

InterPARES 3 : TEAM Malaysia

MANAGEMENT OF ELECTRONIC COURT RECORDS: AN EXAMPLE FROM THE TEAM MALAYSIA CASE STUDY

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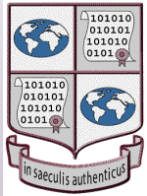
Director of TEAM Malaysia

TEAM Members:

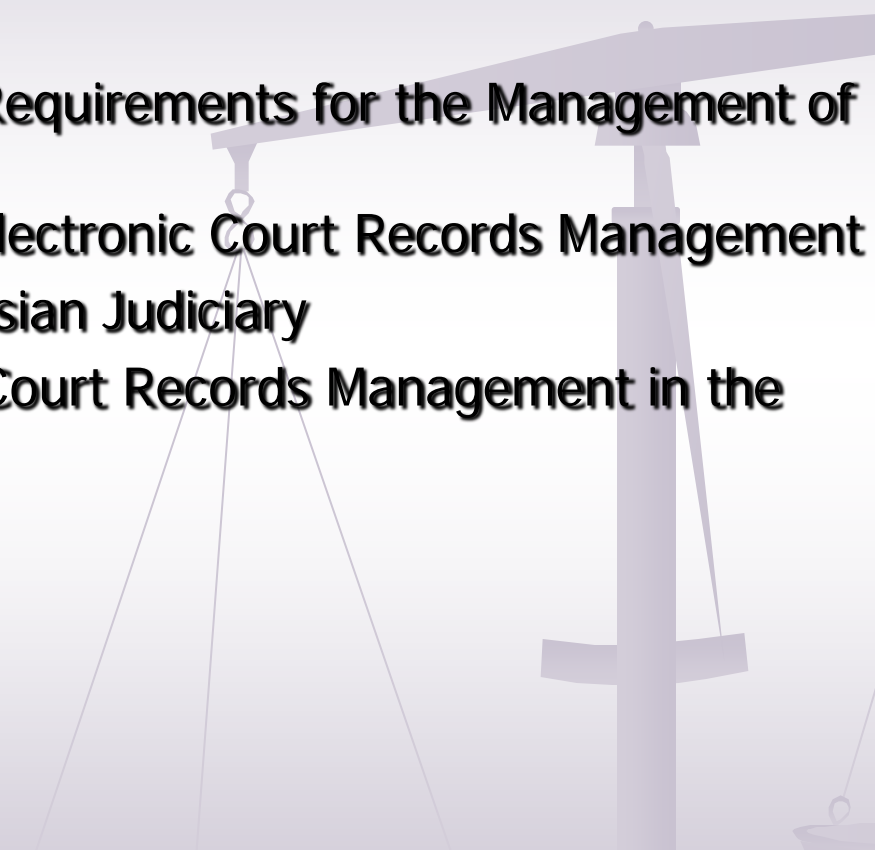
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1ST INTERNATIONAL SYMPOSIUM
SEOUL, SOUTH KOREA
5 JUN 2009

