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BADAN PEGUAM MALAYSIA

"...Maintaining and improving the standards of conduct and learning of the legal profession in Malaysia."

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2006-03-11 Johore Bar Annual Dinner & Dance

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Ngan Arifah & Chai:: 5
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Chambering Students

Michael Chai & Co,::
Legal Assistants

Palani Aisah & Co,::
Chambering Student

Md. Tajuddin & Co,::
Corporate Lawyer

Latest Documents



YL Personality: Nizam Bashir Bin Abdul Kariem Bashir

Thursday, 16 November 2006, 07:55



Contributed by the National Young Lawyers' Committee

Nizam Bashir graduated from Bond University, Australia and was called to the Bar in 1998. He practises in the area of civil litigation in Malacca.

You have a blog called Poetic Justice. Please tell us more about it and the reasons for its creation.

It just a place where I post my musings on issues that interest to me. Strictly tongue-in-cheek, it seemed to be a better idea than muttering to myself while wandering the streets.

In one of your postings, you stated that Article 11 only applies to non-Muslims. Please explain your position.

For the benefit of the uninitiated, Article 11(1) provides that every person shall have the liberty to profess and practise his religion and, subject to Clause (4), to propagate it.

However, to me, the liberty apparently preserved by Article 11(1) is "watered down" by Article 11(5) since Article 11(5) provides that Article 11 does not authorise any act contrary to any general law relating to public order, public health or morality. In my view, even if one accounts for the phrase "general law", Syariah legislations fall under this "proviso".

For that matter, even Federal/non-Syariah legislation fall under this "proviso" if the legislation in question encompasses the subject matters referred therein i.e. public order, public health or morality.

I suppose on further consideration, it seems more accurate to state that Article 11(1) applies to both Muslims and non-Muslims save that its applicability may be subject to the legislations envisaged by Article 11(5).

Alternatively, such a conclusion also seems sensible if one accepts that Article 11(1) should not to be read in an insular manner but in tandem with other Articles. E.g. Article 160(2) - specifically where "Malay" has been anthropologically defined to mean someone of the Islamic faith; although admittedly the phrase "Malay" in the Constitution has generally been utilized in relation to matters like preservation of the special position of the Malays, Malay reservation etc. but still relevant simply because it provides an inkling as to what "Malay" means according to the framers and/or parties negotiating the content of the Constitution.

All said and done, it nevertheless will be interesting to religiously, pun not intended, follow the evolution of arguments or counter-arguments in relation to this Article.

Assuming that your position is correct, i.e. that Muslims do not have the constitutional right to convert out from Islam, do you not think that this deprives Muslims, at least from a human rights perspective, to have the freedom to choose a faith other than Islam?

It is convenient to pose this question "at least" in perhaps a diplomatic way of stating "solely" from a human rights perspective. However, I do not think it is appropriate to do so, "solely" from a human rights perspective, as it ignores the applicability of principles or arguments "at least" from a religious perspective. Clearly, an issue such as this cannot be dealt with merely as a legal question but also a religious one.

For that reason, I think the width contained in Article 11(5) seems more profound

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- 2: Postponement Not Due To Lawyers Only by Annou Xavier
- 3: Re:KL Bar Annual Dinner [2/12/06] by Richard Wee Thiam Seng
- 4: Re:A better surau please by Kiang Jau Sang
- 5: Re: My Smelly Pillow, Where Are u? by Nik Elin Zurina Bt Nik Abdul Rashid

-  [Circular 125/2006](#)
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-  [Library Legislation Update : 29 November 2006](#)

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[Talk: Receivers and Liquidators: A Comparative Study of Their Roles, Duties and Functions](#)
December 2, 2006

[Seminar: Financial Due Diligence in Corporate Transactions - A Primer for Lawyers](#)
December 4, 2006

[Seminar on Civil Litigation](#)
December 4, 2006

[Seminar on Civil Litigation](#)
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December 5 - 06, 2006

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December 5, 2006

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-  [Lawyer/Law Firm Official Search Form \(5286\)](#)
-  [USA Trafficking In Persons Report 2005 \(5270\)](#)

Most Viewed

- [Crisis in the Judiciary](#)
- [Lina Joy v Majlis Agama Islam Wilayah Persekutuan & 2 Ors 2005 \[CA\]](#)

when considered in this light.

