

FORWARD

A YEARLY BULLETIN BY MESSRS. CLARISSA TAN & WONG
2023 EDITION
ISSUE 03



OUR CORDS LENGTHEN,
OUR STAKES STRENGTHEN

"Expansion transcends size; it's about meeting
broader needs and lasting resilience"



MAKING SPACE FOR FRESH OPPORTUNITIES



CLARISSA TAN & WONG
ADVOCATES & SOLICITORS

AT MESSRS. CLARISSA TAN & WONG

INDEX

04 EDITOR'S NOTE

A little message from us to you

05 CORPORATE SOCIAL RESPONSIBILITY 23

Small Steps, Big Impact

17 PROPERTY LAW

Stamp Duty Exemptions in 2023 and case studies on the property scene in Malaysia

07 AN INTERVIEW WITH OUR PARTNER

Get to know Tan Yew Jeen, Eugen

25

BEHIND THE SCENES

Snippets of our life at Clarissa Tan & Wong

09 2023 LEGAL HIGHLIGHTS

Legal developments in 6 practice areas in Malaysia

27

EMPLOYMENT LAW

Case studies on unfair dismissal claims at the Court of Appeal

11 CONSUMER LAW

New requirements on marking of pre-packaged goods

31

INSOLVENCY LAW

Developments in regards to the Bankruptcy Laws in Malaysia

13 CORPORATE LAW

Case studies on corporate matters

33

SUCCESSION LAW

A case study on illegitimate child's right to inheritance in the Federal Court

33

CONTACT DETAILS

Contact us via our listed numbers, emails and addresses

EDITOR'S NOTE

Back in the olden days, people would enlarge their tents by lengthening the cords as their family grew in size and they would add on more tent pegs to the ground to strengthen their stakes. This would ensure that their tent could cater to their growing needs while remaining strong enough to not collapse when the winds blew.

The imagery of a stretched out tent really inspires us as we reflect back on our journey this year as it was one of continuous evolution.

Throughout this year, our primary focus revolved around the strategic expansion of our team, a pivotal step in fortifying our capabilities and expertise. Simultaneously, our Selangor branch experienced a significant milestone by relocating to a new, more expansive office space. This move signified not just a physical transition but a deliberate step towards enhancing our presence in the region, allowing us to better serve our clients, accommodate our growing workforce, and foster an environment conducive to innovation and collaboration. Additionally, we proudly welcomed our third branch office in Johore.

As we embrace this new chapter, we reaffirm our dedication to the core values that have always guided us – integrity, excellence, and compassion. We see our expansion as an opportunity to foster stronger community ties, to advocate more robustly for justice, and to be a beacon of legal support.

We extend our heartfelt gratitude for the ongoing support and trust we receive. The expansion of our team and offices are a direct reflection of our commitment and effort to serving you better, and we are eager to embark on this journey of growth together.

Thank you for choosing us as your partner. We look forward to continuing to exceed your expectations as we evolve and expand our capabilities.

The Forward Team

Small Steps, Big Impact

CORPORATE SOCIAL RESPONSIBILITY

Beyond Business: How Our Partners Champion CSR Initiatives



Sharing legal knowledge online

In the digital landscape where information reigns supreme, our Firm has pioneered a captivating and educational series titled '*Legal Lens*' on Instagram. Each week, we explore interesting current events, taking a critical look through the lens of law to unravel the underlying legal framework shaping these occurrences.

Our Partners have also diligently contributed to our online presence by sharing their knowledge and expertise across various social media platforms. The impact of our social media outreach transcended digital borders, drawing attention from reputable publications such as Sin Chew Daily, China Press, Guang Ming Daily and many more. We were also featured in international press, specifically Singapore and Taiwan.

Cooking hot meals with SESO Malaysia

Devoting our time, resources, and unwavering energy, together with SESO Malaysia, a non-profit organisation that focuses on minimizing food wastage. we delved into the surplus food acquired from local supermarkets and grocers, and transformed these rescued provisions into wholesome meals.

The freshly prepared meals were then immediately distributed to the residents at PJ Caring Home.

