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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

ELECTRONIC EVIDENCE IN THE INFORMATION
COMMUNICATION TECHNOLOGY
ENVIRONMENT IN MALAYSIA: A STUDY ON
PROCEDURE AND ADMISSIBILITY

BY

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INTERNATIONAL ISLAMIC UNIVERSITY
MALAYSIA

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ABSTRACT

In litigation process, liability or culpability of a person or an entity depends on the evidence produced by the parties. The evidence varies from paper to other physical evidence and often backup by oral or testamentary evidence given by witness under oath. But the nature and characteristic of the evidence changes according to the development in the society, the nature of business and the development in the information communication technology or ICT environment. The ICT environment aspires improvement and development in e-commerce and e-court system. At the same time, it also encourages cybercrimes activities such as online fraud, defamation, theft and threat. Electronic evidence is introduced in this ICT environment. As a result, the electronic evidence has also challenged the existing procedural laws and its admissibility under the Evidence Act 1950. Thus, the main issue centered on whether the existing laws relating to the process of gathering evidence in civil and criminal cases can also be applied in e-commerce or e-contract and computer crimes cases. The research analyzes the application of the existing procedures of gathering evidence under the Rules of High Court 1980 (RHC) and the Criminal Procedure Code (CPC) to the gathering of electronic or computer evidence in the above cases. The relevant laws such as Electronic Commerce Act 2006, Contracts Act 1950, Penal Code, Computer Crimes Act 1997, Communications and Multimedia Act 1998, Digital Signature Act 1997 and Evidence Act 1950 are also examined. The research proves that there is no specific provision on the process of gathering electronic evidence such as electronic discovery and others in the RHC 1980 while in criminal cases the CPC is mainly referred to although the gathering of evidence involves computer crime. Further, there is no specific Practice Direction that provides guidelines to conduct gathering of electronic evidence in the ICT environment for civil cases. Similarly, in criminal cases the available standard operating procedures to investigate, search and seize the computer evidence is always kept confidential. On the position of electronic evidence, sections 90A, 90B and 90C of the Evidence Act 1950 affirm the admissibility of electronic evidence in Malaysia. However, the relevancy and reliability of evidence given by the computer forensic expert can still be challenged in court. Therefore, the study concludes that, the existing laws on procedures and evidence should be reviewed and updated in order to accommodate and achieve effective implementation of e-court system in Malaysia and in facing the challenges brought forward by the development in the ICT environment.

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APPROVAL PAGE

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DECLARATION

I hereby declare that this thesis is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

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PROCEDURE AND ADMISSIBILITY**

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To:
My beloved mother.....
Hajjah Che Bashah bunti Hj Ramli

My late father.....
Allahyarham Mohamed Hj Din

My beloved husband.....
Razlan bin Ismail Rautin

My beloved children.....
Zarith Sofea bt Razlan
Rafique Rautin bin Razlan
Ridhwan Rautin bin Razlan
Zarith Dalea bt Razlan

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TABLE OF CONTENTS

Abstract	ii
Abstract in Arabic	iii
Approval Page.....	iv
Declaration Page	v
Copyright Page.....	vi
Acknowledgement	vii
Table of Contents	viii
List of Cases.....	x
List of Statutes	xii
List of Abbreviations	xiii
Transliteration	xiv
CHAPTER ONE: INTRODUCTION	1
1.1 Research Objectives	2
1.2 Statement of Problems.....	3
1.3 Hypothesis	4
1.4 Scope and Limitation of Research.....	4
1.5 Methodology.....	5
1.6 Literature Review	5
1.7 Contents of Thesis	30
1.8 Terminology	32
1.9 Glossary of Information Technology Terms	41
CHAPTER TWO: ICT IN MALAYSIA: THE IMPACT ON SOCIETY.....	44
2.1 Development of ICT in Malaysia	45
2.2 The Government Initiatives	46
2.3 The Impact on Society.....	48
2.4 The Impact on Commercial Transactions.....	50
2.5 The Impact on Court Administration.....	52
2.5.1 The Establishment of Computerised Court System or E-Court	53
2.5.2 The Application of Computer Technology in the Malaysian.....	54
2.5.2.1 The Electronic Syariah Court (E-Syariah Court)	59
2.5.3 The Application of Computer Technology	60
2.6 The ICT Challenges to Malaysia	69
2.7 Summary and Comments.....	71
CHAPTER THREE: ICT AND THE LAW IN MALAYSIA.....	72
3.1 The Cyber laws in Malaysia: An Overview	72
3.1.1 The Objective and Scope of the Laws	73
i) Computer Crimes Act 1997 (CCA)	73
ii) Digital Signature Act 1997 (DSA)	73

