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THE BORNEO TERRITORIES

*The Development of their Laws and Constitutions*



Edited by

L. A. SHERIDAN, LL.B., PH.D.

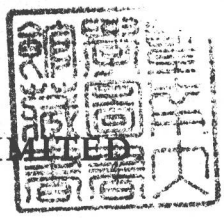
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#### EDITOR

**L. A. SHERIDAN, LL.B., PH.D.**

*of Lincoln's Inn, Barrister-at-Law, Professor of Law and Dean of the Law Faculty in the University of Malaya in Singapore.*

#### CONTRIBUTORS

**H. G. CALVERT, LL.M.**

*Lecturer in Law, University College of Wales, Aberystwyth.*

**B. L. CHUA, M.A., LL.B.**

*of the Middle Temple, Barrister-at-Law; Advocate and Solicitor, Singapore; Lecturer in Law in the University of Malaya in Singapore.*

**P. COOMARASWAMY, LL.B.**

*of Lincoln's Inn, Barrister-at-Law; Advocate and Solicitor, Singapore; Part-time Lecturer in Law in the University of Malaya in Singapore.*

**R. H. HICKLING, LL.B.**

*of the Middle Temple, Barrister-at-Law; Parliamentary Draftsman and Law Revision Commissioner, Federation of Malaya.*

**THEODORE B. LEE, B.A., LL.B.**

*Temporary Assistant Lecturer in Law in the University of Malaya in Singapore.*

## PREFACE

COMPARED with some other volumes in this series, this book ventures into strange territory. Nearly two hundred years of experience of the common law in Malaya have seen many interesting developments, but the documentation is poor. Happily, law reporters have served the area reasonably well, though oral judgments often go unnoticed, and the case law can be handled with fair facility with the aid of the digests put out by the *Malayan Law Journal*. The legislation of those States which publish official revised editions of the laws from time to time is readily accessible, but the enactments of others are often hard to trace and harder to obtain. There has until the past few years been no academic legal profession in Malaya, and practitioners have not been forward in publishing. Valuable work has indeed been done by the authors of the half dozen or so Malayan legal books and by the authors of notes in the *Malayan Law Journal* since its inception in 1932 under its present editor Mr. B. A. Mallal. Yet this present volume is a pioneering effort; its shape has been influenced by this; it is not a survey of branches of law treated in more detail elsewhere but a survey which, it is to be hoped, will be the forerunner of many and more profound treatises. Those who have contributed have therefore attempted not only to sketch the development of Malaya's laws and constitutions but also to indicate the materials more detailed works might employ.

The task of the author of a legal textbook resembles that of the photographer at a race; he transfixes a continuing process at an instant of time. The resulting image may seem strange to a spectator at the process. This is a period of particularly rapid change in the laws of Malaya, and especially of Singapore: or so it seems to those in the thick of it. Enactments pour out from what must surely be the highest concentration of legislatures per head of population to be found anywhere in the world. Reference to the table of statutes will verify that no fewer than nineteen such law factories are or have been engaged in the industry in the area covered by this volume (and that is counting the Malayan Union Legislative Council, the Federation of Malaya Legislative Council and the Federation of Malaya Parliament, successors in title, as one). But a point has to be taken, if a book is to be published at all, when an author must call time

and hand over to the printer. The law here is basically as it stood on July 31, 1960, but every effort has been made to incorporate subsequent variations in footnotes.

