

# LAA 3064 MOOT/MOCK AND PLACEMENT

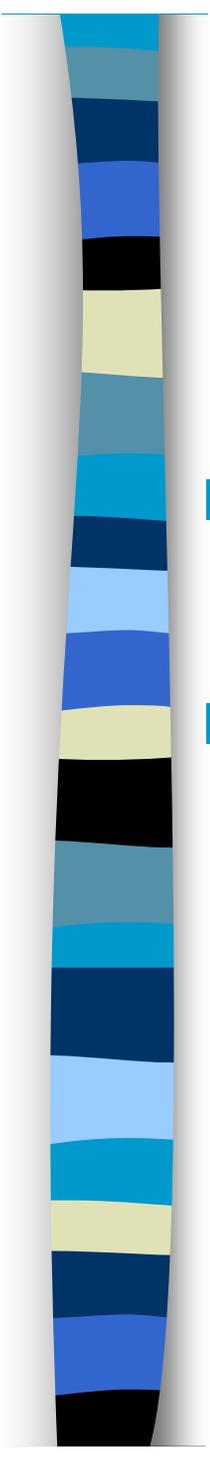
## CONTEMPT OF COURT





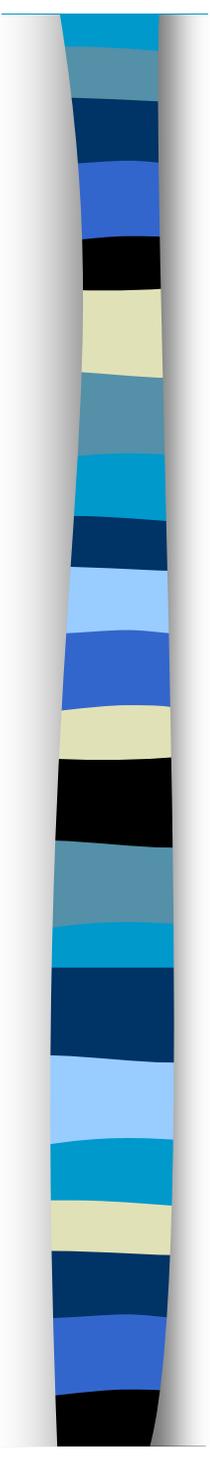
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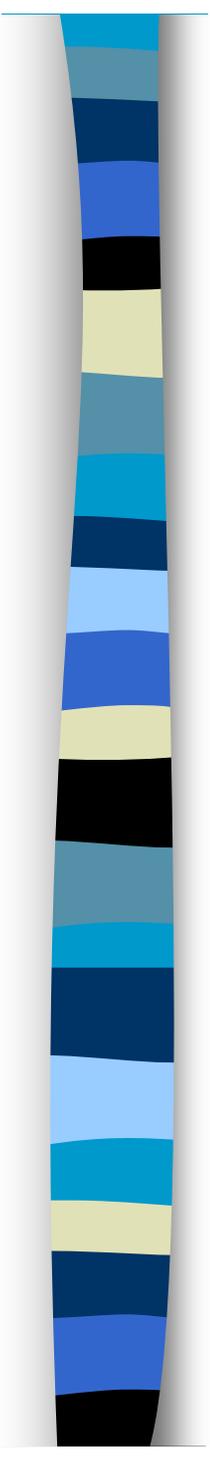
# Introduction

- It is important for the protection to all, judges, parties, witnesses and the public.
- Any act done or writing published which is calculated to bring a court or a judge into contempt or to lower his authority or to interfere with the due course of justice or the lawful process of the court.



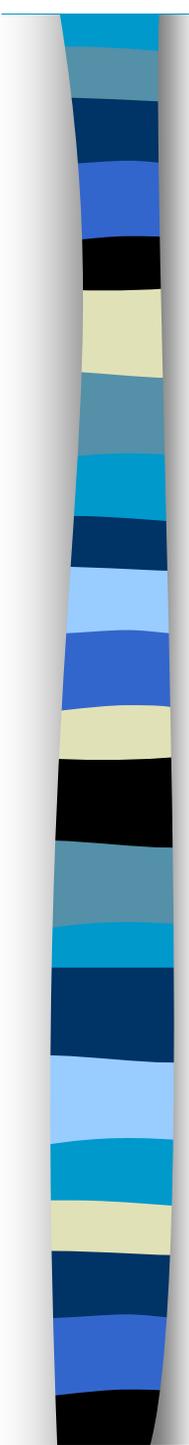
## Definition.

