

CHAPTER TWO: WHAT IS LAW?

Law is a system of rules, guidelines and regulations set by the state to safeguard human life and their properties and to prevent crime. Law is considered to be the official regulations and rules set by the government to control the behavior of its subjects in the society and it is used as preventive methods of fighting injustice and criminal activities of members of the society. Laws are found in constitution, Judiciary and legislation. So laws are created to maintain and establish order in the society.

SOURCES OF LAW IN MALAYSIA

Written laws are laws which have been endorsed in the federal constitution. It is a law that specifically written down in the constitution and it is the highest law of the land. All the state members are obliged to follow that rules and regulations. If any person or group of the society violates the law will be punished or penalized.

UNWRITTEN LAWS:

Unwritten laws are laws which are not existed in any statutes and can be found only in case decisions. Unwritten laws are laws that are not passed and not found in the constitution. It comprises of English law (Common Law), judicial decisions, Muslim laws and Malay customs.

WHAT IS CONSTITUTION?

In Malaysia, Constitution is the supreme laws of the country. It is the champion of basic and individual's rights. It is a set of very important principles and it is regulated by the state. They called written laws because they are categorically written in the federal constitution as a valid and approved set of legal document. These laws simply cannot be changed, unless by 2/3 majority of the law makers.

WHAT IS CYBER LAW?

Cyber is a prefix describing a person as part of information age. Cyber law refers to the laws of the internet. Cyber law protects individuals, governments and organizations from the infringements of their information. It also protects the security and integrity of information, Protects intellectual property, verifies and legalizes online transaction and lastly protects the confidentiality of information. Cyber law deals with:

Computers and Internet

Networks

Websites

Storages

Software

Email

Phones and ATM machines

DO WE REALLY NEED CYBER LAW?

Scholars such argue that the content of cyber law is contentious among researchers. However, many researchers are of the view that the content of cyber law includes individual privacy, technology transfer, e-government, commercial transaction and most importantly intellectual property. Beside this cyber law or law of the internet also has a direct impact on the traditional aspect of our laws such as contract, business regulation, privacy law, communication process, global trade, consumer protection, health aspect of the society, banking, criminal law and finally security law

One may ask do we really need cyber law as a distinct law or as a legitimate legal field? According to Bagby, (2002) there will be time that cyber law will converge into traditional law especially in the area of commercial transactions. Based on this view point cyber law will melt with the traditional law and slowly cyber law will disappear from transaction. As such the law of the internet is just temporarily being used and soon will disappear. Second view according to Bagby, (2002) is that cyber law becoming so complicated and developed that traditional field of the law somehow cannot accommodate online activities such as e-commerce.

Time will come that traditional law cannot respond sufficiently to the information explosion of cyberspace anymore. Cyber law then becomes so sophisticated that it is beyond the capacity of traditional law to deal with the cyberspace transaction anymore. Cyber law then emerges as a distinct and dynamic field of the law for the cyberspace.

'Cyber law should therefore remain a very appropriate area of inquiry irrespective of the evolutionary or revolutionary nature of cyberspace regulation. ... Irrespective of the evolutionary or revolutionary approach society takes to Cyber law, the Internet offers disruptive change of sufficient magnitude to assure continuing interest by students, academics, managers and policymakers.' says Bagby, (2002)

Reference: (***Introduction: Cyber law: A Forward (Special Issue on Cyber law) by John W. Bagby, 39 Am. Bus. L.J. 521 (Summer, 2002)***)

Despite sophistication and invention in information technology, our system is bound to crash under merciless attacks from cyber criminals in real time. If strong measures are not in place, our information integrity, personal address, authenticity of our documents and even the availability of needed information will be under threat by criminals. The need for cyber laws is extremely important to protect our system and fight and punish cyber criminals. We need cyber laws to safeguard our information system from illegal activities and misuse. We need cyber laws to define offences and implement appropriate punishment for the offenders.

We need cyber laws to protect us while doing transactions online. We need cyber laws to do business on line without fear of being cheated. We need cyber laws to protect us from:

Cyber crime

Protect our intellectual property

Protect our copyrights

Make our business safe online

Describe penalties for the crime

Describe offences

Protect our communications

Protect our activities online

Protect our computers from hacking

Protect us from pornography

Protect us from unlawful transfer of electronic fund.

The following Acts are in place to protect online users from cyber criminals:

- 1 Copyright Act 1987
- 2 Official Secrets Act 1972
- 3 Companies Act 1965 (Act 125)
- 4 Trade Marks Act 1976
- 5 Patents Act 1983
- 6 Digital Signature Act 1997
- 7 Computer crimes Act 1997
- 8 Telemedicine Act 1997

DO WE NEED CYBER LAW?

