

Unifying the Limitation Statutes in Malaysia

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Abstract

When Malaysia was formed in 1963, the *Malaysia Act 1963* extended the laws of the former Federation of Malaya to Sabah and Sarawak. Be that as it may, many laws remain different between East and West Malaysia. One such law is limitation: the *Limitation Act 1953* applies in West Malaysia only, the *Limitation Ordinance (Sabah Cap. 72)* applies in Sabah and the *Limitation Ordinance (Sarawak Cap. 49)* applies in Sarawak. The existence of these different statutes on the same subject matter may potentially lead to confusion and inconsistencies in the judicial and legal system in Malaysia, and hardship and injustice to litigants. This article seeks to analyse the similarities and differences in the various limitation statutes in West and East Malaysia, with a view to answering the question as to whether there can only be one limitation statute that applies throughout Malaysia, with recognized, modern, relevant and legally enforceable causes of action with realistic limitation periods, bearing in mind the special interests and safeguards afforded to Sabah and Sarawak when Malaysia was formed.

Keywords: Limitation - Causes of action.

1. Introduction

When Malaysia was formed in 1963, the *Malaysia Act 1963* extended the laws of the former Federation of Malaya to Sabah and Sarawak. Be that as it may, many laws remain different between East and West Malaysia. One such law is limitation: the *Limitation Act 1953* applies in

West Malaysia only,²⁰ the Limitation Ordinance (Sabah Cap. 72) applies in Sabah and the Limitation Ordinance (Sarawak Cap. 49)²¹ applies in Sarawak. The existence of these different statutes on the same subject matter may potentially lead to confusion and inconsistencies in the judicial and legal system in Malaysia, and hardship and injustice to litigants. For example, the Limitation Act 1953 only applies to West Malaysia, whereas the Limitation Ordinances in Sabah and Sarawak apply to all suits instituted in Sabah²² and Sarawak²³ respectively, notwithstanding that a contract may have been entered into outside these States.²⁴ If a suit was instituted in Sabah because the cause of action and facts of the case arose in Sabah, the pleadings would have contained parts of the Limitation Ordinance of Sabah. However, if for *forum non conveniens* reasons (for example, if all the defendants and witnesses reside in Kuala Lumpur) the case is dismissed and a new suit is to be instituted in the High Court in Malaya (due to the inability to transfer cases between the High Court in Malaya and the High Court in Sabah and Sarawak),²⁵ the entire pleadings would have to be changed to now refer to the Limitation Act 1953. This is notwithstanding that the cause of action and facts of the case arose in Sabah. In such a situation, the brief may have to also be transferred to an advocate and solicitor from West Malaysia, if the original advocate from Sabah is not an advocate and solicitor of the High Court in Malaya.

2. Limitation Periods

The policy of statutes of limitation is based on the theory that after a long delay, the law presumes that all claims and demands have been satisfied, paid for and settled (*Hamid, 2006*). The idea is to encourage promptitude in the prosecution of remedies, based on the maxim *vigilantibus, non dormientibus jura subveniunt* i.e. the law aids the vigilant and not those who slumber. The different limitation statutes in force in Malaysia at present are:

- (i) West Malaysia - Limitation Act 1953,
- (ii) Sabah - Limitation Ordinance (Cap 72), and
- (iii) Sarawak - Limitation Ordinance (Cap 49).

In West Malaysia, the Limitation Act 1953 applies to both court actions and arbitrations.²⁶ The defence of limitation must be specifically pleaded.²⁷ The limitation period for actions founded in

²⁰ Limitation Act 1953, section 1(2).

²¹ This was enacted on 1 January 1959 and was declared a Federal Law in 1965 vide F.L.N. 200 of 1965.

²² Limitation Ordinance of Sabah, section 10(1).

²³ Limitation Ordinance of Sarawak, section 10(1).

²⁴ Limitation Ordinances of Sabah and Sarawak, section 10(2).

²⁵ *Fung Beng Tiat v Marid Construction Co.* [1996] 2 MLJ 413; *The Board of Trustees Of The Sabah Foundation & Anor v The Board Of Trustees of Syed Kechik Foundation & Ors* [1999] 1 MLJ 257; *Syed Salam Albukhary & Ors (Discovery Defendants)* [2009] 1 LNS 799.

²⁶ Limitation Act 1953, sections 3 and 30.

²⁷ Limitation Act 1953, section 4.

contract or tort, to enforce a recognisance, to enforce an award, to recover a sum recoverable under any written law (other than a penalty or forfeiture) and for an account is six years from the date the cause of action accrued.²⁸ An action to enforce a judgment cannot be brought after twelve years of the judgment, and interest on the judgment cannot be recovered after six years from the due date of the interest.²⁹ An action to recover any civil penalty or forfeiture cannot be brought more than one year from the date the cause of action accrued.³⁰ The limitation period for the conversion or wrongful detention of a chattel is six years from the accrual of the cause of action.³¹ Actions pertaining to revenue matters against a Collector, officer of revenue, the State or Federal Government must be brought within one year of the action taken by the latter bodies.³² The limitation period to recover land is twelve years from the date of accrual of the cause of action,³³ whereas for recovery of rent it is six years.³⁴ Regarding the limitation to recover money secured by a mortgage or charge, or to recover proceeds of the sale of land or personal property, an action (including foreclosure proceedings) shall be brought before the expiration of twelve years.³⁵ However, for the recovery of arrears of interest or damages for such arrears payable in respect of any sum of money secured by a mortgage or charge payable in respect of the proceeds of the sale of land, the limitation period is six years.