iii) Copyright (Amendment) Act 1997 (CAA).....	74
iv) Telemedicine Act 1997 (TMA)	74
v) Communication and Multimedia Act 1998 (CMA).....	75
vi) Communication and Multimedia Commission Act	75
vii) Optical Disc Act 2000 (ODA)	75
viii) Electronic Commerce Act 2006 (ECA).....	76
3.2 The Proposed New Laws: The Electronic Government Activities Bill...	76
3.2.1 The E-Government Activities Bil	77
3.2.2 The Personal Data Protection Bill.....	78
3.3 Computer Crimes: A Background	78
Computer Related Crimes (Old Crimes, New Tools).....	78
Computer Crime or Computer Abuse	81
3.4 Cyber Crimes under the Computer Crimes Act 1997 (CCA).....	86
3.5 The Legislation Governing E-commerce in Malaysia	98
3.5.1 The Contracts Act 1950	98
3.5.2 The Digital Signature Act 1997 (DSA 1997).....	100
3.5.3 The Electronic Commerce Act 2006 (ECA)	101
3.6 Challenges Posed by ICT to Legislation	101
3.7 Summary and Comments.....	104

CHAPTER FOUR: ICT AND THE CRIMINAL POCEDURE LAW106

4.1 Development of The Criminal Procedure Law in Malaysia.....	107
4.2 Methods of Gathering Electronic Evidence in Computer Crime Cases ...	109
4.2.1 Detection and Investigation of Computer Crime	111
4.2.1.1 The Laws and Procedures for Computer Crime	113
4.2.1.2 Techniques and Tools of Computer Crime	120
4.2.1.3 Procedure on Computer Search and seizure	122
4.2.1.4 Preservation of Computer Evidence.	130
4.2.2 Computer Forensic Examination: Definition and Background.....	131
4.2.3 The Law and Procedure on Computer Forensic Examination	134
4.2.4 Tools of Computer Forensic Examination	136
4.2.5 Techniques of Computer Forensic Examination.....	137
4.3 Problems and Challenges to the Investigators, Prosecutors, Computer F	139
4.3.1 Problems and Challenges Faced by the Cyber Crime	140
4.3.2 Problems and Challenges to the Prosecutors	144
4.3.3 Problems and Challenges to the Computer Forensic Expert.....	150
4.3.4 Problems and Challenges to the Criminal Lawyers	152
4.3.5 Problems and Challenges to the Criminal Judge	153
4.4Summary and Comments.....	

CHAPTER FIVE: ICT AND THE CIVIL PROCEDURE LAW157

5.1 Development of Civil Procedural Law in Malaysia	158
5.1.1The Rules of High Court 1980 (RHC).....	160
5.2 Methods of Gathering Evidence under the RHC 1980: An Overview	160
5.2.1 Discovery and Inspection of Documents (O 24 RHC 1980)	160
5.2.1.1 Scope and Limitation of Discovery	161
5.2.1.1.1 Types of Discovery and the Procedural Application	167

5.2.1.2 Electronic Discovery (E-Discovery)	172
5.2.1.2.1 Issues relating to e-discovery: Its Limitation	175
a) Technological issue	176
b) Procedural issue	177
c) Implementation issue.....	181
5.2.1.2.2 Electronic discovery in E-Commerce Transactions..	187
5.2.2 Interrogatories (O 26 RHC 1980).....	192
5.2.2.1.The Objective and Scope of Interrogatories	192
5.2.2.2. Procedures for Interrogatories	193
5.2.2.3 Interrogatories in E-Commerce or E-Contract	194
5.2.3 Admission (O 27 RHC 1980).....	196
5.2.3.1 Scope, Limitations and Procedures of Admission.....	197
5.2.3.2 Admissions in E-Commerce or E-Contract.....	198
5.2.4 Anton Piller Order (APO)	198
5.2.4.1 The APO and E-Commerce or E-Contract	202
5.3 Preservation of Electronic Evidence.....	203
5.4. Problems and Challenges to the Lawyers in Civil Practice	206
5.4.1 General Problems and Challenges to the Lawyers.....	207
5.4.1.1 Problems in Presentation of Evidence	212
5.4.2 Problems and Challenges to the Civil Judges	215
5.5 Summary and Comments.....	216

CHAPTER SIX: ICT AND THE LAW OF EVIDENCE IN MALAYSIA219

6.1 Development of the Law of Evidence: A Background.....	219
6.1.1 The Evidence Act 1950 (Act 56)	221
6.1.2 The Evidence (Amendment)	222
6.2 Definition of the Term ‘Electronic Evidence’	224
6.2.1 Interpretation of the Term ‘Computer’ and ‘Computer Output’	226
6.3 The Position and The Admissibility of Electronic Evidence	
6.3.1 Determining the Relevancy and Reliability	231
6.3.2 Burden of Proof and Standard of Proof the Electronic Evidence ..	234
6.4 The Admissibility of Computer Evidence as a Documentary	236
6.5 The Admissibility of Computer Forensic Evidence	249
6.6 The Inadequacies in the Evidence Act 1950	256
6.7 Summary and comments	261