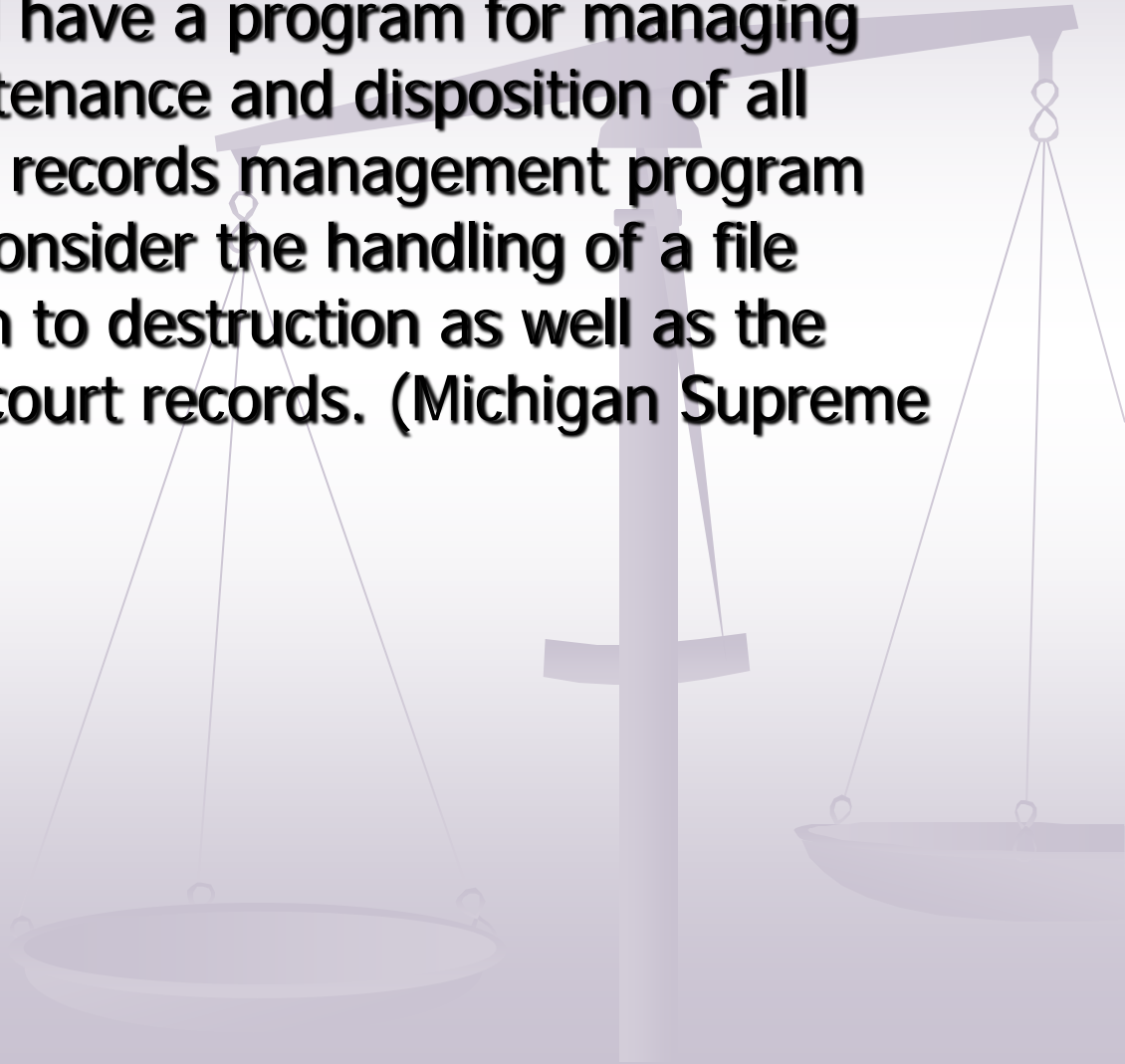


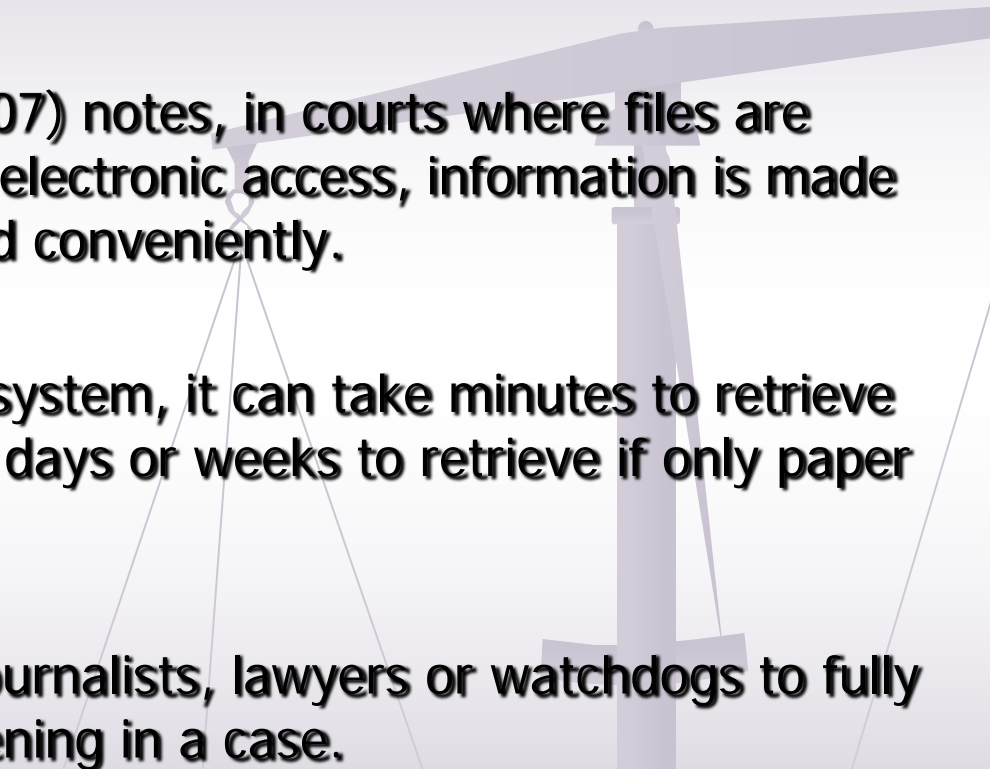
PRESENTATION OUTLINE

1. Introduction
 2. The Need of Functional Requirements for the Management of Electronic Court Records
 3. The Implementation of Electronic Court Records Management
 4. Background of the Malaysian Judiciary
 5. The Need for Electronic Court Records Management in the Malaysian Judiciary
 6. Aim and Objectives
 7. Scope of the Study
 8. Research Methodology
 9. Significance of the Study
 10. Conclusion
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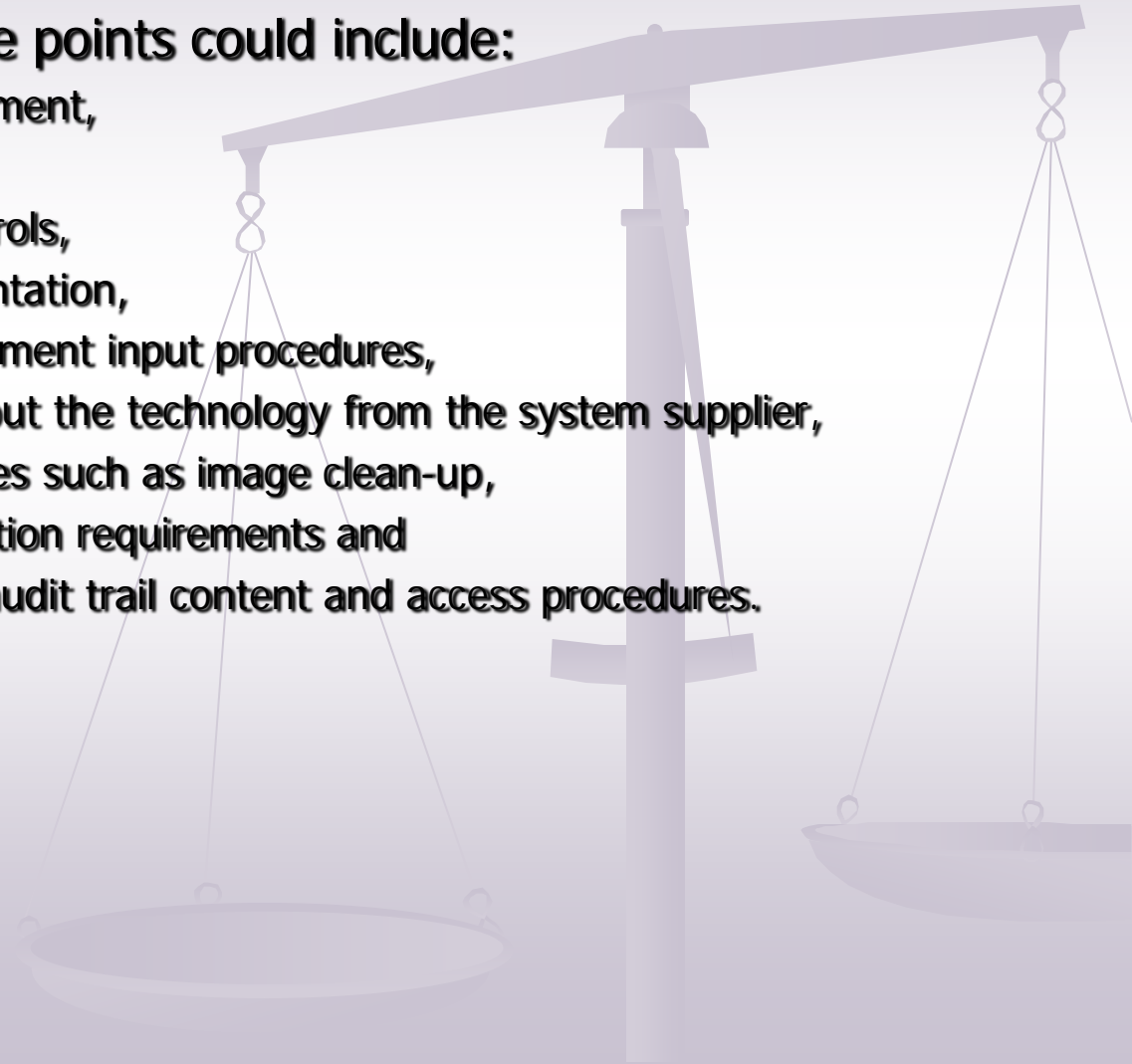
INTRODUCTION

- Every court should have a program for managing the creation, maintenance and disposition of all court records. Any records management program instituted should consider the handling of a file from case initiation to destruction as well as the handling of other court records. (Michigan Supreme Court, 2008)



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- Court records technically may be available in paper form, except in certain circumstances. But accessing records of previous actions is not easy, especially if the records are kept far away from the office of origin.
 - In contrast, as Spratt (2007) notes, in courts where files are available through remote electronic access, information is made available more quickly and conveniently.
 - With a remote electronic system, it can take minutes to retrieve information that can take days or weeks to retrieve if only paper files are available.
 - This makes it easier for journalists, lawyers or watchdogs to fully understand what is happening in a case.

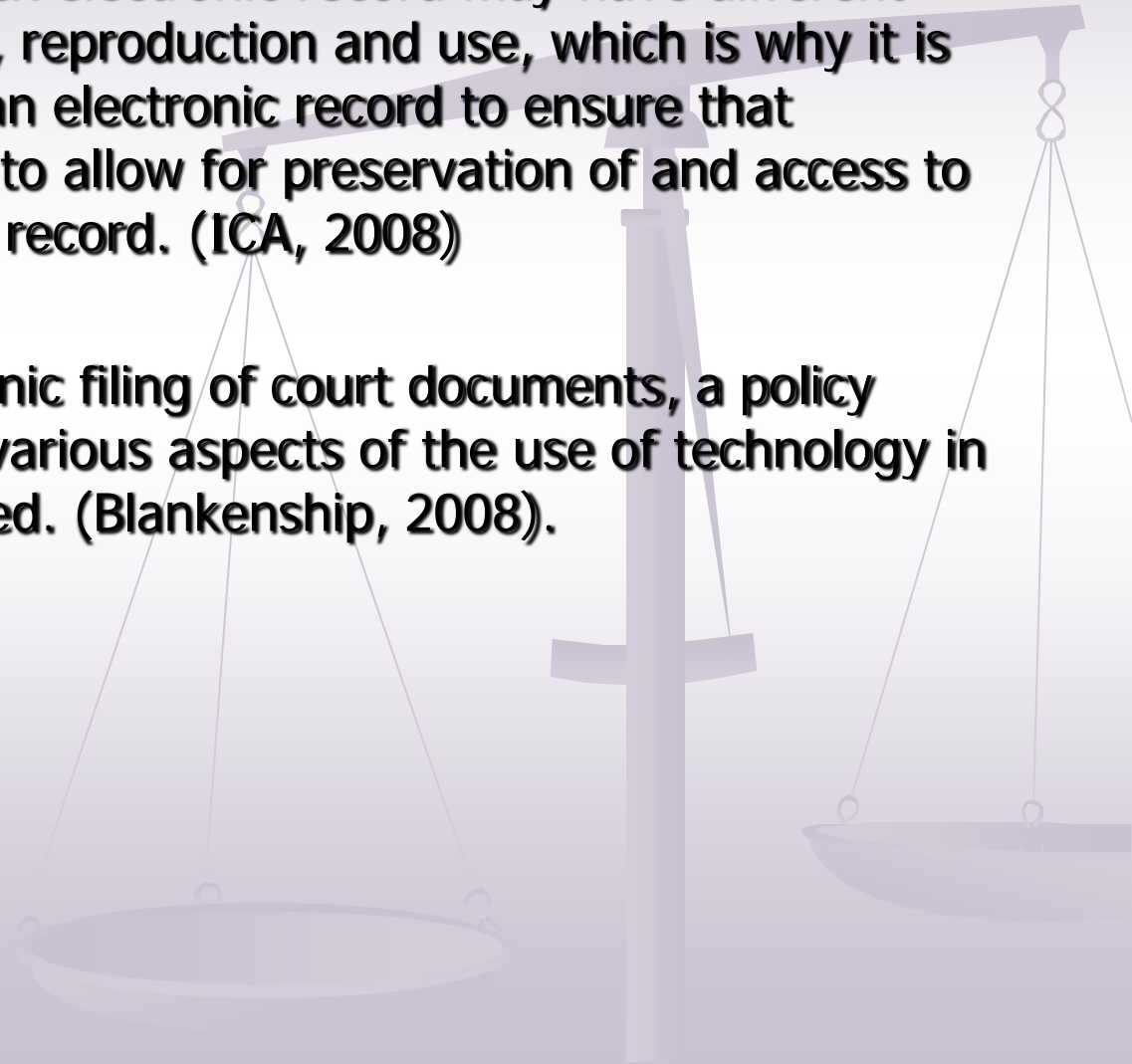
- Electronic documents can easily be thrown out of court when so-called 'compliance points' are found to be missing in systems from which a company sources evidence, according to experts at the British Standards Institute.
- These missing compliance points could include:
 - no information policy document,
 - no retention schedule,
 - inappropriate security controls,
 - lack of procedural documentation,
 - insufficient control on document input procedures,
 - insufficient information about the technology from the system supplier,
 - use of inappropriate facilities such as image clean-up,
 - no thought of future migration requirements and
 - lack of documentation on audit trail content and access procedures.



THE NEED OF FUNCTIONAL REQUIREMENTS FOR THE MANAGEMENT OF ELECTRONIC COURT RECORDS

- In the legal environment, the ambit and application of a piece of legislation is referred to as its jurisdiction. If the jurisdiction of a particular policy or act is not clear, this can create difficulties for record managers and archivists.
- For example, in Australia there has been an uncertainty about the jurisdiction of archival legislation over the records of the courts. Because the legislation does not explicitly cover case files and transcripts of the courts, these documents may not be affected by the legislation. By contrast, in Namibia, the Archives Act of 1992 explicitly states the legal records to which it applies. (IRMT, 2002)

- Electronic evidence in the form of records often has operational or juridical requirements for persistence over periods of time that may exceed the lifespan of the hardware or software that created it. Each element in a complex electronic record may have different requirements for storage, reproduction and use, which is why it is critical when preserving an electronic record to ensure that mechanisms are in place to allow for preservation of and access to every element within the record. (ICA, 2008)
- To implement the electronic filing of court documents, a policy recommendation on the various aspects of the use of technology in the court system is needed. (Blankenship, 2008).



STANDARDS

National Centre for State Courts, US, has produced many technology standards, to improve the administration of justice through leadership and service to state courts around the world including:

- Technology Standards Functional Requirements. National Centre for State Courts, The Conference of State Court Administrators (COSCA) and National Association for Court Management (NACM) (2000 – 2008).
- Electronic Court Filing Standards. OASIS LegalXML, Electronic Court Filing Technical Committee (ECF TC) (2008).
- Functional Requirements. Office of State Court Administrator, Supreme Court of Florida (October 2002). Functional requirements (with diagrams) for criminal, civil, juvenile, probate, traffic, drug courts and jury.
- Electronic Filing Standards Project. California Administrative Office of the Courts (2001).

EXAMPLES OF COURTS THAT HAVE ADOPTED TECHNOLOGY STANDARDS:

- i. The Supreme Court of Texas Judicial Commission for Children, Youth and Families formally has already adopted a *functional requirements* reference model to address the special case management needs of courts handling child protection dependency cases. (Millan, 2008).
- ii. General Court Rule 30 (GR 30), adopted by the Washington State Supreme Court, requires the Judicial Information System Committee (JISC) to adopt electronic court filing technical standards that are to be followed by the courts in the state of Washington that implement electronic filing. (NCSC, 2002)

THE IMPLEMENTATION OF ELECTRONIC COURT RECORDS MANAGEMENT

- As proven by Guy (2006), most of the results of electronic filing are positive.
- The United States and Australia are examples of two developed countries that have already implemented an electronic court filing system.

United States:

- National Center for State Courts: Provides a comprehensive guide to electronic filing materials in the United States
- U.S.Courts: Electronic filing in Appellate Courts, Districts Courts and Bankruptcy Courts.

