

**FORENSIC ANALYSIS OF CHEMICAL ADDITIVES AND STATUTORY INGREDIENTS
STANDARD: A CASE REVIEW OF PUBLIC PROSECUTOR V PENGURUS HONG
TRADING & CO**

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ABSTRACT

Food labelling and compliance with ingredient standards is an important concern in the Malaysian market, as it is vital to ensure consumers' rights to being informed about the food they consume for their health and protection. The aim of this paper is to discuss the legal and ethical consequences of failure to comply with food ingredient standards as set out in domestic legislation. Violating the standards will not only damage customer confidence but may also create legal issues about the criminal liability of manufacturers. This research is based on the case review of Public Prosecutor v Pengurus Hong Trading & Co [1985] 1 MLJ 366, which discusses the cases related to tea products that was alleged to contain prohibited coloring matters under the Sale of Food and Drugs Ordinance 1952. The heart of the controversy in the case is whether or not the law actually means that no coloring matter at all is to be added. In this case review, the paper points to the use of the principle of statutory interpretation called 'ejusdem generis', which limited the effect of the law to those substances that are detrimental to the human body. This study seeks to highlight the need for clarity in the wording of legislation and the compliance of products with standards, with the ultimate goal of creating transparency and accountability of the food manufacturer, ensuring the rights of consumers are always respected.

Introduction

Food safety laws are a crucial component of the protection of consumers against harmful substances, and are also a critical element in ensuring that all food products sold in the market meet the legal requirements. The composition, quality and acceptable additives of food products are regulated in Malaysia by the Sale of Food and Drugs Ordinance 1952 and the accompanying regulations. The main objectives of food regulations are to protect the consumer's health, increase economic viability, and facilitate fair trade of foods, within and between nations. Basically, food safety regulations involve general principles for three stakeholders, which are public authorities, food establishments, and end consumers. The public authorities play an important role to enforce food safety laws while food manufacturers have the obligations to implement the legal standards and take all reasonable precautions and practices to avoid failure (Halim et al., 2024).

Conflicting interpretations can occur regarding the regulations, especially with regard to the use of food additives like colouring substances. In *Public Prosecutor v Pengurus Hong Trading & Co* [1985] 1 MLJ 366, the question of interpretation of provisions in the Sale of Food and Drugs Regulations 1952 as to the use of colouring matter in tea were discussed. The laboratory test showed that the tea products sold were contaminated with colouring substances, Tartrazine and Ponceau 4R, this led to the charging of the accused who is a tea manufacturer. The question before the court was whether the relevant regulations banned all colouring in tea or just those which were detrimental to human health.

This case is important in the practice of statutory interpretation as it illustrates how the principles of interpretation can be used to interpret the actual meaning of a law. In this case, the *ejusdem generis* rule. The court's ruling offers guidance on the interpretation of food regulations and underscores the need to balance consumer protection with effective enforcement of regulations.

Sale of Food and Drug Ordinance 1952

One of the earliest legislations that has been passed in Malaysia to control the sale, preparation and distribution of food and drugs is Sale of Food and Drugs Ordinance 1952. The ordinance was introduced to ensure that the consumers will not be subjected to the market of adulterated, contaminated, unsafe or misleading food and drug products. This ordinance was based on the social legislation growing in the 19th century, and applied the concept of strict criminal liability. This type of strict liability is an effective tool for government to ensure that statutory standards are obeyed and provide protection for consumers against overwhelming producers (Sonarajah, 1985; Meng, 1996; Russell, 2001).

The primary intent of the ordinance was to ensure that food and drugs sold to the public were safe, of acceptable quality and properly labelled. It also granted the legal powers to the government to take action against those manufacturers, importers and sellers who fail to meet the food safety requirements. It gave official laboratory analysis to authorised health officers the legal power to enter commercial premises, to remove from any premises goods found to be suspicious and to take samples for official laboratory analysis.

This was an ordinance banning the use of harmful materials or ingredients in food products which would be harmful to human health. It also took up a variety of matters including food adulteration, false description, misleading advertisements and the sale of unstandardised products. It explicitly prohibited the use of toxic chemical preservatives and industrial dyes, not used for food, that were often added to make food look better.

Later, the ordinance was the basis to build a more detailed food law in Malaysia such as Food Act 1983 and Food Regulations 1985, which are still in effect today for food safety and quality standards. Unfortunately, the modern practice does expose consumers to unapproved, substandard and dangerous medicines categorized as unregistered, counterfeit and adulterated medicines which may instead have adverse effects on their health (Katap et al., 2009). The 1952 Ordinance established the foundation, while the subsequent 1983 Act extended the ideas to deal with current complexities in the supply chain, innovative packaging and international trade.