L. A. S.

*Singapore.*

*April, 1961.*

## CHRONOLOGICAL TABLE

- 600-700 B.C. — Approximate beginnings of Indian influence in the Malayan peninsula.
- 1200-1300 A.D. — Sultanate of Tumasek (Singapore) founded by a prince from Sumatra.  
Malacca founded by Sultan Iskander Shah of Tumasek.
- 1300-1400 — Approximate end of Indian dominance in the Malayan peninsula.  
Fall of Tumasek to Javanese invaders.
- 1400-1700 — Large-scale immigration by different routes into the Negri Sembilan area of Malays from the Minangkabau highlands of Sumatra.
- 1402 — Sultanate of Malacca founded by Parameswara (ex-sultan of Tumasek).
- c.1414 — Parameswara converted to the Muslim faith.
- 1511 — Malacca conquered by the Portuguese.
- 1641 — Malacca conquered by the Dutch.
- 1786 — Penang Island ceded by Kedah to the East India Company.  
Beginnings of large-scale Chinese immigration.
- 1796 — Malacca peacefully occupied by the British.
- 1800 — Province Wellesley ceded by Kedah to the East India Company.
- 1801 — Naning annexed to Malacca.
- 1802 — Malacca returned *de jure* to the Dutch.
- 1807 — First charter of justice issued to Penang.
- 1818 — Malacca returned *de facto* to the Dutch.
- 1819 — Singapore factory rights granted by Johore to the East India Company.
- 1824 — Withdrawal of Dutch influence in the Malayan peninsula in favour of the British.  
Malacca ceded by the Dutch to the East India Company.  
Singapore ceded by Johore to the East India Company.
- 1826 — The Dindings and Pangkor Islands ceded by Perak to the East India Company.  
Malacca, Penang (including Province Wellesley), Singapore, the Dindings and the Pangkor Islands incorporated into a unified administrative unit, called the Straits Settlements, with its capital at George Town (Penang), under the government of Bengal.  
Second charter of justice issued to the Straits Settlements.
- 1832 — Capital of the Straits Settlements moved from George Town to Singapore.
- 1834 — Indian legislature established (with authority over the Straits Settlements).
- 1841 — Sarawak transferred by Pangeran Muda Hassim to James Brooke.
- 1842 — Perlis separated from Kedah.  
James Brooke accepted by Sultan of Brunei to rule Sarawak as his representative.
- 1846 — Labuan ceded to the British as a colony by Sultan of Brunei.  
James Brooke recognised by Sultan of Brunei as sovereign of Sarawak.
- 1847 — British treaty of protection with Brunei.
- 1855 — Third charter of justice issued to the Straits Settlements.
- 1867 — Straits Settlements separated from India and made a colony.  
Labuan incorporated in the Straits Settlements.
- 1873 — British intervention in Selangor.
- 1874 — Treaty of Pangkor: British adviser accepted by Perak.  
British adviser accepted by Sungei Ujong.
- 1875 — British adviser accepted by Selangor.  
Pahang recognised by British as independent of Johore.



- 1876 — Authority of ruler of Sri Menanti (one of the nine States) recognised by Eenas, Gunong Passir, Johol, Jompole, Muar and Terachi (six of the nine States).
- 1877 — Territory ceded by Sultan of Brunei to the British North Borneo Company.  
Appointment of Mr. W. A. Pickering, under the Chinese Immigration Ordinance, 1877 (No. 2), as Protector of Chinese immigrants at Singapore, and of an Assistant Protector of Chinese at Penang.
- 1883 — British adviser accepted by Jelebu.
- 1885 — British treaty of protection with Johore.  
British control of foreign affairs accepted by Sarawak.
- 1886 — Cocos (Keeling) Islands transferred from Ceylon to the Straits Settlements.
- 1887 — British treaty of protection with Pahang.  
British adviser accepted by Sri Menanti (and its six dependencies).
- 1888 — British adviser accepted by Pahang.  
British control of foreign affairs accepted by British North Borneo and Brunei.
- 1889 — British adviser accepted by Rembau and Tampin (the last of the nine States to do so).
- 1895 — The nine States, together with Sungei Ujong and Jelebu, reduced to six States (Jelebu, Johol, Rembau, Sri Menanti, Sungei Ujong and Tampin) and federated under the name of Negri Sembilan.  
British adviser accepted by Negri Sembilan.  
Perak, Selangor, Pahang and Negri Sembilan joined in an executive and judicial federation under the name of the Federated Malay States.
- 1898 — Negri Sembilan became a unitary state.
- 1900 — Christmas Island incorporated in the Straits Settlements.
- 1906 — British adviser accepted by Brunei.
- 1909 — Anglo-Siamese Treaty: Siamese rights in the Malayan peninsula transferred to the British.  
British advisers accepted by Kedah, Kelantan, Perlis and Trengganu.  
Federal legislature established for the Federated Malay States.
- 1914 — British adviser accepted by Johore.
- 1934 — The Dindings and the Pangkor Islands ceded back to Perak by the British.
- 1942-45 — Japanese occupation of Malaya.
- 1945-46 — British Military Administration of Malaya.
- 1946 — The Straits Settlements and the Federated Malay States disbanded.  
Johore, Kedah, Kelantan, Malacca, Negri Sembilan, Pahang, Penang, Perak, Perlis, Selangor and Trengganu federated under the name of the Malayan Union.  
Singapore, the Cocos (Keeling) Islands and Christmas Island constituted the Colony of Singapore.  
British North Borneo ceded to the British by the British North Borneo Company and joined with Labuan to constitute the Colony of North Borneo.  
Sarawak ceded to the British as a colony by Rajah Brooke.
- 1948 — The Malayan Union disbanded and replaced by the Federation of Malaya with the same constituent states.  
Beginning of "the Emergency."
- 1955 — First Legislative Council of the Federation of Malaya with elected majority. The Alliance elected, Tunku Abdul Rahman becoming Chief Minister.  
First Legislative Assembly of the Colony of Singapore with elected majority. The Labour Front-Alliance coalition elected, Mr. David Marshall becoming Chief Minister.

