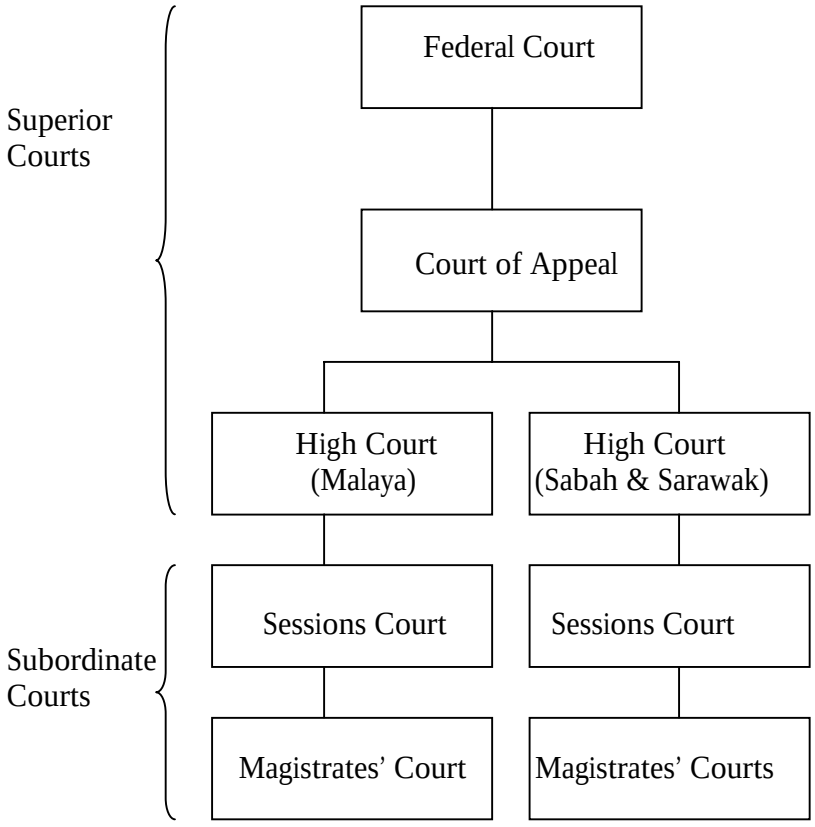
PART 1
OVERVIEW OF THE
DISPUTE RESOLUTION MECHANISM

I. Overview of the Court System

Malaysia applies the English common law system and its court system is based on the English Judicial hierarchy, with the highest court being the Federal Court. Below it are the Court of Appeal, two High Courts (Malaya, and Sabah and Sarawak), Sessions Courts, and Magistrates' Courts:



The jurisdiction of each Court is clearly defined by statute, as well as the Federal Constitution.[1] In the early years after gaining independence from Britain, Malaysian society was not known for being litigious. However, due to economic expansion and increased education, more and more cases were brought to the courts, either as a result of increased trading and commercial activities resulting in increased contractual duties and responsibilities, or as a result of greater awareness of rights among the citizens. While the number of cases filed in the court registry grew, the number of judges appointed and new courts established did not grow in tandem with the increase in workload. Another problem which arose was delay caused by lawyers or prosecutors in getting their cases ready for trial. Due to frequent postponement of cases, cases which could have been disposed of remained in the court registry files as active cases. Judges and magistrates are subject to transfer, and when this happens many "part-heard" cases emerge. The same Judge needs to be available to continue with his or her case in the old locality while at the same time, he would have to manage the cases which are filed in court in the new locality. Hearing dates therefore are liable to be postponed, and this will prolong the trial process.

Apart from the above problems, the conventional court system also does not lend itself favorably to probable litigants due to the following factors:

(i) Usage of the courts require strict adherence to Rules of procedure, be it civil or criminal procedure.[2] Most of these rules are not easily understandable by the common man, and as such, lawyers are required to help the layman to file his case in court; to draw up a statement of claim or defence; to file affidavits; to make sense of the legal language used in most commercial contracts, and finally, to argue the case before the magistrate or Judge.

(ii) The language of the courts have been for a long time the English Language, and this language continues to be used in the Superior Courts, especially in cases of appeal. In the lower courts, such as the Magistrates' Courts, the Malay or national language is now widely-used, and there are court translators for those not well-versed in either language. Most written judgments of Judges in the Superior Courts are still written in English,

[1] See IDE Asian Law Series No. 4, Judicial System and Reforms in Asian Countries (Malaysia), p. 4.
[2] *ibid*, Chapters 6 & 7.

while most commercial documents continue to be made in the English language. To the ordinary man in the street who is not highly educated, resort to the court system therefore becomes "difficult".