Summary of The Case

The case summary of Public Prosecutor v Pengurus Hong Trading & Co is an example of a conflict of statutory interpretation in relation to the standards for tea ingredients under the Sale of Food and Drugs Regulations 1952. The central question raised in the law was whether the words "or other matter for facing" in Regulation 3(v)(ii) meant that there was an absolute ban on the use of any colouring material in tea, which is what the prosecution had argued. The prosecution argued that the phrase "other matter" should be construed as any substance whatsoever. But the High Court did not buy this contention, rather following the principle of statutory interpretation called the ejusdem generis rule. Judge Eusoff Chin said that general words that follow specific words describing poisonous substances, like Prussian blue and lead, should be interpreted as describing substances of the same class or category, which is in this case substances that are harmful or hazardous to the human body.

The court also highlighted that both Tartrazine and Ponceau 4R are included in the list of permitted food colourings in regulation 18 and schedule A. The use of these authorised colourings cannot be considered a contravention of the Ordinance as the use of tea is permitted under Section 2 and so the use of the colourings is permitted. In addition, the court looked to the intent of the legislature by looking at other products such as vinegar, and compared the tea standards to the other, where caramel is the only acceptable colouring agent. The lack of such an explicit ban on tea suggests that the legislators were not completely against safe colouring agents. Therefore, the court has decided that the law does not forbid the use of colouring matter in tea so long as it does not hurt the health, and thus allowed its decision of acquittal and discharge.

Means of Evidence

Documentary Evidence

The documentary evidence in the case of Public Prosecutor v. Pengurus Hong Trading & Co includes:

The Department of Chemistry publishes a Chemical Report:

The samples of "Cap Sawi" tea were sent to the Department of Chemistry, Kuala Terengganu for analysis by a chemist and this report was prepared. In the product, the following colours were used as a facing matter, which have been confirmed in this document: Tartrazine and Ponceau 4R. Within a court setting this report is used as objective evidence to establish that the element of the act (actus reus) additives in the tea, was present, thus establishing the ground for the legal action of the Sale of Food and Drugs Regulations 1952.

Schedule A of Regulation 18 (Statutory Reference):

The Respondent put forward the submission that the substances found in the chemical report are substances that are explicitly authorized by law. The use of Tartrazine and Ponceau 4R is therefore not a criminal offence, as no person will be allowed to sell food containing added colouring substances if the substance is not specified in Schedule A. To check whether the manufacturer has met the stipulated food safety standards, the court looked at the so-called written list in this schedule. Justice Eusoff Chin, in interpreting the prohibition of the Regulation 3 (v) (ii) of "other matter", found that the principle of "ejusdem generis" is applicable. The court has ruled that the prosecution's interpretation of the meaning of "no colouring matter" was incorrect. Rather, the court held in *In re Clark*, general words that follow specific propositions should be interpreted as ancillary to the purpose of the provision. Since lead and 'Prussian blue' are poisonous, the term 'other matter' can only be used for substances that are harmful to the health. Therefore the respondent was acquitted as the colouring materials used were safe and legal in accordance with the law.

Information and labelling on the product packaging.:

The Health Inspector (PW1) bought three packets of "The Cap Sawi" in a retail shop in Marang and was able to identify the respondent, "Hong Trading & Co" as the manufacturer of the product because there was written information on the packaging. The information on this label is used in the trial proceedings to establish the liability and the origin of the product up to the consumer.

Physical Evidence

The physical evidence in this case is three packets of “Sawi” tea (Exhibits), which were tendered as evidence in court. The evidence was gathered during the first prosecution witness, (PW1) Health Inspector Nik Mohd. Bin Nik Abu Bakar’s official purchase on the 18 May 1983 at about 11.00am. The site from which this physical evidence was retrieved was a retail shop owned by Mustafa bin Embong, No. B-4, Tanah Lot, Marang, Terengganu.

Expert Witnesses

Prosecution called evidence from a chemist of the Kuala Terengganu Department of Chemistry to lay the basis of the charge. The specific chemist who prepared the chemical report, which was the basis for the judgment, is not identified, but the report was tendered and objectively established that Tartrazine (as Tetrazine in the judgment) and Ponceau 4R were identified as being present in the tea samples analyzed as facing matters. This expert testimony was crucial to establishing the *actus reus*, in helping determine whether the additives existed prior to the court’s assessment of whether actions were legal within the current statutory framework.