CHAPTER SEVEN: ISLAMIC LAW ON ELECTRONIC EVIDENCE264

7.1 The Principles of Justice and Its Application	265
7.1.1The Meaning of ‘Evidence’ Islam.....	268
7.1.2 The Meaning of ‘Document’ in Islam.....	269
(a) Oral testimony or <i>shahadah</i>	270
(b) Written document or <i>al-kitabah</i>	270
(c) Circumstantial evidence or <i>qarinah</i>	271
7.1.3 ‘Computer Evidence’ as evidence in Islam.....	271
7.2 The Application of Islamic Law of Evidence in Malaysia	272
7.3 Procedures For Gathering Evidence: The Syariah Civil and Criminal	276
7.3.1 Discovery and Inspection of Documents under Syariah Civil.....	277

7.3.1.1 Other Methods for Gathering Evidence in Syariah Civil	282
7.3.2 Search and Seizure Process Under Syariah Criminal Procedure ...	285
7.3.2.1 Procedures for investigation: Search and Seizure	285
7.3.2.2 Computer Forensic Investigation: The Syariah Law	289
7.4 Computer Evidence and its Admissibility under the Syariah Statutes	290
7.4.1 Computer Output as Evidence	291
7.4.1.1 The Admissibility of Computer Evidence in Syariah Civil.	292
7.4.1.2 The Admissibility of Computer Evidence in Syariah.....	295
7.4.1.3 The Admissibility of Forensic Evidence in Syariah.....	297
7.5 Problems and Challenges for Syari'É Lawyers and Syariah Court	299
7.6 Summary and Comments	300
CHAPTER EIGHT: CONCLUSION	303
BIBLIOGRAPHY	316
APPENDIX A: Incidents statistics of cybercrimes reported(June 2007)	358
APPENDIX B: Spam incident statistics reported by MyCert/NISER (June 2007) ...	359
APPENDIX C: Search List (Borang Bongkar).....	360
APPENDIX D: Certificate under s90A(2) of the Evidence Act 1950.....	361

LIST OF CASES

ABX Logistics (Malaysia) Sdn Bhd v Overseas Bechtel (Malaysia) Sdn Bhd [2003] 7 CLJ 357
Ahmad Najib b Aris v Public Prosecutor [2007] 2 MLJ 505.
American Civil Liberties Union v Janet Reno 929 F. Supp. 824 (1996)
Angus & Coote Pty Ltd v Render and Other (1989) 16 IPR
Anton Piller KG v Manufacturing Process Ltd.[1976] 1 All ER 779
APA Oceanic Funds Management Ltd v Smith [1987] 11 ACLR 879
Ashworth Hospital Authority v MGN Ltd [2002] 1 WLR 2033, HL
Australian National Airlines Commission v Commonwealth (1975) 49 ALJR 338
Aw Kew Lim & Ors v PP [1987] 2 MLJ 601
Balfour v Foreign and Commonwealth Office. [1994] 1 WLR 681
Bank Islam Malaysia Bhd v Adnan bin Omar [1994] 3 AMR 2291
Bank Utama (M) Bhd v Cascade Travel & Tours Sdn Bhd [2000] 4 MLJ 582
Bank Bumiputra Malaysia Bhd & Anor v Lorraine Osman & Ors [1985] 2 MLJ 236
Beneficial Finance Corp Ltd v Conway [1970] VR 321
Berkeley Administration INC, v Mc Clelland (1990) FSR 381
Brinkinbon Ltd v Stahag Stahl GmbH [1983] 2 AC 34
Broccoli v. Echostar Communications Corp., 229 F.R.D. 506 (D.Md.2005)
Castle v Cross [1984] 1 WLR 1372.
Che Esah & Anor v Che Limah [1966] 1 MLJ 36 (FC)
Cheng Ong San v PP (1949) 15 MLJ 69-70
Che Omar bin Che Soh v Public Prosecutor [1988] 2 MLJ 55.
Chong Kim Seng v PP.(1949) 15 MLJ 69-70.
Choo Ang Chee v Neo Chan Neo & Ors 12 SSLR 120 .
Compagnie Financiere et Commerciale du Pacifique v Peruvian Guano Co(1882) 11 QBD 55
Commissioner of Religious Affairs v Tengku Mariam [1970] 1 MLJ 220
Computerland Corp v Yew Seng Computers [1991] 3 MLJ 201
Connecticut v. Skakel, No. FST CR00-135692T (Conn. Super. Ct. 1992).
Consol. Aluminum Corp. v. Alcoa, Inc., 2006 U.S. Dist. LEXIS 66642
Creative Purpose Sdn Bhd & Anor v Integrated Trans Corp Sdn Bhd & Ors [1997] 2 MLJ
Datuk Amar James Wong Kim Min & Anor v Pendaftar Pertubuhan [2004] 6 MLJ 235, (HC, KL)
Datuk Haji Nik Mahmud v Bank Islam Malaysia Bhd. [1998] 3 MLJ 393, [1998] 3 CLJ 605, CA.
Dato Mokhtar bin Hashim & Anor v PP [1983] 2 MLJ 232
Datuk Tiah Thee Kian v Public Prosecutor and another appeal. [2002] 1 MLJ 585
Davies v Eli Lily & Co[1987] 1 WLR 428
Derby & Co. Ltd v Weldon & Others (No10)[1991] 2 All ER 901
Director of Public Prosecutor v Bignell [1998] 1 Cr App R 1
DPP v Sutcliffe [2001] VSC 43
Dunn and Bradstreet Ltd v Typesetting Facilities Ltd [1992] FSR 320.
Dunning v Board of Governors of the United Liverpool Hospitals [1973] 2 All ER 454

