

**LAW & ETHICS
FOR
ENTREPRENEUR
S**

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Introduction

Businesses in Malaysia are subject to its laws. They are also subject to the laws of other countries in which they operate. Meanwhile businesses that are organized in other countries must obey the laws of Malaysia when doing businesses here. Sometimes the businesses are also subject to code of ethics.

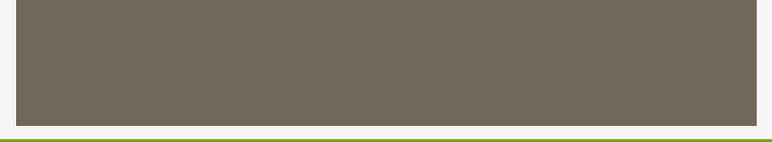
This module is designed to develop participants' awareness on the importance of law and ethics in business, the intrinsic nature of law vis-à-vis ethics, and the important functions of law and ethics in business.

At the end of this module, participants should be able to appreciate the importance of law and ethics in business, differentiate between law and ethics, and apply the relevant law and ethical value in business.

Introduction

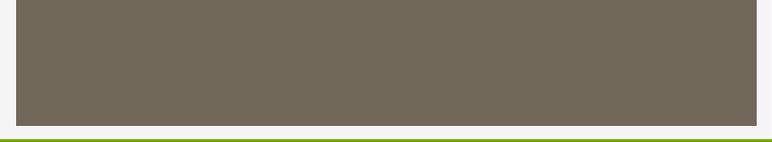
“A corporate executive ... has direct responsibility to conduct business in accordance with [shareholder] desires ... [i.e.] to make as much money as possible while conforming to their basic rules of the society, both those embodied in law and those embodied in ethical custom.”

Milton Friedman



Part I

Law and Entrepreneur



To sustain a business, entrepreneurs need to aware relevant legal provisions to their business.

Sometime they need to be good enough to manipulate the law !!

Entrepreneurs need to understand law in order to avoid loss!!!

Void and Illegal Contracts

Arumugam v Somasundram (1934) FMSLR 322 (High Court, Selangor)

The respondent, as the driver of a motor car owned by the petitioner, obtained judgment for \$90 in the Magistrate Court, Kuala Lumpur, being wages due to him by the petitioner for five months. Although this was only licensed as a private car, it was used, to the knowledge of both parties, for hiring purposes contrary to the provisions of section 44 of the Motor Vehicles Enactment 1928.

Held: Both parties in *pari delicto* and that the judgment of magistrate on the claim for wages must be set aside.

The Importance of Law

Law ensures that a business can be run, that everybody will have an equal opportunity, that there will be fair dealings and most important, the sustainability of the business.

Law as a guideline to entrepreneurs.

The Function of Law

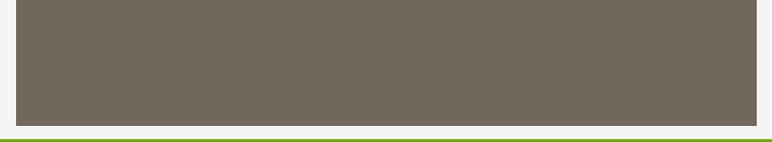
Law establishes rights, duties and privileges that are consistent with the values and beliefs of their society or its ruling group.

Law provides stability, predictability and continuity so that people can know how to order their affairs.

Law provides guidelines as what is right and what is wrong.

Law and Business Decision Making

- Business Decision Making
 - Contracts
 - Sales
 - Negotiable Instruments
 - Creditor's Rights
 - Intellectual Property
 - E-Commerce
 - Product Liability
 - Torts
 - Agency
 - Business Organizations
 - Professional Liability
 - Courts and Court Procedures



Part II

Business Law and Ethics

What is law?

Law is basically a set of rules that is enforceable in court.

There are many rules that we need to observe in our life. But if you break a rule with regard to your class you will certainly not be charged in court.

The Concept of Law

Law is the command of the sovereign authority in a society and backed by sanction.

Law is also known as the body of principles recognized and applied by the state in the administration of justice.

So ...

COMMAND

DUTY
TO
OBEY

SANCTION

LAW



What is Ethics?

Ethics is a standard of values that involve a concept of right and wrong, good and evil, and responsibility.

Perception?

The Difference Between Law and Ethics

Ethics is a standard of values that involve a concept of right and wrong, good and evil, and responsibility.