In arguing that there is no legal or religious freedom granted to Muslims to convert out from Islam, would this not imply that coercion is used to prevent a Muslim from converting out to a religion of his choice?

At the outset, permit me to point out that the question makes an assumption of my views on the religious position. In that regard and with the caveat I may not necessarily be qualified in the relevant fields, verses 5:54 and 10:99 of the Holy Quran seem quite telling of the approach required to this issue.

Further, I wonder whether it quite correct to approach this issue on the basis of freedom or coercion when, "at least" from a religious perspective, apostasy is not considered a moral right.

What in your view is the punishment for apostasy?

Presumably, this question seeks to illicit a response as to the consequences of apostatizing in Malaysia. Thus far, and as far as I am aware, the various State Syariah Enactments do not mandate punishment for apostatizing in accordance with the strictures of the principal sources of the Syariah i.e. the Quran or the Prophetic Traditions.

Broadly speaking, the punishment is meted out on a lower standard i.e. taazir derived from the root word azar which generally means to prevent or to reform. It is a discretionary punishment and may vary from State to State. Even so, clearly such punishment can never exceed the jurisdictional limitations for criminal offences cast upon the Syariah Courts pursuant to the Syariah Courts (Criminal Jurisdiction) Act 1965.

What are your thoughts on "Islam Hadhari"?

Islam Hadhari is actually somewhat of a misnomer as the impression given is that it is a theory of governance seeking to reform Islam. In truth, Islam Hadhari is merely a theory of governance seeking to reform the community of Muslims and seeks to do so pursuant to a number of principles.

For that reason, even though I am well aware of the criticisms leveled against it, Islam Hadhari cannot be truly faulted since it seeks to inculcate and nurture appropriate values in the community of Muslims in Malaysia.

Do you think there is rampant Islamization in Malaysia?

To ensure I understood the question properly, I looked up the meaning of "Islamization" and it means the process of a society's conversion to the religion of Islam, or an increase in observance by an already Muslim society.

As far as conversion to Islam is concerned, I don't think it is rampant. However, please feel free to disabuse me of this notion if there are statistics reflecting otherwise.

As far as an increase in observance by an already Muslim society, I think the reverse is true. By that, I am referring to a decline in moral values, at least vis-à-vis Muslims, as can be seen by the increase in children out of wedlock, theft, boozing etc albeit each having its causes. In that regard, visits to certain establishments in some parts of Malaysia might be quite illustrative.

At the end of the day, as one gentleman puts it - "as everywhere in the Muslim world, there are Muslims who practice, a number who don't really, and those in the middle".

That said, I personally find it rather strange that there is not even a whisper of "rampant Islamization" when it relates to Malaysians being able to reap the benefits of Malaysia's halal hub initiatives and/or Islamic financing hub. A more cynical observer might consider this one-way acceptance to be rather disingenuous.

There is a school of thought that bars non-Muslims from discussing Islam or commenting on its practices. Why is this so, and do you subscribe to this school?

To a certain aspect, I think we are jumping the gun. The appropriate question to ask first is whether we should indulge in public discussions of one religion or another. More often than not, I have seen public discussions on such religions degenerate into "My God is holier than thou" debates.

Surely, such discussions, particularly for an issue as inflammatory as this is, must require a more considerate approach. In that regard, I am minded of this Malay proverb - ibarat menarik rambut dalam tepung, rambut tidak putus dan tepung tidak berselerak.