Entores Ltd v Miles Far East Corp [1955] 2QB 327
ESPL (M) Sdn. Bhd. v Harbert International Est Sdn Bhd [2004] 1 MLJ 296
ex parte Osman (1991) 93 Cr App R 202.
Fatimah v Logan (1871) I Ky 225.
Faber Merlin Malaysia Bhd v Ban Guan Hin [1981} 1 MLJ 105, FC
Garner v DPP (1990) 90 Cr App R 178
Garcin and Others v Amerindo Investment Advisors Ltd and Others [1991] 1 WLR 1140
Gnanasegaran a/l Pararajasingam v Public Prosecutor [1997] 3 MLJ 1(CA)
Golf Lynx v Golf Scene Pty Ltd (t/a Custom Golf Club Co) (1984) 59 ALR 343.
Grant v Southwestern & County Properties Ltd [1974] 3 WLR 221
GTFM v Wal-Mart Stores, 2000 WL335558 (S.D.N.Y.)
Harris Scarfe v Ernst & Young [2005] SASC 407.
Hennessy v Wright (1980) 24 QBD 445
Hjh Halimatussaadiah bte Kamaruzzaman v Public Services Commission [1992] 1 MLJ 513
Ibcos Computers Ltd v Barclays Mercantile Highland Finance Ltd [1994] FSR 275
Info Communications Development Authority of Singapore v Singapore Telecommunications Ltd. [2002] 3 SLR 289
In the Goods Of Abdullah (1835) 2 Ky Ec 8
Jaafar Bin Hussain v PP (1950) 16 MLJ 154
Jayasena v The Queen (1970) AC 618
JS Hastings v Green & Collier Bullion Pte Ltd. [1986] 1 MLJ 211, [1984-1985] SLR 600
Junaidi bin Abdullah v PP [1993] 3 MLJ 217
Keevil and Keevil Ltd v Boag [1940] 3 All ER 346
Kenwood Electronics (Malaysia) Sdn Bhd v People's Audio Sdn Bhd & Ors [2003] 5 CLJ 436.(HC, Penang)
Koh Hor Khoon v R [1955] MLJ 196.
Koo Hi Chiang v PP[1994] I MLJ 265
Las Vegas Hilton Corporation v Sunny Khoo Teng Hock [1997] 1 SLR 341
Laura Zubulake v UBS Warburg LLC 02 Civ. 1243 (SAS)
Lee Chin Hock v PP (1972) 2MLJ 30
Lee Thian Beng v PP (1972) 1MLJ 248
Leha binte Jusoh v Awang Johari bin Hashim [1978] 1 MLJ 202
Ler Wee Teang Anthony v Public Prosecutor [2002] 2 SLR 281
Lian Keow Sdn Bhd v C Paramjothy [1982] 1 MLJ 217
Lim Jjoen Kon v A-B Chew Investments Pte Ltd (1991) 3 MLJ 4
Lim Mong Hong v Public prosecutor [2003] 3 SLR 88
Looi Wooi Saik v Public Posecutor (1962) 28 M.L.J 337
Lonrho Ltd v Shell Petroleum Ltd [1980] QB 358
Mat Roni bin Daud v Siti bte Hussin [2000] 5 MLJ 605
Mahomed Syedol Ariffin v Yeoh Oii Gark (1916) 22 AC 575
Manilal & Sons (Pte) Ltd v Bhupendra KJ Shan (t/ a JB International). [1990] 2 MLJ 282
McKeow v DPP [1995] Crim LR 69
Meor Atiquerahman bin Ishak & Ors v Fatimah bte Sihi & Ors [2000] 5 MLJ 513
Mehesz v Redman (No 2) [1980] 26 S.A.S.R 244 (FC)