There is no limitation period by a beneficiary for breach of trust involving fraud and recovery of trust property converted to the trustee's use,³⁶ but for every other action for breach of trust and recovery of trust property, the limitation period is six years.³⁷ Any claim to the personal estate of a deceased person or to any share or interest in such estate, whether under a will or on intestacy, shall be brought before the expiration of twelve years³⁸ but the arrears of interest or damages for such arrears for any legacy of a deceased person must be brought within six years.³⁹ The Act also provides for the extension of the limitation period in certain circumstances, for example in cases of disability,⁴⁰ where a debtor administers the estate of his creditor,⁴¹ acknowledgements and part payments⁴² and in cases of fraud or mistake.⁴³

²⁸ Limitation Act 1953, sections 6(1) and (2).

²⁹ Limitation Act 1953, section 6(3).

³⁰ Limitation Act 1953, section 6(4).

³¹ Limitation Act 1953, section 7(1).

³² Limitation Act 1953, section 8.

³³ Limitation Act 1953, section 9(1).

³⁴ Limitation Act 1953, section 20.

³⁵ Limitation Act 1953, sections 21(1) and (2).

³⁶ Limitation Act 1953, section 22(1).

³⁷ Limitation Act 1953, section 22(2).

³⁸ Limitation Act 1953, section 23.

³⁹ *Ibid.*

⁴⁰ Limitation Act 1953, section 24.

⁴¹ Limitation Act 1953, section 25.

⁴² Limitation Act 1953, sections 26 to 28.

⁴³ Limitation Act 1953, section 29.

In Sabah and Sarawak, the Limitation Ordinances apply to all suits instituted in Sabah⁴⁴ and Sarawak⁴⁵ respectively, notwithstanding that a contract may have been entered into outside these States.⁴⁶ Just like in West Malaysia, the defence of limitation must be specifically pleaded.⁴⁷ The Ordinances have similar provisions for the extension of the limitation period in certain circumstances, for example in cases of disability,⁴⁸ where a debtor administers the estate of his creditor,⁴⁹ acknowledgements and part payments⁵⁰ and in cases of fraud.⁵¹ Where no period of limitation is specifically provided for, the limitation period is 6 years,⁵² and to establish a periodically recurring right the limitation period is 12 years.⁵³

With regard to the period of limitation itself, the Ordinances provide for the period of limitation for 115 separate causes of action, and these are set out in the respective Schedules with limitation periods ranging from one year to sixty years. Of these 115 causes of action, many can properly be grouped under the wider categories of causes of action such as contract, tort, recovery of immovable property, etc. For contracts especially, the Contracts Act 1950 was made applicable to Sabah and Sarawak as at 1 July 1974⁵⁴ and therefore both oral and written contracts should be treated equally with only one period of limitation applicable and not different periods of limitation depending on different types of contracts. Despite listing 115 different causes of action, the Limitation Ordinances of Sabah and Sarawak do not provide for the limitation period for breach of trust cases where fraud is involved. In West Malaysia there is no limitation for this cause of action; in Sabah and Sarawak there is a period of limitation of three years for breach of trust. It then becomes questionable whether the three years is also applicable to breach of trust cases involving fraud, or whether the limitation period is six years since this cause of action is not specifically mentioned out of the 115 listed causes of action. Table 2 is a list of all the causes of action listed under the Limitation Ordinances of Sabah and Sarawak which can properly be categorised under wider headings of causes of action.

⁴⁴ Limitation Ordinance of Sarawak (n 23).

⁴⁵ Limitation Ordinance of Sarawak (n 23).

⁴⁶ Limitation Ordinance of Sarawak (n 23).

⁴⁷ Limitation Ordinances of Sabah and Sarawak, section 3.

⁴⁸ Limitation Ordinances of Sabah and Sarawak, sections 6 to 8.

⁴⁹ Limitation Ordinances of Sabah and Sarawak, section 9.

⁵⁰ Limitation Ordinances of Sabah and Sarawak, sections 19-21 and 23.

⁵¹ Limitation Ordinances of Sabah and Sarawak, section 18.

⁵² Schedule of the Limitation Ordinances of Sabah and Sarawak, item 97.

⁵³ Schedule of the Limitation Ordinances of Sabah and Sarawak, item 100.

⁵⁴ Contracts (Malay States) (Amendment and Extension) Act 1974 (Act A239).