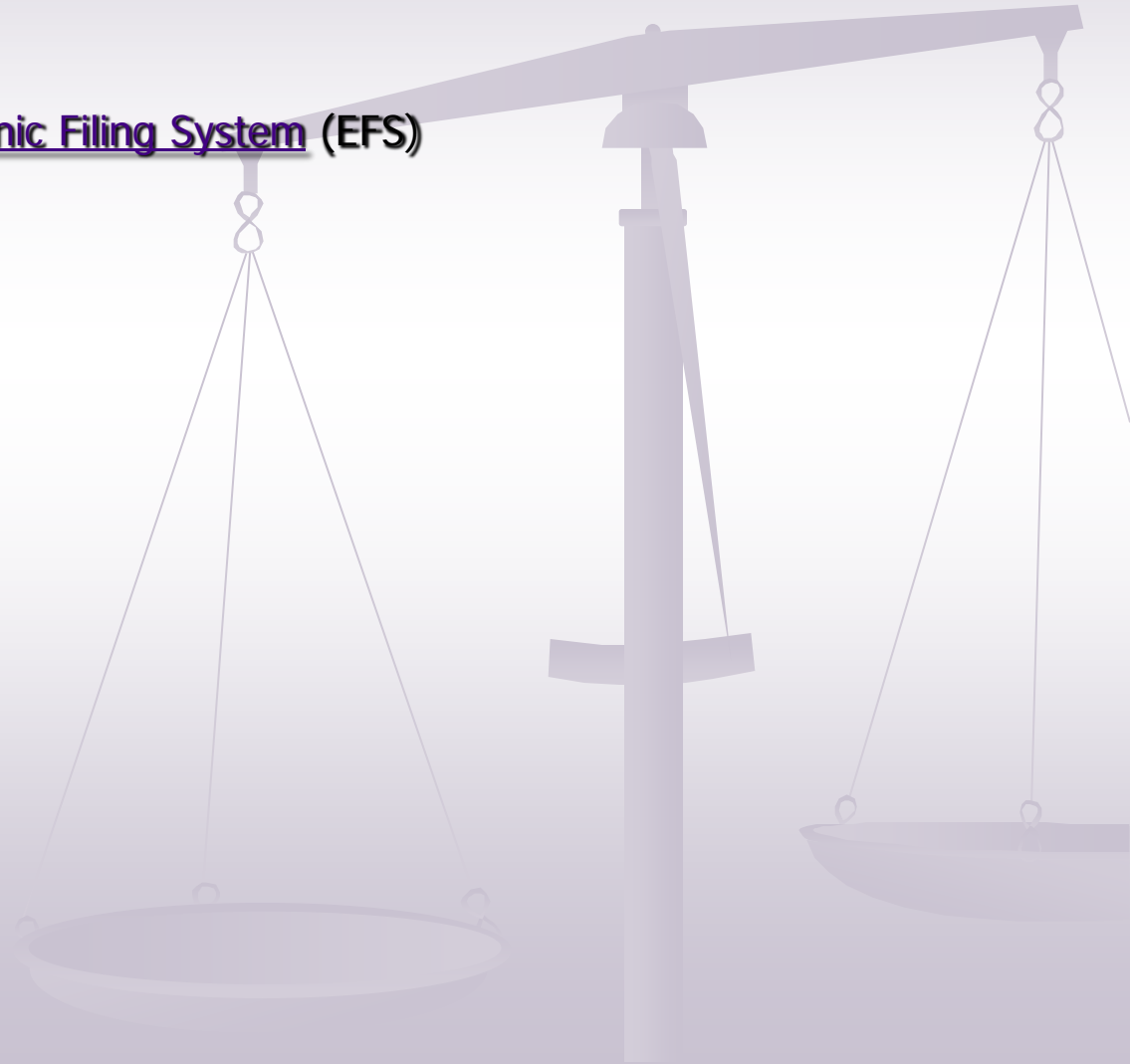
Australia:

- Federal Court of Australia is one of the few courts outside the United States that currently permits documents to be filed electronically.

In South East Asia, Singapore has implemented an electronic court filing system.

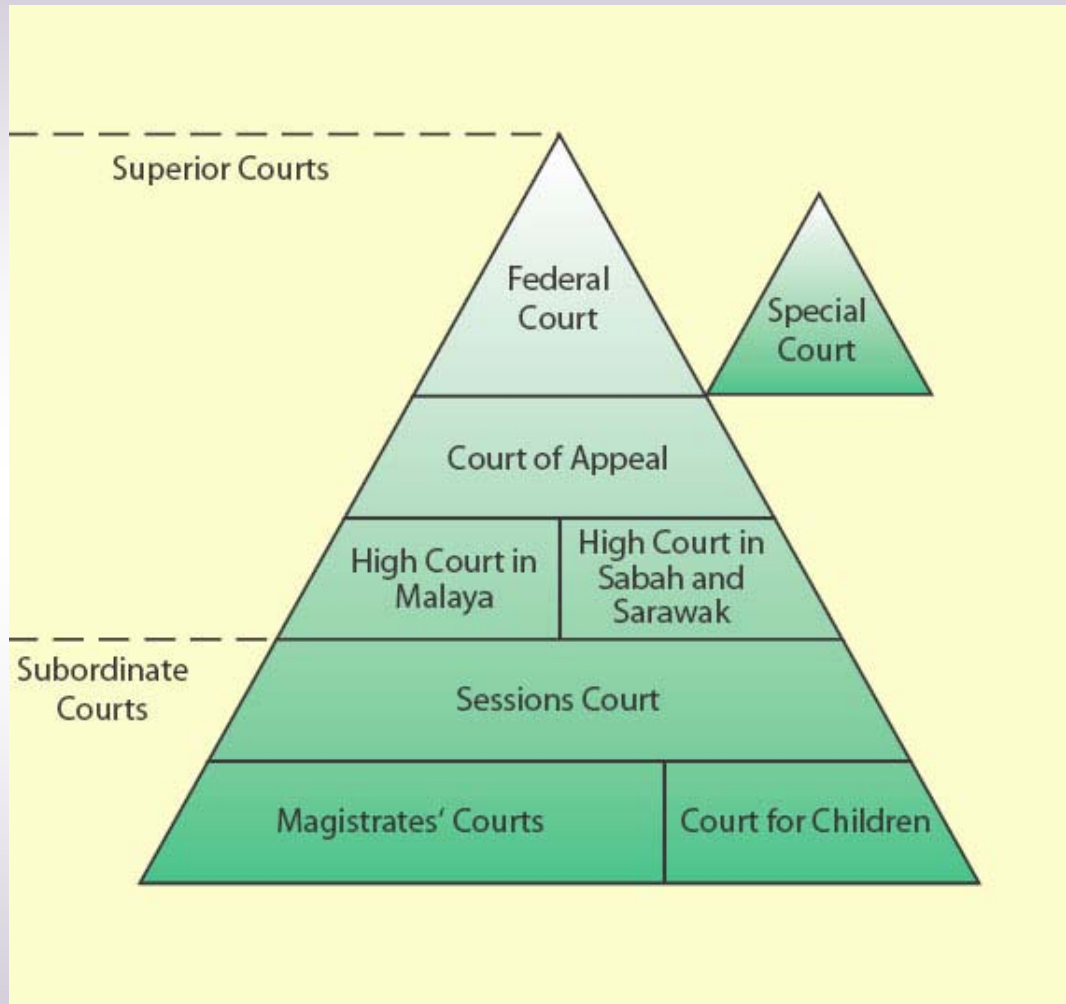
Singapore:

- Singapore Judiciary Electronic Filing System (EFS)
- Justice Online



THE MALAYSIAN CASE STUDY:

MALAYSIAN JUDICIAL STRUCTURE



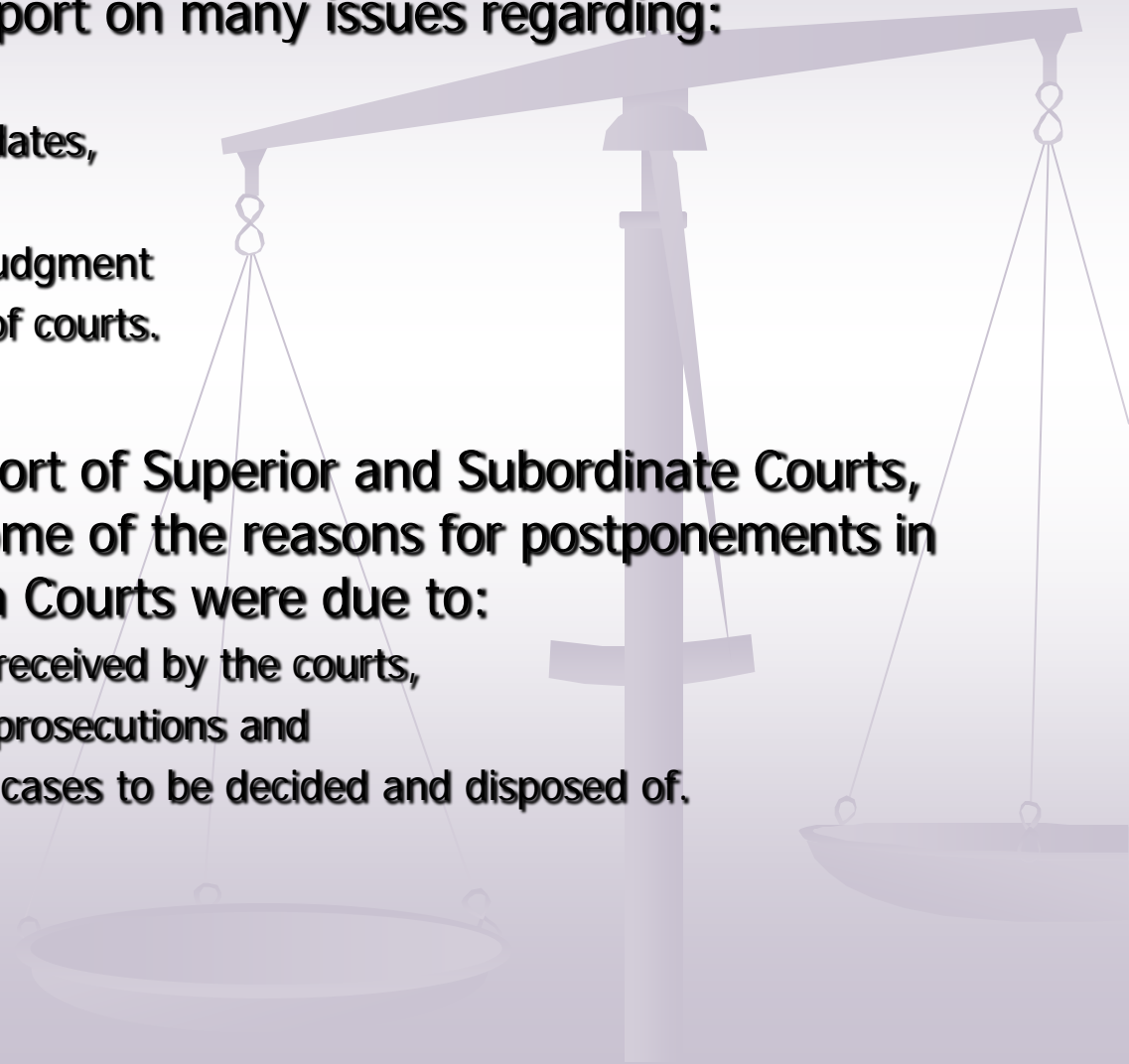
Source: Malaysian Court Official Web, "Jurisdiction of the Court."