Law, however, differs from ethics where it normally does not associate with moral but recognized by the sovereign and enforceable in courts.

Law always associated with technocratic, bureaucratic, rigid and obligatory whereas ethics is more conscientious, voluntary choice beyond normativity.

Should the law be based on good moral?

You drive your car exceeding the speed limit. You do so because you want to save someone's life.

A police traffic stop you and give you a summon ticket. Thereafter you are charged in court for speeding and need to pay the fine for what you have done!!!

Should the law be based on good moral?

Cutter v Powell [1795] EWHC KB J13

The claimant's husband agreed by contract to act as a second mate on the ship the 'Governor Parry' on a return voyage to Jamaica. The voyage was to take eight weeks and he was to be paid on completion. A term in the contract stated:

"Ten days after the ship 'Governor Parry,' myself master, arrives at Liverpool, I promise to pay to Mr. T. Cutter the sum of thirty guineas, provided he proceeds, continues and does his duty as second mate in the said ship from hence to the port of Liverpool. Kingston, July 31st, 1793."

Six weeks into the voyage the claimant's husband died. The claimant sought to claim a sum to represent the six weeks work undertaken.

Held: The wife's action failed. Payment was on condition that he worked the ship to Liverpool, since he did not fulfil this condition the widow was entitled to nothing.

Tan Chye Chew v Eastern Mining & Metals Co Ltd [1965] 1 MLJ 201

The respondent entered into two contracts, one with the first appellant for the assignment of rights to prospect certain mining land including in an approved application for prospecting permit; and second with the second appellant for the payment of commission for the second's appellant's part in bringing about the first contract. It was alleged that the second appellant had shown to a geologist employed by the respondent some land which was later discovered not to be included in the approved application.

The trial judge found that the second appellant, with the knowledge of the second appellant, had knowingly and deliberately shown the wrong area, that the second appellant was guilty of fraud. And that the first appellant was liable therefor.

Hamlyn v John Houston & Co [1903] 1 KB 81

One side of the defendant's business as grain merchants was to obtain, by lawful means, information about its competitors' activities. Houston, a partner in the firm, obtained confidential information on the plaintiff Hamlyn's business by bribing one of Hamlyn's employees.

Held: The firm was liable for the loss suffered by Hamlyn.

The Difference Between Law and Ethics

Though law often embodies ethical principles, law and ethics are far from co-extensive.

Many acts that would be widely condemned as unethical are not prohibited by law – non-disclosure of mere facts in sales of goods, for example.

Sources of Law

- Primary Sources of Law

- The Malaysian Constitution and the Constitutions of the various states
- Statutory Law – including laws passed by Parliament, state legislatures, or local governing bodies
- Regulations created by administrative agencies such as the Food and Drug Administration
- Case law and common law doctrines

- Secondary Sources of Law

- Books and articles that summarize and clarify the primary sources of law, e.g. encyclopedias, treaties, articles in law reviews and compilations of law

Sources of Ethics

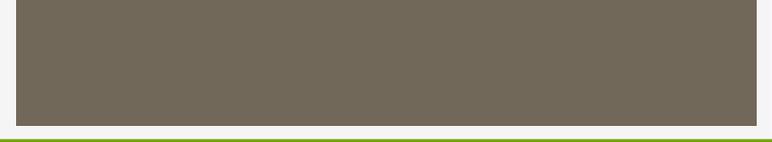
- Religion

- Religion is the oldest source of ethical inspiration. Religion gives an expression of what is wrong and right in business and other walks of life. The Principle of reciprocity towards another is found in religion. Religion preaches the necessity for an orderly social system and emphasize upon social responsibility with an objective to contribute to the general welfare.

- Culture

- Culture is the set of understandings that members of a community share in common. It consists of a basic set of values, ideas, perceptions, preferences, concept of morality, code of conduct etc. which creates distinctiveness among human groups. Culture differs from society to society and is passed from generation to generation.

- Law



Please read the case below.

Legal ..? Ethical ..?