Table 2: Causes of Action under the Limitation Statutes in Sabah and Sarawak

Categories of causes of action	Causes of action in Sabah and Sarawak	Limitation period	Schedule to the Limitation Ordinance of Sabah	Schedule to the Limitation Ordinance of Sarawak
Contract	For the wages of a household servant, artisan or a labourer	1 year	Item 2	Item 2
	For the price of food or drink sold by the keeper of a hotel, tavern or lodging house	1 year	Item 3	Item 3
	For the price of lodging	1 year	Item 4	Item 4
	Against a carrier for compensation for losing or injuring goods or delay in delivery of goods	2 years	Items 17 and 18	Items 16 and 17
	For the hire of animals, vehicles, boats or household furniture	3 years	Item 21	Item 20
	For all matters relating to goods sold and delivered	3 years	Items 22-25	Items 21-24
	For the price of trees or growing crops sold, where no fixed period of credit is agreed upon	3 years	Item 26	Item 25
	For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment	3 years	Item 27	Item 26
	For compensation for injury caused by an injunction wrongfully obtained ⁵⁵	3 years	Item 33	Item 32
	By a ward who has attained majority, to set aside a sale by his guardian	3 years	Item 35	Item 34
	For all money lending transactions	3 years	Items 39-46	Items 38-45
	For compensation for breach of promise	3 years	Item 47	Item 46

⁵⁵ Rules of Court 2012, Ord 29, rule 1 and Form 53.

Categories of causes of action	Causes of action in Sabah and Sarawak	Limitation period	Schedule to the Limitation Ordinance of Sabah	Schedule to the Limitation Ordinance of Sarawak
Contract (continued)	For actions involving bonds, bills of exchange and promissory notes	3 years	Items 48-62	Items 47-61
	By a surety against the principal debtor or a co-surety	3 years	Items 63-64	Items 62-63
	Upon a contract to indemnify	3 years	Item 65	Item 64
	By an advocate for his costs	3 years	Item 66	Item 65
	For the balance due on a mutual, open and current account	3 years	Item 67	Item 66
	Insurance claims and premiums	3 years	Items 68-69	Items 67-68
	Against a factor for an account	3 years	Item 70	Item 69
	By a principal against his agent for moveable property received and not accounted for	3 years	Item 71	Item 70
	For property which the plaintiff has conveyed while insane	3 years	Item 76	Item 75
	For money paid upon an existing consideration which afterwards fails	3 years	Item 79	Item 78
	For contribution under a joint decree or joint estate against co-sharers	3 years	Item 81	Item 80
	By co-trustee for a contribution claim	3 years	Item 82	Item 81
	For seaman's wages	3 years	Item 83	Item 82
	For wages not expressly provided for	3 years	Item 84	Item 83
	By a mortgagor or chargor after mortgage or charge is satisfied, to recover surplus received by mortgagee or charge	3 years	Item 85	Item 84
	For an account and share of profits of a dissolved partnership	3 years	Item 86	Item 85

Categories of causes of action	Causes of action in Sabah and Sarawak	Limitation period	Schedule to the Limitation Ordinance of Sabah	Schedule to the Limitation Ordinance of Sarawak
Contract (continued)	By a lessor for the value of trees cut down by lessee contrary to lease terms	3 years	Item 87	Item 86
	For profits of immovable property belonging to plaintiff wrongfully received by defendant	3 years	Item 88	Item 87
	By a vendor of immovable property to enforce lien for unpaid purchase money	3 years	Item 90	Item 88
	For a call by a company	3 years	Item 91	Item 89
	For specific performance and rescission of a contract	3 years	Items 91-93	Items 90-91
	For compensation for breach of oral contract	3 years	Item 94	Item 93
	For compensation for breach of written contract	6 years	Item 95	Item 94
Tort	For compensation for false imprisonment and malicious prosecution	1 year	Items 8 and 10	Items 8 and 9
	For compensation for libel and slander	1 year	Items 11 and 12	Items 10 and 11
	For compensation for loss of service occasioned by the seduction of the plaintiff's servant or daughter	1 year	Item 13	Item 12
	For compensation for inducing a person to break a contract with the plaintiff ⁵⁶	1 year	Item 14	Item 13
	For compensation for an illegal, irregular or excessive distress	1 year	Item 15	Item 14
	For compensation for wrongful seizure of movable property under legal process	1 year	Item 16	Item 15

⁵⁶ Michael A. Jones, Anthony M Dugdale, Mark Simpson (ed), *Clerk & Lindsell on Torts* (22nd edn, Sweet & Maxwell 2017).

