unreasonable behaviour; (c) desertion for two years; and (d) two years' separation. This is almost directly copied from current English divorce law.

There are, however, more fetters on divorce than in Australia. A petition for divorce is not permitted within the first two years of a marriage, except where it would cause exceptional hardship to the petitioner not to allow the petition. Furthermore, the court may adjourn the hearing of a petition, so that the parties may seek a reconciliation. In some circumstances, compulsory reconciliation counselling may be imposed on the parties. It seems, however, that these impositions, mandatory as they are in theory, are of little assistance in practice.

Unlike Australia, which exercises jurisdiction in a very liberal set of circumstances (eg. where either party is an Australian citizen), the domicile of the parties must be Malaysian before the divorce court will entertain a petition. Both Australia and England permit a wife to establish a separate domicile. But this is not the law in Malaysia. Perhaps this is a small matter, but it does reflect the perpetuation of "sexist" attitudes in a male-dominated country. (More serious examples of this will be given later.)

Incidentally, the grounds for nullity of a marriage are much wider than in Australia, where divorce is so simple and readily available that the **voidable** marriage has been abolished. In Malaysia, grounds like wilful refusal to consummate a marriage, and the presence of a communicable venereal disease, which to Australian family lawyers have an antediluvian flavour, still are on the statute book. They render a marriage voidable.

A judicial separation is possible under Malaysian law.

Muslims

Traditionally, renunciation of Islam by either party, or conversion to Islam by one party, automatically dissolved a marriage in Islamic law. Now, statutes provide that this is no longer automatic, but that the court in some States does have power to dissolve a marriage on those grounds.

The most important recent development in Muslim divorce law is that a husband or wife seeking divorce must now apply to the court. The previous law, permitting a husband automatically to divorce his wife on the pronouncement of **talaks** is thus abrogated. Now, the court advises the husband whether or not to pronounce the **talak**.

Elaborate provisions exist to assist reconciliation. Indeed, whenever the divorce is not consensual, a conciliatory committee is usually appointed, with the husband and wife each having representation on this committee. The committee, however, is not required where one of the parties has committed some serious matrimonial offence, and in certain other circumstances.

Most significantly, under modern Islamic Family Enactments a wife is entitled to seek a divorce. The grounds are still more limited than those available to a husband, who, in effect, can unilaterally renounce the marriage.

Something akin to the ancient common law decree of Restitution of Conjugal Rights is available to either party.

MAINTENANCE

Maintenance of spouses and children is also governed by different laws for Muslims and non-Muslims.

Non-Muslims

A wife may claim maintenance from her husband on divorce, and her husband may do so also, if he is incapacitated. In assessing maintenance, the court must take into account the means and needs of the parties. Unlike in Australia, however, matrimonial fault is always relevant to the award. The right to maintenance is lost on remarriage or adultery of the wife. Maintenance agreements are possible, but are by no means axiomatic, as they are in Australia. They may be more easily varied, and do not require to be sanctioned by the court.

Enforcement of maintenance is by the usual, unsatisfactory methods - there is nothing like a collection agency. And it is specifically provided that arrears of more than three years are irrecoverable.

Children are entitled to maintenance from their parents until the age of 18 or until the cessation of any disability. There appears to be no provision for increasing this age for educational purposes.

Muslims

Apart from usual maintenance, a wife who is divorced may apply for **mutlah**, that is, a consolatory gift, if she is divorced without just cause. Moreover, she is entitled to retain the **mas kahwin** (dowry) and her **pemberian** (any additional marriage gift or settlement).

A wife may also apply for regular maintenance, and so may a husband if he is incapacitated. But the wife is not entitled to maintenance if she is "**nusvus**", that is, if she "unreasonably refuses to obey her husband". This state of ill grace is exhibited by her withholding her association with her husband, leaving home against his will or refusing to move house with him. She has the right, however, to repent!

Maintenance is based on the needs and means of the parties, regardless of specific proportions of the husband's income. Maintenance is awarded for the wife's life. Moreover, a deserted wife has the right to stay in the matrimonial home as long as the children remain under age, unless the husband can find a suitable alternative home for her. This right, however, is lost on her remarriage.

Children are entitled to be maintained by their father, but only up to the surprisingly low age of 15: an exception, however, exists if the child is undergoing higher education. Not merely the father's natural children may claim; the right enures also for the benefit of any children accepted into his family.