<http://www.kehakiman.gov.my/courts/judicialEN.shtml>

THE NEED FOR ELECTRONIC COURT RECORDS MANAGEMENT IN THE MALAYSIAN JUDICIARY

- **Malaysian newspapers report on many issues regarding:**
 - missing court files,
 - long waits for trial/appeal dates,
 - long trials,
 - long waits for grounds of judgment
 - case backlogs at all levels of courts.

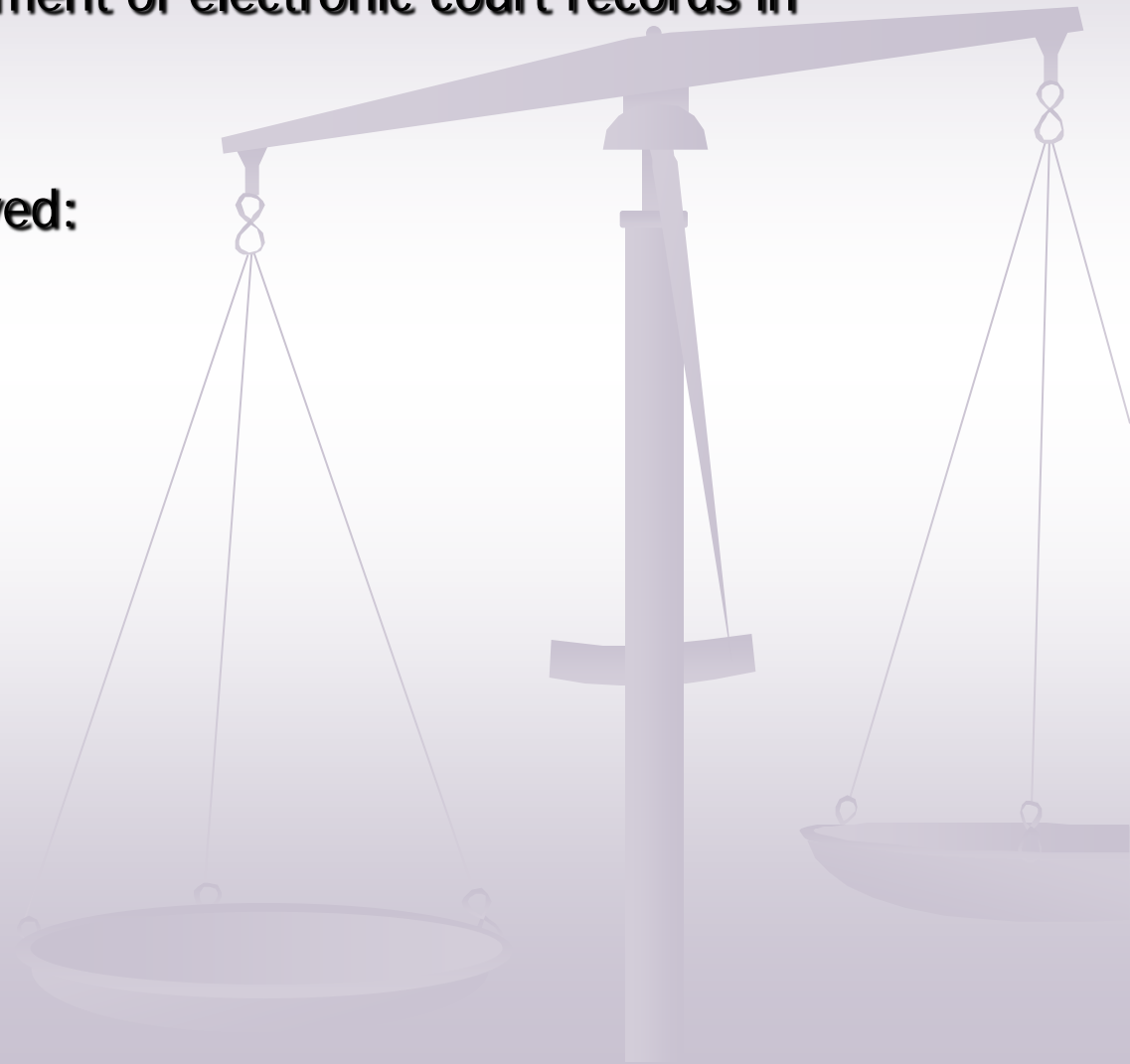
- **Based on the Annual Report of Superior and Subordinate Courts, Malaysia (2006/2007), some of the reasons for postponements in criminal cases in the High Courts were due to:**
 - records that are not being received by the courts,
 - incomplete documents for prosecutions and
 - the long waiting period for cases to be decided and disposed of.



A preliminary case study was carried out during August 2008 in the Court of Appeal to identify the records management practices and the need for the management of electronic court records in Malaysia.

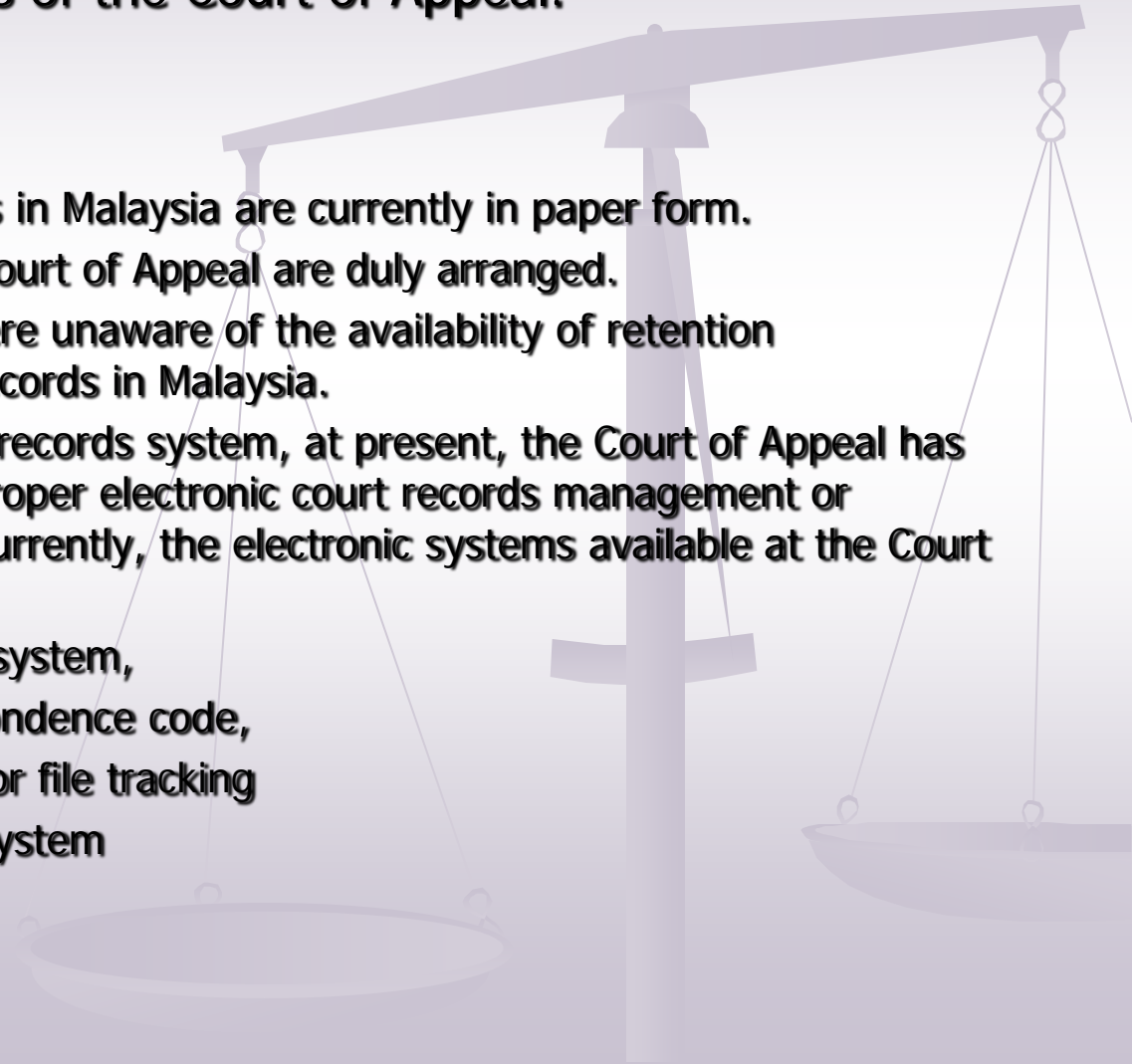
The data collection involved:

- i. Face to face interviews**
- ii. Direct Observation**
- iii. Documentation**



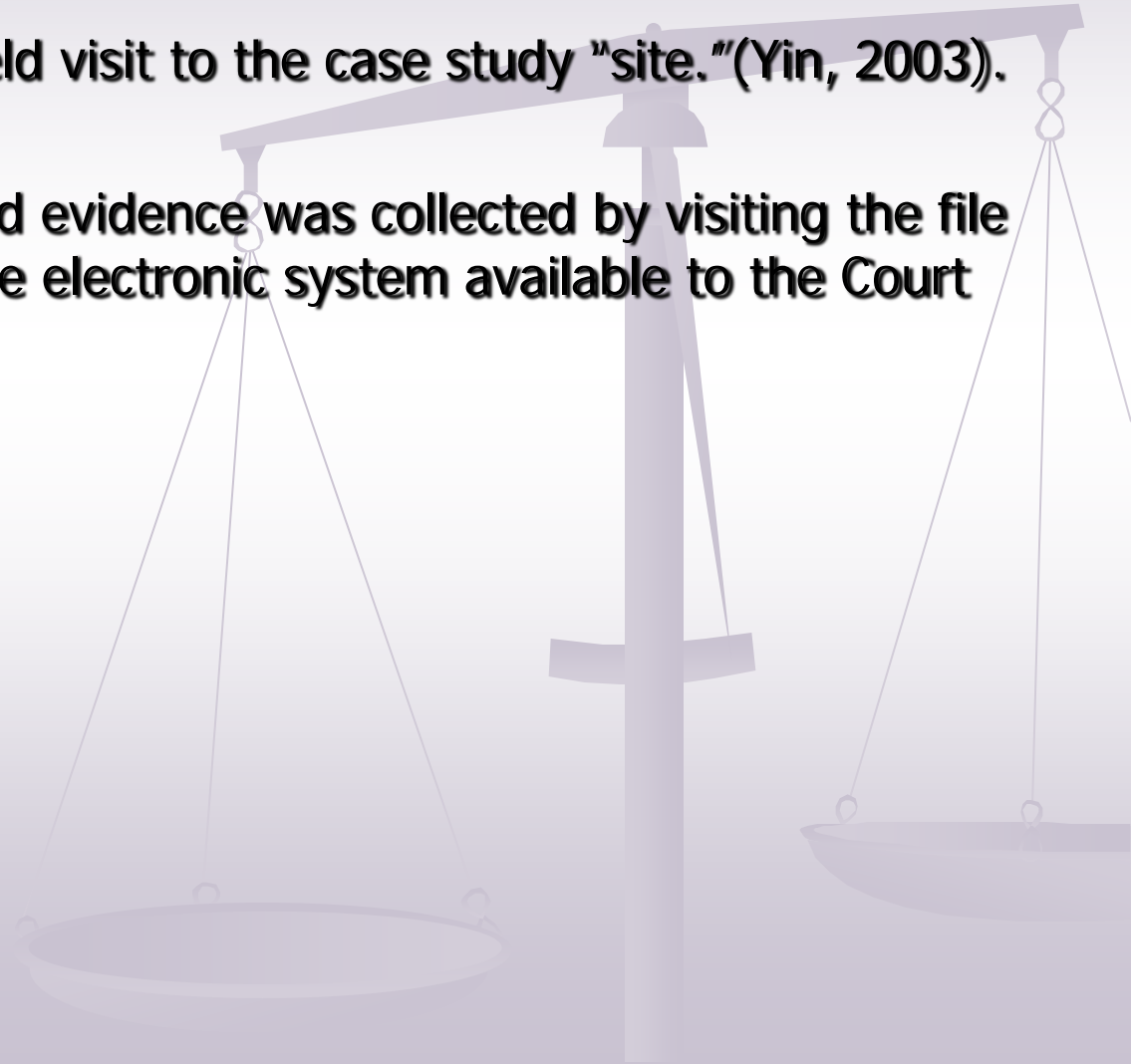
Face to face interviews

- An interview session was conducted with the Deputy Registrar and one of the programmers of the Court of Appeal.
- It was revealed that:
 - most of the court records in Malaysia are currently in paper form.
 - files and records in the Court of Appeal are duly arranged.
 - court of appeal's staff were unaware of the availability of retention requirements for court records in Malaysia.
 - Regarding the electronic records system, at present, the Court of Appeal has not yet implemented a proper electronic court records management or recordkeeping system. Currently, the electronic systems available at the Court of Appeal are:
 - i. an electronic payment system,
 - ii. a database of correspondence code,
 - iii. a bar coding system for file tracking
 - iv. a case management system



Direct Observation

- Direct observation is a field visit to the case study "site." (Yin, 2003).
- Additional information and evidence was collected by visiting the file room and by exploring the electronic system available to the Court of Appeal.



COLOUR CODINGS

FOR CRIMINAL, CIVIL APPEALS AND MOTIONS

DIFFERENT COLOUR REPRESENTING DIFFERENT YEAR

CIVIL

Colour Codes According to the Years

1994-1999



2000



2001



2002



2003



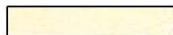
2004



2005



2006



2007



2008



CRIMINAL & LEAVE APPEAL

Colour Codes According to the Years

1994-1999



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2001



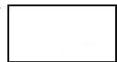
2002



2003



2004



2005



2006



2007



2008



THE FILES AND RECORDS OF APPEAL ARE COLOUR CODEDLY TAGGED AT THE SIDE /BACKBONE OF THE DOCUMENTS FOR EASY IDENTIFICATION ACCORDING TO THE YEAR



THE TAGGED FILES ARE ARRANGED IN RACKS ACCORDING TO THE RESPECTIVE YEARS



DIFFERENT COLOUR OF FILE COVERS ARE USED TO DIFFERENTIATE BETWEEN CIVIL AND CRIMINAL APPEALS AND MOTION FOR LEAVE APPLICATION.



FILE TRACKING AND BARCODING SYSTEM

CRIMINAL APPEAL FILE NO. W-09-17-06
FILE RECORD OF APPEAL

DALAM MAHKAMAH RAYUAN MALAYSIA
IN THE COURT OF APPEAL OF MALAYSIA
(SIDANGKASASA RAYUAN)
(APPELLATE JURISDICTION)

NO. RAYUAN JENAYAH:
CRIMINAL APPEAL NO. **W-09-17-06**

Pendakwa/Raya
(vs. Responden/Respondent)
Tam Kuit Hing
(CPA Shauke & Co.)

Pihak Pertaja
Appellant

Pihak Responden
Respondent

Ditupai Mahkamah Tinggi: *Montezgoz*
From the High Court in

No. Pembicaraan Jenayah: **A2-6**
Criminal Trial No.

Keputusan Hakim: **Ya Hatten Tuan Mohtaruddin bin Ramez**
Decision of Judge:
Kewatibahan Sec 22 Akta Perindustrian Security 1983