- 1956 — Christmas Island ceased to be part of the Colony of Singapore.
- 1957 — Independence within the Commonwealth ("Merdeka") for the Federation of Malaya.
- 1958 — The Cocos (Keeling) Islands ceased to be part of the Colony of Singapore.
- 1959 — First general election for the Federation of Malaya Parliament (with a fully elected lower House). The Alliance returned again, Tunku Abdul Rahman continuing as Prime Minister.  
Internal self-government for Singapore under the name of the State of Singapore. First general election for a fully elected Legislative Assembly. The People's Action Party returned, Mr. Lee Kuan Yew becoming Prime Minister.
- 1960 — End of "the Emergency."

## POPULATION

TABLE A

POPULATION TOTALS—AREA NOW COMPRISED IN THE

Year	1750	1766	1812	1817	1820	1821
Singapore						
Penang						
Malacca	9,635	7,216	26,107	19,647	41,220	4,727

Note: There are no figures available from 1750–1844 for the other states.

TABLE A

Year	1850–2(d)	1860	1871	1879	1881	1884
Singapore	52,891	81,734	97,111	80,984	139,208	46,568
Penang	107,914	124,772	133,230		188,245	
Malacca	62,514	67,267	77,756		93,579	
Straits Settlements (b)	223,319	273,773	308,097		421,032	
Perak Selangor Negri Sembilan Pahang						
Federated Malay States						
Johore Kedah Kelantan Trengganu Perlis Unlocated						
Malayan Union						
Federation of Malaya						
TOTAL						

(a) No figures include visiting forces.

(b) Including Christmas Island and Cocos Keeling Islands 1891–1957 and Labuan until 1901.

(c) 1842 in Malacca and Prince of Wales' Island; 1844 in Province Wellesley.

(d) 1850 in Singapore, excluding 1,548 convicts, 2,995 persons living afloat, and an estimated

(e) An unreliable census; about 6,000 nomadic aborigines and 350 Malays are known to have

TABLES (a)

## FEDERATION OF MALAYA AND THE STATE OF SINGAPORE

1823	1827	1829	1833	1834	1836	1840	1842-4 (c)
10,683	33,162	30,164	20,978 86,275	34,339	29,984	35,389	91,978 46,096

(continued)

1887	1891	1901	1911	1921	1931	1947	1957
97,106	181,602	226,842	303,321	418,358	557,745	938,144 (b)	1,445,929 (b)
	235,618 92,170	248,207 95,487	278,003 124,081	304,335 153,522	359,851 186,711	446,321 239,356	572,100 291,211
	509,390	570,536	705,405	876,215	1,104,307	—	—
	217,869 81,592 65,219 (e) 57,444	333,778 168,789 96,028 84,113	494,057 294,035 130,199 118,708	599,055 401,009 178,762 146,064	765,989 533,197 233,799 180,111	953,938 710,788 267,668 250,178	1,221,446 1,012,929 364,524 313,058
	422,124	682,708	1,036,999	1,324,890	1,713,096	—	—
			180,412 245,986 286,751 154,073 32,746 —	282,234 338,558 309,300 153,765 40,087 —	505,311 429,691 362,517 179,789 49,296 1,496	738,251 554,441 448,572 225,996 70,490 2,087	926,850 701,964 505,522 278,269 90,885 1,499
			—	—	—	4,908,086	—
			—	—	—	—	6,280,257
			2,642,372	3,325,049	4,345,503	5,846,230	7,726,186