Categories of causes of action	Causes of action in Sabah and Sarawak	Limitation period	Schedule to the Limitation Ordinance of Sabah	Schedule to the Limitation Ordinance of Sarawak
Tort (continued)	Against a carrier for compensation for losing or injuring goods or delay in delivery of goods	2 years	Items 17 and 18	Items 16 and 17
	For compensation for malfeasance, misfeasance, nonfeasance independent of contract	2 years	Item 20	Item 19
	For compensation for obstructing or diverting a way or water course	3 years	Items 28-29	Items 27-28
	For compensation for trespass on immovable property	3 years	Item 30	Item 29
	For compensation for infringing copyright or any other exclusive privilege	3 years in Sabah; 6 years in Sarawak	Item 31	Item 96
	To restrain waste	3 years	Item 32	Item 31
	To compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets	3 years	Item 34	Item 33
	By principals against agents for neglect or misconduct	3 years	Item 72	Item 71
	For compensation for injury to the person	3 years	Item 94A	Item 92
Action against judgment	Foreign judgment	6 years for Sabah	Item 96	
	Judgment obtained in Sabah / Sarawak	12 years	Item 98	Item 98
Conversion or unlawful detention	Against one who, having a right to use property for specific purposes, perverts it to other purposes	2 years	Item 19	Item 18
	By any person bound by an order respecting the possession	3 years	Item 36	Item 35

Categories of causes of action	Causes of action in Sabah and Sarawak	Limitation period	Schedule to the Limitation Ordinance of Sabah	Schedule to the Limitation Ordinance of Sarawak
Conversion or unlawful detention (continued)	For moveable property lost, acquired by theft, dishonest misappropriation, conversion or detention	3 years	Item 37	Item 36
	Wrongfully taking, injuring or detaining moveable property	3 years	Item 38	Item 37
	To recover moveable property conveyed or bequeathed in trust, deposited or pawned and afterwards bought from the trustee, depository or pawnee for valuable consideration	12 years	Item 102	Item 102
	Against a depositee or pawnee to recover moveable property deposited or pawned	30 years	Item 113	Item 113
Recovery of land	For land bequeathed in trust, mortgaged or charged and afterwards purchased from the trustee, mortgagee or chargee for valuable consideration	12 years	Item 103	Item 103
	By mortgagee or chargee for possession of land	12 years	Item 104	Item 104
	By a purchaser at a private sale when vendor was out of possession at the time of sale	12 years	Item 105	Item 105
	By a purchaser at a sale in execution of an order, when judgment debtor was out of possession at the time of sale	12 years	Item 106	Item 106
	By a purchaser at a sale in execution of an order, when judgment debtor was in possession at the time of sale	12 years	Item 107	Item 107
	By a landlord to recover possession from tenant	12 years	Item 108	Item 108
	By a remainder-man or reversioner other than a landlord or devisee for possession	12 years	Item 109	Item 109

Categories of causes of action	Causes of action in Sabah and Sarawak	Limitation period	Schedule to the Limitation Ordinance of Sabah	Schedule to the Limitation Ordinance of Sarawak
Recovery of land (continued)	For possession when the plaintiff, while in possession of the land, has been dispossessed or has discontinued the possession	12 years	Item 110	Item 110
	For possession when plaintiff has become entitled by reason of forfeiture or breach of condition	12 years	Item 111	Item 111
	For possession or any interest therein not specifically provided for	12 years	Item 112	Item 112
	Against a mortgagee or chargee, to redeem or recover possession of land mortgaged or charged	60 years	Item 115	Item 115
Recovery of money secured upon immoveable property	To enforce payment of money charged upon immoveable property	12 years	Item 101	Item 101
	By a mortgagee or chargee for foreclosure or sale	60 years	Item 114	Item 114
Fraud / Mistake	To cancel or set aside an instrument not otherwise provided for	3 years	Item 73	Item 72
	To declare the forgery of an instrument	3 years	Item 75	Item 74
	To set aside decree obtained by fraud	3 years	Item 77	Item 76
	For relief on the ground of mistake	3 years	Item 78	Item 77
Breach of trust	To make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust	3 years	Item 80	Item 79

There are some similarities in the period of limitation between West and East Malaysia. These include action for breach of a written contract which is six years, action against judgment (excluding foreign judgments) which is twelve years, recovery of penalty or forfeiture under written law which is one year, action in respect of revenue matters which is one year, action for recovery of rent which is six years and claims on or to the personal estate of a deceased person, whether under a will or intestacy which is twelve years. A summary of the description of the cause of action and the period of limitation which are similar across the respective jurisdictions is provided in Table 3.

Table 3: Causes of Action with Similar Limitation Periods in West Malaysia, Sabah and Sarawak

Cause of action	West Malaysia	Sabah	Sarawak
Breach of contract	6 years ⁵⁷	6 years for breach of contract in writing ⁵⁸	6 years for breach of contract in writing ⁵⁹
Action against judgment	12 years ⁶⁰	12 years (except foreign judgment) ⁶¹	12 years ⁶²
Recovery of penalty or forfeiture under written law	1 year ⁶³	1 year ⁶⁴	1 year ⁶⁵
Action in respect of revenue matters	1 year ⁶⁶	1 year ⁶⁷	1 year ⁶⁸
Recovery of rent	6 years ⁶⁹	6 years ⁷⁰	6 years ⁷¹
Recovery of money secured upon immoveable property	12 years ⁷²	12 years (except by mortgagee or chargee) ⁷³	12 years

⁵⁷ Limitation Act 1953, section 6(1)(a).