(iii) Court proceedings are very formal, often time-consuming, and expensive (due to legal costs). The atmosphere is not "friendly" as litigation is adversarial in nature.

Problems of the Court System

The main problem facing the court system is the backlog of cases:

Table 1

Court Statistics as at December 2000

	No. of cases filed		**No of cases cleared**	**No of active cases**
Magistrates' Court	299,411	(civil)	140,248	159,163
	1,087,617	(criminal)	749,399	338,218
Sessions Court	155,478	(civil)	71,149	84,329
	7,997	(criminal)	4,876	3,121
High Court	100,047	(civil)	45,812	54,235
	4,068	(criminal)	2,265	1,803
Court of Appeal	3,048	(civil applications)	1,867	1,181
	8,061	(civil appeals)	3,629	4,432
	128	(criminal application)	101	27
	1,010	(criminal appeal)	552	458
Federal Court	584	(civil applications)	421	163
	3,229	(civil appeals)	3,216	13
	63	(criminal appeals)	43	20

Source: Federal Court

However, the backlog is being steadily cleared, and a computerisation project for the courts have been initiated by the government to more effectively monitor the movement of files.

Another problem which has surfaced and has been reported is the increased workload of judges, causing judgments to be delayed.[3] The delay consists of a delay in giving a decision after a case had ended, and delay in giving the written judgement after an oral decision had been delivered. According to the report, the main reason for such delay is that judges are terribly hard-pressed, especially those in the High Court and Sessions Court as they handle the bulk of the cases. Most of these judges begin their day by hearing chamber matters and then go on to preside at open court hearings for the full day. The only time available for writing judgments is at home, in the evenings or weekends, or during the annual court vacation or, if a judge is lucky, when a hearing gets postponed! The commercial, appellate and special powers divisions of the High Court are reported to be the most over-stressed.[4] A retired Court of Appeal judge states that judges probably have to write a "mind-boggling 10-15 judgments a month."

The above problem is compounded by the fact that judges do not have the best support system, either in the form of equipment or staff. Court of Appeal and Federal Court judges who have to do the most in terms of legal research do not have research assistants.

Judicial Reform

Apart from computerisation of the court system, the other judicial reform which has been implemented to help clear the backlog of cases is case-management. The Rules of the High Court was amended on September 22, 2000. A new Order 34 was substituted for the old, providing for Pre-trial Case Management. Not later than 14 days after the close of pleadings, a plaintiff shall cause to be issued a notice in Form 63 requiring the parties to attend before the judge. If a plaintiff fails to comply, the judge may direct the Registry of the Court to issue a notice in Form 64 to the plaintiff to show cause why the action should not be struck out.

At the "first pre-trial conference", the judge may –

(a) direct the parties or any of them to furnish particulars of the claim or defence or other pleadings as the Judge may deem fit;

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[3] New Sunday Times, November 4, 2001, p. 9.
[4] *ibid*.

(b) order the parties or any of them to answer interrogatories on oath or affirmation;

(c) require the parties to formulate and settle, with the concurrence of the Judge, the principal issues requiring determination at the trial;

(d) order the parties or any of them to deliver their respective lists of documents that may be used at the trial of the action;

(e) direct the parties or any of them to deliver their respective lists of documents that may be used at the trial of the action;

(f) order either party to the action to furnish the report of an expert and fix the time for the delivery of such report;

(g) require each party to provide a brief summary of that party's case to the Judge in advance of the trial date;

(h) direct the parties to the action, whenever there is agreement upon all or any of the documents proposed to be relied upon by them or any of them at the trial of the action, to file and exchange a bundle of such documents;

(i) direct the parties to exchange and file a statement of agreed facts;

(j) subject to all just exceptions as to privilege, direct the parties to make any disclosure or provide any information which the judge considers relevant to the issues in the action;

(k) limit the number of witnesses that each party to the action may call at the trial;

(l) direct the joinder of any party as a party to the action or the removal of any party who is already a party to the action;

(m) order the addition of a third party to the action and deal with all directions consequent upon such addition;

(n) fix a date for the hearing of the action;

(o) deal with all applications for amendments to the pleadings;

(p) limit the time within which any of the directions given are to be complied with.

The judge may of his own motion or on application by letter by any party schedule and convene as many pre-trial conferences as he may deem necessary for the giving of directions or of such further directions he may deem necessary or for the amendment or variation of any direction already given. (0.34, r.6).