

NOTES ON LEGISLATION

The Civil Law (Amendment) Act, 1975.

This amendment to the Civil Law Act, 1956, (Act 67) has the effect of changing the law enunciated in the case of *Ti Tuck and another v. Mohamed Yusoff* ([1973] 2 M.L.J. 72).

In that case the respondent, a police constable, had been injured in a road accident. As a result of the injuries he was retired from the police force and was given a pension. The only question for determination was the question of damages. The learned trial judge had held that in assessing damages for loss of earnings the gratuity and pension received by the respondent should not be brought into account. On appeal, it was held by the Federal Court that as the gratuity and pension were non-contributory they should have been taken into account and deducted from the damages awarded.

There was at that time no statutory provision dealing with the point at issue and the Federal Court therefore were referred to the law in England. The Federal Court referred to the case of *Browning v. War Office* ([1963] 3 All. E.R. 1089), where "the true principle applicable in the assessment of damages at common law" was stated by Lord Denning that the plaintiff should —

"give credit for all sums which he receives in diminution of his loss, save in so far as it would not be fair or just to require him to do so."

Thus contributory pensions would not in the view of the Federal Court be deductible but a non-contributory pension or pension should be. The case of *Browning v. The War Office* has for practical purposes been overruled by the decision of the House of Lords in *Parry v. Cleaver* ([1969] 1 All. E.R. 555) and in *Raja Mokhtar v. Public Trustee, Malaysia* ([1970] 2 M.L.J. 151), Raja Azlan Shah had in reliance on that case held that the pension awarded to the plaintiff in that case by the Government should not be taken into account in assessing the damages at common law. He relied on what Lord Reid had said in *Parry v. Cleaver* —

"In my judgment, a decision that pensions should not be brought into account in assessing damages at common law is consistent with general principles, with the preponderating weight of authority and with public policy as enacted by Parliament and I would therefore so decide."

The Federal Court however held that *Parry v. Cleaver* was not a relevant authority. It is interesting to note that the Federal Court said of the

English decisions that those decisions "unlike decisions of the Privy Council are not binding on our courts". The Federal Court pointed out public policy weighed largely in the decision of the House of Lords in *Parry v. Cleaver*. Ong C.J. said —

"For our part we think that the question of public policy has no part to play when the Court attempts stretching of the common law by extending the interpretation of section 3(1) of the Civil Law Ordinance, 1956, beyond limits defined by Parliament."

Finally the Federal Court referred to section 7 of the Civil Law Act, 1956 which at that time provided in a proviso to the section that in assessing damages under that section there shall not be taken into account any pension or gratuity which has or will be paid as a result of death. The Court said that in their view the proviso must be construed in its proper context and judges were not at liberty to extend its application by analogy to the pension or gratuity which is payable not to a deceased person's dependants but to an injured person himself.

Under the former law in Malaysia (section 7 of the Civil Law Act) it was provided that the Court in assessing damages recoverable as a result of death, should not take into account —

- (a) any sum paid or payable on the death of the deceased under any contract of assurance or insurance, whether made before or after the coming into force of the Act;
- (b) any sum payable as a result of the death under any written law relating to Employees Provident Fund;
- (c) any sum or gratuity which has been or will or may be paid as a result of the death.

Section 2 of the Civil Law (Amendment) Act, 1965 now provides that in addition the Court should not take into account

- "(d) any sum which has been or will or may be paid under any written law relating to the payment of benefit or compensation whatsoever in respect of the death."

This would ensure for example that sums payable under the Employees' Social Security Act, 1969 are not taken into account.

In addition section 28A has been added to the Act to provide that the Court should not, in assessing damages recoverable in respect of personal injury which does not result in death, take into account —

- (a) any sum paid or payable in respect of the personal injury under any contract of assurance or insurance, whether made before or after the coming into force of the Act;
- (b) any pension or gratuity which has been or will or may be paid as a result of the personal injury; and
- (c) any sum which has been or will or may be paid under any written law relating to the payment of any benefit or compensation whatsoever in respect of the personal injury.

The new section 28A is modelled on section 7(3) of the Act but it is regrettable that the model has not been followed in full. There is no provision corresponding to proviso (b) to subsection (3) of section 7, which provides that in assessing the damages no account shall be taken of any sum, payable as a result of death under any written law relating to employees provident fund. Money standing to the credit of the employees provident fund can be withdrawn if the member of the fund is physically or mentally incapacitated from engaging in any further employment (Employees Provident Fund Ordinance, 1951, S. 13(1)(c)). If as a result of the personal injury a person is incapacitated and is therefore unable to engage in further employment, he will be entitled to a sum payable under the law relating to employees provident fund. It would seem that such sum will have to be accounted in assessing the damages recoverable in respect of the personal injury. One wonders if this was intended!

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LEGISLATION

The following is a list of Acts passed and revised in Malaysia in 1975:

FEDERAL ACTS PASSED

<i>Bil. Akta/ Act No.</i>	<i>Tajuk Ringkas/Short Title</i>
151	Akta Cukai Perkhidmatan, 1975. Service Tax Act, 1975.
152	Akta Pendaftaran Kelahiran dan Kematian (Peruntukan-peruntukan Khas), 1975. Registration of Births and Deaths (Special Provisions) Act, 1975.
153	Akta Bank Pembangunan Islam, 1975. Islamic Development Bank Act, 1975.
154	Akta Pemusnahan Serangga Pembawa Penyakit, 1975. Destruction of Disease-Bearing Insects Act, 1975.
156	Akta Penyelarasan Perindustrian, 1975. Industrial Co-ordination Act, 1975.
157	Akta Instituti Piawaian dan Penyelidikan Perindustrian Malaysia (Perbadanan), 1975. Standards and Industrial Research Institute of Malaysia (Incorporation) Act, 1975.
158	Akta Ahli Kimia, 1975. Chemists Act, 1975.

FEDERAL ACTS REVISED

<i>Bil. Akta/ Act No.</i>	<i>Tajuk Ringkas/Short Title</i>
155	Immigration Act 1959/63