⁵⁸ Schedule of the Limitation Ordinance of Sabah, item 95.

⁵⁹ Schedule of the Limitation Ordinance of Sarawak, item 94.

⁶⁰ Limitation Act 1953, section 6(3).

⁶¹ Schedule of the Limitation Ordinance of Sabah, items 96 and 98.

⁶² Schedule of the Limitation Ordinance of Sarawak, item 98.

⁶³ Limitation Act 1953, section 6(4).

⁶⁴ Schedule of the Limitation Ordinance of Sabah, item 1.

⁶⁵ Schedule of the Limitation Ordinance of Sarawak, item 1.

⁶⁶ Limitation Act 1953, section 8.

⁶⁷ Schedule of the Limitation Ordinance of Sabah, items 5, 6 and 7.

⁶⁸ Schedule of the Limitation Ordinance of Sarawak, items 5, 6 and 7.

⁶⁹ Limitation Act 1953, section 20.

⁷⁰ Schedule of the Limitation Ordinance of Sabah, item 95A.

⁷¹ Schedule of the Limitation Ordinance of Sarawak, item 95.

⁷² Limitation Act 1953, section 21.

⁷³ Schedule of the Limitation Ordinance of Sabah, item 114.

			(except by mortgagee or chargee) ⁷⁴
Claims on or to the personal estate of a deceased person, whether under a will or intestacy	12 years ⁷⁵	12 years ⁷⁶	12 years ⁷⁷

3. The Position in Sabah and Sarawak

It is important to note that in attempting to unify the limitation statutes in Malaysia, the legislation peculiar to Sabah and Sarawak would also be involved. Therefore, it is necessary to consider whether such a unification exercise would be contrary to the special interests and safeguards afforded to Sabah and Sarawak.

On 9 July 1963, the Malaysia Agreement was signed in London by the British government, the Malayan government, Sarawak, Sabah and Singapore for the formation of Malaysia. The Agreement included the special interests and safeguards for Sabah and Sarawak.⁷⁸ In accordance with Section 66 of the Malaysia Act 1963, Part XIIA was inserted into the Federal Constitution to provide for additional protection for the States of Sabah and Sarawak. These included, among others, Article 161 which provided for the continued use of English in court proceedings unless otherwise approved by Legislatures of the States of Sabah and Sarawak,⁷⁹ Article 161B which provided for the restriction to non-residents of the right to practise before the courts in the States of Sabah and Sarawak unless otherwise adopted by the Legislatures of the States of Sabah or Sarawak,⁸⁰ and Article 161E which provided, among others, that no amendments could be made to the constitution and jurisdiction of the High Court in Sabah and Sarawak and the appointment, removal and suspension of judges of that court, and the immigration powers given to Sabah and Sarawak to control the right of entry and residence in the States, without the consent of the Yang di-Pertua Negeri of those States respectively.⁸¹

⁷⁴ Schedule of the Limitation Ordinance of Sarawak, item 114.

⁷⁵ Limitation Act 1953, section 23.

⁷⁶ Schedule of the Limitation Ordinance of Sabah, item 99.

⁷⁷ Schedule of the Limitation Ordinance of Sarawak, item 99.

⁷⁸ Malaysia Agreement, article VIII.

⁷⁹ Federal Constitution, article 161(3).

⁸⁰ Federal Constitution, article 161B(1).

⁸¹ Federal Constitution, articles 161E(2) and (4).

In addition, List IIA was also added to the Ninth Schedule of the Federal Constitution, being the Supplement to the State List for Sabah and Sarawak. The distribution of legislative powers between the Federal and State levels is provided for in Chapter 1 of Part VI of the Federal Constitution. Parliament has the power to legislate at the Federal level.⁸² The Legislature of a State has the power to legislate at the State level.⁸³ In the event of an inconsistency between Federal law and State law, the Federal law shall prevail.⁸⁴ The Legislature of a State has residual powers to make laws on matters not enumerated in any Lists in the Ninth Schedule.⁸⁵ Parliament does, however, have the power to make laws in respect of any matter enumerated in the State List in certain situations⁸⁶ as well as to authorise the Legislature of a State to make laws in respect of matters enumerated in the Federal List.⁸⁷

Although States have the power to legislate on matters contained in the State and Concurrent Lists,⁸⁸ such powers are subject to Article 81 which empowers the executive authority of every State to ensure that they comply with any Federal law that applies to that State. This is consistent with Article 75 which upholds the supremacy of Federal over State laws. Arguably, Article 75 would only apply where State law is passed after the Federal law, otherwise Parliament may indirectly nullify or repeal State laws by passing a new Federal law which is inconsistent with existing State law (Fong, 2016).

