An individual’s right United Kingdom and to be let alone in the Malaysia
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Abstract
What right to privacy is, whether or not the existing legal framework recognises such a concept and what the scope of such concept is - are questions that have yet to be settled and are still subjects for debates. The gravity of the problem has been accumulated with the fact how this aspect of life has been and could be easily intruded with the advance of technology. Thus it is paramount that such an individual’s very right to be let alone must be afforded the legal protection it deserves. The paper examines the relevant laws in the United Kingdom and Malaysia to see whether or not the currently enforceable laws in the respective legal system may provide the very essence of human rights that privacy seeks to safeguard. The analysis of case laws shows that the more current trend (that perhaps not the latest one) of the English common law refutes the existence of general right to privacy. The commencement of the HRA 1998, however, has attracted the necessity to examine and evaluate the scope of the right to privacy, at least in the context of an individual’s ‘right to respect for his private and family life, his home and his correspondence’. This paper attempts to exemplify the scope of the right to privacy as that being protected by virtue of Article 8 of the ECHR and, in the context of Malaysian legal system, to examine if such a right may be recognized by invoking individuals’ fundamental right to personal liberty and/or property as protected respectively under Articles 5 and 13 of the Federal Constitution of Malaysia. The law of the United Kingdom, particularly the English law, is chosen as the benchmark because the United Kingdom is where the common law was initially originated, developed and subsequently introduced to the former British colonies. To a great extent the English common law is still being applied across the Commonwealth countries. Unlike the United Kingdom, since its Independence Day Malaysia already has the Federal Constitution; the supreme law of the land that codifies inter alia the fundamental rights and freedoms of its subjects. That leads to many other differences that affect the extent of reception of English law in Malaysia. Further grounds for choosing Malaysia as the point of comparison include the facts that although the common law of England is seen as the most influential source of law in Malaysia and that most of the existing legislation in Malaysia are either a codification of common law principles or an adoption of the United Kingdom legislation, the local custom and usage, the official religion of the country and the political orientation of Malaysia have driven the country to adopt some legal measures exceptionally different than those existing in the United Kingdom and other commonwealth countries. This paper ultimately aims to demonstrate that it is already high time to have express judicial or legislative recognition of privacy, especially for the countries where such legal recognition is still arguably lacking such as the United Kingdom and Malaysia and to outline the possible options available in each legal system to sanction and express legal protection for the right to privacy.