The day echoed with the clinking of pots and pans, the laughter resonating through the kitchen, and the joyous chatter as we shared stories while preparing the meals. It wasn't merely about cooking; it was about fostering connections, bridging communities, and making a tangible difference in the lives of those often overlooked.



Educating the public through talks & webinars

At the heart of our Firm's values lies a deep commitment to empowering our community through knowledge and understanding of the law. Through engaging presentations and interactive discussions, our Partners unraveled legal complexities, demystified legal jargons to ensure that everyone comprehends their rights, and provided avenues for seeking legal recourse.

As a Firm, we take immense pride in our Partners' contributions to these speaking engagements. Their unwavering dedication to keeping our community well-informed is a testament to our firm's ethos of serving not only as legal professionals but also as advocates for education and empowerment.

CORPORATE SOCIAL RESPONSIBILITY

'We have a social responsibility, a constitutional opportunity and a moral obligation to make our world a better place'





TAN YEW JEEN, EUGEN
Partner (Penang Branch)

PARTNER SPOTLIGHT: TAN YEW JEEN, EUGEN

1) WHAT'S YOUR LEGAL JOURNEY LIKE AND HOW DID IT LEAD TO PRACTISING CORPORATE AND COMMERCIAL LAW?

My legal journey has been both fulfilling and dynamic. I began my career with a strong foundation in real property law in private practice, gradually gravitating towards corporate law as an in-house counsel due to its intricate challenges and the dynamic nature of business transactions. The complexity of commercial legal issues appealed to me, leading me to specialise in this field over time. Choosing a practice area to specialise in is similar to finding the right shoe – once you find the right fit, you're all set to run a marathon!

2) HOW DO YOU AND THE FIRM REMAIN RELEVANT AND ADVANTAGEOUS IN THESE CHANGING TIMES?

Staying relevant in today's dynamic landscape is like riding the legal rollercoaster – thrilling and strategic! As a Firm, we prioritise continuous learning, adapting to emerging technologies, and staying abreast of evolving legal frameworks. I believe this is reflected in our innovative approaches, such as our endeavours on social media and in publications, as well as our engagement in public talks addressing the latest legal advancements. As for myself, I am enthusiastic about self-improvement and have achieved both LL.B (Hons) and LL.M (Hons) from the University of Malaya. Additionally, I hold certification as an Associate of the Asian Institute of Chartered Bankers, specialising in anti-money laundering practices and have been elected as a Fellow at the Malaysian Institute of Chartered Secretaries and Administrators.

3) WHAT DID YOU LEARN THIS YEAR?

The lessons this year were immeasurable. I learned the art of adaptability, the importance of a resilient mindset, and the value of continuous learning. It's like discovering new superpowers to navigate the ever-changing legal universe. So I would say, "Bring it on, 2024!".

4) WHAT DO YOU LOOK FORWARD TO IN 2024?

As our economy steadily recuperates and businesses regain momentum, the ongoing progress in technology and evolving regulatory structures not only promise intriguing advancements but also open doors for exciting prospects in foreign investments. This aspect particularly excites me. Embracing these changes, I look forward to further contributing to our clients' success and expanding our firm's capabilities.

Legal highlights in the area of consumer, corporate, property,
employment, insolvency and succession

HIGHLIGHT OF THE YEAR

Legal Development in Malaysia

The law is
the agent
and
repository
of change
in society

CONSUMER LAW

Trade Descriptions (Marking of Pre-packaged Goods) Order 2023

CORPORATE LAW

Abdul Malek Faisal bin Mohd Hyffny v Shaikh Marikhzan Jalani & Ors [2023] 4 MLJ 207

Gopala Krishnan Chettiar a/l Muthu v Sealand Marine Inspection and Testing (M) Sdn Bhd & Anor [2023] 4 MLJ 445

