

INTERNATIONAL LAW CASES FROM MALAYSIA AND SINGAPORE

by S. Jayakumar

[Singapore: Singapore University Press,
1974: XXIV and 458 pp. \$S40.00]

A casebook can serve two basic functions. It may be used as a teaching tool to provoke discussion and encourage analysis or it may be used as a convenient repository of basic primary materials. From either one of these perspectives, Jayakumar's *International Law Cases from Malaysia and Singapore* leaves much to be desired.

As a teaching tool its principal limitation is that it relies exclusively on cases to convey the role international law plays in the decision making process. In so doing it eschews the real world by excluding treaties, the work of intergovernmental organisations and representative state practice from Malaysia and Singapore. In the sections on jurisdiction and law of the sea, for example, it would have been useful to include Malaysian and Singaporean continental shelf legislation and model concession agreements relating geographical, jurisdictional and profit sharing arrangements. International law, as Jayakumar himself has ably demonstrated elsewhere, is not made by judicial tribunals, especially in newly independent states. To indicate even implicitly that it is, distorts the entire process and encourages the already wary undergraduate into thinking that the relationship between international law and reality is tenuous. This conviction can only be further fostered where no background, no sense of political history and no indication of alternative views are provided. In addition, fully 90% of the cases included are pre-*Merdeka* decisions delivered by English judges, whose views cannot be said to reflect a Malaysian or Singaporean perspective of the requirements of world public order. Jayakumar has included occasional questions and comments comparing the cases and encouraging the reader to search for a "truer" rule of law, but both questions and comments focus on internal consistency issues instead of inquiring into the external and frequently unarticulated policy reasons underlying the judgements. This absence is nowhere more striking than in *Government of the State of Kelantan v. The Government of the Federation of Malaya and Tunku Abdul Rahman Putra Al-Haj* ([1963] M.L.J. 355), where the High Court dismissed a motion by the plaintiff challenging the constitutionality of the Malaysia Agreement and the Malaysia Act on the very eve of the new State's establishment.

It is as a convenient reference tool that Jayakumar apparently intended the book to be primarily used. Its ability to serve this purpose has been drastically impaired by its narrow scope and insular outlook. Almost no

reference is made to the role of international organisations of any kind or to the international regulation of transport, communication and trade. The chapter on law of the sea, a subject of the greatest importance to Malaysia and Singapore, makes no mention of the crucial issues of jurisdiction on the continental margin and seabed, the status of the Straits of Malacca or the law relating to archipelagos. Malaysian and Singaporean practice on state succession, something of interest to international lawyers generally, is ignored entirely. The fascinating legal concept of piracy is covered in some detail but there is nothing to indicate the uses the British made of that concept to justify their intervention on the Malay Peninsula outside the Straits Settlements. The piracy case of *R. v. Tunku Mohamed Saad* in particular has been whittled down from the sixty odd pages it occupies in *Kysbe's Reports* to less than four pages. Although the deleted portions are primarily composed of the arguments of defence counsel and are not directly relevant to the decision, they put the case in its historical and political context and, unlike the judgement of *Norris R.*, present a justification for the defendant's conduct from a Malayan perspective. These limitations make the book less than attractive to foreign scholars whose primary international legal interests in Malaysia and Singapore are in just those areas. In terms of the needs of local students, to whom the original reports are readily available, it would have enhanced the book's value to have included non-judicial materials not so readily available to students. There are, moreover, almost no references made to standard treatises, monographs or to the burgeoning periodical literature in the areas covered, which would have helped to put some of the decisions in their proper perspective and demonstrate whether or not a particular case is a deviation from the mainstream. This is particularly important in respect to the case on jurisdiction because colonial courts have been known to take a very broad view of their jurisdictional competence.

In bringing together many little known and until now unorganized cases and by shedding light, albeit incidentally, on the little understood relationship between international law, municipal law and imperial law, Jayakumar has made a useful contribution to Commonwealth and South East Asian legal history. Taken on its own terms, however, its limitations outweigh its usefulness.

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MALAYSIAN INCOME TAX

2nd Ed. by

Awther Singh, assisted by Jaginder Singh.

(Singapore, Law Book Company of Singapore and

Malaysia, 1974: XX and pg. 544. \$72.00)

This is the second edition of the book originally published in November 1972. The author claims that the whole of Part A of the book which deals with the law has been entirely rewritten and this has been made possible by the fruitful relationship of the author with Mr. Jaginder Singh of the Faculty of Law, University of Malaya. This review deals mainly with Part A – the legal part of the book. It must be said at the outset that the second edition is a vast improvement on the first edition. The book provides a clear summary of the legal provisions relating to income tax in Malaysia and can be read with profit by all students and practitioners of the law.

One major criticism of the book is that not enough significance is given to the term "Malaysia". At page 3 of the book it is stated quite wrongly that "Malaya till 1957 [was] ruled by the United Kingdom" but while Singapore is mentioned, Sabah and Sarawak are ignored. At page 10 it is stated that the Federal Court is bound by its own decisions and by the decisions of the Singapore Court of Appeal prior to 1965, again ignoring the position relating to the decisions of the Court of Appeal of Sarawak, North Borneo and Brunei. On the same page the impression given is that Malaysia has only one High Court and clearly account has not been taken of the fact that there is a High Court for the Borneo States. At page 27 it is stated that the law of contract in Malaysia is governed by the Contracts (States of Malaya) Ordinance, 1952, which is not only incorrect, but ignores the position of Sabah and Sarawak and also of Penang and Malacca. It was the Contracts (Malay States) Ordinance, 1950 that was applicable to the Malay States – perhaps the author was prophesing for the Ordinance has now been extended to the whole of Malaysia and is now known as the Contracts Act, 1950.

The doctrine of *stare decisis* as it applies to Malaysia is summarised, though very inadequately, at page 10 but throughout the book there are references to cases, where it is not made clear whether they are decisions in or from Malaysia or decisions in other countries. In particular Singapore cases have been freely cited without specific reference to the fact that they are Singapore cases. Thus at page 205, the decisions of the Singapore Board of Review are cited as "local" cases. At page 67 the decision of the