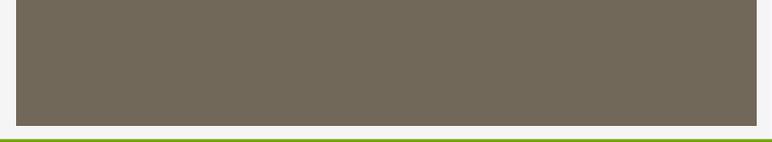
Airedale NHS Trust v Bland [1993] HL

Tony Bland seriously injured in the Hillsborough disaster, was being kept alive only by extensive medical care (not a life-support machine). He had survived for three years in persistent vegetative state (PVS). He continued to breathe normally, but was kept alive only by being fed through tubes. He had no chance of recovery; his doctors (with the support of his family) sought a declaration from the court that it would be lawful for them to discontinue treatment so that he might die peacefully.

Held: Treatment could properly be withdrawn in such circumstances, because the best interests of the patient did not involve him being kept alive at all costs.

In this case feeding him was treatment and that treatment would not cure him and therefore was not in his best interests.

It was lawful for D's doctors to stop feeding him artificially.



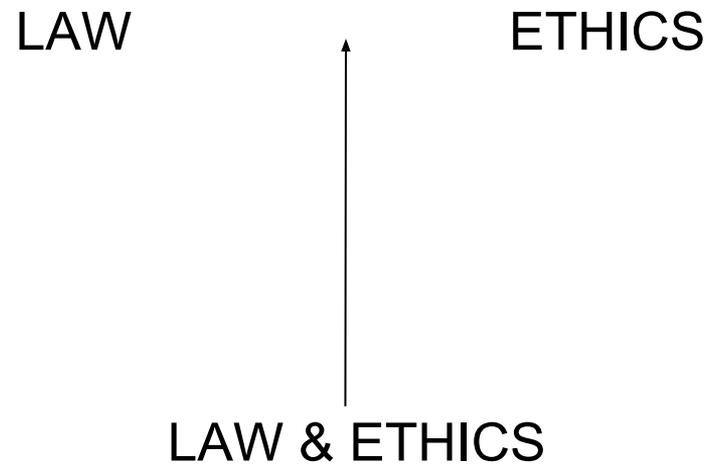
There are some situations where law and ethics share the same value.