PROTECTION OF CHILDREN ON DIVORCE

Non-Muslims

As in Australia, the welfare of the child is the paramount consideration in an award of custody. This nebulous concept, however, gives little more than general guidance in individual instances. And so, Malaysian law lays down a number of rebuttable presumptions, e.g. that a child under 7 should be with its mother, and that the status quo should not be disturbed. Australia, by contrast, has moved away from presumptions, the High Court of Australia having declared that each custody case should be considered entirely on its own merits without regard to any general, conventional wisdom. (It must, however, be conceded that legal practitioners operate from these so-called "presumptions", which, after all, represent the accumulated wisdom of centuries.)

Strangely, the Malaysian statute specifically states that the court should not strive to avoid splitting the siblings - which courts in Australia and elsewhere undoubtedly tend to do. The wishes of the parents, and any child who is of an age to express an independent opinion, are expressly stated to be taken into account.

An excellent feature of Malaysian custody law is that terms of access seem to be more carefully regulated than say, in Australia, where access tends to be seen as a consolation prize for disappointed non-custodians. The appropriate Malaysian provision is circumspectly drawn, and provides that the court may state terms relating to custody and access. In particular, the court may set out the arrangements for the child's

educational and religious upbringing, for the circumstances in which the child may visit the non-custodial parent or in which the parent may have access to the child. (This important distinction is not observed in Australia.) Finally, the court is empowered to express, as a condition of custody or access, a prohibition against taking the child out of Malaysia.

The **guardianship** (as opposed to custody) of the child generally vests in the father. There is an interesting provision which enables the court to make a declaration of unfitness for custody, the effect of which is to prevent the surviving non-custodian from obtaining automatic custody on the death of the custodian.

No provision for separate representation of children is made in the Malaysian legislation, but there is a section which states that, on questions of custody of a child, the court is enjoined to take the advice of a person trained in welfare matters. As there is nothing akin to the Family Court of Australia, with its comprehensive welfare services attached to the court, it is difficult to envisage how this provision could be efficacious. It is, apparently, a discretionary procedure, and somewhat rarely used.

Muslims

While guardianship vests in the father, it is clearly provided in modern Muslim law that custody [**hadanah**] is, *prima facie*, a legal right of the mother. **Hadanah**, however, is lost by the wife on her re-marriage, on her immoral behaviour, if she changes her residence so as to prevent the father from exercising his right of guardianship, if she neglects or is cruel to her child, or if she renounces the Islam faith. Moreover, **hadanah** lasts only until the child reaches the age of seven, though it may be extended until he reaches nine. Then, custody reverts to the father.

These apparently clumsy, adult-oriented laws may be varied if the child chooses otherwise. The child, however, must have reached the age of discretion to be able to choose. In any case, the court has a general right to dispose of custody as it thinks fit, notwithstanding any statutory rule to the contrary. And in so doing, the welfare of the child is paramount.

There is an interesting provision in the modern Muslim Family Law Enactments that the court may, but is not bound to, take advice on questions of custody, from child welfare experts.

As with non-Muslims, there are certain rules to guide the court, which have the status of statutory rebuttable presumptions, e.g. that it is best for a child to be with his mother during infancy.

ADOPTION

There is little doubt that there exists in Malaysia a great deal of *de facto* adoption. It seems to be respectable, in extended families, for a woman with an already large number of

children to "assign" one or two of them to a sister or female cousin who cannot conceive. Indeed, the view was expressed to the writer by a most well educated woman, herself one of thirteen children, that a mother has a duty to share out her children with those of her sisters who are unfortunate enough not to be able to have children of their own.

Most births in Malaysia take place at home, and it is easy to persuade the midwife to register the surrogate as the real mother.

Moreover, recent newspaper reports suggest that there is a trade of trafficking babies from Thailand, albeit there is a penal statute expressly forbidding child buying and selling, with severe penalties.

There is, however, an elaborate machinery for legal adoption, which involves the sanction of the court. Indeed, the Adoption Act permits *de facto* adopters to regularize their position.

It is provided that the only persons who may adopt are two spouses jointly, with one exception - either the natural mother or the natural father may adopt her or his own child singly or jointly with her or his spouse. One only of the applicants must be over 25 and at least 21 years older than the child, save in special circumstances, or where one of the applicants is the natural mother or father, or is a relative and over the age of 21. Modern adoption theory would query the wisdom of this special dispensation for relative adoptions. And there is nothing in Malaysian law akin to that in England or Victoria, which suggests that "custodianship" might be preferred to adoption of step-children. But as the divorce rate in Malaysia is low, the problem of blended families is not so acute as in Western societies.

