Chapter Three

The Law Regulating Student Discipline in Malaysia

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In Malaysia, the written Federal Constitution is the primary source of law governing the system of education.¹ The Federal Constitution sets out the legal rights and obligations of all citizens as it represents the supreme law of the country.

Article 4(1) of the Federal Constitution reiterates that even though inconsistency may arise as to which law is more significant, it remains the supreme law of the federation and any law passed after independence which is inconsistent with its provisions shall to the extent of the inconsistency be deemed to be void. Hence, in this respect, the doctrine of constitutional supremacy is clearly laid down in the Federal Constitution.

Historically, the British colonial administration ruled the country for a number of years. The British presence had an impact on the development of the law in what was then known as Malaya. As a consequence, the common law exerts a significant influence on the legal system in Malaysia.

Since Malaysia achieved independence from the British on August 31, 1957, the principles of the common law have been duly recognized and accepted as an integral part of Malaysian law. For the past fifty years, Malaysian judges have exercised wide discretion in importing English common law, equity, and statutes into the legal system when there is a lacuna in Malaysian law. In cases involving litigation in schools, the judiciary has applied English common law in a wide scope.

Among the fundamental liberties guaranteed by the Federal Constitution that are relevant and applicable to school law, in particular, student discipline are equality before the law and equal protection from the law; the right to receive an education; freedom to profess, practice, and propagate religion;