Meanwhile, the first prosecution witness (PW1), Nik Mohd. bin Nik Abu Bakar, Health Inspector at Marang Health Office was key to establishing the chain of custody on the ground. PW1 testified that the three packets of tea known as “Cap Sawi” tea were handed over to the Formal Procurement on May 18, 1983 from Mustafa bin Embong’s retail shop and were sent to the Department of Chemistry for forensic examination. This textbook evidence of fact by PW1 has preserved the integrity of the exhibit and has also been evidence that the respondent was the manufacturer, based on the information which had to be recorded on the label as required.

Issues Involving Halal Forensic in the Detection of Synthetic Colourants as Facing Matter in Tea Products.

Islamic Jurisprudence

The Principle of Halalan Toyyiban and food quality

The problems of food fraud and food contamination in the context of Islamic jurisprudence cannot be overlooked as they have a direct effect on the Principle of Halalan Toyyiban and Food Quality (the *toyyib* aspect – purity, wholesomeness, and safety) in order to protect the Public Interest (*maslahah*) and the health of Muslim consumers. Halalan *toyyiban* is the main concept of food consumption for the Muslim community. It starts from the farm until the very last process, where the food is prepared using the permissible ingredients in a clean and hygienic manner before being put on the table (Anuar et al., 2024).

The concept of halalan *toyyiban* (permissible and wholesome) is mentioned several times in the Quran. Translation: O mankind, eat from whatever is on earth [that is] lawful and good and do not follow the footsteps of Satan. Indeed, he is to you a clear enemy (Al-Baqarah, 2:168).

Translation: And eat of what Allah has provided for you [which is] lawful and good. And fear Allah, in whom you are believers (Al-Maidah, 5:88).

These Quranic verses clearly demonstrate that the principle of halalan *toyyiban* is paramount, as it demands that food must not only be lawful under Islamic law (*halal*), but also safe, clean, and of high quality (*toyyib*) to safeguard the physical health and spiritual purity of Muslims.

Mustaffa (2019) said that the eating of halal food is very important in consuming the food because it will influence the character and human development. Halalan *toyyiban* has great significance for Muslims as part of their Islamic belief. This adherence is interpreted as an expression of ‘*ubudiyah*’ or gratitude to what has been given to the Muslims. The results of the study by Amarul et al. (2019) show that halal awareness, halal certificates, marketing campaigns, and halal brands positively influenced consumers’ interest in buying halal products, while food quality had a negative effect on consumers’ interest in buying halal products in Malaysia who were not Muslims.

The main problem of food forensics case study is the chemical analysis to detect the synthetic colorants such as Tartrazine and Ponceau 4R that were used as a facing material in the 'Sawi' brand tea. The prosecution contended that all the colouring matter was an offence under Section 11(1) © of the Sale of Food and Drugs Ordinance 1952 but ultimately, this forensic evidence would show that the colouring matter was legally allowed Schedule A additives (Regulation 18). This emphasises the importance of laboratory testing to ensure the quality standards and integrity of food products.

Al-aslu fil-asya' al-ibahah

One of the basic laws in Islamic jurisprudence, originally formulated in this rule. It sets forth that everything, everything that is, and everything in its world is allowed except when there is evidence in the scriptures that is authentic and says it is not.

These definitions are the foundation of three important scholarly views. The first opinion which is that of Shafi'i school and most of the Muslim scholars is that the default status of any items is allowed if there is no evidence prohibiting it. The second opinion is that the default state is not allowed unless it is made permissible, which was held by Abu Hanifah, Ibn Hamid and some of the Mu'tazilites. Finally, the third group has a position of 'neutrality', that is 'al-tawaqquf' (suspension of judgement), because the pros and cons of the case are equally convincing. This last position is led by some Hanafi scholars, Abu al-Hasan al-Ash'ari, and some other eminent jurists (Hasbullah et al., 2018).

The expression of Al-Aslu fi al-Asyya' al-Ibahah is reflected in two important aspects of the Islamic law. First of all, it serves as a conceptual instrument to deduce rulings from scriptural contexts: when there is no explicit prohibition, this is regarded as a sign of permissibility. Moreover, this maxim is a substitute for a statute in the absence of any explicit textual evidence. In this sense, it is classified as one of the methods of legal thinking, a maxim used as a substitute for primary evidence in which no explicit texts exist, and as a secondary legal instrument, other than the explicit texts, such as *istislah* (public interest), *istihsan* (juristic preference), and *istishab* (presumption of continuity) (Aris et al., 2022). Finally, this makes it a crucial jurisprudential equation which is instrumental in solving modern problems and safeguarding human welfare.