Merchants' and Manufacturers' Insurance Co Ltd v Davies [1938] 1 KB 196
Metropolitan Opera Association, Inc., v Local 100 Hotel Employee and Restaurant Employees International Union 212 F.R.D. 178 (S.D.N.Y. 2003)
Mohamed Habibullah bin Mahmood v Faridah bte Dato Talib [1992] 2 MLJ 739
Mohamed Meera Nachair v Inche Khatijah (1890) 4 Ky 608.
Mosaid Technologies Incorporated v. Samsung Electronic Co., Ltd., Samsung Electronics America, INC., Samsung Semiconductor, INC., and Samsung Austin Semiconductor, L.P. 2004 U.S. Dist. LEXIS 25286
Mulley v Manifold (1959) 103 CLR 341
Murphy v Murphy [1999] 1 WLR 282
Myers v D.P.P. [1965] AC 1001
Navaseelan Balasingam v Public Prosecutor [2007] 1 SLR 767.
Nik Hassan b. Nik Hussin & Another v PP[1948] 14 MLJ 74
Norwich Pharmacal v Customs & Excise Commissioner [1974] AC 133.
Ong Cheng Neo v Yeap Cheah Neo & Ors (1872)1Ky 326, (1875) LR 6, PC 381
P v T LTD [1997] 1 WLR 1309
Pembangunan Maha Murni Sdn Bhd v Jururus Ladang Sdn Bhd [1986] 2 MLJ 30
Petroliam Nasional Bhd & Ors v Khoo Nee Kiong [2003] 4 MLJ 216
Playboy Enterprises, Inc v Welles 60 F. Supp. 2d 1050 (S.D. Cal. 1999)
Poly Electronic &Electrical (M) Sdn Bhd v Daewoo Corp (N I) [2003] 2 MLJ 310
Preston, [1994] 2 AC 130 at 146-147; [1993] 3 WLR 891; [1993] 4 All ER 638; 98 Cr App R 405, (HL)
Procter & Gamble Co. v Haugen, 179 FRD 622 (D.Utah 1998)
Public Prosecutor v Aman Shah (unreported) Session Court No.1 Kuala Lumpur (Arrest No 62-50-90).
Public Prosecutor v Ang Soon Huat [1991] 1 MLJ 1
PP v Dato' Seri Anwar bin Ibrahim (No 3) [1999] 2 MLJ 1
Public Prosecutor v Gan Ah Bee [1975] 2 MLJ 106, 108 (HC)
PP v Lian Lian Chen [1992] 2 MLJ 561.
PP v Lee Ee Teon [1953] 19 MLJ 244
Public Prosecutor v Muhammad Nuzaihan bin Kamal Luddin. [2000] 1 SLR 34.
PP v Mohd. Amin Mohd Razali & Ors [2002] 5 CLJ 281
PP v Muhamed bin Sulaiman [1982] 2 M.L.J. 320
Public Prosecutor v Ong Cheng Heon [1998] 6 MLJ 673 (HC)
PP v Robert Boon Teck (1995) 1CLJ 102
PP v Syarikat Perusahaan Makanan Haiwan Bekerjasama [1969] 2 MLJ 250
PP v Tan Wee Suan, Ong Choo Ping and Ors (unreported) August Case No.62-158-2001, Johor Bharu
Public Prosecutor v Virammal AIR 1923 Mad 178.
PMK Rajah v Worldwide Commodities Sdn Bhd [1985] 1 MLJ 86
R v Bow Street Metropolitan Stipendiary Magistrate and another, ex p Government of the United States of America [1999] 3 WLR 620
R v Bow Street Magistrate Court and Allison: Ex Parte Government of the United States [2000] 1 Crim App R 61.
R v Brown (Winston) [1994] 1 WLR 1599
R v Bryant and Dickson (1946) 31 Cr App R 146
R v Chief Constable of West Midlands Police, ex parte Wiley [1994] 3 All ER 420
R v Clowes [1992]3 All ER 440
R v Davis [1993] 1 WLR 613,[1993]2 All ER 643

