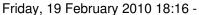


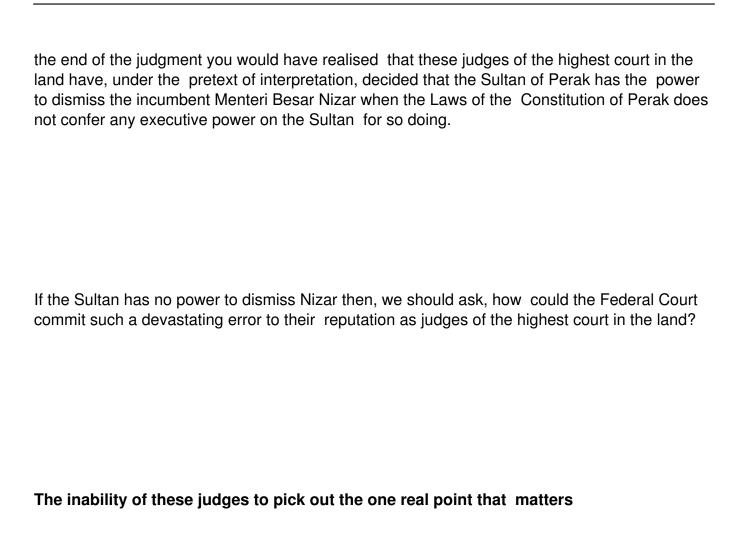
By NH Chan

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FEB 19 — On 9 February 2010 the Federal Court (Alauddin Mohd Sheriff PCA, Arifin Zakaria CJ (Malaya), Zulkefli Ahmad Makinudin, Mohd Ghazali Mohd Yusoff and Abdul Hamid Embong FCJJ) handed down a unanimous decision on Nizar v Zambry. The judgment of the court was read by Chief Judge, Malaya Arifin Zakaria.

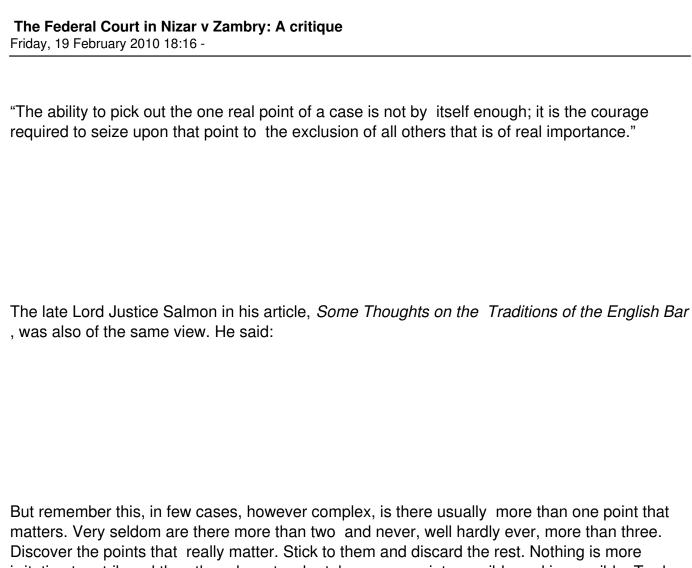
The judgment is 40 pages long on A4 size paper and if you have the stamina to persevere to





That is why the ability to pick out the one real point that matters is so important. That is why young advocates learnt how to spot it very early in their career if they are not to bore the judge, whom they are addressing, to tears. This is what Sir Patrick Hastings — he was one of the great advocates of his day before and after World War II — had to say about the ability to seize upon the one vital point that is to be found in any case; see his book *Cases in Court*

