An Overview on Issues Related to Fallen Trees in Malaysia

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ABSTRACT

Construction development in Malaysia consist of various development aspects. Among the areas of development is green area, on which various trees were planted or left untouched in its development. Considering the climate of this country, where heavy rainfall and storm is a common, a number of damages caused by fallen trees were reported. This research is meant to look at legal issues related to trees in Malaysia, rights and responsibilities attached to it as well as improvement that can be made. The extent of compensation and insurance coverage, if any, need to be understood in order to ascertain whether such protection available is sufficient to cover for any damages. As such, it is important to identify and examine the Malaysian legal position on trees, together with relevant rights and responsibilities that ensues. Further, the understanding of the public on the rights and responsibilities over damages caused by fallen trees will be explored. At the end of the research, a conclusion can be drawn on the extend of legal responsibilities and compensation can be claimed for fallen tree cases, as well as the understanding of the public on their rights over the matter.

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INTRODUCTION

Construction development in Malaysia nowadays include the development of greenery areas and trees. Putrajaya, one of the biggest planned city in Malaysia was planned as a garden city. Various trees were planted or left untouched in its development. According to Roberts, Sally A. [5] it is almost beyond comprehension that something which appears as simple, lovely and majestic as the everyday common tree could involve so many complex legal issues. Tree law encompasses a number of general categories:

1. Boundary & Border Line Trees
2. Trespassing Cases
3. Cases Involving Roots
4. Real Estate Cases
5. View Cases
6. Municipality and Public Highway Cases
7. Utility Company Cases
8. Easements and Rights of Way
9. Negligence Cases
10. Safety-Related Cases

Tree law cases can be fascinating, and many involve several subject areas. For example, some cases concerning roots also involve the same issues as those of border, boundary line and trespassing cases. Trespass cases can arise when a party takes the law into their own hands by performing trimming or actual removal operations. According to O’Brien, Michael and Hanemann, Stephen [3] a fallen tree owner can be held liable under tort law if it can be proven that he neglect proper maintenance of the tree. according to the state of Louisiana Civil Code article 2317.1: The owner or custodian of the thing is answerable for damage occasioned by its ruin, vice, or defect, only upon a showing that he knew or, in the exercise of reasonable care, should have known of the ruin, vice or defect which caused the damage, that the damage could have been prevented by the exercise of reasonable care, and that he failed to exercise such reasonable care. Thus, to establish liability for
damage caused by a defective thing (ie—a fallen tree), the property owner must demonstrate that the tree owner should have known, in the exercise of reasonable care, of the defective tree that caused the damage, that the damage could have been prevented by the exercise of reasonable care, and that the tree owner failed to exercise such reasonable care. Caples v. USSA Ins. Co., 806 So.2d 148, 150 [1].

Apart from fallen trees, damages may also be inflicted by the root of the trees [2]. Tree roots are often blamed when buildings sustain damage. The legal basis of tree root claims is usually nuisance. This is not nuisance in the usual sense, but a specific branch of the law of tort, another branch of which is negligence. A tree root claim founded on negligence would face the difficulty that damage to buildings is generally held to be economic loss which is not usually recoverable in a negligence action. In contrast, the tort of nuisance specifically relates to the interference with occupation and enjoyment of land; indeed the claimant has to have an interest in the affected land in order to bring an action. Many property-related claims are brought in nuisance, for example the claim in Hunter v Canary Wharf concerning interference with TV reception. As well as proving their interest in the land, a tree root claimant has to show encroachment by the defendant's tree roots, and prove damage caused to their property by the roots.

The rights and responsibilities over trees not only imposed onto individuals. Lindsey, Sue [2] illustrated this by referring to the American case of GUINAN V. OTTAWA (CITY), where the decision of Justice J. MacKinnon of the Ontario Superior Court, dated February 26, 2010, confirms that the common law nuisance principles that apply to private landowners, also apply to municipalities. It is therefore possible for a municipality to be found liable for private nuisance. According to Roberts, Sally A. [5] there are various reports and issues related to trees. To certain extend, issues related to trees may resulted in injuries to body and property. The PetalingJaya City Council (MBPJ), for instance, has awarded RM148,245 to claimants from 2009 to 2011, for various cases in Petaling Jaya, involving damage to vehicles going into potholes, trees falling on private property in a storm and children hurt at playgrounds.