- Contempt of court or *contemptus curiae*.
- Any conduct that tends to bring the authority and the administration of the law into disrespect or disregards or to interfere with or prejudice parties, litigants, their witnesses during the litigation.
- The above definition does not postulate *mens rea* such as intention or knowledge or even reason to believe to accompany the act. However criminal contempt may require element of *mens rea*.



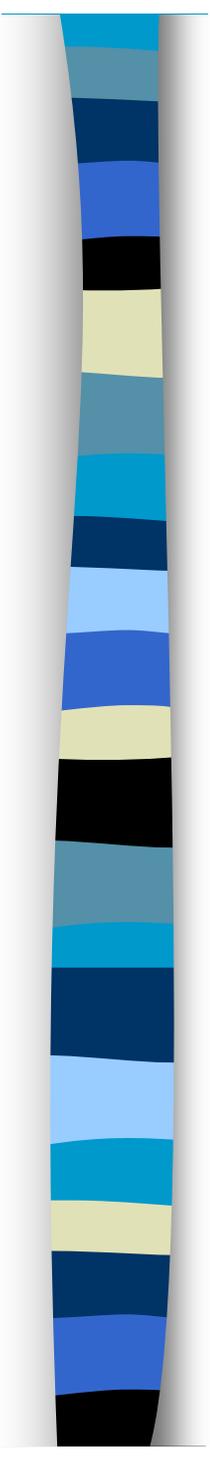
## Cont...

- Courts, in dealing with the contempt case should maintained by taking the utmost care that it is not used on occasions or in cases to which it is not appropriate.
- It would be better for the judge to refer any misconduct to the DB rather than they are punished for contempt of court.
- A contempt can be in any form, any act, any slander, any contemptuous utterance, or can be the subject matter of any news, report or article or it may be an act of disobedience of court's order.



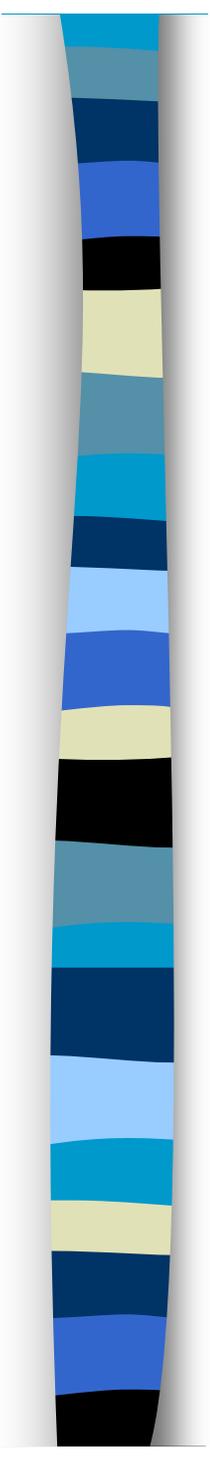
# Categories of Contempt

Criminal Contempt	Civil Contempt
<p>Contempt in the face of the Court-In the course of proceedings.</p> <p>Contempt in scandalising the court or judge in judicial capacity-</p> <p>Subjudice comment</p>	<p>Disobedience to court's order, injunction and etc.</p> <p>Breach of undertakings.</p>



# CIVIL CONTEMPT

- Involves private injury.
- If a solicitor has given an undertaking and failed to perform it his conduct will be regarded by the court exercising disciplinary jurisdiction over its officers as a civil contempt.
- Similarly disobedience to the court's order may amount to civil contempt.
- The vital ingredient in civil contempt is that he must have acted as an officer of the court in carrying on legal proceedings.



# Disobedience to Court Order

- Lawyer must be careful when advising the client when the decision is made. They must obey the decision till the order is set aside.
- Seldon V Wilde- Refusal to comply with an order of taxation and application for an attachment . It was held that it amount to civil contempt.



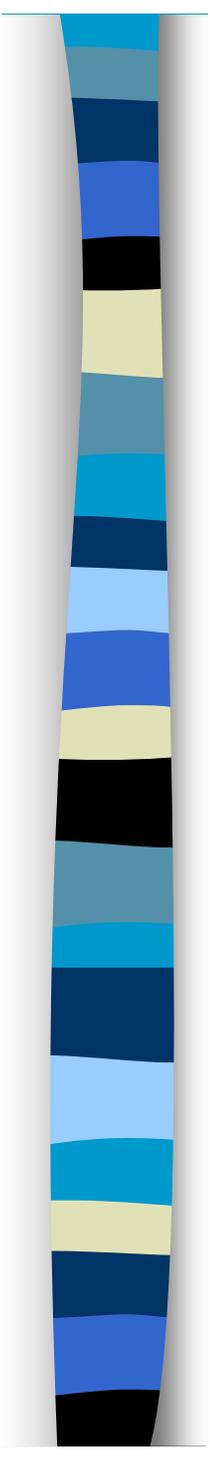
## Cont....