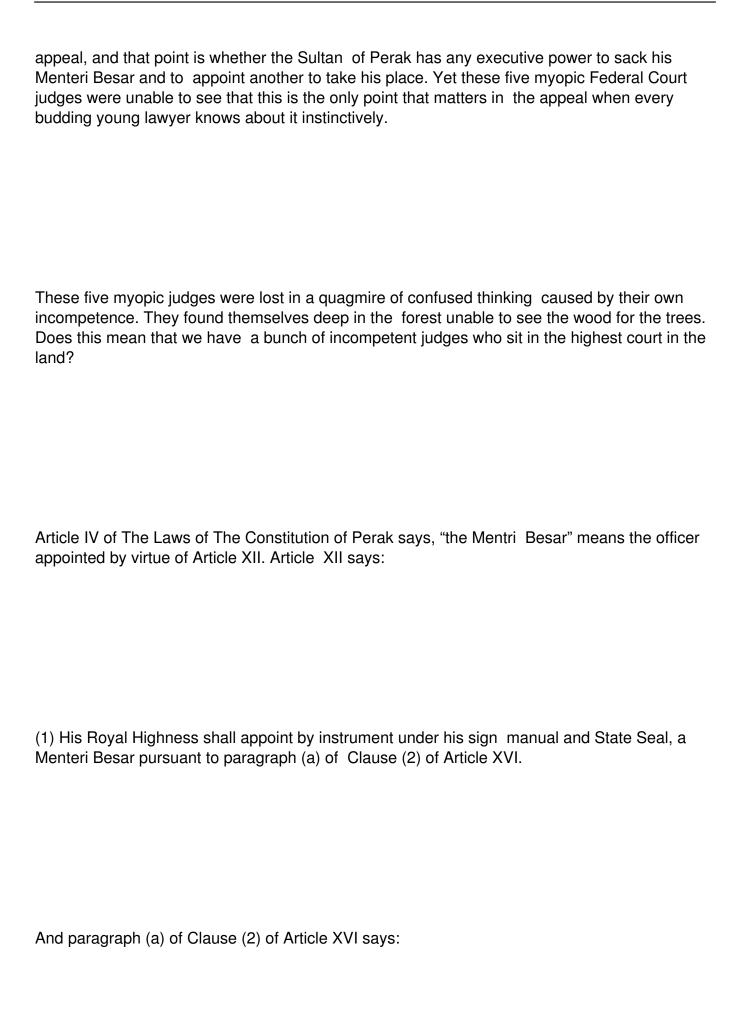
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irritating to a tribunal than the advocate who takes every point possible and impossible. To do so is a very poor form of advocacy because the good points are apt to be swept away with the bad ones. Stick to what matters.

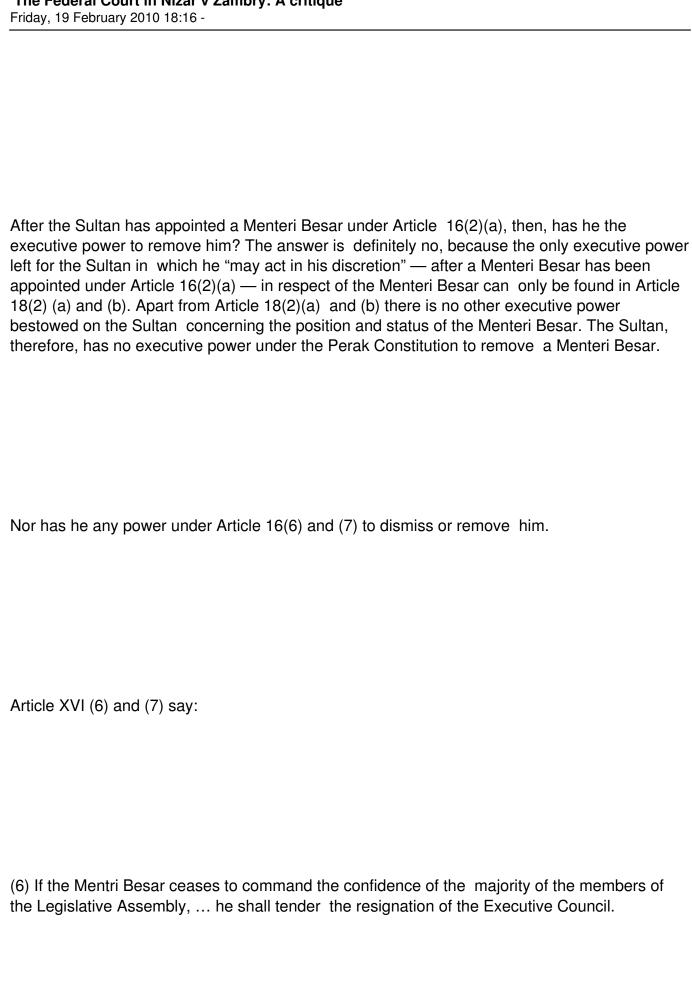
In the case of Nizar v Zambry, the only point that matters in the appeal is whether the Sultan of Perak has any executive power to remove a Menteri Besar who had been appointed by him under Article 16(2)(a).