Companies Act 2016
Industrial Relations Act 1967

EMPLOYMENT LAW

7-Eleven Malaysia Sdn Bhd v Ashvine A/P Hari Krishnan [2023] 3 MLJ 469

EMPLOYMENT LAW

Matrix Global Education Sdn Bhd v Felix Lee Eng Boon [2023] 1 MLJ 880

Industrial Relations Act 1967

INSOLVENCY LAW

Insolvency Act 1967
Insolvency (Amendment) Act 2023

PROPERTY LAW

Affan Bin Mohd Nawi & Ors v Lakefront Residence Sdn Bhd & Ors [2023] MLJU 1955

Remeggious Krishnan v SKS Southern Sdn Bhd (formerly known as MB Builders Sdn Bhd) [2023] 3 MLJ 1

PROPERTY LAW

Housing Development (Control and Licensing) Act 1966
Stamp Duty (Exemption) Order 2023

Stamp Duty (Exemption) (No. 2) Order 2023

Stamp Duty (Exemption) (No. 3) Order 2023

Stamp Duty (Remission) Order 2023

Stamp Duty (Remission) (No. 2) Order 2023

SUCCESSION LAW

Tan Kah Fatt & Anor v. Tan Ying [2023] 2 MLJ 583

Law Reform (Marriage and Divorce) Act 1976

New Requirements On Marking Of Pre-Packaged Goods Effective From September 1, 2023

In a move aimed at enhancing consumer protection and ensuring accurate product information, Malaysia's Minister of Domestic Trade and Cost of Living have introduced the Trade Descriptions (Marking of Pre-packaged Goods) Order 2023, which came into effect on September 1, 2023. This Order imposes marking obligations on wholesalers, manufacturers, importers, and producers of pre-packaged goods to indicate whether the goods are produced locally or imported into Malaysia. However, goods intended for export are exempt from these requirements.

The key provisions of the Order are as follows:

1. **Marking of Pre-packaged Goods:** Pre-packaged goods must have appropriate indications, specific nominal quantity markings, specified quantity indicators for count, and details of the responsible entity's name and address.
2. **Goods with Solid Content in Liquid:** For goods containing solid content in a liquid medium, marking should include either the net weight and drained weight if the liquid might or might not be left over after use, or only the net weight if the liquid is not meant to be left over.
3. **Language and Legibility:** Marks on pre-packaged goods must be legible and in either the national language or English, depending on the goods' origin, and must provide clear contrast with the background color. The minimum height of markings should be 2 to 6 millimeters.
4. **Tolerable Deficiency:** The Order allows for tolerable deficiencies in the quantity of goods within certain limits, which vary depending on the type of goods and packaging.

Violation of the Order can result in severe penalties, including fines up to RM200,000 or RM500,000 for corporations, and fines up to RM100,000 or imprisonment up to three years for individuals.

As the Order is already in effect, businesses should stay informed and take proactive steps to ensure compliance with these important regulations to avoid legal repercussions and protect consumer interests.





In a recent case, *Gopala Krishnan Chettiar a/l Muthu v Sealand Marine Inspection and Testing (M) Sdn Bhd & Anor* [2023] 4 MLJ 445, the Court of Appeal provided clarity on whether a director and shareholder of a company can be classified as a 'workman' under Section 2 of the Industrial Relations Act 1967 (IRA 1967) and thus be entitled to claim unfair dismissal as an employee.

Gopala Krishnan Chettiar a/l Muthu v Sealand Marine Inspection and Testing (M) Sdn Bhd & Anor [2023] 4 MLJ 445

Court Of Appeal Rules That Company Director Can Be Considered A Workman Under IRA 1967

The case revolved around the appellant, who held a directorship and shares in a company specialising in marine cargo surveying and inspection. Despite his status as a director and shareholder, he performed daily work-related duties and site visits as an operations director. When the company accused him of causing staff resignations, he was given a prepared resignation letter to sign, which he refused. Subsequently, the company terminated him and barred him from its premises, leading to his claim of unfair dismissal.

Initially, the Industrial Court ruled in favour of the appellant, acknowledging him as a 'workman' and ordering compensation. However, the High Court overturned this decision, asserting that the appellant's role as a director excluded him from IRA 1967 protection.