Article 76(1) gives power to Parliament to make laws with respect to any matter enumerated in the State List, for among others, the purpose of promoting uniformity of the laws of two or more States⁸⁹ or if so requested by the legislative assembly of any State.⁹⁰ In such cases, the legislation shall only come into operation when adopted by a law passed by the Legislature of the State, where it shall become State and not Federal law.⁹¹ The Federal Court had occasion to consider the power of Parliament to pass laws for purposes of promoting uniformity of laws in the case of *East Union (Malaya) Sdn Bhd v Government of Johore & Anor*.⁹² In this case, it was held that Article 76(4) authorised Parliament to legislate on a state matter “ ... for the purpose only of

⁸² Articles 73(a) and 74(1), read together with List 1 (Federal List) or List 3 (Concurrent List) in the Ninth Schedule of the Federal Constitution.

⁸³ Articles 73(b) and 74(2), read together with List 2 (State List) or List 3 (Concurrent List) in the Ninth Schedule of the Federal Constitution.

⁸⁴ Federal Constitution, article 75.

⁸⁵ Federal Constitution, article 77.

⁸⁶ Federal Constitution, article 76.

⁸⁷ Federal Constitution, article 76A; Electricity Ordinance 2007 (Cap 50) in Sarawak.

⁸⁸ Federal Constitution, articles 73 and 74(2).

⁸⁹ Federal Constitution, article 76(1)(b).

⁹⁰ Federal Constitution, article 76(1)(c).

⁹¹ Federal Constitution, article 76(3).

⁹² [1981] 1 MLJ 151 (Tun Suffian LP).

ensuring uniformity of law and policy ... ”⁹³ and also where there is already uniformity, for example in cases where Parliament wishes to replace one uniform law with another more updated uniform law, or where Parliament wishes to “ ... re-enact and consolidate the already uniform laws to be found in the various state enactments, in order to secure a uniform policy and application of such law ... ”.⁹⁴ The Federal Court also laid down the test to be applied in construing whether a law passed pursuant to Article 76(4) is constitutional:⁹⁵

“In our judgment, the sole test is simply this: does the impugned provision enacted by Parliament ensure uniformity of law and policy? If it does, it is constitutional, regardless of the position previously. If it does not, it is unconstitutional.”

Although the case mentioned above concerned Article 76(4) of the Federal Constitution, it is submitted that the principles enunciated in this case may equally apply to Article 76(1)(b) of the Federal Constitution.

By virtue of Article 77 of the Federal Constitution, residual legislative power i.e. matters not enumerated in any of the Lists in the Ninth Schedule, falls within the competence of a State Legislature. Under Article 161E of the Federal Constitution, any amendments to be made on matters with respect to which the Legislature of the State may (or Parliament may not) make laws, requires two-thirds majority and the consent of the Yang di-Pertua Negeri of the States of Sabah and Sarawak. One example of the utilization of Article 77 is water, where Parliament amended the Legislative List in the Federal Constitution and removed water supplies from the State List (excluding Sabah and Sarawak), and then inserting the same in the Concurrent List. Thereafter, the Federal Government established a Water Services Commission⁹⁶ and Parliament passed the Water Services Industry Act 2006 which increased federal regulation over water at least in West Malaysia.⁹⁷ Another example is tourism. Prior to 1994, tourism was a residual matter which therefore fell within the purview of the State Legislature. However, in 1994, Parliament amended the Federal List and included Tourism as a federal matter vide the Constitution (Amendment) Act 1994.⁹⁸ This was done without the consent of the Yang di-Pertua Negeri of Sabah and Sarawak. The Federal Government now wants to introduce ‘tourism tax’ at the federal level, which has attracted the ire of at least the Sarawak Government who says that

⁹³ Ibid 154.

⁹⁴ *East Union (Malaya) Sdn Bhd* (n 92).

⁹⁵ *East Union (Malaya) Sdn Bhd* (n 92) 155.

⁹⁶ National Water Services Commission Act 2006.

⁹⁷ Water Services Industry Act 2006; Ang Hean Leng & Amanda Whiting, ‘Federalism and Legal Unification: Comparative Perspectives on Law and Justice’ in Daniel Halberstam and Matthias W. Reimann (ed), *Federalism and Legal Unification in Malaysia*, vol 28 (Springer, Dordrecht 2013) 295, 307

⁹⁸ Act A885.

listing ‘tourism’ under the Federal List without the consent of the State Governments of Sabah and Sarawak goes against the spirit of the Malaysia Agreement 1963.⁹⁹ These examples show that the federal government has stepped in and taken control of situations where it feels that the matter is better off governed at federal rather than at state level.