The consent of the applicant's spouse is necessary, unless the spouses are separated. As in Australia, the consent of the parents or guardians of the adoptee is also necessary save in the following circumstances:

- (1) where the parent has abandoned the child, or
- (2) where he or she has persistently neglected to support the child, or
- (3) where the parent cannot be found or is incapable of giving consent, or is withholding it unreasonably, or
- (4) where under some foreign, written law, a competent authority has given permission or granted a licence to the adoption.

Presumably, this last provision was inserted to facilitate inter-country adoptions.

The consent of the parent may be given unconditionally or may be subject to conditions with respect to religion. It may be a specific consent to the adoption by particular individuals, or a general consent to adoption by unknown persons.

Before it may grant an adoption application, the court must be satisfied that the necessary consents have been freely given, with understanding. There must be no payment for

the child. If the applicants have been previously rejected, the court must be satisfied that there has been a substantial change of circumstances.

There seems to be nothing against the arrangement of a private adoption, provided, of course, that it is not for payment. There is, however, a proscription against advertising a child for adoption, or the willingness to arrange an adoption.

An interim adoption order may be made, subject to supervision by the Department of Social Welfare. An adoption may also be made subject to certain terms or conditions, but it is not clear whether these terms may include access by the natural mother. Adoption in Malaysia embodies the traditional view that it is a complete severance of ties with the natural family and the establishment of a new family structure.

The Adoption Act provides for the appointment of a guardian *ad litem*, whose duties are stated to be:

- (1) to ascertain whether the means and status of the applicants are such as to enable them to maintain and bring up the child suitably;
- (2) to ascertain what insurance has been taken out for the child's benefit; and
- (3) to advise on what terms or conditions are desirable.

Strict secrecy of the origins of the adoptee is maintained. Registers and books which make traceable the connexion between an entry in the Register of Births marked "Adopted" and the corresponding entry in the Adopted Children Register may not be inspected without leave of the court.

It is thus apparent that little of the philosophy which has permeated the common law world recently, relating to "open adoption", is reflected in the Malaysian legislation. It may, however, be open to doubt whether the new philosophy, as for example, it is embodied in the Victorian Adoption Act 1984, has had a beneficial effect.

Certainly, it seems open to the criticism that it renders adoption no more stable than long-term foster-care. Perhaps Malaysia is right to be conservative.

FOSTER-CARE

Foster-care is not common in Malaysia. Indeed, the term is more frequently used to cover the position where one woman suckles another's child, which, traditionally, was not uncommon in Malay society.

There are, however, some signs that family foster-care, as it is known in the West, is on the increase. It certainly has many advantages over institutionalization of children. It gives a child the form of substitute care which is most akin to a nuclear family.

But foster-care carries with it many social and legal difficulties, unfortunately, for the most part, ignored by lawyers.

A few voluntary agencies in Malaysia provide foster homes for children who have been abandoned or are homeless or whose parents temporarily are unable to care for them. One such organization is the Malaysian Children's Aid Society. Since its inception in 1970, this Society has helped children of all races and creeds. As is the case in Australia, the Society is inadequately funded by the Government, and relies heavily on voluntary donations and fund-raising projects. Foster-care and family support services are an essential element in its programme.

For the most part, however, substitute care is carried on in orphanages and other institutions, mostly run by the Government.

THE JUVENILE COURT

As in all common law countries, juvenile offenders are treated separately from adults. The juvenile court has jurisdiction over both juvenile crime and care and protection orders. It has jurisdiction over Muslims and non-Muslims alike.

The juvenile court is part of the Magistrate's court system. It is provided that the juvenile court shall, so far as possible, sit either in a different room, or on different days, from that of the adult court. The court in Kuala Lumpur that the writer visited sat in the same room but on a different day from the adult sessions court.

An interesting feature of the Juvenile Court is that the lawyer magistrate must be assisted by two advisers, one of whom, if possible, must be a woman. The function of the adviser, however, is not to assist in deciding the guilt of the accused, but only to advise the magistrate on punishment or other treatment. On the occasion that the writer attended a session of the court, he did so at the kind invitation of a lady adviser, who happened to be on the academic staff of the Education Faculty of the University of Malaya. She explained that her services were entirely voluntary. She had to attend once a month, and saw her role as an important corrective to potential legislation on the part of the judge. The judge and the two advisers, on that occasion, seemed to have no difficulty on reaching a consensus, and the role of the advisers appeared almost to be a formality.