The Court of Appeal revisited the issue, emphasizing the need for a flexible interpretation of 'workman' under IRA 1967. Ultimately, the Court of Appeal ruled in favour of the appellant. They argued that, despite his directorship and shareholding, he functioned as an employee, as evidenced by his daily presence at the workplace and site visits. Additionally, he was not the controlling mind of the company and lacked a formal position as "director of operations" within the Board.

This case underscores that a company director can, under certain circumstances, also function as an employee. The Court's decision hinges on an individual's role and responsibilities, assessing whether their engagement primarily constitutes a contract of service (employee) or a contract for services.



Court Of Appeal Declares Meeting Invalid For Not Observing A 15-Minute Waiting Period

In the landmark case of *Abdul Malek Faisal bin Mohd Hyffny v Shaikh Marikhzan Jalani & Ors* [2023] 4 MLJ 207, the Malaysian Court of Appeal invalidated an Extraordinary General Meeting (EGM) resolution to remove a company director. The judgment, delivered on February 21, 2023, centered on procedural adherence in corporate governance under the Companies Act 2016 (CA 2016) and the company's constitution.

Minsyam Sdn Bhd, the company involved, had split its shareholders into two factions, each holding equal voting shares. The dispute began when one faction, led by Abdul Malek, the company's Chairman and Director, was opposed by Shaikh Markhzan and Syed Zainal, who requisitioned the EGM to oust Abdul Malek.

According to the CA 2016 and company constitution, the chairman should preside over meetings, or in their absence, after 15 minutes, shareholders can elect a replacement. The EGM, scheduled for 10:30am on March 9, 2020, commenced at 10.35am with Shaikh Markhzan self-appointing as chairman. By 10.41am, the resolution to remove Abdul Malek was passed.

The High Court initially dismissed Abdul Malek's challenge, deeming the 15-minute wait as a curable procedural irregularity. However, the Court of Appeal overturned this decision, emphasizing strict adherence to procedural norms. It held that the EGM's commencement before the stipulated 15 minutes violated both the CA 2016 and the company's constitution.

The Court also rejected the application of section 582 of the CA 2016, which allows courts to validate proceedings despite irregularities if no substantial injustice is caused. It underscored the importance of a director's right to be heard, as per section 207 of the CA 2016, and the context of ongoing shareholder disputes.

This decision underscores the criticality of procedural compliance in corporate governance, emphasizing the necessity for quorum, proper appointment of a chairman, and adherence to statutory and constitutional provisions during general meetings.

Stamp Duty Exemption In 2023

[Stamp Duty Exemption for Family Property Transfers]

Malaysia has recently introduced the Stamp Duty (Exemption) (No. 3) Order 2023, which came into operation on April 1, 2023. This order grants a stamp duty exemption for transfers of immovable property between family members, specifically parents and children, as well as grandparents and grandchildren:-

Donor	Recipient
Mother and/or father	Child
Child	Mother and/or father
Grandfather and/or grandmother	Grandchild
Grandchild	Grandfather and/or grandmother

To be eligible for this exemption:-

- 1.The property transfer must be executed on or after April 1, 2023; and
- 2.The recipient must be a Malaysian citizen.

Under this order, for property transfers between these family relationships, the first RM1,000,000 of the property's market value is exempt from stamp duty. Any amount exceeding RM1,000,000 is subject to 50% of the stamp duty.

Stamp Duty Exemption In 2023

[Stamp Duty Benefits for First-Time Homeowners Under iMiliki Initiative]

The Malaysian government has introduced measures to promote affordable home ownership. First-time homebuyers will receive full stamp duty exemptions for property transfers and loan agreements on homes valued at RM500,000 or less until the end of 2025. For homes valued between RM500,001 and RM1,000,000, there is a 75% stamp duty remission until December 31, 2023.