- Disobedience of an injunction (Permanent or temporary) such as mareva injunction and any other order such as anton pillar order may amount to civil contempt. Provides that proper notice is proper issued and the compliance is impossible.
- MBF Holdings BHD V Houg Hai Kong- Injunction to refrain the defendant from printing, circulating, distributing and publishing any allegation of impropriety or illegality against the Plaintiff.
- If failed to comply with a written undertaking by him



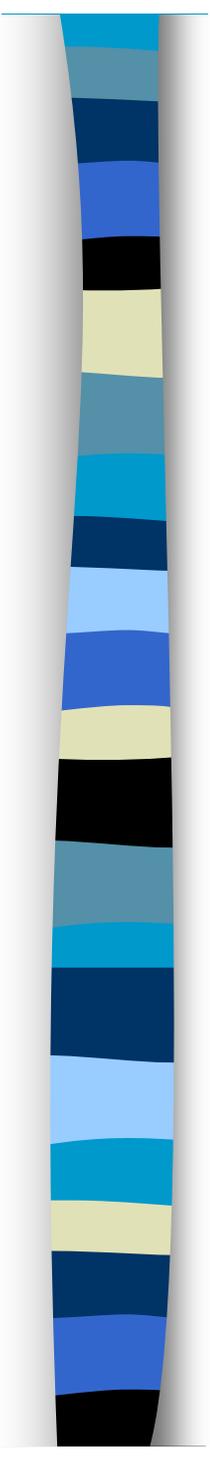
# Criminal Contempt

- It is punishable by attachment and it is granted for the purpose of preventing a breach of law and maintaining discipline of the court. Disobedience by a solicitor to an order of court made against him amounts to contempt of court.
- Deliberate reason for insulting the court.
- Re TT Rajah- The lawyer alleged that the court was not interested in justice and the court running the proceedings for British.



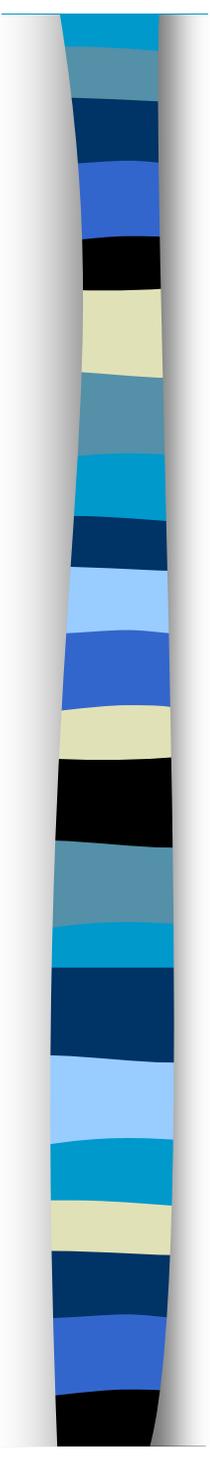
## Cont...

- Re Zainur Zakaria. Being counsel for DSAI he contended that the charge against his client was a conspiracy because of :- 1) Decision to prosecute is not bona fide 2) the charge is false. However the court viewed the allegations were serious and ordered him to provide proof. He gave letters and affidavit to the court. Court did not find any substance of the allegations and asked him to retract his statement. He refuse and was held contempt .
- R 9A-Allows an A&S shall by all means to undertake the defence. R 16- Duty to uphold the interest of the client.



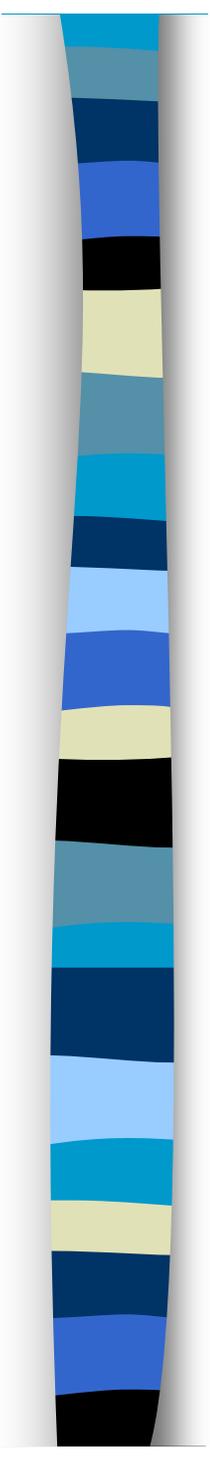
## Disobedience to Court's order.

