

HELP STUDENT LAW JOURNAL

The HELP Student Law Journal is a law publication by students of the Department of Law, HELP University, Malaysia. The aims of the HELP Student Law Journal are to act as an incubator of knowledge and ideas, and to promote legal writing and legal thinking amongst students.

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FOREWORD BY THE DEAN
FACULTY OF LAW AND GOVERNMENT, HELP UNIVERSITY



It gives me great pleasure to write this message for the HELP Student Law Journal 2010. I am very proud to note that this will be the third publication of the journal. The HELP Student Law Journal 2010 is the testament to the hard work and dedication of the students of the Faculty of Law and Government. The journal is entirely student led and run and is the first of its kind amongst private universities in Malaysia.

The HELP Student Law Journal is an incubator of knowledge and ideas and serves as a platform for our students to articulate legal arguments on topical areas of the law. We inculcate in our students legal research, writing and editing skills from an early stage of their undergraduate studies.

The Faculty of Law and Government is at the forefront of private legal education in Malaysia. We believe Innovation is the Fuel of Excellence. The faculty continues to enhance its teaching and learning systems through case studies, problem-based learning, peer teaching, debates and research projects where students are challenged to think critically and develop cogent arguments. These legal arguments are then concretized and published by our students in the student law journal.

We nurture first class achievers and groom employable lawyers. I am confident the HELP Student Law Journal will become an important forum for our law students to engage in legal scholarship.

P. Vasantha
 Dean, Faculty of Law and Government

FOREWORD BY THE EDITOR-IN-CHIEF



It is by no means an easy feat to undertake the publication of a student law journal. An attention to detail is crucial and I have come to find that determination is the driving force behind accomplishment. Having overcome the chaos that comes with the territory of my post as Editor-in-Chief, I am relieved and proud to finally present the HELP Student Law Journal 2010.

The publication of this law journal was a tremendous team effort and so I write this mainly to applaud the aplomb of my Editorial Board members.

A special thank you goes out to Jason Low. I can honestly say that without him and his relentless good work, this 2010 edition would not have come to be.

I would also like to take the opportunity to express my gratitude to Shim De Zhen, and the other members of the 2010 Editorial Board who have done an outstanding job. Your contributions are greatly appreciated.

Also to the contributors, I am grateful for and impressed with the articles authored. Keep up the good work and may you succeed in your endeavours. As Malcolm Gladwell says, 'Talent is the desire to practice.'

Liyana Aini binti Mohd Tajudin
 Editor-in-Chief
 HELP Student Law Journal

ONE MAN'S HOLY GRAIL, ANOTHER'S HERESY



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Much of human history has been dominated by rules, defining boundaries of right and wrong, regulating everyday life and protecting the weak from the strong (and sometimes vice versa). These rules draw a relatively clear line between what is moral and what is immoral. Though the specifics of rules vary from society to society, there has always been a common need for a body or branch to interpret those rules and apply them to factual situations. The law is no different. It defines the boundaries of the legal and illegal, and regulates everything from birth to death and beyond.

It is commonly stated that the judiciary merely interprets and applies the law rather than make it. However, even in that act of interpretation and application, laws are coloured by the minds of judges deciding upon them. Furthermore, a gap in the law will inevitably be filled by the judiciary. Even rules which are supposedly well-established may fall prey to reinterpretation, overruling or modification. Try as they might to leave the law intact, the judiciary shapes it with every judgment they make. It is also necessary for the judiciary to interpret the law - as pointed out by the third element of A.V. Dicey's Rule of Law which states, 'General principles of the constitution (as for example the right to personal liberty, or the right of public meeting) are with us the result of judicial decisions determining the rights of private persons in particular cases brought before the courts'.¹

¹ AV Dicey, *Introduction to the Study of the Law of the Constitution* (8th edn, Liberty Fund Inc 1915).