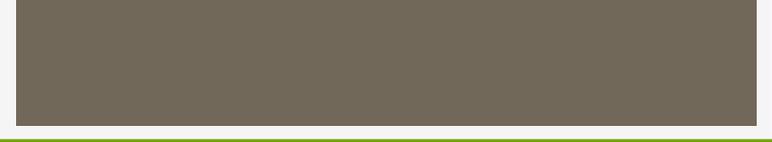
RELATIONSHIP BETWEEN LAW AND ETHICS

LAW

ETHICS

LAW & ETHICS





Part III

Malaysian Legal System

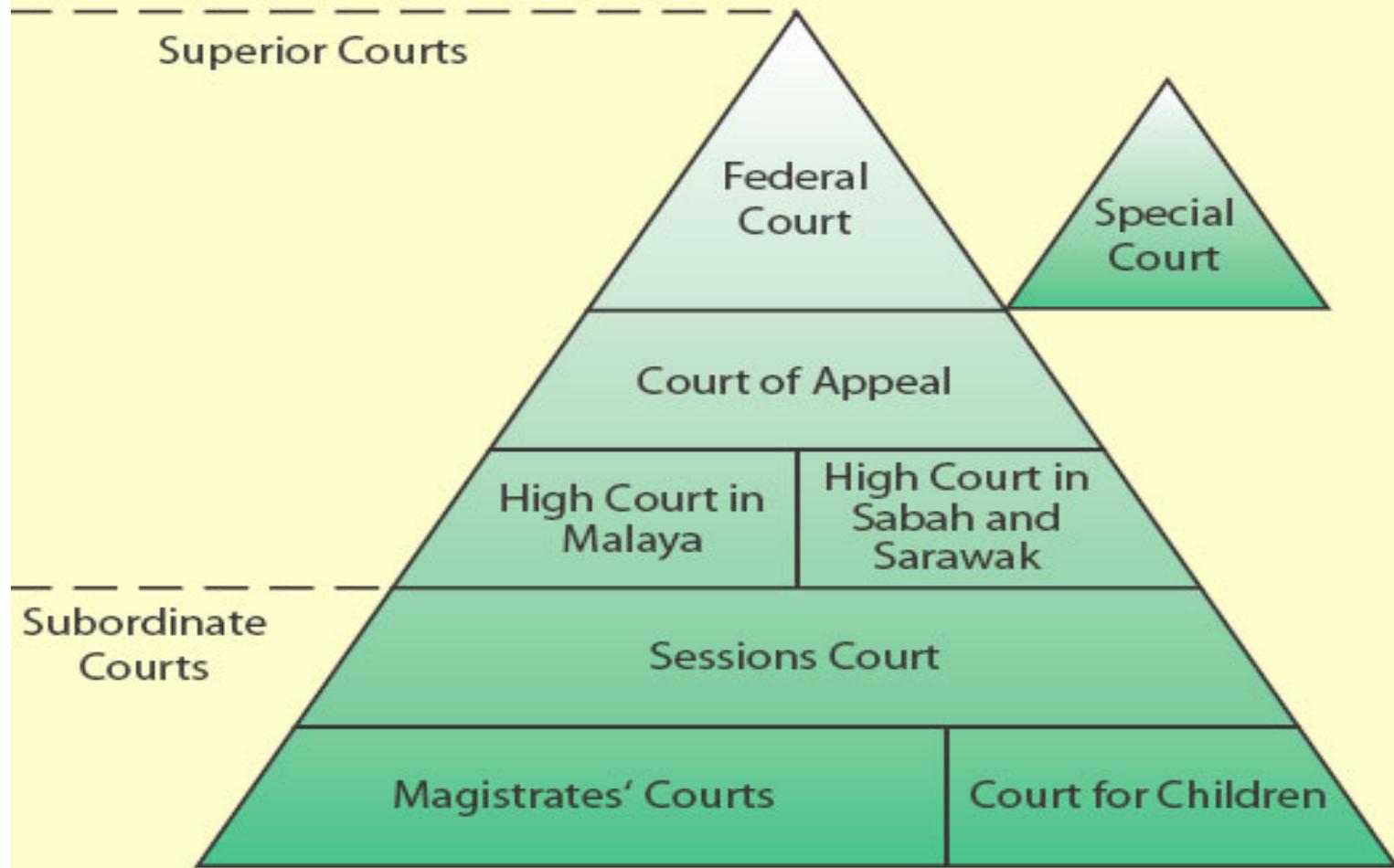
Sources of Law

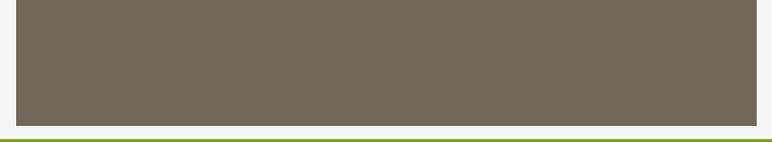
Primary Sources of Law

- The Malaysian Constitution and the Constitutions of the various states
- Statutory Law – including laws passed by Parliament, state legislatures, or local governing bodies
- Regulations created by administrative agencies such as the Consumer Protection (Electronic Trade Transactions) Regulations 2012, Trade Descriptions (Certification and Marking of Halal) Order 2011
- Case law and common law doctrines

Secondary Sources of Law

- Books and articles that summarize and clarify the primary sources of law, e.g. encyclopedias and articles in law reviews





Part IV

Laws for Entrepreneurs

What Does the Law Do?

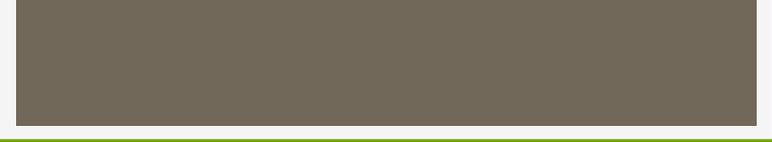
Law provides stability, predictability and continuity so that entrepreneurs know how to order their business affairs.

How?

How?

Abu sets up his new business to sell 'goreng pisang' at Sri Serdang. There are 10 entrepreneurs who are already in the same business. Pak Mat is the only supplier who provides banana in the area. You need to compete with other entrepreneurs to get the banana. At the same time you need to make sure that you achieve your target according to your business plan (RM24000.00 revenue in that particular year).

How can law helps Abu?



Contract !!

Business Start Up and Registration

You may consider to start up your business in the following entities:

1. Sole Proprietorship
2. Partnership
3. Limited Liability Partnership (LLP)
4. Company

Sole Proprietorship

Also known as enterprise or trading co.

The most common business model used by entrepreneurs.

The sole proprietor is the sole owner of the business, hence has a total control over the business.