Citing the above report by MBPJ, a mere RM148,245 was awarded to claimants for a period of 3 years, for various incidents, which include fallen trees. Isthere any reason why compensation awarded for damages caused by fallen trees are low in numbers. Isit possible that the Malaysian public are not aware of their rights to claim compensation for fallen trees?Or the low compensation awarded for damages caused by fallen trees is the result of limitation and restriction of the existing laws available. Referring to the above, a research on the understanding of the Malaysian public on issues related to trees and responsibilities for damages caused by fallen trees is to be conducted to address the issue. Accordingly, this research is meant to look at legal issues related to trees in Malaysia, rights and responsibilities attached to it as well as improvement that can be made. The extent of compensation and insurance coverage, if any, need to be understood in order to ascertain whether such protection available is sufficient to cover for any damages. As such, it is important to identify and examine the Malaysian legal position on trees, together with relevant rights and responsibilities that ensues. Further, the understanding of the public on the rights and responsibilities over damages caused by fallen trees will be explored.

Methodology:

The research will adopt quantitative and qualitative research method in the form of questionnaire survey and documentary review. In achieving the objectives of the research, suitable methods have to be adopted. The selection of methods must take into consideration various factors such as monetary, logistic, time and others. Accordingly, documentary review is selected as one of the research method. The application of documentary review will expose the legal problems related to trees, available legal provisions to the effect as well as rights and responsibilities of the parties involved. Various acts, government documents, reports and other documents will be reviewed in achieving the purpose.

Questionnaire survey will be deployed in understanding the extend of local councils’ rights and responsibilities over damages caused by fallen trees in particular in Peninsula Malaysia, as well as the relevant laws and available protection with regards to damages caused by trees within their jurisdiction. The questionnaire will provides data on the existing laws practised by the local councils on incidents involving fallen trees, to what extend they will be responsible for such incidents and the procedures for claiming for damages caused by fallen trees. The respondents selected will be local councils and government agencies who is dealing with matters related to trees, landscape and law. The relevant agencies involved are local councils in Malaysia, Perbadanan Putrajaya and Jabatan Lanskap Negara. With reference to Perbadanan Putrajaya (PPJ) or Putrajaya Corporation (PJC), it is a local authority which administrates the Federal Territory of Putrajaya. Putrajaya, being planned as a garden and intelligent city, where 38% of the area is reserved for green spaces by emphasising the enhancement of natural landscape provides relevant avenue for the research. PPJ is responsible for public health and sanitation, waste removal and management, town planning, environmental protection and building control, social and economic development and general maintenance functions of urban infrastructure. Under the same nature, Jabatan Lanskap Negara will also provides valuable information on legal problems related to trees. Accordingly, the agency is also selected as part of the respondents for the research. Further, questionnaire survey
is also required to get the understanding of the general public on damages and compensation available for incidents involving fallen trees. The public will give indications on the extend of their rights to claim for damages caused by fallen trees.

Conclusion:
This paper is an overview on issues related to damages caused by fallen trees and available compensation available for such incidents. As Malaysia is a country experiencing heavy rainfalls and storms, fallen trees is a common incident. Despite various reports on damages caused by fallen trees, compensation awarded for such cases can be considered low. Is there any reason for this? Accordingly, the relevant issues and further direction for a study in the topic is laid by this paper. A research methodology in carrying out the research is drafted, with the intention of unearthing the root of the problem. This research will clearly illustrate the applicable laws, rights and responsibilities over trees in Malaysia. The related parties, both the local authorities and the public have to understand the rights and responsibilities when such incident happened. Significantly, it will expose the situation in Malaysia with regards to the issue. Further improvements can be proposed to better the problems.

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REFERENCES