To implement these initiatives, subsidiary legislation was gazetted on June 9, 2023, as part of the Malaysian Home Ownership Initiative (iMiliki) under the Home Ownership Programme 2022/2023. The legislation includes exemptions and remissions:-

1. Exempts full stamp duty on property transfer instruments and loan agreements for residential properties valued at RM500,000 or less; and
2. Provides a 75% stamp duty remission for property transfer instrument and loan agreements on properties valued between RM500,001 and RM1,000,000.

The exemptions and remissions specified in the Orders have specific eligibility criteria:

1. The Sale and Purchase Agreement (SPA) must involve an individual and a property developer
2. The purchase price in the SPA should reflect a discount of at least 10% from the original price offered by the property developer, as approved under the relevant housing development law
3. The SPA must be executed between June 1, 2022, and December 31, 2023, and the stamp duty must be paid by January 31, 2024
4. The individual involved in the SPA must not have previously owned any residential property.

Developer Found In Breach Of Agreements In Luxury Villa Project Controversy

Affan Bin Mohd Nawi & Ors v Lakefront Residence Sdn Bhd & Ors
[2023] MLJU 1955

In this significant legal case, the controversy centered around the development of a housing project, purportedly featuring 110 exclusive luxury villas, as per the representations in the Sale and Purchase Agreements (SPAs).

The project, initially planned as a gated community with 110 villa units, encountered a change when permission was granted to convert part of the land for commercial use. This shift led to legal proceedings, where the 46 purchasers alleged breaches of the SPAs and misrepresentations by the developer.

The court found the developer in breach of the SPAs. The Preamble and plans within the SPAs clearly indicated a commitment to develop 110 villa units, not allowing for a commercial component. This interpretation followed the principle of maximum protection for house buyers, as established in previous case laws.



“Kata itu kota” is a well-known peribahasa. It means that every promise made must be honoured. Its English equivalent is “A man’s word is his bond”.

— per Judicial Commissioner Leong Wai Hong

in *Affan Bin Mohd Nawi & Ors v Lakefront Residence Sdn Bhd & Ors [2023] MLJU 1955*

Federal Court Rules Tribunal Can Hear Multiple Claims On Same Property Exceeding RM50,000 Limit

Remeggious Krishnan v SKS Southern Sdn Bhd (formerly known as MB Builders Sdn Bhd)

[2023] 3 MLJ 1

The case of Remeggious Krishnan v SKS Southern Sdn Bhd revolves around the interpretation of the Housing Development (Control and Licensing) Act 1966, specifically sections 16M and 16Q.

The core of the dispute was the developer's failure to provide an electricity supply in a newly constructed property, which was a breach of the Sale and Purchase Agreement. Remeggious Krishnan, the plaintiff, filed two claims with the Tribunal for Home Buyer Claims: a "Non-Technical Claim" for the breach in the manner of delivery of vacant possession and a "Technical Claim" regarding inadequate ceiling height and the presence of protruding beams and pillars. Each claim individually did not exceed the Tribunal's monetary jurisdiction of RM50,000, but collectively, the total amount of both claims surpassed this limit.