The law that governs the business include Contract Act 1950 and Registration of Business Act 1956

Sole Proprietorship

The sole proprietor is fully responsible to his business.

He has all rights over business profits and be liable to business losses. His liability is unlimited.

The sole proprietor will be liable for the debts. If the business fails and sued, he will be personally liable and his personal assets can be claimed by his creditors to satisfy the debts.

Sole Proprietorship

Sole proprietorship business must be registered under the Registration of Business Act 1956 (ROBA 1956).

Application for the registration of the business must be made within 30 days from the date of the commencement of the business.

Failure to do so the owner can be fined not exceeding RM50,000.00 or imprisonment for a term not exceeding two (2) years or both.

Partnership

Also known as firm.

The second most common business model used by entrepreneurs.

Partners are the owners of the business, and have a total control over the business.

The law that governs the business include Partnership Act 1961, Contract Act 1950 and Registration of Business Act 1956.

Partnership

Partners are fully responsible to their business.

They have all the rights over business profits and be liable to business losses. Their liabilities are unlimited.

All partners are liable for the debts of the firm. If the business fails and sued, they will be jointly and severally liable to third party. Their personal assets can be claimed by his creditors to satisfy the debts.

Partnership

A partnership business in Peninsular Malaysia must be registered under Registration of Business Act 1956.

A partnership business in Sabah must be registered under The Trades Licensing Ordinance 1948.

A partnership business in Sarawak must be registered under The Business Names Ordinance (Cap 64) and Business, Professions and Licensing Ordinance (Cap 33).

Partnership

All partnership businesses should be registered within 30 days from the date of commencement of the business.

Registration can be done at any SSM counter or through online via Ezbiz Online services.

Please refer to Guidelines For New Business Registration.

Partnership

A person who carries on business without registering a business commits an offence under the ROBA 1956 and if found guilty be fined not exceeding RM50,000.00 or imprisonment for a term not exceeding two (2) years or both.

Limited Liability Partnership

Limited Liability Partnership (LLP) is an alternative business vehicle regulated under the Limited Liability Partnerships Act 2012 which combines the characteristics of a company and a conventional partnership.

An LLP has the legal status of a body corporate which is capable of suing and being sued in its own name, holding assets and doing such other acts and things in its name as bodies corporate may lawfully do and suffer.

Partnership

Registration of partnership business is required to enable the firm to sue or to enforce third-party obligations owed to the firm.

Limited Liability Partnership

LLP is featured with the protection of limited liability to its partners similar to the limited liability enjoyed by shareholders of a company coupled with flexibility of internal business regulation through partnership arrangement similar to a conventional partnership.

LLP also offers flexibility in terms of its formation, maintenance and termination while simultaneously has the necessary dynamics and appeal to be able to compete domestically and internationally.

Limited Liability Partnership

Unlike conventional partnership, an LLP should be registered by the Compliance Officer.

An application for the registration must be made to the Registrar of Limited Liability Partnerships ('Registrar') by the Compliance Officer.

Failure to register the limited partnership will render the firm as a general partnership and all partners will be deemed as general partners, with unlimited joint and several liabilities for the firm's debts.

Company

Company is another alternative business vehicle, and it could be private or public; limited or unlimited liability; limited by shares or limited by guarantee.

Company in Malaysia is governed by Companies Act 2016.

A company is incorporated from the date of incorporation stated in the notice of registration and is a legal person separate from its members, continues in existence until removed from register, and has all the powers of a body corporate.

Separate Legal Entity

This concept of separate legal personality has two consequences:

1. A company's property belongs to it and not to its directors, management or shareholders. Even if you are a sole director and a 100 per cent shareholder, you can still be found guilty of stealing from your own company. Liquidators and future owners will have an interest in pursuing claims for theft or misuse of assets where a company has been plundered by those in day-to-day control. Many a corporate swindler has been pursued through the courts for forgetting this basic principle.
2. A company is responsible for its own debts and liabilities. The shareholders and, as a general rule, directors cannot be forced to pay them.