- Interfering with the due administration of justice.
- Strict Approach
- Re Freston- Order to pay a certain sum and to deliver certain documents. The Court held that it was a criminal contempt and an attachment was granted.



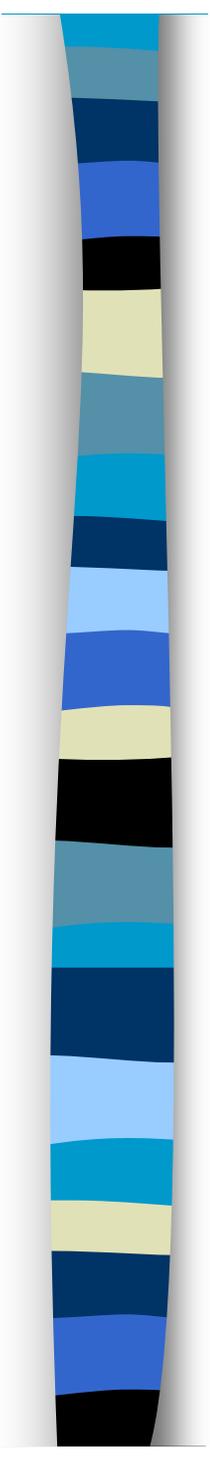
## Cont..

- Liberal Approach
- Ram Goswamy v pp- solicitors applied to discharge from representing his client but refused by the judge. The solicitor declined to carry on. COA held that such conduct did not amount to contempt and interference of justice.



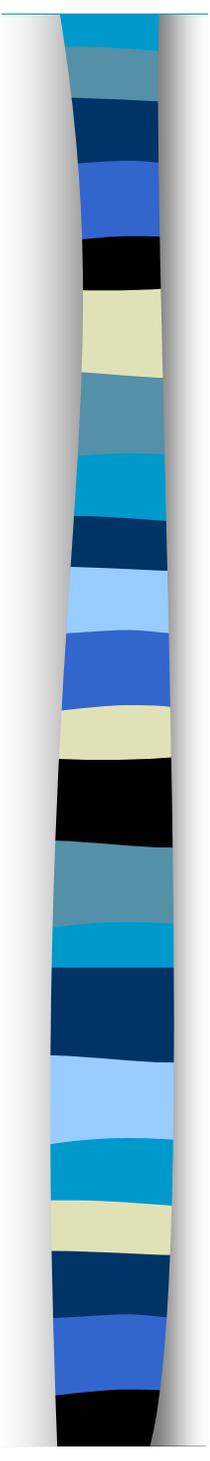
## Cont...

- The use of violence such as an assault in complying with the Order may amount to contempt of court.
- Re Clements- Court's order to inspect document at the solicitor's office but the officer was abused and assaulted by the solicitor. The court found that the solicitor was contempt.



# Deception to Court

- Deceiving the court may amount to contempt.
- R V Weisz- The solicitors cited fictitious case was found for contempt.
- Dr Leela Ratos v Anthony Ratos- mislead the court into granting an adjournment.
- Cheah Cheng Hock v PP- The Court had power to punish for contempt for forging or altering court documents or committing other deceits. Penalty imposed was too harsh and be varied to RM1,000.00 or 3 months jailed in default of payment.



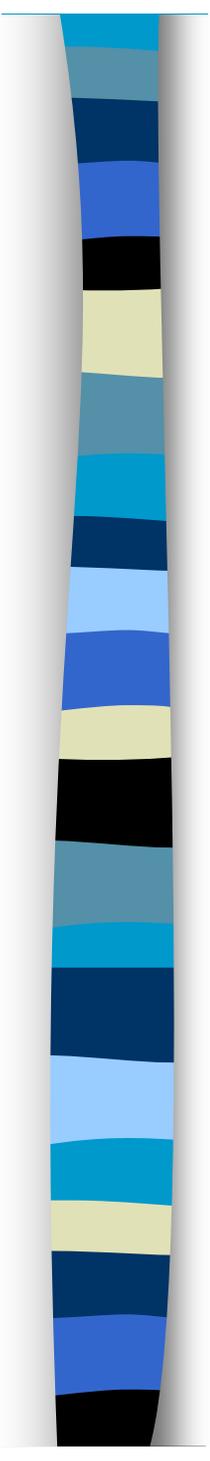
# Offensive conduct in Court

- Offensive personal conduct in the court.
- Such words or actions that would interfere or tend to interfere with the course of justice.
- Solicitor must restrain the use of his language and temper his use of words. Otherwise it may be regarded as a deliberate challenge to the authority of the judge and an interference with the administration of justice.
- If he has a complaint the solicitor must use the legitimate means.eg through bar committee.