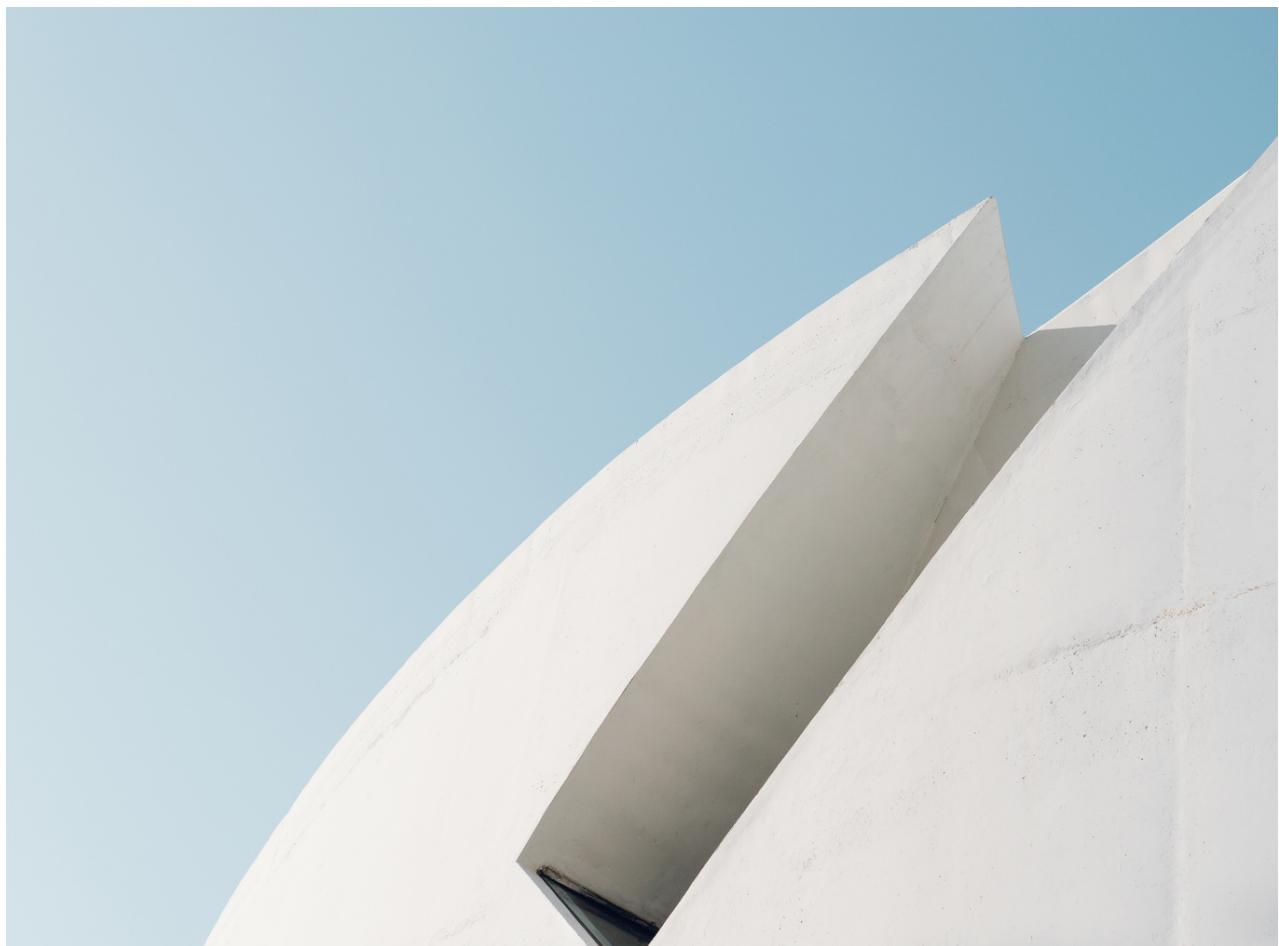
FIRST ISSUE: JURISDICTION OF TRIBUNAL TO HEAR THE CLAIMS

The central legal question was whether the Tribunal had jurisdiction to hear two separate claims in respect of the same property where the total amount of dispute of the two claims exceeds the Tribunal's monetary jurisdiction of RM50,000. The Federal Court, diverging from the Court of Appeal's interpretation, held that 'the same matter' in section 16Q of the Housing Development Act refers to the same issue or type of claim, not the same physical property. This interpretation allowed Krishnan's separate claims on different aspects concerning the same property to be valid.

SECOND ISSUE: DUTY TO ENSURE THAT THERE IS ACTUAL CONNECTED SUPPLY OF ELECTRICITY AND WATER

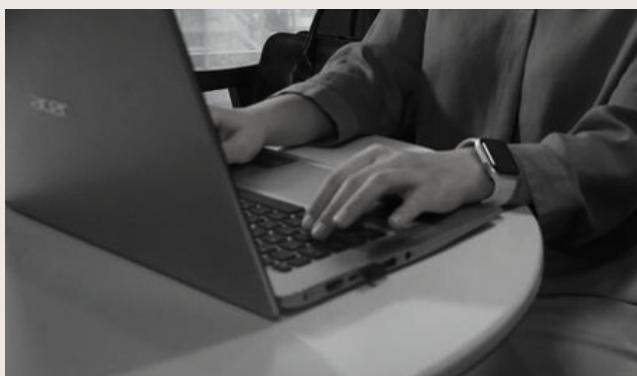
Further to that, Clause 27 of the SPA requires water and electricity to be "ready for connection" when the developer delivers vacant possession. The Federal Court disagreed with the Court of Appeal's interpretation that this didn't mean actual electricity supply had to be installed; instead, it meant functional electrical points and the availability of supply.