Then there is the extension of laws. As mentioned before, the Malaysia Act 1963 provides for the extension of laws of the former Federation of Malaya to the Borneo States,¹⁰⁰ and the present laws of the Borneo States (i.e. all laws in force in the Borneo States prior to 16 September 1963) were treated as federal laws.¹⁰¹ This was a useful and expeditious method of providing, without having to take up the time of Parliament, a single set of laws that applied throughout Malaysia¹⁰². Section 74 of the Malaysia Act 1963 empowers the Yang di-Pertuan Agong to make orders modifying (including amending, adapting or repealing¹⁰³) any present law over which Parliament has power.¹⁰⁴ The Yang di-Pertuan Agong is also empowered to make orders extending to Sabah and Sarawak any present laws of the Federation, or to declare any State law of Sabah and Sarawak to be federal law, but not to modify such state law.¹⁰⁵ However, such orders must be made with the concurrence of the Yang di-Pertua Negeri of Sabah and Sarawak.¹⁰⁶ The Yang di-Pertuan Agong’s powers under Section 74 of the Malaysia Act 1963 continues until the end of August 1965 and thereafter till Parliament otherwise provides.¹⁰⁷ To date, Parliament has not “otherwise provided”; therefore this power still exists and may be utilized for purposes of harmonizing the laws between East and West Malaysia. An example of the extension and

⁹⁹ n/a, ‘State against new federal tourism tax’ *Borneo Post Online*, (Sibu, 8 June 2017) <<http://www.theborneopost.com/2017/06/08/state-against-new-federal-tourism-tax/>> accessed 17 January 2022; Desmond Davidson, ‘Will we see any tourism tax money, asks Sarawak minister’ *The Malaysian Insight* (Sarawak, 8 June 2017) <<https://www.themalaysianinsight.com/s/4604/>> accessed 17 January 2022; Sulok Tawie, ‘Sarawak Cabinet to decide on federal tourism tax’ *The Malay Mail Online* (Kuching, 12 June 2017) <<http://www.themalaymailonline.com/malaysia/article/sarawak-cabinet-to-decide-on-federal-tourism-tax#T86iORp8YDcoMfz0.97>> accessed 17 January 2022; FMT Reporters, ‘State to decide action on tourism tax soon, says Sarawak Minister’ *Free Malaysia Today* (Petaling Jaya, 12 June 2017) <<http://www.freemalaysiatoday.com/category/nation/2017/06/12/state-to-decide-action-on-tourism-tax-soon-says-swak-minister/>> accessed 17 January 2022; Nawar Firdaws, ‘Like it or not, Sarawak subject to tourism tax, says state minister’ *Free Malaysia Today* (Petaling Jaya, 14 June 2017) <<http://www.freemalaysiatoday.com/category/nation/2017/06/14/like-it-or-not-sarawak-subject-to-tourism-tax-says-state-minister/>> accessed 17 January 2022.

¹⁰⁰ Malaysia Act 1963, sections 73(1) and (2).

¹⁰¹ Malaysia Act 1963, section 73(3); See also the list of laws in Sabah and Sarawak declared as federal laws in Appendix B.

¹⁰² D.B.W Good, ‘Problems of harmonizing the laws in the Malaysian Federation’ in Suffian M, Lee, H.P. & Trindade, F.A. (ed) *The Constitution of Malaysia, Its Development: 1957-1977* (OUP 1979).

¹⁰³ Malaysia Act 1963, section 74(10).

¹⁰⁴ Malaysia Act 1963, section 74(1).

¹⁰⁵ Malaysia Act 1963, section 74(2).

¹⁰⁶ *Ibid.*

¹⁰⁷ Malaysia Act 1963 (n 100), section 74(8).

modification of laws from West to East Malaysia pursuant to Section 74(2) of the Malaysia Act 1963 is the Subordinate Courts Act 1948 which was extended to East Malaysia with effect from 1 June 1981.

Currently, the Law Revision and Law Reform Division of the Attorney-General's Chambers is responsible to ensure that every Malaysian law is " ... up to date, accurate and in tandem with current needs".¹⁰⁸ The Division's main functions are to "reprint laws in both the national and English language, publish revised texts of laws, extend Federal laws to Sabah and Sarawak and the Federal Territories, translate English texts of pre-1967 laws to the national language, review archaic and obsolete laws, and modernize laws to be in tandem with the changing needs of society".¹⁰⁹ The Extension Unit within the Law Revision and Law Reform Division of the Attorney-General's Chambers has the responsibility of extending and/or modifying federal laws to, among others, the States of Sabah and Sarawak pursuant to Section 74 of the Malaysia Act 1963. The main purpose of the task is to ensure uniformity of federal laws in its application throughout Malaysia.¹¹⁰ The extension exercise is carried out upon request from the States of Sabah and Sarawak or from ministries or agencies concerned or on the Law Revision and Law Reform Division's own initiative.¹¹¹ For example, the State of Sarawak requested for the Innkeepers Act 1952 (Act 248) to be extended to it since there was no specific law for the administration of the hotel industry in Sarawak. Act 248 was then gazetted in 2011 under the Ministers of Federal Government (Amendment) Order 2011¹¹² and thereafter the extension and modification orders were completed and submitted to the Ministry.¹¹³

4. One Limitation Statute Across Malaysia

As set out extensively earlier, there are already some similarities on the general principles of limitation, as well as on the period of limitation for some causes of action across the three jurisdictions. In Sabah and Sarawak, many of the causes of action can properly be categorized under the wider cause of action of contract, tort, recovery of immovable property etc. For

¹⁰⁸ Law Division and Law Reform Division, 'Role and Responsibility of the Sector', (*Attorney-General's Chambers*) <http://www.agc.gov.my/agcportal/index.php?r=portal2/left&menu_id=bjBCTG11Z3Q1TmljQThGRlkxUWxwdz09> accessed 17 January 2022.