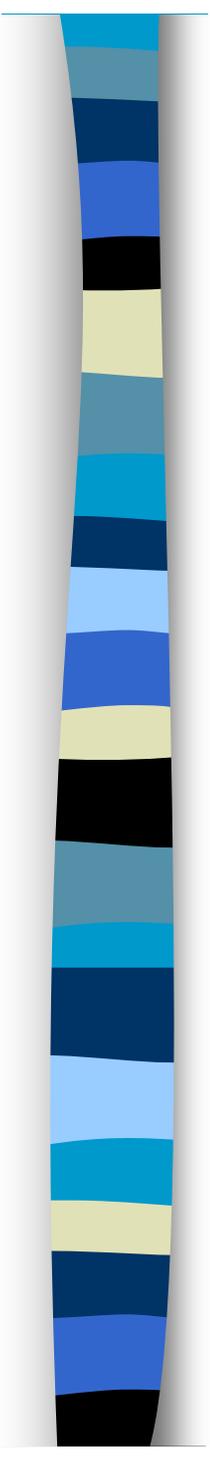
## Cont....

- Re Kumaraendran- Abdool Cader J: the solicitor shouted at the president of the sessions court was held guilty of criminal contempt.
- Karam Singh V PP- learned magistrates summarily committed the counsel to imprisonment. R.Azlan Shah set aside the conviction.
- Tarnishing of the image of justice will amount to contempt if there are proper channels for redress.



# Absence from Court

- The solicitor must attend the court at the date of hearing. Breach of duty to clients.
- There must be intention to interfere with the administration of justice. *Izoura v R*.
- *Lai Cheng Chong v P*-The counsel's failure to attend the hearing had prima facie interfered with the administration of justice but since the counsel had apologized to the Court there was no contempt.



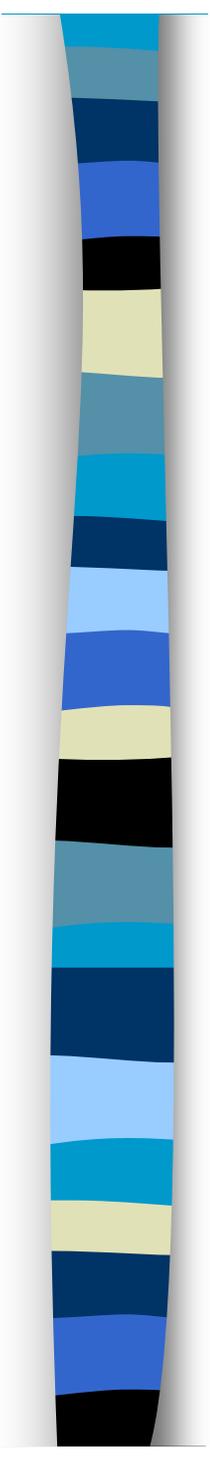
## Cont.....

- Re John Tan Khee Eng-the solicitor was held to be in contempt of court after several failure to attend in court.
- If the solicitor is able to give good reason such short notice to attend the court, there will be no contempt. *Weston v Central Criminal Court Court's Administrator*.



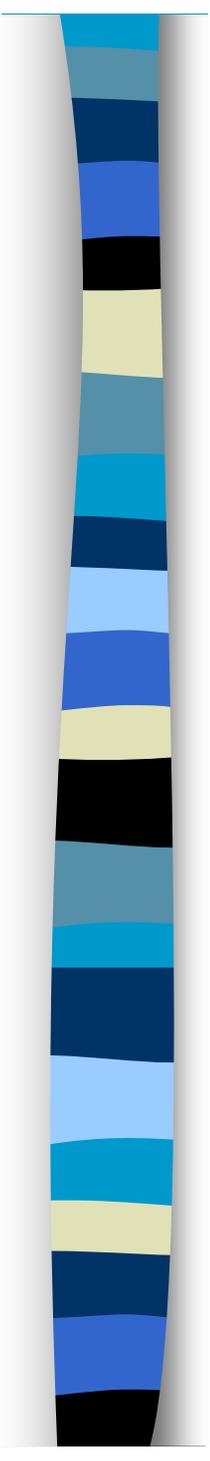
# Acting Without Authority

- The lawyer who acting without jurisdiction.
- For eg. A&S who does not have certificate of peguam syarie cannot represent his client in syariah court.
- Peguam syarie who are not qualified to be admitted as A&S cannot represent case in Civil court.