R v Ewing. [1983] 3 WLR 1
R v K (Trevor Douglas). (1993) 97 Cr App R342
R v Keane[1994] 1 WLR 746, [1994] 2 All ER 478
R v Minors; R v Harper [1989] 2 All ER 208, [1989] 1 WLR 441.
Reg v Neville [1991] Crim LR 288
R v Oakes (1959) 2 All ER 92
R v Pettigrew [1980] 71 Cr App R 39
R v Rodriguez (1887) 4 Ky 323
R v Shephard. [1993] 2 W LR 102, [1993] AC 380
R v Shephard [1991] Cr. App. R 139, [1993]1 All ER 225
R v Sinha [1995] Crim.L.R 68.
Reg v Spiby (1990) Crim App R 186
R v Turner [1975] 1 All ER 60
R v Ward. [1993] 1 WLR 619; [1993] 2 All ER 577
R v Wood (1983) 76 Cr App R 23, CA
Rank Film Distributors Ltd & Others v Video Information Centre & Others [1980] 2 All ER 273 (CA), [1981] 2 All ER 76 (HL)
Rekapacific Bhd v Securities Commission & Anor and Other Appeals [2005] 2 MLJ 269.
Rowe Entertainment, Inc v Wm. Morris Agency, Inc., 205 F.R.D (S.D.N.Y. 2002).
Rupchand Bhojwani Sunil v Public Prosecutor [2004] 1 SLR 596
Radio Ten Pty Ltd v Brisbane TV Ltd [1984] Qd R 1133
Sahrip v Mitchell & Anor (1870) Leic.466
Schmidt Scientific Sdn Bhd v Ong Han Suan [1997] 5 MLJ 632
Sheikh Abdullah v Kang Kock Seng [1974] 1 MLJ 174
Sigma Cable Co. Ltd v Nam Huat Electric & Sanitary Co. & Ors (1972) 1 MLJ 7
Sonica Industries Ltd v Fu Yu Manufacturing Ltd [1999] 4 SLR 129
Sony Music Entertainment (Australia) Ltd. v University of Tasmania, et al Fed Court, NSW Dist., N128 of 2003 (May 30, 2003).
Standard Chartered Bank v Mukah Singh [1996] 3 MLJ 240(HC)
Standard Bank London Ltd. v The Bank of Tokyo Ltd. [1996] 1 C.T.L.R. T-17
Stanley William Wood (1982) Cr LR 667, (1983) 76 Cr App R 23
State Bank of South Australia v Heinrich (1989) 52 SASR 596.
Stevenson v. Union Pacific Railroad, 354 F. 3d 739 (8th Cir.2004)
Subramaniam v PP [1956] 22 MLJ 220 PC [1956] 1 WLR 955 PC
Sukma Darmawan Sasmitaat Madja v Ketua Pengarah Penjara, Malaysia & Anor. [1999] 1 MLJ266 (CA) and [1999] 2 MLJ 241.
Tai Chai Keh v PP.(1949) 15 MLJ 69-70
Tan Cheng Kooi & Anor v.PP (1972) I MLJ 115
Tan Chin Seng & Ors v Raffles Town Club Pte Ltd [2002] 3 SLR 345
Tengku Puteri Zainah bte Tengku Iskandar v Dato Seri Mohd Najib bin Tun Abdul Razak [1999] 5 MLJ 50
Teoh Peng Phe v Wan & Co [2001] 1 AMR 367.
The Statute of Liberty [1968] 1 WLR 739
Tinta Press Sdn. Bhd. v Bank Islam Malaysia Bhd. [1987] 1 CLJ 474.
Walker v Wisher (1889) 23 QBD 335
Wong Chik and Anor v PP (1950) 16 MLJ 157
Woolmington v Director of Public Prosecutions [1935] A.C 462
Yap Cheng Kee & Anor v Ow Giam Eng & Anor [1977] 1 MLJ 177 (FC).

Yekambaran Marimuthu v Malayawata Steel Berhad [1994] 2 CLJ 581
(HC, Penang), [1993] MLJU 96.
Yeo Hiap Seng v Australia Food Corp. Pte Ltd & Anor (1991) 1 MLJ 144
Yong Mok Hin v United Malay States Sugar Industries [1967] 2 MLJ 9
Zainab binti Mahmood v Abd. Latif b Jusoh (1993) Jurnal Hukum(JH), 297.
Zubulake v. UBS Warburg LLC, No. CTV. 012C1243, 2004 WL 1620866 (S.D.N.Y.
2004)