1. Prevent Cyber Crime
2. Protect Copyrights
3. Protect Intellectual Property
4. Make e-business safe online
5. Save Money and time
6. Paperless society
7. To facilitate ICT System
8. Describe Offences
9. Describe Penalties
10. Protect communications
11. Define multimedia activities
 - (a) Theft by hacking
 - (b) Funds transfer fraud
 - (c) Pornography
 - (d) Internet cash fraud
 - (e) Credit card fraud.

WE DO NOT NEED CYBER LAW:

Consider several of the best-known examples of regulatory failure in the online environment:

(1) the expanding access to pornography, (2) stalking, (3) infringement from peer-to-peer file

sharing (e.g, popular music, videos/films, textual works, images), (4) gambling and settlement of gambling debts, and (5) tax evasion (e.g, sales and use taxes). The expansion of cyberspace activity has permitted each of these regulatory failures to fundamentally change rights, legal protection and duties. In each instance, the legal and technological responses to date are weak.

Reference: *(Introduction: Cyber law: A Forward (Special Issue on Cyber law) by John W. Bagby, 39 Am. Bus. L.J. 521 (Summer, 2002)*

CONCLUSION

In sum, the future of Cyber law will depend at least in part on how the tension between evolutionary and revolutionary forces is reconciled. The revolutionary method would start from scratch to build a new Cyber law for cyberspace. This resulting Cyber law could be a minimalist Internet exceptionalism that embraces libertarian ideals largely exempt from law in the traditional space. Alternatively, the revolution could create a complex, new system, largely unique to cyberspace. Of course, some middle-ground or hybrid could result between the extremes of minimalism and unique complexity.

Reference: *(Introduction: Cyber law: A Forward (Special Issue on Cyber law) by John W. Bagby, 39 Am. Bus. L.J. 521 (Summer, 2002)*

HOW TO PREVENT CRIME?

1. Install Hardware-Software
2. Identify weak points of your system
3. Make security policies and procedures
4. Use passwords with letters and numbers
5. Risk management training
6. emergency response centre
7. Make backups

WHAT IS CYBERSPACE?

Cyberspace refers to a virtual global interaction between real people using interconnected information technology infrastructure, telecommunications and interlinked computer processing systems. Unlike traditional or convectional space which occupies a tangible and observable space such as a house, an office, printing companies, internet providers and

telecommunication companies, cyberspace does not have a tangible space to measure. As thus, when millions of interlinked computer networks such as websites, individual Computers, Networks, Data storage, software, TV, Email, Electronic devices, fixed Phones, hand phones and ATM machines communicate to each other through one virtual universe, that electronic space of communication is considered to be cyberspace. As such, Cyberspace is a virtual electronic means of interlinked networks which instantly communicate to each other in real time with real participants.

Cyberspace is extremely useful for the exchange of scholarly information and billions of goods are traded every day in virtual global markets. It is astonishing to note that traders in the virtual global supermarkets do not need to apply for any governmental licenses, any handling and hidden charges, shipment charges and most importantly custom duty. It is like real people, real world of opportunities and borderless countries. Cyberspace is for all without discrimination. As thus, cyberspace deals with more on global social interaction rather than technicalities and formalities. The interaction in cyberspace happens between real people with real intention of influencing each other in order to gain a well-mannered living.

INTERLINKED NETWORKS FORMS CYBERSPACE:

Websites, individual Computers,

Networks, Data storage

Software, TV, Email

Electronic devices

Fixed Phones

Hand phones

ATM machines

Computers and digital information has made a fundamental changes in our lives. Information technology has changed the way we think about space and physical and geographical locations are now redundant and no more relevant. As thus, in order to understand cyberspace well, we have to understand the challenges that technology had brought to us. Today cyberspace has become a place of virtual social interaction that billions of real people exchange useful ideas with each other hopping to gain intended benefit. So Cyberspace is the world without any border.

Cyberspace simply means if you want anything, from auction to real property, from hot to cold drink, you can find it in a blink of an eye. If you wish to travel from Mongolia to the *Kalahari desert* of south Africa, you can reach it in a fraction of a second. If you desire to know and compare cultures and customs of the world noticeably Republic of Dagestan in Russia and that of Calcutta in India, I am not kidding, you are done. In brief, most of human beings activities are spent in the cyberspace rather than physical space. It is so real that people learn in cyberspace, get PhD, teach in cyberspace, play their favorite games, make research and discoveries, hunt for jobs and make money in cyberspace. As thus, cyberspace is very important. <http://www.starcourse.org/cybernavts/whatiscyberspace.htm>)