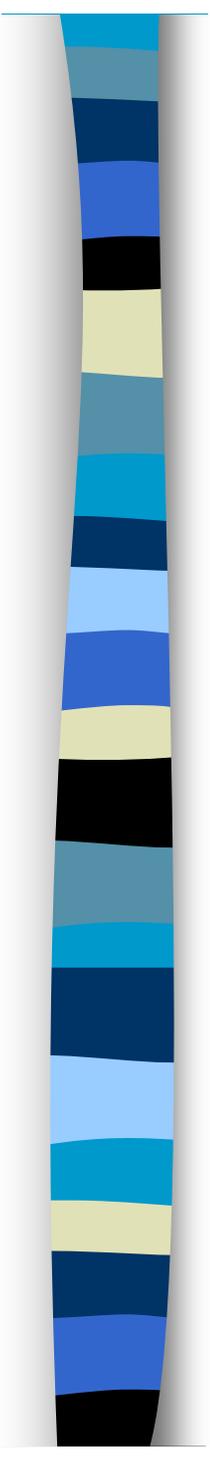
# Offensive Conduct Outside Court

- It is not contempt in the face of the court.
- Contempt in scandalizing court or judge.
- Publication of comments on any case if amount to Sub judice and undermining judicial determination of the truth may tantamount to criminal contempt.
- A criminal case remains sub judice until expiration of the time allowed for appeal.



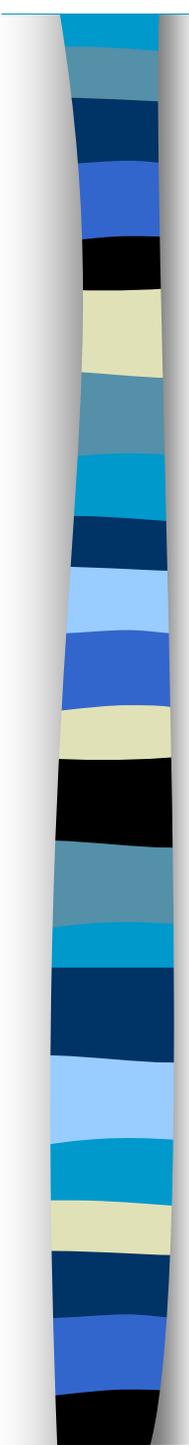
## Cont...

- Interference in the form of public criticism
- PPv Seeralan S/O Suppiah- Publicity- stating that magistrate is not independent and bias.
- AG V Arthur Lee Meng Kuang- Contempt in scandalizing court or judge. Criticized the decision made by the Supreme Court and alleged that the decision was biased and unjust.



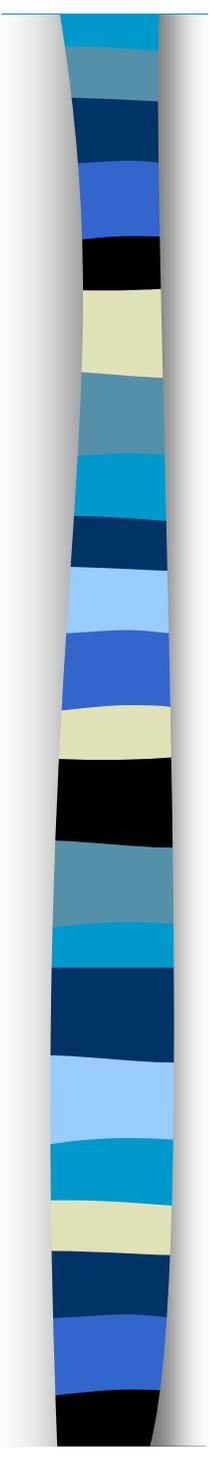
## Cont...

- Trustee of Leong V SM Idris & Anor- Issuing press statement criticizing the judgment .
- AG V Manjeet Singh Dillon- Criticism in affidavit that the CJ is unfit to be the Lord President.
- Any criticism must be given within the the ambit reasonable courtesy and in good faith.
- Subjudice- Cheak Yoke Thong v pp.- lawyers should refrain themselves from briefing the press on matters pending before the court. The lawyers are bound by Rules 45, 46, 47.