The juvenile court has jurisdiction over all offences except those punishable by death. A "juvenile" is any person from seven to seventeen years of age; a "child" is a person from seven to fourteen, and a "young person" is from fourteen to seventeen. There is a provision for an adult and young person charged with the same offence to be tried in the adult court, that court, however, having all the powers under the Juvenile Court Act.

The Juvenile Court sits in private. Only (i) the police; (ii) the parties, their parents/guardians, lawyers and witnesses and (iii) any other person specially authorized may attend. The writer, of course, came into the third category. When a child or young person is arrested, he must be brought without unnecessary delay to the Juvenile Court. He may be released on bail, with or without sureties, or detained in a place of detention.

The parent or guardian is required to attend the hearing, unless the Juvenile Court waives this requirement. In all the cases attended by the writer, one or both of the parents were present. The lamentation and sorrow of the parents was sad to behold. It must indeed be a thankless thing to have a wayward child.

There does not appear to be any procedure similar to that in South Australia, for instance, where a panel seeks to avoid a court appearance for the child. Nor is the procedure in the court itself exceptionally informal. It is provided that the juvenile court must explain the charge in simple language, and that the juvenile court must be asked whether he admits or denies the charge.

A great problem in Malaysia is the multiplicity of languages. Attached to the juvenile court were two interpreters, one to translate from Malay [Bahasa Malaysia] to English, the other from Chinese (including several dialects) to Malay. The interpreters were both young, vivacious women, who revelled in their role. They translated simultaneously with great speed and skill. And they went much further than the role of interpreter seemed to demand. They were much more active than the lady judge, who seemed almost distant in her disinterestedness. The Malay/English interpreter especially, a beautiful, unusually tall, young woman, seemed to perceive her role as a cross between prosecutor, counsellor and friend to the offender. She cajoled and sympathized. She seemed to be thoroughly enjoying her role - which, indeed, she so admitted to the writer in a private interview.

Extraordinarily, the trilingual proceedings passed without hitch.

None of the cases which the writer observed involved a plea of not guilty. Most of them were concerned with absconding from an approved school. The court had only to consider pleas of mitigation on that day, and these were generally rather pathetic and half-hearted.

The juvenile court is enjoined, in considering a plea of mitigation, to take into account the offender's general conduct, home surroundings, school record and medical history. It has the following powers:-

- (a) to admonish and discharge the offender;
- (b) to discharge him on a good behaviour bond;
- (c) to commit him to the care of a relative or other fit person;
- (d) to order his parent or guardian to execute a bond to exercise proper care or guardianship;

- (e) to make a supervision order, which might require the offender to attend a probation hostel;
- (f) to send the offender to an approved school or Henry Gurney School [Henry Gurney was a High Commissioner of Malaya during the Emergency, and was assassinated by Communists. His wife was interested in juvenile delinquents.]

The juvenile court, however, does not have jurisdiction to pass a sentence of death. For a capital offence, the maximum punishment that may be inflicted by the juvenile court is detention at the pleasure of the State Authority.

The Probation Officer occupies an important position in the scheme of juvenile correction. His duties are to visit the child or young person, to see that the conditions of any bond are observed, to report to the juvenile court on his behaviour and to advise, assist and befriend him, helping him, if appropriate, to obtain employment. Regrettably, it seems that the probation service is understaffed.

If a child is sent to an approved school, the order will be for three years or until the child reaches 14, whichever is the longer period. But if he escapes from the approved school, he may either be ordered to serve an extra six months or be sent to the much stricter Henry Gurney School.

OBSERVED CASES IN THE JUVENILE COURT

The writer observed several cases in the Juvenile court at Kuala Lumpur. The first two were heard in chambers, the remainder in court. Unfortunately, in none of the cases was there a Not Guilty plea, so that a recital of them may be somewhat lacking in human drama and interest. The writer's observations of the cases are nevertheless set out, in the hope that the flavour of the court may be gleaned.

CASE I - (in chambers)

An application in respect of a girl (aged 15 years 11 months) who had absconded from an approved school. The proceedings were in Bahasa Malaysia.

The girl was represented by a woman lawyer. (Legal representation is a right for juveniles.)

The girl's father and mother were present. Both the girl and her parents were required to stand, throughout the proceedings. The girl appeared frightened and demure, but had been sent to the approved school after being found to be uncontrollable. The Malay interpreter directed proceedings, asking the girl why she had absconded. She did not answer immediately, but then, very quietly, explained where she had gone. The warden of the approved school lodged a report on the girl's behaviour. Both the father and mother were in tears.