The court's ruling in the case of Hong Trading & Co is an example of the practice of Al-Aslu fi al-Asyya' al-Ibahah. The court's decision to allow substances that are not found to be harmful was a move in support of the principle of original permissibility that lies at the heart of Islamic jurisprudence, which emphasizes that the basis for prohibition or prohibition by law is evidence of harm.

Halal Standard and Statutory Regulation

In the case reported, the tea manufacturer, named Hong Trading & Co, which manufactured tea under the brand name 'Sawi' had been charged for selling tea products that contained food additives which was alleged to be banned by the tea standards. The packets were filled with a tea dust, but on chemical examination it was found that there were synthetic colourants in the tea dust used as "facing matter".

The manufacturing company was charged under Section 11(1)© of the Sale of Food and Drugs Ordinance 1952 for adding "other matter" to the tea, which turned out to contain Tartrazine and Ponceau 4R, the first of which has been found to cause allergic reactions in humans and the second to be specifically allowed by law under Regulation 18 Schedule A.

Tea is defined exactly under the pre-revised Ordinance, which also specifies the quality requirements for tea. These unaltered requirements stipulate that tea consists of the leaf and bud of different species of tea, treated by customary trading methods. The text prescribes very tight analytical parameters: tea should not contain more than seven percent and no less than four percent ash (half of which should be soluble in water) and a minimum of water extract of thirty percent, to ensure purity and quality. In addition, the statute sets forth clear prohibitive standards and specifically prohibits inferior inputs like spurious, exhausted, decayed or mouldy leaves and stalks. It also says no artificial coloring or contaminants Prussian blue or lead or lead compounds are prohibited.

Part III, Regulation 18 of the pre-revised Food and Drugs Ordinance, 1952 clearly stipulates the regulation of food additives by stating that no person shall make, import for sale or sale food which contains added

coloring matters other than those specified in Schedule A. Tea is legally defined as food under Section 2 of the Ordinance so this schedule specifically covers the use of colouring agents such as "Tartrazine" and "Ponceau 4R". This led to a central conflict that the prosecution argued that the intent of the legislation was to impose an absolute prohibition on any tea coloring matter and these specific colorings should not be allowed in tea. The issue of this clash is a classic "disaster for the defenders of the statute" (as The Independent called it) debate on statutory interpretation with the prosecution arguing for a strict prohibition and a literal interpretation of the unamended regulation being permissibility for substances on the schedule.

Eusoff Chin in the case of Hong Trading & Co. has been largely guided by the English precedent of *In re Clark* [1898] to apply the principle of the rule of *eiusdem generis*. In *In re Clark* it was held by Lord Justice Vaughan Williams that if an expression is to be interpreted as restrictive, then the general words that follow it must be restricted to the same category genus. If so, the general term "or otherwise" was used only in the genus "trade or business. Using the same reasoning, Eusoff Chin concluded that the use of the word "other matter" in Hong Trading & Co. does not imply a blanket ban on all food additives. Rather, since it referred to specific toxic substances, such as "Prussian blue" and "lead", it could only have a meaning in the context of the known toxic genus, that is the category of substances which are naturally found to be toxic or harmful.

In addition, the doctrine of *In re Clark* sets forth that general, ancillary words should never be given such a broad reading as to destroy the specific propositions that precede them. If "other matter" were to also prohibit "safe" food colorings, the legislature would have to spell out all of the "safe" items as well, which it never did. Thus, in order to sustain a rational interpretation of the statute, the court determined that the phrase "other matter" did not have the legal power to trump the clear authority of Regulation 18 and Schedule A that expressly permitted coloring with "safe" dyes such as Tartrazine and Ponceau 4R. In sum, it proved to be a viable defense to any arbitrary prosecution for food manufacturers based on the untailored language of the statute.

Health Implication

As far as health concerns are concerned, using the default rule of permissibility is directly connected with the absence of harm. If no negative health effects have been proven, any product, food product or food additive is still legally acceptable. The legal status of a substance changes from allowed to banned to protect public health and well-being, however, when there is scientific evidence that it can harm health or pose a health threat.