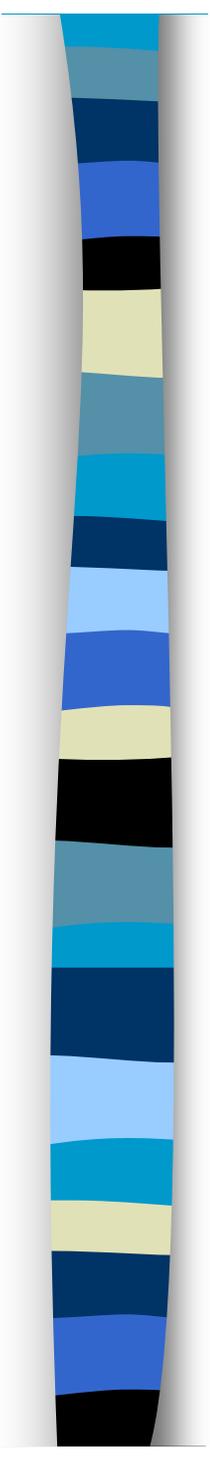
# Difference Between Criminal and Civil Contempt

Criminal	Civil
<ul style="list-style-type: none"><li>• Punishable by attachment. Punitive in nature.</li><li>• Marks an interference with the administration of justice.</li><li>• Element of mens rea</li></ul>	<ul style="list-style-type: none"><li>* Compensatory in nature</li><li>• Remedy for loss resulting from disobedience to an order of court.</li><li>• Element of mens rea is not necessary to be proved.</li></ul>



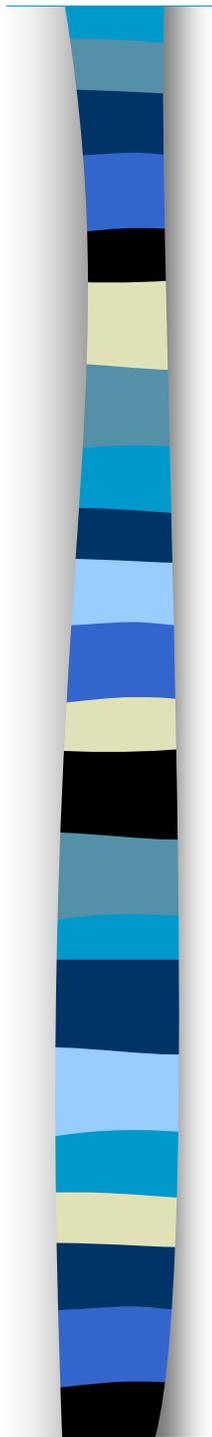
# Procedure for Contempt

- Promptly- Malaysian Bar v Tan Sri Dato' Abd Hamid-should be reasonable.
- Specify the nature of the alleged contempt.
- Give reasonable opportunity to be heard.
- The power to punish should be rarely to be invoked. Really necessary.

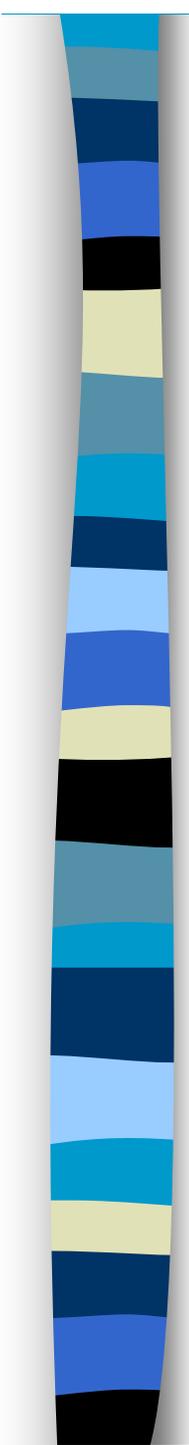


# Contempt In Syariah Court

- S220 (1) Syariah Civil Procedure Code Enactment 1991- if contempt in face of the court, no need to serve notice to show cause. The person has the right to be heard.
- Other cases of contempt notice to show cause need to be served personally.
- S 221- imposing of fine.
- S 222- power to suspend, vacated or varied the punishment
- S 223- contempt by corporation.
- S224- proceedings without authority.

