Recent Developments in the Administration of Islamic Law in Malaysia

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The Federal Constitution of Malaysia provides that Islam is the religion of the Federation; but other religions may be practised in peace and harmony in any part of the Federation. If the adherents of other religions claim to be able to practise their religion in peace and harmony, the more so can the Muslims claim the right to practise the religion of Islam in peace and harmony. Islam requires Muslims to follow in all aspects of their life the teachings of Islam. In particular Muslims are required to follow and carry out the injunctions of the sharia as revealed by Allah in the Holy Qur'an and as exemplified by the Prophet Mohammed (peace and blessings of Allah be upon him).

Before the coming of the colonial powers, the law which was applied in the Malay states was the Islamic law, which had absorbed to some extent the rules of Malay custom. In Malacca the law was compiled in the Malacca Laws2 and when the Malacca Empire fell, versions of the Malacca Laws were applied in the other states, as, for example, in Pahang, Johore, and Kedah.3 In Trengganu the Islamic law was applied particularly in the time of Sultan Zainalabidin III.4 In Johore the

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Majallat al-Ahkam, a compendium of the civil law from Turkey, was translated into Malay at the beginning of the twentieth century and ordered to be applied in Johore. Similarly the Hanafite Code of Qadri Pasha in Egypt was adapted and translated into Malay as the Ahkam Shariyyah Johore. However, with the coming of the British and their influence in the Malay states, English law was introduced in the form of codes taken from those enacted in India, including the Penal Code, the Contract Act, the Evidence Act, the Criminal Procedure Code, the Civil Procedure Code, and, in the field of land law, legislation based on the Torrens system was introduced. The introduction of these laws meant that the Islamic law was no longer applicable in the areas covered by those laws. More significantly still, courts were set up headed by British judges trained in the English common law and the judges of these courts tended to apply the English law whenever there was no legislation which could be applied. In this way the law of torts and the rules of equity were introduced in the Malay states. The attitude taken by the British judges was confirmed by the Civil Law enactments of 1937 and 1951 and finally the Civil Law Ordinance 1956, which stated that in the absence of any written law, the courts shall apply in West Malaysia the common law of England and the rules of equity as administered in England on 7 April 1956. The Civil Law Ordinance 1956 was extended to Sabah and Sarawak in 1971 with the effect that in the absence of any written law, the courts were to apply the common law of England and the rules of equity, together with statutes of general application, as administered or in force in England, on 1 December 1951 in the case of Sabah and 12 December 1949 in the case of Sarawak. In the case of mercantile law the Civil Law Act provided that in the absence of any written law, the law applicable in the Malay states would be the English Law as on 7 April 1956 while the law applicable in Penang, Malacca, Sabah and Sarawak would be the law in England at the corresponding period. The result of this development is that while in theory it may be claimed that Islamic law is the law of the land in the Malay states, in practice and in actual fact it is the English law which has become the basic law and the law of the land in Malaysia. The Syariah courts were placed in a subordinate position, their jurisdiction was restricted and no efforts were made to raise the status of the courts or their judges and officers.

In the case of Ramah v. Laton a majority of the Court of Appeal in the Malay states held that Islamic law is not foreign law but it is the law of the land and as such it is the duty of the courts to declare and apply the law, and it is not competent for the courts to take evidence on what the Islamic law is. If the judges of the civil courts had put into practice what they declared in that case, it would have meant that Islamic law would have to be administered in the civil courts. Fortunately or