LIST OF STATUTES

Administration of Islamic Law (Federal Territories) Act 1993. (Act 505)(Malaysia)
Anticybersquatting Consumer Protection Act (ACPA) of 1999.(US)
Banker's Books (Evidence) Act 1949 (Malaysia)
Banking and Financial Institution Act 1989 (BAFIA) (Act 372)(Malaysia)
Civil Evidence Act 1968 (England).
Civil Evidence Act 1972 (England)
Civil Evidence Act 1995 (England)
Civil Procedure Act 1997 (England)
Civil Procedure Code, 1918 (England)
Civil Procedure Rules 1998 (CPR) (England)
Computer Crimes Act 1997(Act 563) (Malaysia)
Computer Misuse Act 1993 (CMA) Singapore)
Computer Misuse (Amendment) Act 1998(CMAA) (Singapore)
Computer Misuse Act 1990(CMA)(England)
Communications and Multimedia Act 1998 (CMA)
Communications and Multimedia Commission Act 1998(Malaysia)
Communications and Multimedia (Amendment) Act 2004(Malaysia)
Contracts Act 1950 (Malaysia)
Copyright (Amendment) Act 1997 (Malaysia)
Controlling the Assault of Non Solicited Pornography and Marketing Act (CAN-
SPAM Act 2003) (US)
Courts of Judicature Act 1964 (Malaysia)
Courts Ordinance, 1934.(England)
Companies Act 1985 (UK)
Criminal Evidence Act 1965 (England)
Criminal Justice Act 1988 (England)
Criminal Procedure Act 1865 (England)
Criminal Procedure and Investigations Act 1996 (England).
Criminal Procedure Code (Amendment and Extension) Act 1976
Criminal Procedure Code (Act 593) (Malaysia)
Criminal Procedure Code (Amendment) Act 1998 (Malaysia)
Criminal Procedure Code (Amendment) Act 2006. (Act A 1274) (Malaysia)
Criminal Justice Act 1988 (England)
Data Protection Act 1984 (England)
Data Protection Act 1998 (England)
Dangerous Drugs Act 1952 (Malaysia)
Defamation Act 1957 (Act 286)
Digital Signature Act 1997 (Malaysia)
Digital Signature Act (Utah, US)
Electronic Commerce Act 2006 (Malaysia)
Electronic Commerce Security (Illinois, US)
Electronic Commerce (EC Directive) Regulations 2002 (2002 No.2013)(UK)
Electronic Communications Act 2000 (UK)
Electronic Signature Regulations 2002 (2002 N0.318)(UK)

Electronic Transactions Act 1998 (Singapore)
 Electronic Transaction Act 1999 (Australia)
 Evidence Act 1950 (Malaysia)
 Evidence Act 1872 (India)
 Evidence Act 1995 (New South Wales)(Australia)
 Evidence (Amendment) Act 1989 (Malaysia)
 Evidence (Amendment) Act 1993 (Malaysia)
 Evidence (Amendment) Act 1996 (no.8) (Singapore)
 Evidence (Amendment) Act 1997 (Malaysia)
 Evidence Ordinance 1893 (Malaysia)
 Evidence Ordinance 1950 (Malaysia)
 Extra-territorial Offences Act 1976 (Malaysia)
 Extradition Act 1989 (UK)
 Extradition Act 1992 (Act 479) (Malaysia)
 Federal Constitution (Malaysia)
 Federal Rules of Civil Procedure (US)
 Islamic Family Law (Federal Territories) Act 1984 (Act 303) (“IFLA”)
 Internal Security Act 1960 (Malaysia)
 Interpretation Acts 1948-1967 (Malaysia)
 Mutual Assistance in Criminal Matters Act 2002 (MACMA)(Act 621) (Malaysia)
 Optical Discs Act 2000 (ODA)(Malaysia)
 Privacy and Electronic Communication (EC Directive) Regulations 2003 (UK)
 Penal Code, Act 574 (Malaysia)
 Police and Criminal Evidence Act 1984 (England)
 Police Act 1967 (Act 344) (Malaysia)
 Privacy and Electronic Communication (EC Directive) Regulations 2003(UK)
 Regulation of Investigatory Powers Act 2000 (UK)
 Regulation of Investigatory Powers Act 2002(UK)
 Rules of Court 1996 (Singapore)
 Rules of High Court 1980 (Malaysia)
 Rules of Supreme Court 1990 (Singapore)
 Rules of the Federal Court 1995 (Malaysia),
 Rules of the Court of Appeal 1994 (Malaysia)
 Rules of the High Court (Amendment) Rules 1981(Malaysia)
 Search Warrants Act 1985(New South Wales) (Australia)
 Spam Act 2003 (Australia)
 Spam Control Act 2007 (Singapore)
 Subordinate Court Rules Act 1955 (Malaysia)
 Supreme Court Rules of 1957 (Malaysia)
 Syariah Civil Procedure Code (Selangor) Enactment 2003
 Syariah Court Evidence (Federal Territories) Act 1997
 Syariah Court Civil Procedure (State of Penang) Enactment 1999.
 Syariah Court Civil Procedure (Selangor) 1999
 Syariah Court Civil Procedure (Federal Territories) Act 1998 (Act 585)
 Syariah Courts (Criminal Jurisdiction) Act 1965 (revised 1988)
 Syariah Criminal Offences (Federal Territories) Act 1997
 Syariah Criminal Procedure (Federal Territories) Act 1997(Act 560)
 Syariah Criminal Procedure Code (Selangor) Enactment 2003
 Syariah Criminal Procedure (Negeri Sembilan) Enactment 1992

Syariah Criminal Procedure Code (Johore) Enactment 1997
Telemedicine Act 1997 (TMA) (Malaysia)
Telecommunication Act 1984 (UK)
Theft Act 1968

Rules

Legal Profession (Publicity) Rules 2001
Rules on Websites for Law Firms 2002.