undercount of 1,000; 1851 in Penang; 1852 in Malacca.  
been missed.

TABLE B

## RACIAL DISTRIBUTION

SINGAPORE							
	1824	1830	1836	1840	1849	1860	1871
Malaysians	6,431	7,640	12,538	13,200	17,039	16,202	26,141
Chinese	3,317	6,555	13,749	17,704	27,988	50,043	54,572
Indians (a)	756	1,913	2,932	3,375	6,284	12,973	10,313
Europeans	(b)	(b)	(b)	(b)	(b)	(b)	(b)
Eurasians	(b)	(b)	(b)	(b)	(b)	(b)	(b)
Others	179	526	765	1,110	1,580	2,516	3,790

(a) Including, where appropriate, Pakistanis.

(b) Included under "Others."

## MAINLAND ALONE (a)

	1921	1931	1947	1957
Malaysians ..	1,597,456	1,897,007	2,427,834	3,125,674
Chinese ..	859,626	1,290,752	1,884,534	2,333,756
Indians ..	439,352	573,198	530,638	(e) 696,186
Europeans ..	(c)	(c)	9,607	(c)
Eurasians ..	(c)	(c)	10,061	(c)
Others ..	43,271	66,644	45,412	123,342

(a) Area now comprising the Federation of Malaya.

(b) Area now comprising the Federation of Malaya and the State of Singapore.

(c) Europeans and Eurasians included under "Others."

(d) Not including Pakistanis in the Federation of Malaya.

(e) Pakistanis included under "Others."

For further information, see the various governments' census reports and annual reports. 1952); Saw Swee Hock, *The Population of Singapore and Its Social and Economic Implications*

## OF MALAYAN POPULATION

## ALONE

1881	1891	1901	1911	1921	1931	1947	1957
33,012	35,958	35,986	41,806	53,595	65,014	113,803	197,060
86,766	121,908	164,041	219,577	315,151	418,640	729,473	1,090,595
12,086	16,009	17,047	27,755	32,314	50,811	68,967	124,084
(b)	(b)	(b)	(b)	(b)	(b)	9,279	10,826
(b)	(b)	(b)	(b)	(b)	(b)	9,110	11,382
5,858	7,727	9,768	14,183	17,298	23,280	7,512	11,982

## ALL MALAYA (b)

1921	1931	1947	1957
1,651,051	1,962,021	2,541,637	3,322,734
1,174,777	1,709,392	2,614,007	3,424,349
471,666	624,009	599,605	(d) 820,270
14,954	17,768	18,886	—
12,654	16,043	19,171	—
32,961	56,113	52,924	—

See also T. E. Smith, *Population Growth in Malaya* (Royal Institute of International Affairs, (University of Malaya M.A. thesis, 1960).