The case took ten minutes, and was peremptorily decided. The girl was sent back to the approved school to complete her three years with an extension of 6 months.

CASE 2 - (in chambers)

This was also a case of a girl absconding. The girl claimed that she wanted to return to her family, but she had not gone straight home. The interpreter again conducted proceedings, rather aggressively, seemingly cross-examining the girl.

Again, the girl was sent back to the approved school for an extended period.

CASE 3 - (in chambers)

A young person (male, 18) had been sent to an approved school for three years. He absconded. He was led in by a policeman, for, pending the enquiry, he had been detained in a police lock-up.

He was Chinese, and his father was present. It should be noted that the Juvenile Court retained jurisdiction despite the fact that the offender had turned the age of 18.

The Chinese interpreter was required. Here, the translation was from Chinese into Malay, and every word had to be translated, for this Magistrate herself did not understand Chinese.

The boy was contrite. He admitted the offence, but said that he had simply gone out to buy some things. He repented, and looked suitably abashed to be convincing. But it appeared that he had already absconded twice. He wanted to return to the same school. The father pleaded for the court to give his son a last chance. But the principal of the school did not want him back.

He received an unwanted punishment - detention in the much more severe Henry Gurney School for three years.

CASE 4 - (in chambers)

A Chinese boy aged 16 absconded from an approved school. The facts were almost identical with those in Case 3, but this time leniency was shown by the court. He was sent back to the approved school, for an additional 6 months.

The above routine cases were heard in chambers. It was a typical Malaysian day. The temperature was 30°. The room was austere, starkly furnished. The airconditioner was noisy and made for inaudibility at times.

The scene was depressing and dispiriting.

There was then a recess, during which the writer was able to interview the interpreters and the warden of the approved school. The delay was caused by the late arrival of the police prosecutor. Apparently, there is a shortage of prosecutors, and indeed there was some doubt whether the day's proceedings in

open court would be able to begin at all. Eventually, however, a prosecutor arrived, and the more serious cases began in open court.

CASE 5 - [in open court]

A Chinese boy (13) was accused of housebreaking by day. He was scruffy looking, with scabrous sores on his leg. Formerly, he had pleaded not guilty, but now wished to change his plea. The court adjourned the case for a probation report.

CASE 6 - [open court]

Two Chinese boys, aged 17 and 16, were charged with armed robbery. The prosecutor sought an adjournment, on the ground that he had not been able to subpoena the complainant. Counsel for the boys, speaking in English, raised a preliminary issue. The Court advised him to refer the matter to the Deputy Public Prosecutor.

It fell, strangely, to the interpreter to check the diary for a new hearing date. The Court remanded the boys in custody, their parents having refused to act as sureties for bail. One of the boys sought a change of cell, on the basis that he was being constantly assaulted by his fellow inmates. The Court refused this request.

CASE 7 [open court]

A Malay boy (aged 17) was charged with the theft of a motor-cycle in 1986. The law's delays worked to the boy's advantage. The complainant was unable to be found. The court gave the accused offender a discharge, not amounting to an acquittal. (The writer was advised that this determination did not preclude the police from bringing an action later.)

CASE 8 [open court]

A Malay boy (17) was accused of possessing cannabis above four grams, contrary to section 6 of the Dangerous Drugs Act. This case had to be adjourned because the Police Prosecutor was required in another court. The above are hardly sufficient to enable the writer to form more than the superficial view that Malaysian juvenile justice is not particularly enlightened by Western standards. There was little to excite any comparative lawyer seeking ideas on which to base reform.

CONCLUSION

The writer has found a study of the Family Laws of Malaysia an intriguing one. The country itself is a remarkable melting-pot of racial groups. Unlike some other polygot societies, these racial divisions inevitably preserve different values, ideals and beliefs. It is not possible in Malaysia to aim for racial integration. The Islamicization of the country's main racial unit carries with it the threat of greater racial deviations rather than the promise of greater racial unity.

The wonder of it is, that the country, itself a remarkably unhistorical amalgam of disparate geographical entities, has generally remained free of overt racial displays of disharmony. There is some chance that this harmony might founder under the increasingly aggressive policy of positive discrimination of Bumiputras.

It will be interesting to see whether the Islamicization of the country will have a decisive effect on the reforms of the non-Muslim Family laws. The extreme tenets of fundamentalist Islamicists hang most uncomfortably with the trends in the Western world, for example, towards greater equality of women and greater independence of children. It will take Solomonesque wisdom on the part of Malaysians to maintain a *via media* between two opposing carriageways!

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