¹⁰⁹ *Ibid.*

¹¹⁰ Human Rights Commission of Malaysia, *Attorney-General Chambers Malaysia Bi-Annual Rep* [2011] SUHAKAM 126.

¹¹¹ *Ibid* 127.

¹¹² P.U. (A) 43/2011.

¹¹³ *Ibid.*

example, a claim for compensation for false imprisonment,¹¹⁴ malicious prosecution,¹¹⁵ libel¹¹⁶ and slander¹¹⁷ are all claims under the wider cause of action of tort. Notwithstanding this, the separate causes of action have different limitation periods ranging from one to sixty years.¹¹⁸ There are some causes of action that are outdated and may no longer be relevant in today's modern world, for example compensation for loss of service occasioned by the seduction of the plaintiff's servant or daughter,¹¹⁹ to restrain waste¹²⁰ and seaman's wages.¹²¹

With particular regard to limitation statutes, it is of vital importance to note that one of the items on the Federal List is civil and criminal law and procedure and the administration of justice¹²² as well as education.¹²³ This includes, among others, the constitution and organization of all courts other than Syariah Courts, the jurisdiction and powers of all such courts, remuneration and privileges of judges, persons entitled to practise before the courts, and the subject matter of civil and criminal law such as contracts, evidence, interpretation of federal law, limitation, actionable wrongs, property, etc. Therefore, the statutes of limitation may well be reviewed by the Law Revision and Law Reform Division of the Attorney-General's Chambers whose duty is, among others, " ... to review archaic and obsolete laws, and modernize laws ... ".¹²⁴ This is because firstly, these matters fall squarely under " ... civil and criminal law and procedure and the administration of justice ... ".¹²⁵ Secondly, these laws have general application for purposes of administration of justice and legal practice in Malaysia, and do not contain any 'sensitive' provisions such as constitutional safeguards or peculiar application to the states of Sabah and Sarawak. Therefore, these laws may be reviewed by the Federal Government (in particular, the Law Revision and Law Reform Division of the Attorney-General's Chambers) for purposes of unification without any encumbrances or negative repercussions.

¹¹⁴ Schedule of the Limitation Ordinances of Sabah and Sarawak, item 8.

¹¹⁵ Schedule of the Limitation Ordinance of Sabah, item 10; Schedule of the Limitation Ordinance of Sarawak, item 9.

¹¹⁶ Schedule of the Limitation Ordinance of Sabah, item 11; Schedule of the Limitation Ordinance of Sarawak, item 10.

¹¹⁷ Schedule of the Limitation Ordinance of Sabah, item 10; Schedule of the Limitation Ordinance of Sarawak, item 9.

¹¹⁸ Schedule of the Limitation Ordinances of Sabah and Sarawak, item 114.

¹¹⁹ Schedule of the Limitation Ordinance of Sabah, item 13; Schedule of the Limitation Ordinance of Sarawak, item 12.

¹²⁰ Schedule of the Limitation Ordinance of Sabah, item 32; Schedule of the Limitation Ordinance of Sarawak, item 31.

¹²¹ Schedule of the Limitation Ordinance of Sabah, item 83; Schedule of the Limitation Ordinance of Sarawak, item 82.

¹²² Ninth Schedule to the Federal Constitution, item 4 of List I.

¹²³ Ninth Schedule to the Federal Constitution, item 13 of List I.

¹²⁴ Law Division and Law Reform Division (n 108).

¹²⁵ Ninth Schedule to the Federal Constitution, item 4 of List I.

That being the case, it is submitted that any exercise undertaken to unify and modernize these laws will not affect any of the constitutional safeguards afforded to Sabah and Sarawak. Any amendments, modification, consolidation or repeal of any of these legislations may be passed with a simple majority in both Houses of Parliament pursuant to Article 159(4)(b) of the Federal Constitution as these legislations are ordinary law within the ambit of Parliament's legislative powers.

The unification of the limitation legislation is therefore possible for the whole of Malaysia, albeit a more simple, straightforward and modern legislation with more realistic limitation timelines that appeals to a more effective administration of justice.

5. Conclusion

Consolidated laws on limitation which apply uniformly across Malaysia may be beneficial to the judicial and legal system as a whole as it is not only convenient but also promotes consistency and reduces confusion. It is therefore recommended that there be only one limitation statute that applies throughout Malaysia, with recognized, modern, relevant and legally enforceable causes of action with realistic limitation periods. Such a limitation statute would only serve to lessen the confusion in the legal fraternity as to which limitation statute applies, particularly in cross-border transactions which would certainly appeal to the international community, especially foreign investors in Malaysia who would have more confidence in our judicial and legal system. These are features which conform to the ideal concepts of the rule of law and the doctrine of *stare decisis*, the hallmarks of an ideal judicial and legal system.

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