The Federal Court's decision in Remeggious Krishnan v SKS Southern Sdn Bhd is significant for its progressive interpretation of the Housing Development (Control and Licensing) Act. By allowing separate claims for distinct matters on the same property, the Court has enhanced the protective measures for home buyers. This decision serves as a precedent for future cases, ensuring that technical and non-technical claims, even when collectively exceeding the Tribunal's monetary limit, can be pursued individually.



BEHIND THE SCENES





Employees Are Prohibited From Seeking Unfair Dismissal Damages In Civil Courts

7-Eleven Malaysia Sdn Bhd v Ashvine A/P Hari Krishnan [2023] 3 MLJ 469

In a significant legal decision, the Court of Appeal in the case of 7-Eleven Malaysia Sdn Bhd v Ashvine A/P Hari Krishnan [2023] 3 MLJ 469 has ruled that employees are unable to pursue damages for unfair dismissal in civil courts but must utilize the statutory mechanism provided, specifically, the Industrial Court. This decision has important implications for the employment law in Malaysia.

In this case, the employee, who was a Senior Manager of Human Resources, claimed she was unfairly treated and harassed by her supervisor and subsequently resigned. She demanded a substantial sum from the company, leading to a lawsuit in the High Court seeking over RM96 million in damages.

The High Court initially rejected the company's request to dismiss the claim, stating that excessive claims do not constitute court abuse. However, the Court of Appeal overturned this decision, emphasizing that claims of constructive dismissal fall under the jurisdiction of the Industrial Court, as per the Industrial Relations Act 1967. The Court referenced previous Federal Court rulings, asserting that common law remedies in civil courts are limited to contractual payments, and since all dues were paid to the employee, there was no further claim.

The ruling clarified that the statutory mechanisms provided for employment disputes must be followed, and pursuing such claims in civil courts is an abuse of process. The Court of Appeal's decision marks a precedent in Malaysian employment law, emphasizing the exclusive role of the Industrial Court in handling unfair dismissal cases.

Negotiated Separation Agreements May Negate Claims Of Forced Resignation And Dismissal

Matrix Global Education Sdn Bhd v Felix Lee Eng Boon

[2023] 1 MLJ 880

The case *Matrix Global Education Sdn Bhd v Felix Lee Eng Boon*, is a significant legal matter in the context of employment law, specifically addressing the issue of constructive dismissal. Felix Lee Eng Boon served as the CEO of Matrix Global Education. During his tenure, the company received several complaints about declining academic standards. In response, Lee was reassigned to a different role. Subsequently, the company proposed that he resign, offering severance terms which were negotiated between the parties.

Lee contested this move, claiming that he was forced to resign, constituting a constructive dismissal. The Industrial Court agreed with Lee, finding that his resignation was not voluntary but a result of the company's actions. Consequently, Lee was awarded back wages and compensation.

The case progressed to the High Court, which upheld the Industrial Court's decision. However, the scenario changed at the Court of Appeal. The appellate court noted several inconsistencies in Lee's claims and actions. They pointed out that the way Lee negotiated his severance terms and the manner of his resignation did not align with the typical characteristics of a forced resignation or constructive dismissal.

The Court of Appeal's decision to allow the company's appeal highlights the complexity of employment law, especially in cases of alleged constructive dismissal. The Court emphasized the importance of a detailed examination of the facts and context surrounding such claims. This case serves as a precedent, illustrating the nuances involved in determining whether an employee's resignation constitutes a voluntary act or a response to an untenable situation created by the employer.