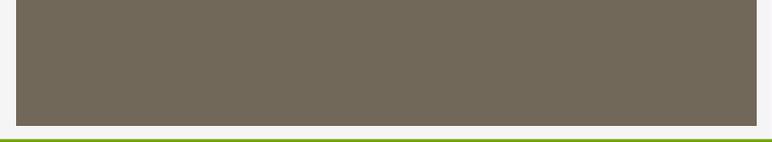
Separate Legal Entity

The second point is why 'limited' companies give their shareholders 'limited liability'. A limited company may be sued until all its assets have been exhausted, but no creditor can turn to the shareholders and ask them to meet any deficit. Once a company has received at least the nominal value of its issued shares (RM1 for a RM1 share, etc), the shares are 'fully paid' and the shareholder has no further liability. Shares may be issued 'partly paid': a RM1 share may be issued with 25 cents payable on issue and 75 cents at some future date or on an earlier liquidation. But once those amounts are paid in full, the shareholder has no further liability for the company's debts.

Company

A company must be registered with the Registrar of Companies at Companies Commission of Malaysia (CCM).

In *Sunrise Sdn Bhd v First Profile (M) Sdn Bhd & Anor* (1996) the court noted that in the eyes of the law, a company is considered as a legal person at the time it is incorporated/registered.



Part V

Selected Legal and Ethical Issues in Business

Contract - Legal Tricks

Entrepreneurs should have always alerted with some of the legal tricks. There are circumstances where entrepreneurs could lose their business due to the ignorance.

Some of the examples with regard to legal tricks are illustrated below.

Contract - Legal Tricks

Butler Machine Tool v Ex-Cell-O-Corporation [1979] 1 All ER 965

Butler Machine Tool Co Ltd made and sold machine tools. They sent a letter to Ex-Cell-O on May 23, 1969 offering Ex-Cell-O some new machinery for £75,535. With it, was Butler's standard contract terms. It included a price variation clause, so that if their manufacturing costs went up, that price rise would be passed on to Ex-Cell-O. Ex-Cell-O replied on May 27 and said they would order the machinery, but on Ex-Cell-O's own standard terms. Ex-Cell-O's standard terms did not have a price variation clause. Butler replied on June 5. It replied on the tear-off slip from Ex-Cell-O's terms. At the bottom of this slip it read, "We accept your order on the terms and conditions stated therein." But Butler added a letter reasserting that the deal was being made under Butler's own terms, from the May 23 letter. A while later, nothing further had been said, and Butler delivered the machinery. They asked for £75,535, plus £2,892 according to their price variation clause. Ex-Cell-O refused to pay the extra. Butler sued Ex-Cell-O

The Supreme Court held that the contract was on Ex-Cell-O's terms, and therefore the increase in price was ineffective.

Contract - Exemption Clause and Negligence

Chin Hooi Nan v Comprehensive Auto Restoration Service Sdn Bhd [1995] 2 MLJ 100

Chin Hooi Nan left his car with the defendant to be waxed and polished. When Chin came back to collect his car, he found that his car was damaged due to the negligence on the part of the defendant. The defendant tried to avoid liability based on an exemption clause written on the back of the receipt given to the plaintiff, which stated; “The company is not liable for any loss or damage whatsoever of or to the vehicle, its accessories or contents. Vehicle and goods are at owner’s risk”.

Held: The defendant could not rely on the clause due to negligence.