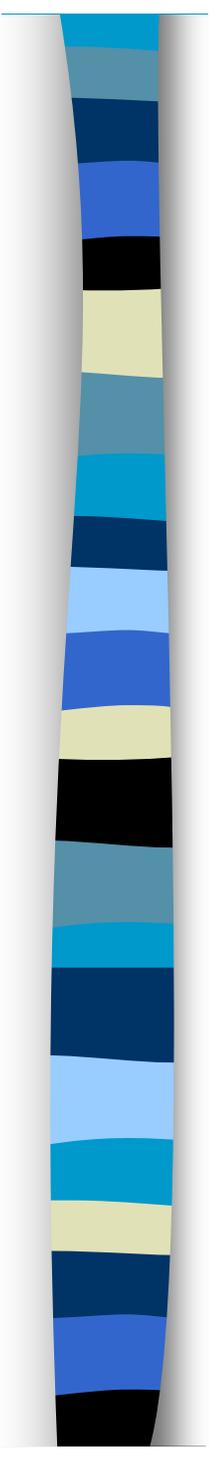


- Isteri pertama Ariffin Mohamad atau Ayah Pin, Che Minah Rameli, 58, semalam memfailkan permohonan menghina perintah mahkamah terhadap Pentadbir Tanah Besut, Permohonan difailkan di Mahkamah Tinggi kira-kira 11 pagi oleh peguam Che Minah, Haris Mohamed Ibrahim. Dalam permohonan itu, Che Minah turut menamakan Penolong Pentadbir Tanah Besut, Mohd Iskandar Muhammad Aziz, sebagai responden kedua. Che Minah adalah pemilik tanah yang menempatkan 'kerajaan langit' ajaran sesat Ayah Pin yang terletak di perkampungan



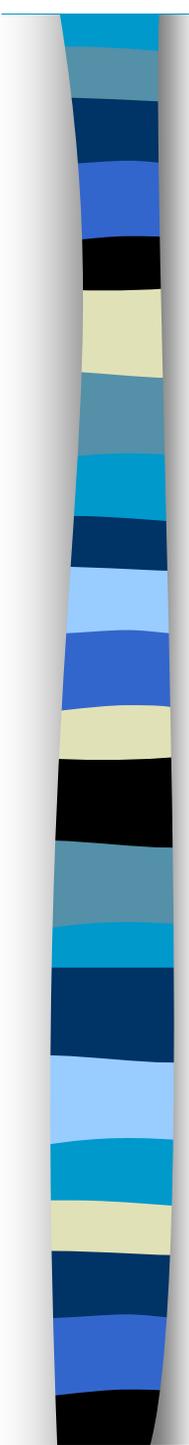
# Comparison of Contempt in Syariah and Civil Court

Civil Court	Syariah Court
<ul style="list-style-type: none"><li>• Punishable by attachment. Punitive in nature. *Compensatory in nature</li><li>• Marks an interference with the administration of justice.</li><li>• Courts of Judicature Act 1964 and RHC 1980 Order 52 Rule 1.</li></ul>	<p>No clear provision on contempt of court.</p> <p>No exact definition and interpretation on law of contempt.</p> <p>Punishment might be punitive and compensatory.</p> <p>Syariah Civil Procedure Code.</p>



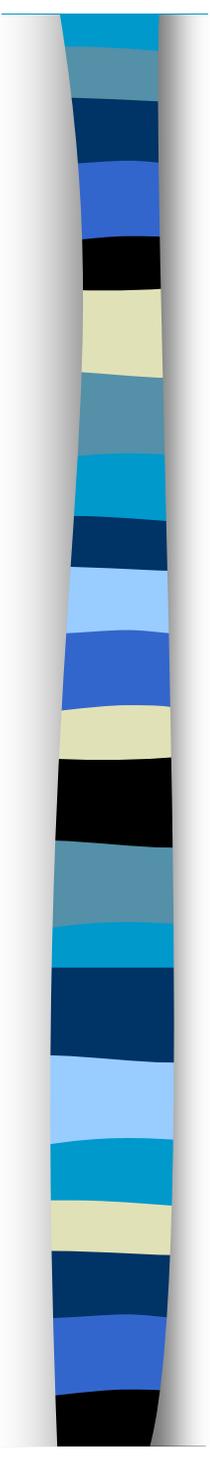
# Conclusion

- Contempt of Court can be defined as any conduct that tends to bring the authority and the administration of the law into disrespect or disregards or to interfere with or prejudice parties, litigants, their witnesses during the litigation.
- There is no clear rules on the law of contempt in the syariah court.
- Lawyers should avoid any contemptuous offence whether inside or outside the court in order to maintain the public confidence on the legal profession.



# Required Reading

- K.J. Aiyar's, *Law of Contempt of Courts, Legislatures and Public Servants*, The Law Book Company Ltd, India, 1997.
- Tan Yock Lin, *The Law of Advocates and Solicitors in Singapore and West Malaysia*, 1991 MLJ
- Ravi Neko, Professional Practice.
- Relevant cases.
- Relevant statutes such as LPA 1976, LPPER 1978, PSRS 1991 and etc



Thank you

“contemplus curiae.”