## MALAYAN LAW REPORTS\*

<i>Abbreviation</i>	<i>Title</i>	<i>Date</i>	<i>Area</i>
F.M.S.L.R.	Federated Malay States Law Reports (government publication)	1906-41	Federated Malay States
Innes	Innes's Land and Mining Cases (in Innes on <i>Registration of Title</i> )	1907-13	Federated Malay States
J.L.R.	Johore Law Reports (2 vols.)	1915-40	Johore
Ky.	Kyshe's Reports (4 vols.)	1808-90	Straits Settlements
Leic. (or S.L.R. Leic.)	Leicester's Reports (or Straits Law Reports) (1 vol.)	1827-77	Straits Settlements
M.A.C.	Magistrate's Appeal Cases (1 vol.)	1884-93	Penang
M.C.	Malayan Cases (Vol. 1, ed. Mallal and Mallal; Vol. 2, ed. B. A. Mallal; old and important cases which are still law: 2 vols. published)	Vol. 1 (1939); Vol. 2 (1958)	All Malaya
M.L.J.	Malayan Law Journal	1932-current	All Malaya
M.L.R.	Malayan Law Reports (government publication)	1950-54	All Malaya
M.U.L.R.	Law Reports of the Malayan Union (government publication)	1946-47	Malayan Union
Q.N.	Quarterly Notes (5 parts) (government publication)	1926-27	Straits Settlements
S.C.R.	Sarawak Supreme Court Reports	1928-49	Sarawak
S.C.R.	Sarawak Law Reports	1950-current	Sarawak
S.L.J. or S.L.R.N.S.	Straits Law Journal (last vol., No. 5, called Straits Law Reports, New Series)	1888-92	Straits Settlements
S.L.R.	Singapore Law Reports	1946-49 and 1953-56	Singapore
S.S.L.R.	Straits Settlements Law Reports	1867-1942	Straits Settlements
Taylor	Taylor's Cases (part of Taylor's <i>Customary Law of Rembau</i> )	1903-28	Federated Malay States
W.O.C.	Wood's Oriental Cases (1 vol.)	1842-69	Straits Settlements

\* See p. 27.

## CONTENTS

<i>Preface</i>	<i>page</i> vii
<i>Map of Malaya</i>	xiii
<i>Chronological Table</i>	xv
<i>Population Tables</i>	xviii
<i>Malayan Law Reports</i>	xxii
<i>Map of South East Asia</i>	xxiii

## INTRODUCTION

1. INTRODUCTION	<i>L. A. Sheridan</i>	3
Political Entities		6
Application of Laws		14
Reception of the Common Law		14
Doctrine of Precedent		24
Law Reports		27
Sources of Legislation		27
Interpretation of Legislation		34

### *Part One*

## CONSTITUTIONAL DEVELOPMENT

2. FEDERATION OF MALAYA CONSTITUTION	<i>L. A. Sheridan</i>	47
Relations between the Federation and the States		49
Federal Authorities		53
Individual Liberties		55
3. THE STATES OF THE FEDERATION	<i>R. H. Hickling</i>	67
Introduction		67
Constitutional History		69
The Essential Provisions		71
The State Legislative Assemblies		73
The Mentri Besar and the Chief Minister		77
The State Executive Council		78
The Ruler		78
The Public Services of the States		86
Official Language		89
The State Religion		90
State Finances		92
Amendment of the State Constitutions		95
Interpretation of the State Constitutions		96
Capacity of the States		97
Special Position of Perlis		98
Special Position of Malacca and Penang		99
The States Gazettes		100
State Nationality		101
Future Developments in the States		102



4. THE SINGAPORE CONSTITUTION	<i>L. A. Sheridan</i>	103
The Legislative Assembly		104
The Executive		108
Judiciary		110
Special Position of the Malays		110
Individual Liberty		111
5. THE BORNEO TERRITORIES	<i>R. H. Hickling</i>	115
Introduction		115
Constitutional Structure		119
Civil Service		127
Nationality and Citizenship		128
Legal Systems		129
Local Government		139
The Land		140
Commerce		145
Income Tax		146
Customs Duties		146
Currency and Banking		147
Industrial Property		147
Immigration		148
State Pensions		149
The Press		149
Future Developments		150

## Part Two

### PUBLIC LAW

6. THE JUDICIAL SYSTEMS AND LEGAL PROFESSIONS	<i>L. A. Sheridan</i>	153
System of Courts in Singapore		153
System of Courts in the Federation of Malaya		158
Appeals		164
Tribunals other than Courts of Law		168
The Legal Profession and Legal Education		170
7. CIVIL PROCEDURE AND EVIDENCE	<i>P. Coomaraswamy</i>	174
Civil Procedure		174
Evidence		176
8. CRIMINAL LAW AND PROCEDURE	<i>H. G. Calvert</i>	191
Degrees of Responsibility		196
Inchoate Crimes		197
Particular Offences		198
Offences Against Property		202
Criminal Procedure		206