The health concerns here relate to the interpretation of the law, which has to determine whether the chemicals that had been added to the tea themselves were dangerous to people's bodies. Based upon the doctrine of "*eiusdem generis*" (of the same kind), the court ruled that the term "other matter" in Regulation 3(v)(ii) meant the same type of substances that are harmful or deleterious to the human body, which is consistent with the toxic nature of the substances previously mentioned, lead and Prussian blue. The court found that the coloring agents Tartrazine (Tetrazine) and Ponceau 4R found by chemical analysis were not in breach of safety standards and could not be classified as prohibited hazardous materials under the said regulation, Schedule A (Regulation 18).

The assessment of health implications should be based on empirical evidence and valid clinical data and not speculation. If an ingredient or chemical compound is tested and shown to be safe within certain limits, the law should not be used to limit the use of that ingredient. Prohibitions or bans should be applied only if there are clear and serious health issues with consumers.

Conclusion

In conclusion, this case review highlights the vital intersection between food safety legislation, scientific validation, and statutory interpretation. The dispute in *Public Prosecutor v Pengurus Hong Trading & Co* emphasizes that while regulations must protect public health, they must also be interpreted rationally to prevent arbitrary enforcement against compliant manufacturers. By applying the *eiusdem generis* rule, the High Court justly determined that safe, legally authorized additives like Tartrazine and Ponceau 4R do not fall under the statutory prohibition aimed at toxic materials.

From an Islamic jurisprudence perspective, this legal outcome perfectly aligns with the maxim of Al-Aslu fil-Asya' al-Ibahah and the wholesome framework of Halalan Tayyiban. It underscores that any prohibition in food standards must be grounded in verified, scientific proof of harm rather than legislative ambiguity. Ultimately, this case serves as a foundational reminder for the modern food and halal industry that achieving true transparency and consumer protection requires a precise balance between strict statutory standards, meticulous forensic analysis, and clear legal boundaries.

References

- Amarul, A., Sukirno, S., & Kurnia, D. (2019). Understanding the awareness of the importance of halal labels to business actors based on range of long business variations. *Business and Management Research*, 8(1), 17–24. <https://doi.org/10.5430/bmr.v8n1p17>
- Anuar, F. N., Mamat, M. N., & Tumiran, M. A. (2024). Halalan tayyiban food consumption: An understanding level on gender among fully residential schools' students in Selangor. *Malaysian Journal of Social Sciences and Humanities (MJSSH)*, 9(5), Artikel e002812. <https://doi.org/10.47405/mjssh.v9i5.2812>
- Aris, H., Halim, A. A., & Muslim, N. (2022). Aplikasi kaedah usul fiqh dalam memahami hadith-hadith berkaitan wabak dan penetapan langkah keselamatan. *Malaysian Journal of Social Sciences and Humanities (MJSSH)*, 7(5), Artikel e001527. <https://doi.org/10.47405/mjssh.v7i5.1527>
- Halim, N. R. A., Hashim, H., Mutalib, S., & Ghani, M. A. (2024). Food safety regulations implementation and their impact on food security level in Malaysia: A review. *International Food Research Journal*, 31(1), 20–31. <https://doi.org/10.47836/ifrj.31.1.02>
- Hasbullah, M., Mamat, Z., & Zakaria, M. Z. (2018). Al-aslu fi al-asyya' baina al-ibahah aw al-hazr: Pemakaiannya dalam keputusan Muzakarah Jawatankuasa Fatwa Majlis Kebangsaan Bagi Hal Ehwal Ugama Islam Malaysia. *Journal of Fatwa Management and Research*, 13(1), 1–18. <https://doi.org/10.33102/jfatwa.vol13no1.10>
- Katap, R., Rahman, S., Zamani, S., & Ismail, S. A. (2009). *Enforcement of the Sale of Drugs Act 1952 (Act 368) on registered products in Malaysia* [Tesis Sarjana Muda, Universiti Teknologi MARA].
- Meng, M. H. Y. (1996). Strict liability in criminal law: A re-examination. *Singapore Journal of Legal Studies*, 1996, 312–339.
- Mustaffa, K. A. (2019). Developing halalan tayyiban concept in Malaysia's food industry. *Halal Journal*, 3(3), 97–108.
- Russell, H. (2001). *Criminal law*. Blackstone Press Limited.
- Sornarajah, M. (1985). Defences to strict liability offences in Singapore and Malaysia. *Malaya Law Review*, 27(1), 1–28.