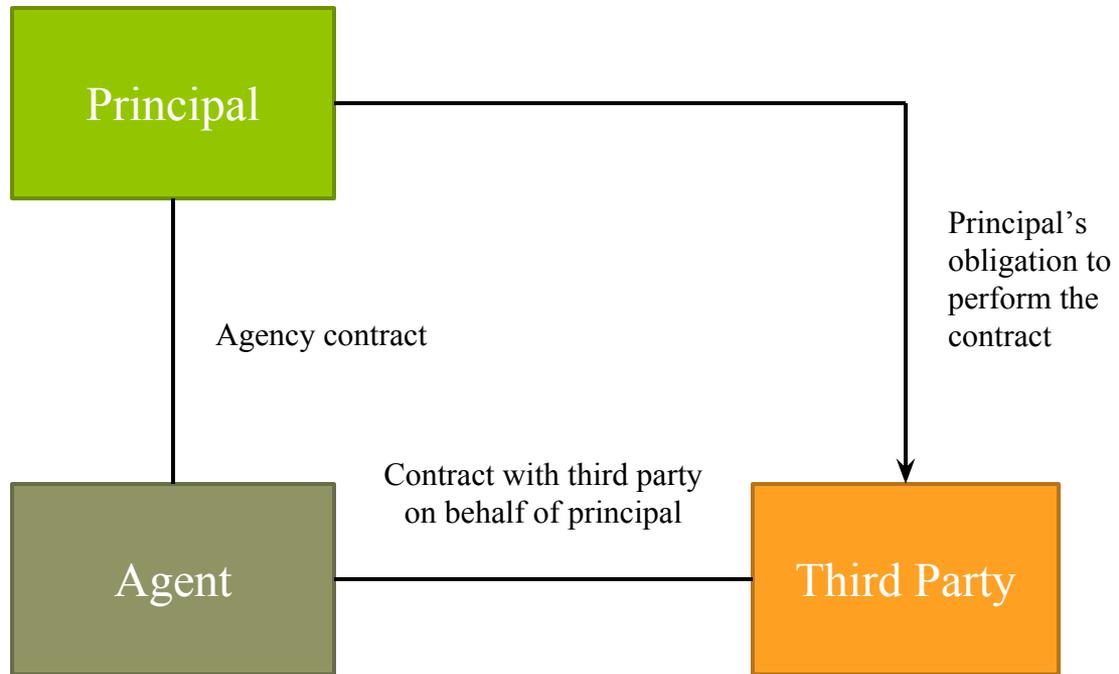
Contract - The Rigidity of the Law

Kau Daw Yau v Kim Nam Realty [1984] 1 MLJ 256

The Federal Court need to consider whether there was 'frustration' when a vendor found it difficult to fulfil his obligations in a contract for the purchase of land. The state authority imposed certain condition in the conversion of agricultural land into building lots. The vendor who was a developer had sold all the proposed lots prior to approval.

Held: The contract cannot be discharged and there was no frustration (as required by section 57(2) Contract Act 1950)

Agency



Principle of Agency in Partnership Business

Every partner is an agent for the firm and his other partners for the purpose of the business of the partnership; and the act of every partner who does any act for carrying on in the usual way business of the kind carried on by the firm of which he is a member bind the firm and his partners, unless the partner so acting has in fact no authority to act for the firm in the particular matter, and the person with whom he is dealing either knows that he has no authority or does not know or believe him to be a partner

Section 7 Partnership Act 1961

Sale of Goods

Issues always arise who will bear the risk of loss in cases where the goods loss or damage after a valid contract has been made.

Example

A makes a contract to sell his computer to B. While delivery, A involves in an accident and the computer was totally broken.

Who bears the risk of loss? A or B?

Risk of Loss

In reference to the common law principles, the risk of loss will be with the party who held the title of the goods.

Example

If I own a car the risk of loss will be unto me, not the other person.

I am the person who is responsible to the car if the car is damaged. Other person cannot be forced to repair my car simply because it is mine.

Risk in Goods

Risk prima facie passes with property.

Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not.

Section 26 SOGA 1957

Halal Business - Fraud and Negligence

“The authorities found the bakery used a releasing agent that did not have halal certification, that its halal certification had expired and the floor was dirty”.

The Star On-Line 14 September 2006

Halal Business - Fraud and Negligence

Silver Bird's Crisis

“Somehow in Sept 2006, Silver Bird's Nilai factory created the buzz in the consumer and media news when it was uncovered that particular factory was using non-halal cooking oil and was operating in unhygienic conditions. That crisis had cost the company its reputation, not to mention losses in sales. It posted a net loss of RM18.25 million for the first quarter ended Jan 31, 2007 which among other things inclusive of its operation start-up losses in Singapore as well”.

Finance Twitter 27 September 2007

Halal Business - Fraud and Negligence

“Dindings Poultry (a local chicken meat producer) also was sued for not ensuring that its products were Halal, and this suit was settled for RM100 million (NST 2006)”.

Golnaz Rezai, et. All. (2009). Economic and Technology Management Review, Vol. 4, 65–73

Long-term impact expected for Cadbury over porcine-tainted chocolates



Sales of the hugely popular Cadbury chocolates in Malaysia and around the world may be affected for "a very long time" as a result of loss in public confidence over recent findings of porcine DNA in their chocolate bars.

Although only two products are affected in the controversy, overall sales decline would be felt across the board for the entire range of Cadbury's products, especially in Malaysia, according to a halal industry insider.

"The halal and haram issue is of paramount importance for many Muslims, especially so in Malaysia," said Kamarul Aznam Kamaruzaman, managing editor of H Media, a Malaysian halal publishing company.