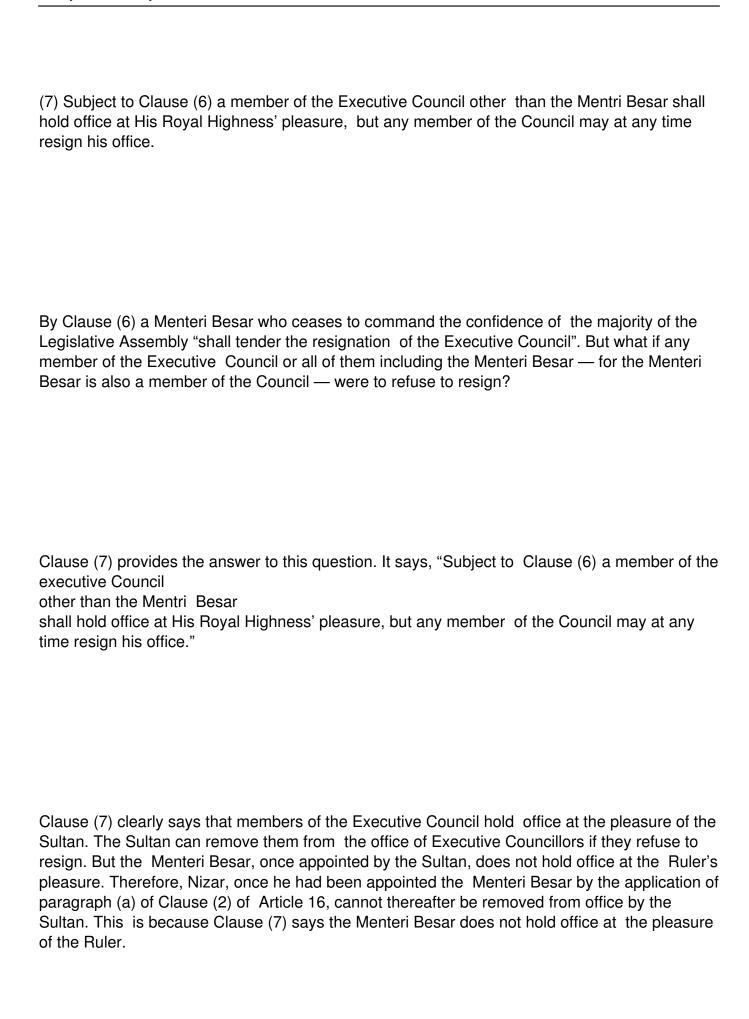
Any astute lawyer or judge can see at once that there is only one point that matters in the



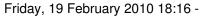
Friday, 19 February 2010 18:16 -
(1) His Royal Highness shall appoint an Executive Council.
(2) The Executive Council shall be appointed as follows, that is to say -
(a) His Royal Highness shall first appoint as Mentri Besar to preside over the Executive Council a member of the Legislative Assembly who in his judgment is likely to command the confidence of the majority of the members of the Assembly; and
(b) He shall on the advice of the Mentri Besar appoint not more than ten nor less than four other members from among the members of the Legislative Assembly;

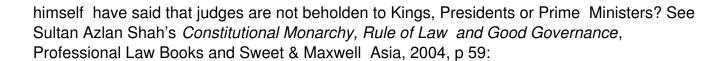
That was how Nizar came to be appointed the Menteri Besar. He was appointed by the Sultan of Perak to be the Menteri Besar by the application of the provision of Article 16(2)(a) of the Constitution of Perak shortly after the State General Election of 2008. The provision of Article 16(2)(a) gives the Sultan of Perak the executive power to appoint a Menteri Besar "who in his judgment is likely to command the confidence of the majority of the members of the Assembly".
Article XVIII (2) is the only other provision in the State Constitution where the Sultan "may act in his discretion in the performance of the" functions stated in Clause 2 of Article 18. Paragraphs (a) and (b) of Clause 2 read:
(2) His Royal Highness may act in his discretion in the performance of the following functions (in addition to those in the performance of which he may act in his discretion under the Federal Constitution) that is to say -
(a) the appointment of a Mentri Besar,
(b) the withholding of consent to a request for the dissolution of the Legislative assembly,





Now you can see why the timid lions being circumspect as the monarch's liege they would rather not check nor oppose any points of the sovereignty of the monarch. 'Yes, Yes,' whimpered the cowardly lions. But why should they be sycophants when Sultan Azlan Shah





The judges are not beholden politically to any Government. They owe no loyalty to Ministers. ... They are "lions under the throne" but that seat is occupied in their eyes not by Kings, Presidents or Prime Ministers but by the law and their conception of the public interest. It is to that law and to that conception that they owe their allegiance. In that lies their strength.

This quotation comes right from the horse's mouth, the Sultan of Perak has said it himself that it is to the law that judges owe their allegiance. Therein lies their strength. They are not lions under the throne of Kings, Presidents or Prime Ministers.