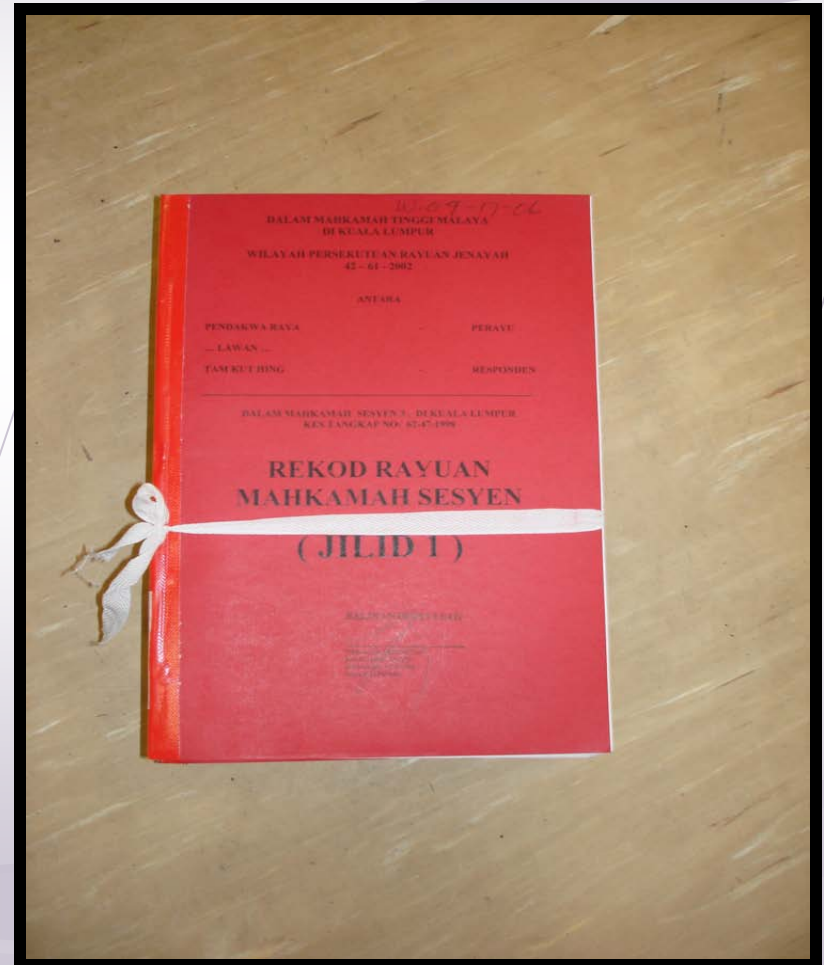
di Kuala Lumpur
on

suban **2004**
of 19

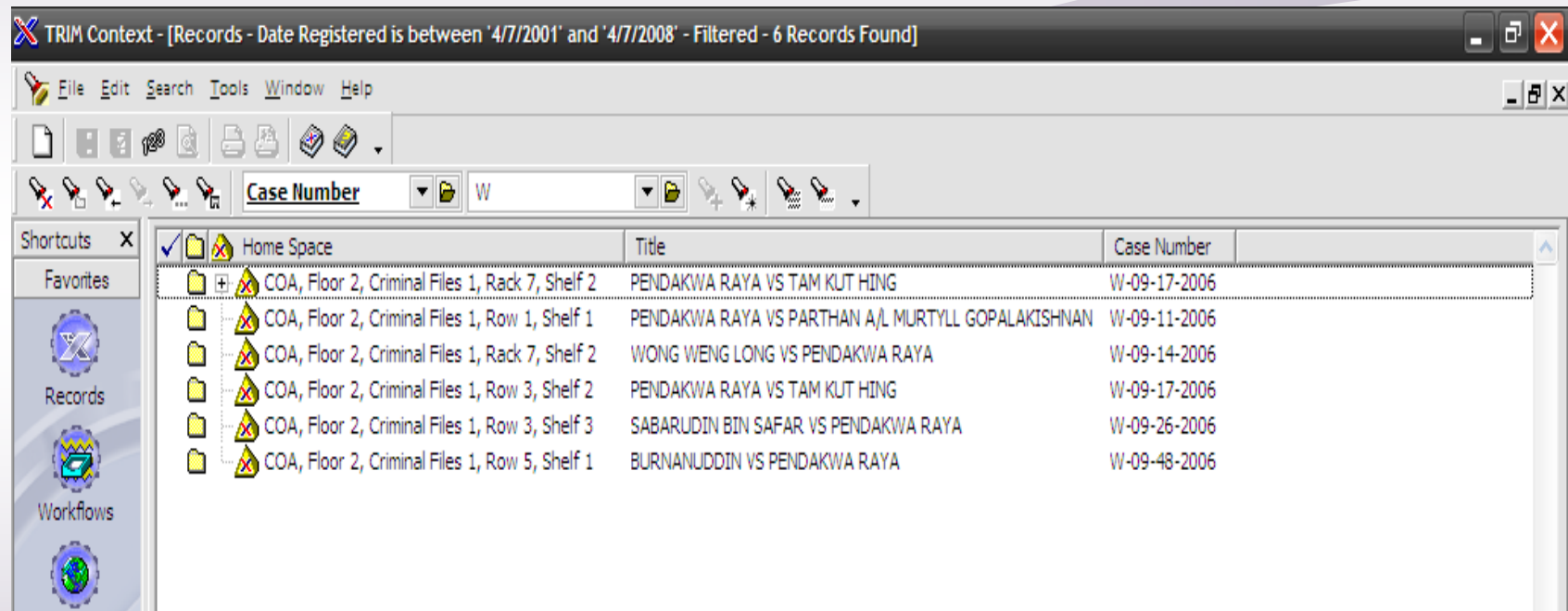
12/5/06
23/6/06

TARIKH DATE	REKOD LANGKAH/LOKAH PEMBICARAAN RECORD OF PROCEEDINGS

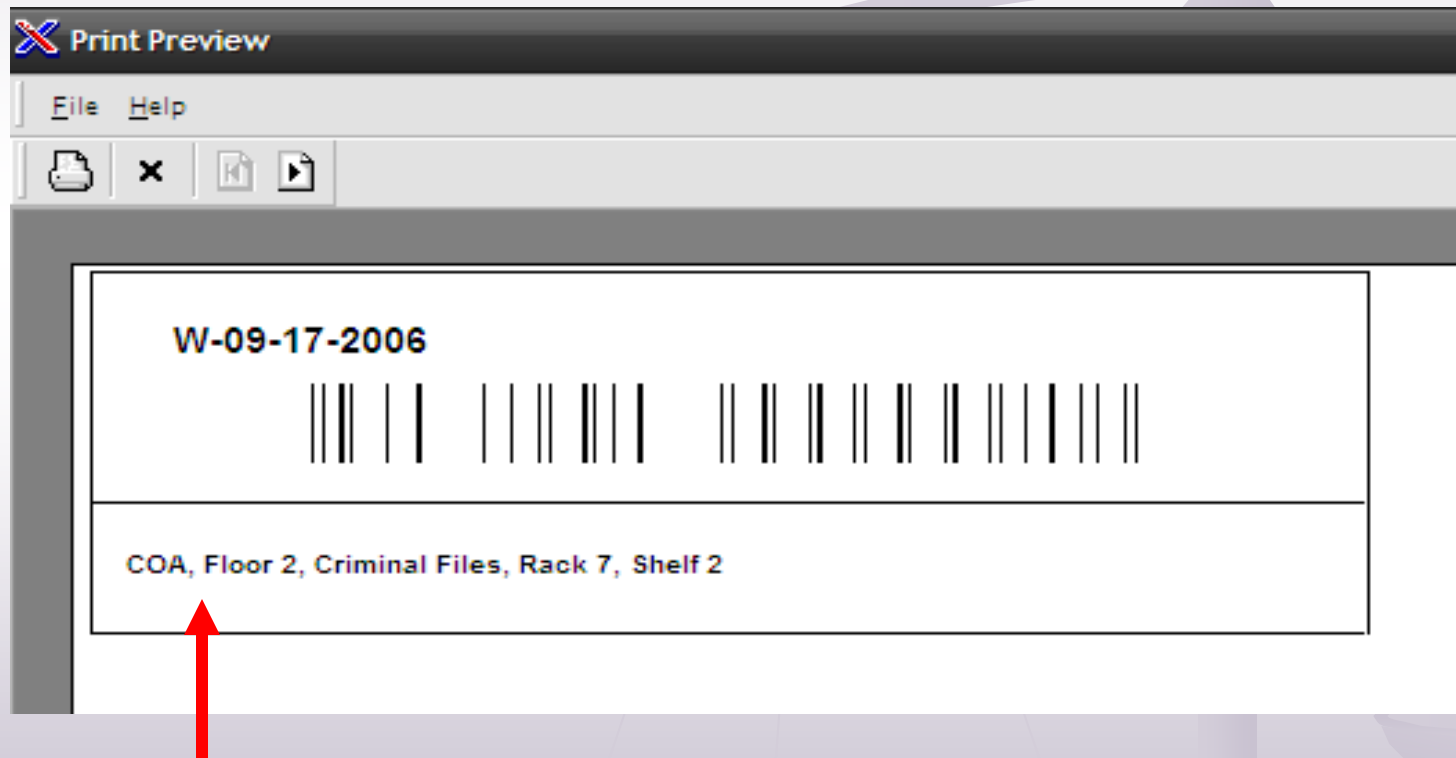
09
17



SCREEN SHOT OF THE FILE TRACKING SYSTEM FOR CRIMINAL FILES



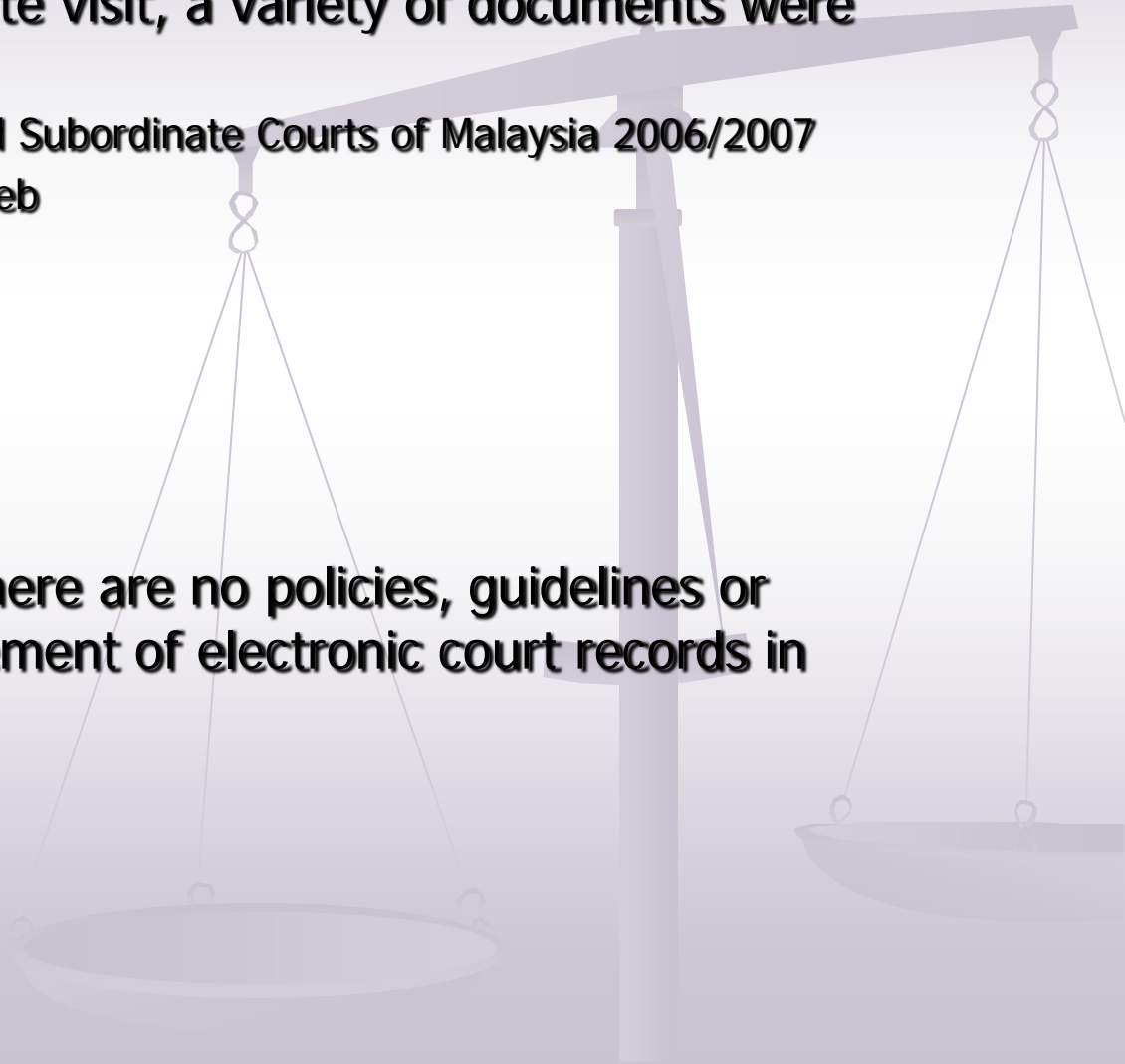
SCREEN SHOT OF THE BARCODE FOR CRIMINAL APPEAL (FILE NO. W-09-17-2006)

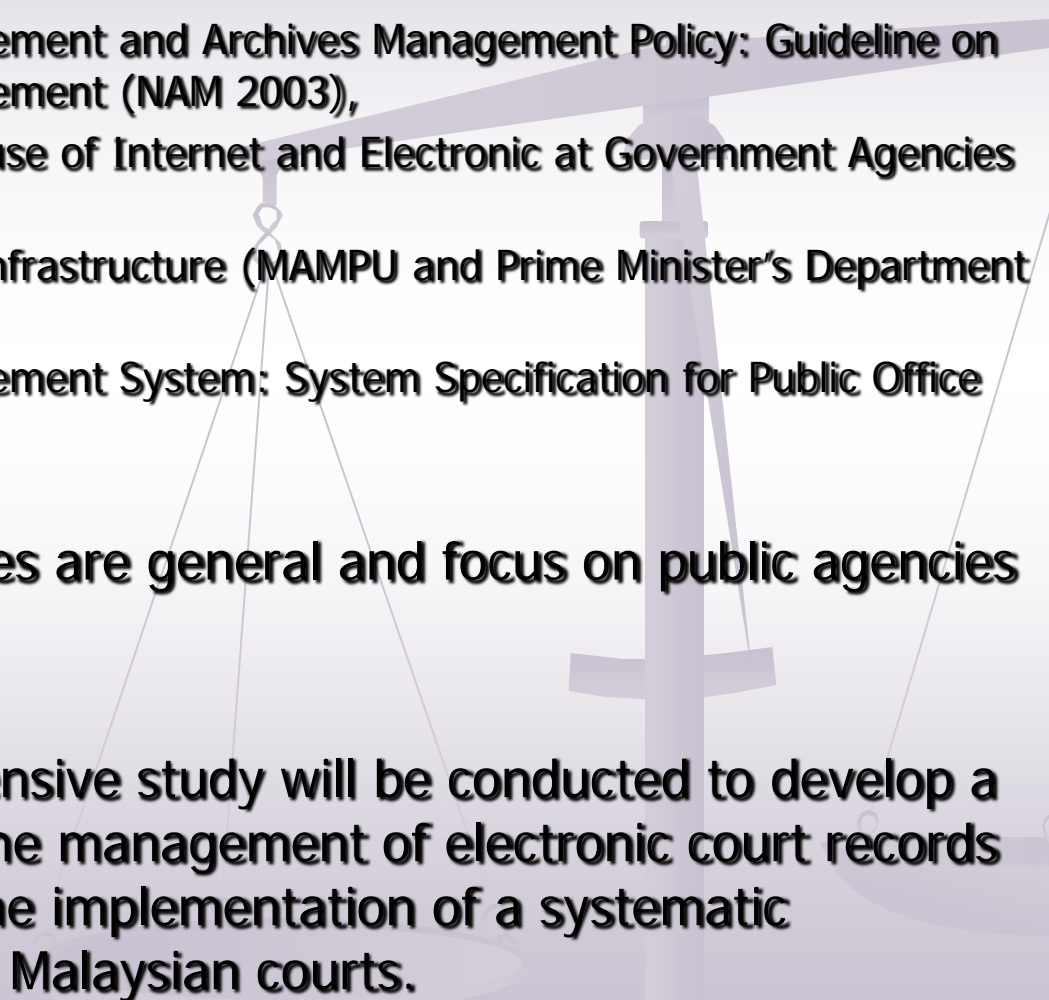


LOCATION OF FILE IN THE FILE ROOM

Documentation

- To corroborate and augment evidence collected during the face-to-face interviews and the site visit, a variety of documents were analyzed, including:
 - Annual report: Superior and Subordinate Courts of Malaysia 2006/2007
 - Malaysian Courts Official Web
 - Newspaper clippings
 - Online articles
 - Proceedings
 - National Policies
- The result reveals that, there are no policies, guidelines or standards on the management of electronic court records in Malaysia.