He cited the case of High 5 bread maker, the Silver Bird Group which languished in years of financial turmoil as a result of dwindling sales over halal non-compliance in early 2008. The said company never fully recovered till today, remaining in the red over the past six years.

"Similarly, Cadbury's bottom line may be affected for a very long time. Such is the power of halal in Malaysia, it can make you, but it can also break you," Kamarul added.

Earlier, the Islamic Development Department (JAKIM) suspended Cadbury's Halal certification for the two types of tainted chocolate bars, the Cadbury Dairy Milk Hazelnut, with batch number 200813M01H I2 that expires on November 13, 2014, and Cadbury Dairy Milk Roast Almond, with batch number 221013N01R I1, that expires on January 15, 2015.



Kraft Foods Inc.

Twelve of the company's iconic brands – including Cadbury, Jacobs, Kraft, LU, Maxwell House, Milka, Nabisco, Oreo, Oscar Mayer, Philadelphia, Tang and Trident – generate revenue of more than US\$1 billion annually.

Meanwhile in Singapore, the city state's Agri-Food and Veterinary Authority (AVA) said today that the Republic did not import the implicated batch of Cadbury brand products.

Nonetheless, they will be checking similar Cadbury products available in Singapore's market "to ensure that the ingredients used in the manufacturing of the products are truly as declared under the statement of ingredients".

Consumers to Sue

Amidst the growing calls for Muslims to boycott Cadbury chocolates, an NGO called Jaringan Melayu Malaysia (JMM) said it will be suing Cadbury Confectionery Malaysia for RM100 million in damages for "misleading Muslims" by producing products with porcine DNA.

"This is a malicious lie and has to be contained. Among the Muslims, this is a great insult... such products should not be produced at all," said JMM president Azwanddin Hamzah.

He said JMM would partner with legal aide group Sukaguam to proceed with their legal action and are pursuing action under Section 50 of the Consumer Protection Act.

"We want to close down Cadbury if possible," he said. "They shoved pork in our mouths, and then apologise later. They have huge labs and yet, they keep giving the same excuses and just apologise. To me and other Muslims, this is not enough," he said.

Azwanddin also trained his guns at both JAKIM and the Health Ministry, accusing them of delaying the official announcement after the porcine DNA was detected as early as February.

"There may be some leakages in JAKIM, I don't want to make any accusations but I encourage consumers to also sue JAKIM," he added.

Law and Ethics

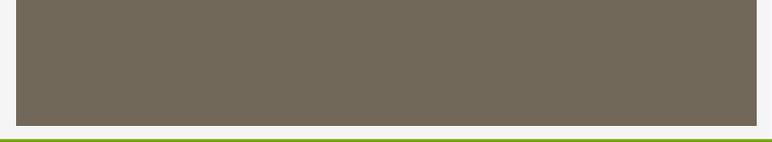
Law alone is not enough to ensure the performance of promises made in legally binding contracts because the law is a narrower field than business ethics and developed to address particular issues. Law has due process that enables rights and obligations to be decided and also provides remedies for the victim and sanctions for the offender.

Law and Ethics

In ethics, there is no due process equivalent but rather rely upon other factors such as moral standards and the philosophies of businesses that justify them such as trust and honesty which is the basic elements of all business operations upon entry into contract. Loss of reputation is an important sanction for unethical behavior.

Law and Ethics

Law and ethics are the two elements that entrepreneurs need to closely observe in their businesses. Without complying to the law you might be sued in court but if you ignore the ethical requirements in your business you might suffer for the whole of your life !!!



Part VI

Conclusion

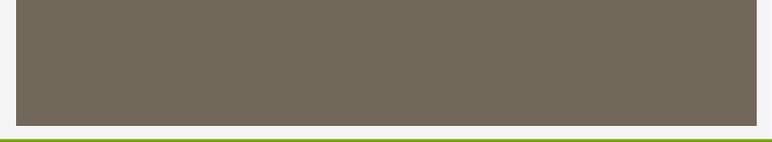
Law or Ethics?

Observing the legal requirements is very important if an entrepreneur wants to have a sustainable business.

However, observing the legal requirements alone is not enough. An entrepreneur need to also observe the ethical values in his/her business.

“A corporate executive ... has direct responsibility to conduct business in accordance with [shareholder] desires ... [i.e.] to make as much money as possible while conforming to their basic rules of the society, both those embodied in law and those embodied in ethical custom”.

Milton Friedman



Thank you !