To what extent can one subject the interpretations of the Quran by Islamic scholars to rigorous intellectual scrutiny without being blasphemous?

Clearly, there is no divinity in the opinions of scholars. So, to my mind, blasphemy is hardly an appropriate cause for concern vis-à-vis scholars.

However, the reality is that there may be a distinction in the value of scholarly input emanating from scholars who have had grounding in the traditional Islamic

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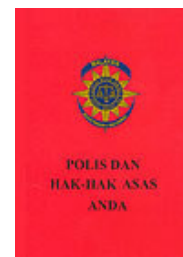
Polls & Surveys

- [Should the Government probe the 1988 judicial crisis and review the sacking of Tun Salleh Abas, George Seah and Wan Sulaiman?](#)
- Yes
- No
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Results

Most Commented

- [OPINION: Why I support the LPA amendments \(31 comments\)](#)
- [OPINION: LPA Amendments - "Stupid is as stupid does" \(Forrest Gump\) \(22 comments\)](#)
- [Lawyer allegedly arrested and abused by PJ police when carrying out his duties \(15 comments\)](#)
- [Legal Profession Act ensures justice \(15 comments\)](#)
- [Slashed lawyer dies \(15 comments\)](#)
- [A Tribute to Catherine Eu \(13 comments\)](#)
- [Open reply to Param's letter \(13 comments\)](#)



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 Lawyers jailed for practising without a certificate
 Fawziah Holdings Sdn Bhd v Metramac Corporation Sdn Bhd 2005 [CA]
 Update on the enforcement of the Solicitors' Remuneration Order 1991 (SRO)

institutions of learning and those who have not.

Even so, I think there is much to be said in favour of exchange of ideas and intellectual discourse save that such exchanges must be done respectfully; failing which, emotions will make up the flint and religion the tinder, leaving nothing but an ash of misunderstanding in its wake.

How can Muslims, especially Muslim lawyers, highlight the virtues of the Islamic faith in an all-embracing manner to those of other faiths?

Paraphrasing somewhat from a verse from the Holy Quran (16:125) - "with wisdom, beautiful preaching and in ways that are best and most gracious".

Comments (2) >>

Nizam Bashir is NOT a Young Lawyer!

Written by Kiang Jau Sang on 16 November, 2006 at 12:06

It is disrespectful to Nizam Bashir to put him under Young Lawyer category because i know this handsome chap in person and he's in practice for more than 7 years and has vast experience in all legal aspects. He's a senior lawyer la. He owns his own successful law firm and drives a brand new Honda Accord. Maybe Bar website should create a colum under "Senior Lawyer Personality"...

If u guys need a true blue young lawyer for an interview... u are looking at one now... *ahem*... Still waiting for someone to approach me for an interview. A young lawyer should be someone who's still young, fresh in practice, lack of experience, still an LA, eat at mamak stalls, and drives a proton... just like me. 😊

YL Personality

Written by Edmund Bon on 18 November, 2006 at 04:25

Dear Kiang Jau Sang

Thank you for your posting. There isn't any hard and fast rule as to who qualifies as a young(er) lawyer. As a practical guide, the age ceiling of 40 or being in practice for less 7 years may be good pointers.

Nevertheless, the interviewees for the section are recommended by fellow members of the Bar bearing in mind the need to cover a broad spectrum of interest areas which may be the subject of the interview; and fairly representing members from different States.

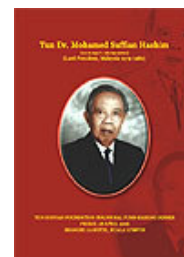
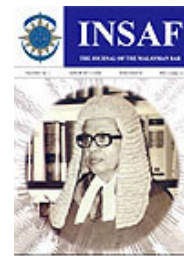
The Committee has commenced on this project on a trial-run basis and the interest generated has been encouraging. We shall in the near future be inviting recommendations from members on the areas of interview and persons to be interviewed.

We would definitely consider you!

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