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- Thus far, the National Archives of Malaysia (NAM) and The Malaysian Administrative Modernisation and Management Planning Unit (MAMPU) have produced a few guidelines on electronic records management, including:
 - Electronic Records Management and Archives Management Policy: Guideline on Electronic Records Management (NAM 2003),
 - Guidelines on Procedural use of Internet and Electronic at Government Agencies (MAMPU 2003),
 - Information Technology Infrastructure (MAMPU and Prime Minister's Department 2007), and
 - Electronic Records Management System: System Specification for Public Office (NAM 2008).
 - However, these guidelines are general and focus on public agencies as a whole.
 - Accordingly, a comprehensive study will be conducted to develop a model requirement for the management of electronic court records as the first strategy to the implementation of a systematic recordkeeping system in Malaysian courts.

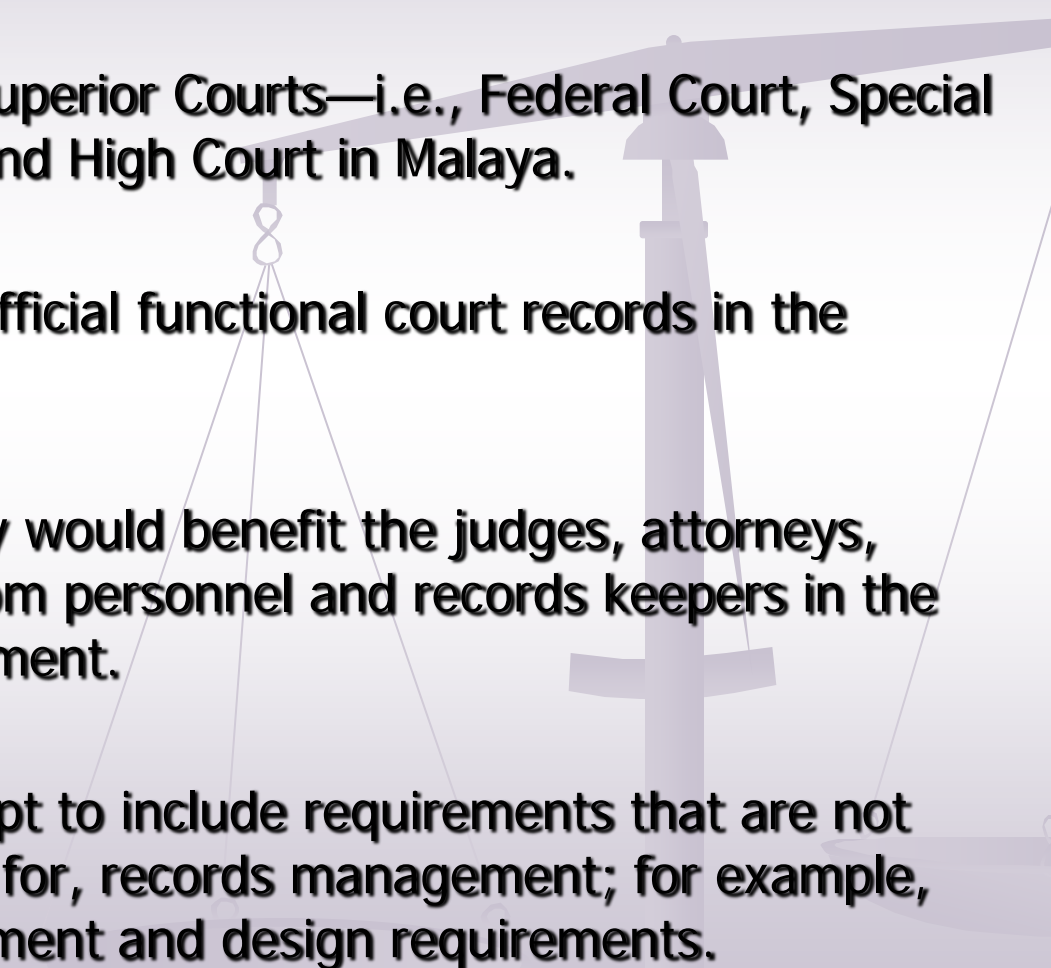
AIM AND OBJECTIVES

The aim of the proposed study is to develop and describe a model requirement for the management of electronic court records in the Superior Courts of Malaysia (Federal Court, Special Court, Court of Appeal and High Court in Malaya).

In pursuance of the above aim, this study embarks on the following objectives:

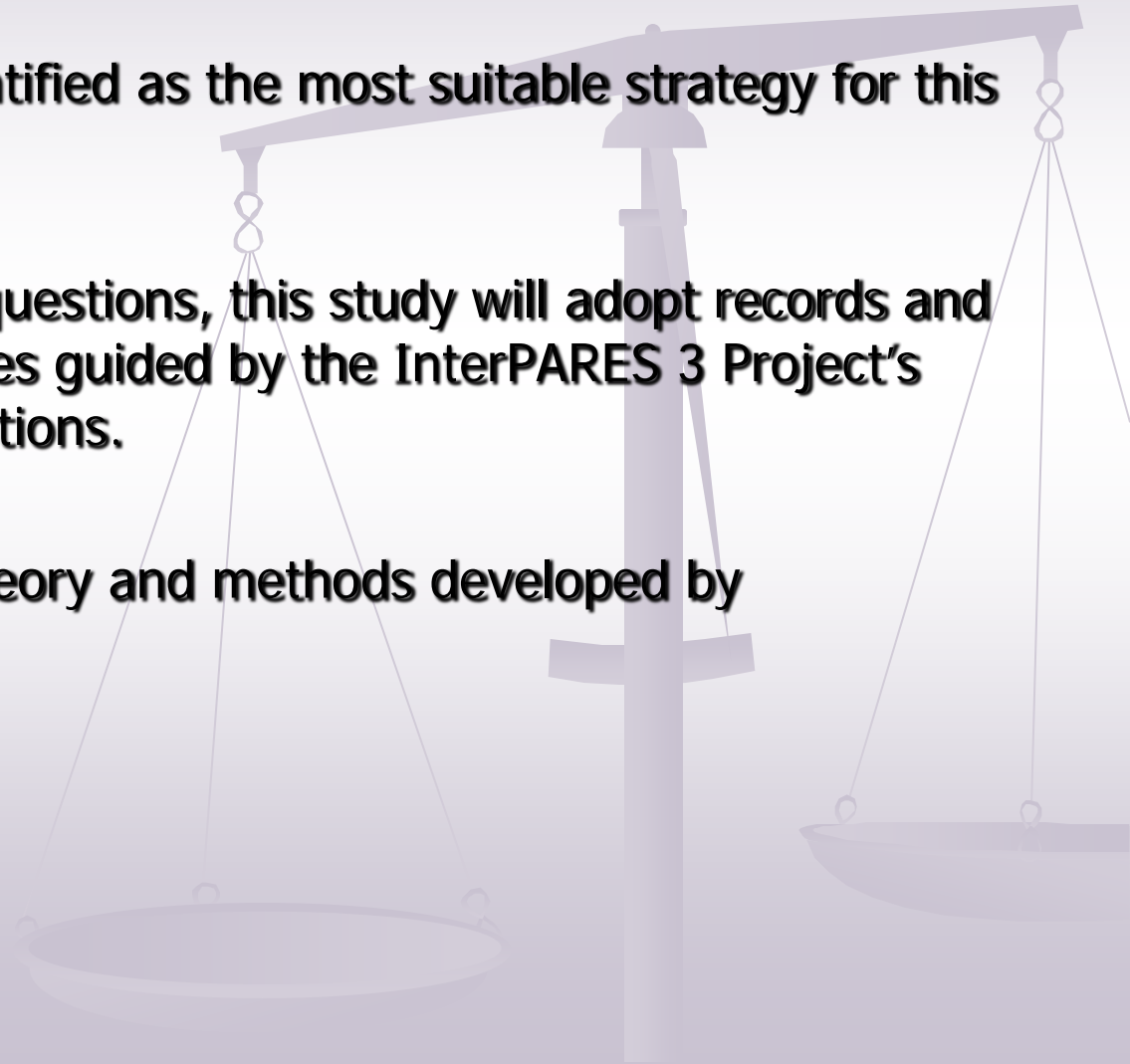
- To investigate the current practices of the recordkeeping system in the Superior Courts of Malaysia. The investigations will be based on two criteria:
 - *Describing the relevant context of the Superior Courts in accordance to the five contexts identified by InterPARES: Provenancial, Juridical, Administrative, Procedural, Documentary and Technological.*
 - *Answering the research questions developed by the InterPARES 3 Project with respect to records and recordkeeping system case studies.*
- To identify and analyze the various international and national best practices of functional requirements for electronic court records management and electronic records management.
- To evaluate the applicability of the model developed based on the best practices framework to the practice of recordkeeping in the system of the Superior Courts of Malaysia.