Practice Directions

Practice Direction No 1 and No 2 of 2005, Supreme Court of Singapore.
Practice Directions – Part 31, Civil Procedure Rules (UK)

Practice Notes

Practice Note No.105 of 1999 of Supreme Court of NSW
Practice Note No 1 of 1969 (Agreed Bundle of Documents)
Practice No 3 of 1970. (Agreed statement of facts)

Order

United States of America (Extradition) Order 1976 (SI 1976 No 2144).

Government Gazettes

Republic Of Singapore Government Gazette, *Acts Supplement*, February 16, No.10, 1996.

CHAPTER ONE

INTRODUCTION

Information Communication Technology (ICT) is a new phenomenon in the world at large. This technology has the capacity to turn the world into a small borderless village making communication instantaneous and accurate. As a result, information has become a priceless commodity that has enabled online business and e-commerce to flourish. To Malaysia, ICT is a springboard or vehicle to achieve the national long-term plan known as Vision 2020. In order to achieve Vision 2020, the Government has taken steps to enact laws, known as 'cyberlaws', to govern the development of ICT. A proposal to set up an electronic court as a forum to settle disputes resulting from the use of information communication technology has also been made, but the law of procedure and evidence is still conventional.

The development of ICT in Malaysia is having a tremendous impact on society, commerce and the law. As a result, society is now becoming conversant with ICT and uses it in everyday life, including buying goods and services on the Internet and online transactions. However, there are members of society who use the Internet to commit crimes such as commercial fraud, defamation, hacking and spamming. As such, the law, particularly the law of evidence and procedure, must be effective enough to ensure that criminals are caught and punished and/or made liable for all losses suffered as a result of their unethical behavior.

At present the law, particularly the cyberlaws, in Malaysia have not fully addressed the above issue and the procedural law governing cyber crime has not been challenged to test the extent of the applicability in cases involving electronic related

crimes or civil liability. In relation to evidence, the admissibility of online evidence remains uncertain because the law gives emphasis and recognition to computer print-out evidence and thus treats such evidence as documentary evidence. In view of the above, this research is undertaken with the aim to examine and analyze the procedural adequacy of the laws governing ICT related cases and the extent of the admissibility of electronic evidence.

This introductory chapter will present the research objective, the statement of problems, the hypothesis, the scope and limitation and the methodology adopted. Relevant studies, which have been conducted in this area, are mentioned in the literature review. Finally, several terminologies and glossary of information technology terms are also presented as to provide better understanding on the impacts of ICT on society, commerce, court administration, cyberlaws and the relevant procedures.

1.1 RESEARCH OBJECTIVES

The objectives of this research are to examine the impact of ICT:

- a) on the society, economy and the administration of Malaysian courts. This will provide the background to the changing environment in the structure of society, economy and court administration in Malaysia. More emphasis is given to the development of the computerised court system (e-court) in Malaysia. This is discussed in detail in Chapter 2.
- b) on the current laws governing e-commerce transactions and cybercrime activities as well as their enforcement in Malaysia as analysed in Chapter 3. This chapter is important as it is the foundation to examine the

efficiency and sufficiency of the law in accommodating the challenges posed by ICT development.

- c) on the methods of gathering electronic evidence in both civil and criminal procedure. This is discussed in detail in Chapters 4 and 5. Briefly, these two chapters analyse all the relevant methods of gathering evidence under the Rules of High Court 1980 (RHC) and the Criminal Procedure Code (CPC). The extent of the applicability of both procedural laws to electronic evidence is also examined.
- d) on the extent of the admissibility of electronic evidence under the Evidence Act 1950 (EA). The focus is on the admissibility of computer printouts and online evidence and the adequacy of the EA 1950. This is examined in Chapter 6.
- e) on the Syariah evidence and procedural laws. This is discussed in Chapter 7.

In short, the objective of this research is to establish that the ICT environment in Malaysia will facilitate the application and implementation of e-court system and litigation process. In order to achieve these objectives the study will analyse the application of the existing procedures and evidence law to ICT related cases.

1.2 STATEMENT OF PROBLEMS

Although the Government of Malaysia has taken the initiative to achieve its Vision 2020 by establishing the Multimedia Super Corridor (MSC) and enacting the cyber laws to govern the application of ICT in Malaysia, the Evidence Act 1950, civil and criminal procedural law and the Court Practice Direction are archaic and uncertain in cases involving electronic evidence. The above rules of procedures, practice direction