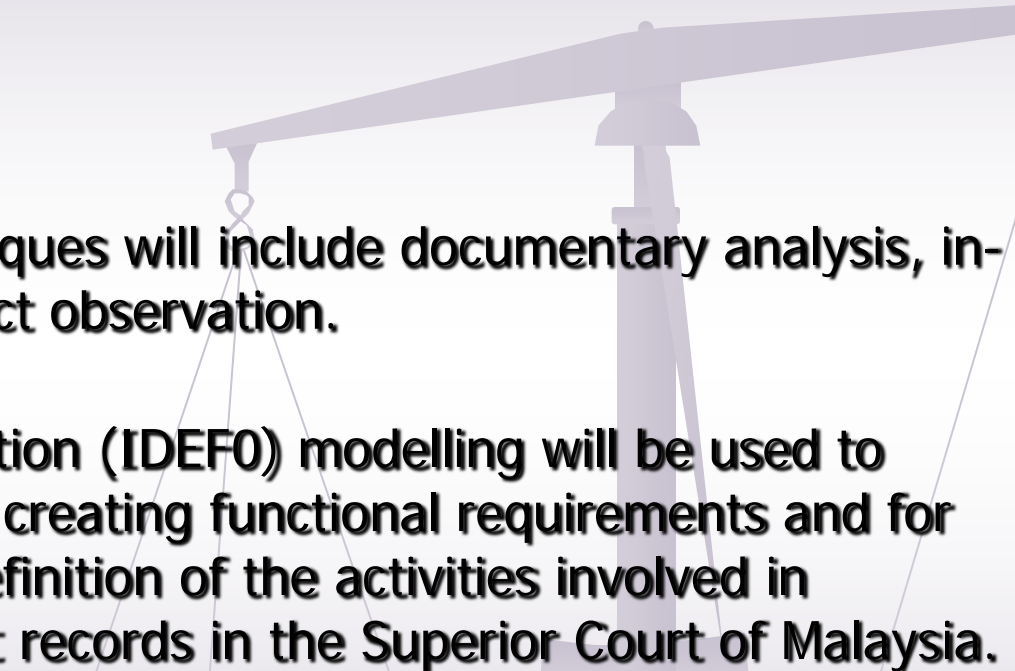
SCOPE OF THE STUDY

- This study focuses mainly on developing the model requirements for the management of electronic court records in Malaysia.
 - This study only covers Superior Courts—i.e., Federal Court, Special Court, Court of Appeal and High Court in Malaya.
 - This study is limited to official functional court records in the Superior Courts.
 - The findings of the study would benefit the judges, attorneys, judicial officers, courtroom personnel and records keepers in the Malaysian Legal Environment.
 - The study will not attempt to include requirements that are not specific to, or necessary for, records management; for example, general system management and design requirements.
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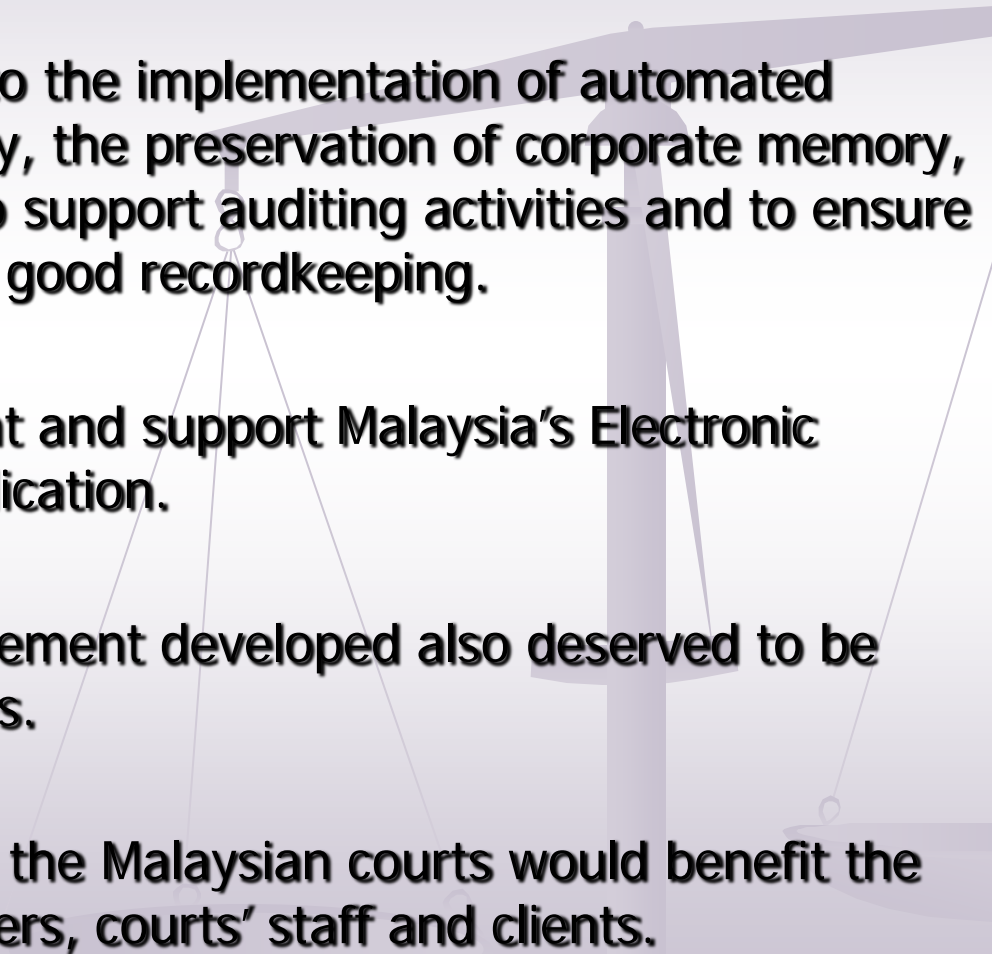
RESEARCH METHODOLOGY

- Qualitative research will be chosen as the approach for this study.
- Case study has been identified as the most suitable strategy for this research.
- To answer the research questions, this study will adopt records and recordkeeping case studies guided by the InterPARES 3 Project's case study research questions.
- This project will utilize theory and methods developed by InterPARES.



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- **The respondents for this study are:**
 - Records practitioners / staff who are given the responsibility to manage records.
 - Judges
 - Courtroom personnel
 - IT/System personnel
 - **The data collection techniques will include documentary analysis, in-depth interviews and direct observation.**
 - **Integrated definition function (IDEF0) modelling will be used to model the procedures for creating functional requirements and for the representation and definition of the activities involved in managing electronic court records in the Superior Court of Malaysia.**

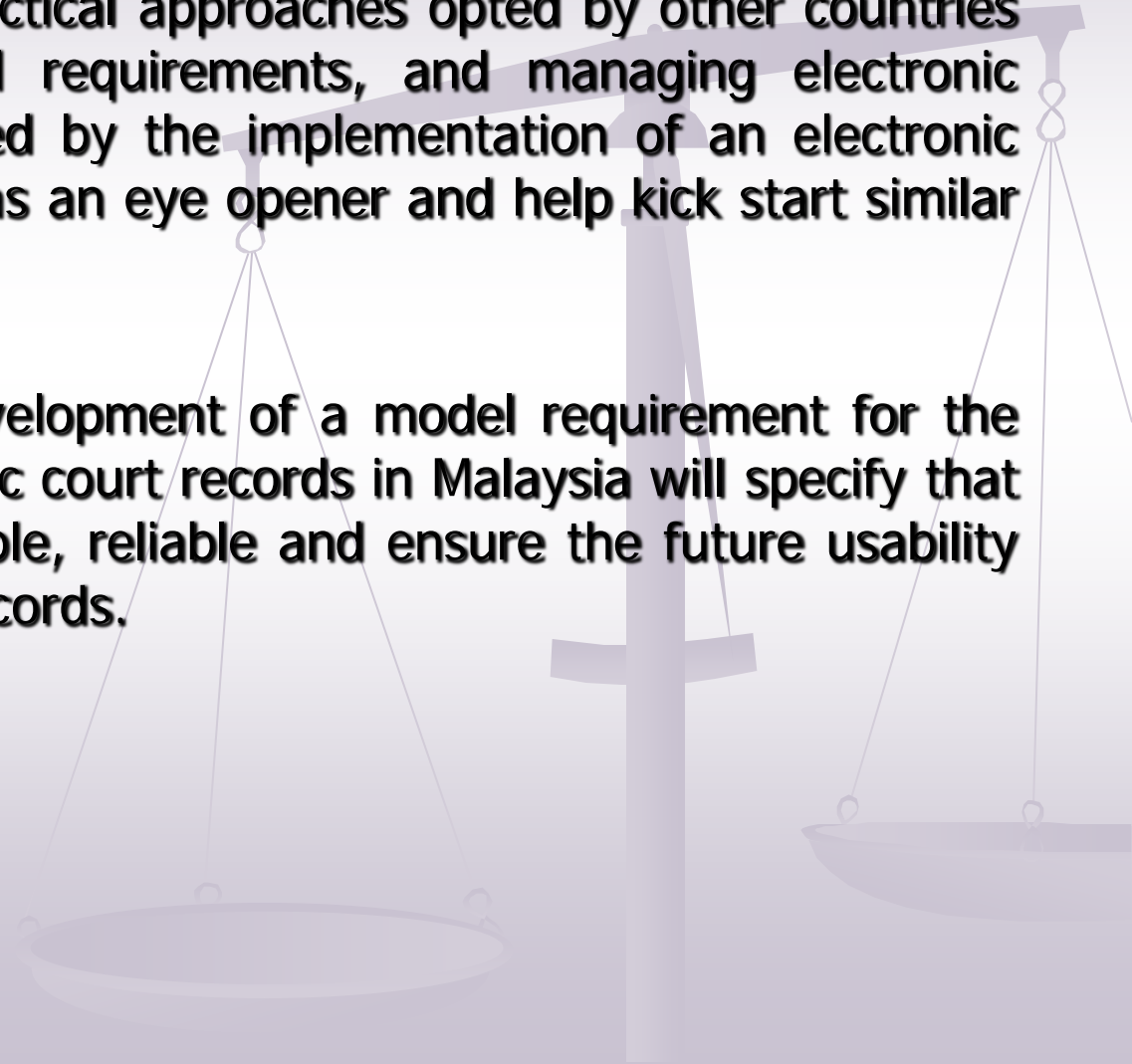
SIGNIFICANCE OF THE STUDY

- The findings could be used to design, select, audit and appraise court records management systems.
 - The study will contribute to the implementation of automated recordkeeping functionality, the preservation of corporate memory, and an enhanced ability to support auditing activities and to ensure good governance through good recordkeeping.
 - This study will complement and support Malaysia's Electronic Government Flagship Application.
 - The comprehensive requirement developed also deserved to be used for teaching purposes.
 - Recordkeeping system for the Malaysian courts would benefit the government, judges, lawyers, courts' staff and clients.
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CONCLUSION

An awareness of the practical approaches opted by other countries in developing functional requirements, and managing electronic court records, augmented by the implementation of an electronic filing system, will serve as an eye opener and help kick start similar practices in Malaysia.

It is hoped that the development of a model requirement for the management of electronic court records in Malaysia will specify that the system be accountable, reliable and ensure the future usability of the electronic court records.



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