The *Matrix Global Education* case significantly clarifies a key aspect of employment law: whether an employee who has negotiated a separation agreement can still claim constructive dismissal. This decision highlights the Industrial Relations Act 1967's intent to foster a fair and balanced relationship between employers and employees. It underscores that the legislation aims for equilibrium, supporting both parties' rights and interests, rather than favouring employees exclusively. This case serves as a precedent in understanding and applying the principles of constructive dismissal within the framework of equitable employer-employee relations.

Significant Reforms To Bankruptcy Laws In Malaysia: Insolvency (Amendment) Act 2023

In a recent development within Malaysia's bankruptcy regime, the Insolvency (Amendment) Act 2023, which came into effect on October 6, 2023, has introduced crucial changes to the Insolvency Act 1967. These amendments aim to streamline the administration of bankrupt estates and expedite the discharge of bankrupt individuals. Below is a summary of the key amendments introduced by the Act:

1. ELIMINATION OF MANDATORY FIRST CREDITORS' MEETING:

The Act eliminates the mandatory requirement for a first creditors' meeting to be called by the Director General of Insolvency (DGI). Such meetings will now only be convened upon request or when deemed necessary.

2. INTEGRATION OF REMOTE COMMUNICATION TECHNOLOGY:

Remote communication technology is now incorporated into bankruptcy administration. Meetings of creditors and the service of notices/documents may be conducted through remote means.

3. EXPANSION OF NON-OBJECTION CATEGORIES:

The Act expands the list of categories for which creditors are unable to object to a bankrupt's discharge by Certificate of the DGI. The new categories include:

- Bankrupt individuals suffering from mental disorders certified by a government hospital psychiatrist.
- Bankrupt individuals aged seventy years and above, deemed incapable of contributing to estate administration by the DGI.

These categories apply retroactively to those declared bankrupt before the Act's enforcement.

4. REMOVAL OF FIXED MONETARY THRESHOLDS:

Certain categories that previously had fixed monetary thresholds now read "as may be prescribed." This adjustment impacts the value of assets exempted from distribution among creditors and cases eligible for summary administration in small cases.

5. AUTOMATIC DISCHARGE PROVISION:

Automatic Discharge: A bankrupt will be automatically discharged from bankruptcy three years after submitting their statement of affairs if they have paid the determined sum of money as per the DGI's assessment and fulfilled their duties as a bankrupt.





Discharge Of Bankruptcy Under Small-Scale Debts

In the budget presentation on February 24, 2023, Malaysia's Prime Minister announced a significant change in bankruptcy cases involving debts of RM50,000 or less, effective from March 1, 2023. Here's a concise summary of the key points:

1. **Small-Scale Debt Definition:** Small-scale debts are those where the total debt is RM50,000 or less

2. **Conditions for Discharge:-**

- Bankruptcy declaration must be over 5 years old.
- Debt must not exceed RM50,000.
- Cooperation with the Department of Insolvency is required.
- No court orders, proceedings, or investigations preventing discharge.
- **Discharge Process:** Discharge is carried out under Section 33A of the Insolvency Act. The Director General of Insolvency (DGI) may issue a discharge certificate at their discretion.

3. **Application for Discharge:** Eligible individuals must apply for discharge to the DGI, who will then notify creditors of their intention.

4. **Creditor Objections:** Creditors can object to discharge within 21 days of receiving notice. Exceptions exist for certain categories of bankrupts.

5. **Consequences of No Objection:** If creditors don't object, the DGI issues a discharge certificate, releasing the bankrupt from provable debts, but they must assist in asset realization and remain liable for government debts.

6. **Handling Creditor Objections:** The DGI reviews creditor objections and may approve or reject them. If rejected, creditors can apply to the court to prohibit discharge for up to 2 years.

Illegitimate Child's Right To Inheritance From Deceased Parent's Estate

Tan Kah Fatt & Anor v Tan Ying

[2023] 2 MLJ 583

The Federal Court case of *Tan Kah Fatt & Anor v Tan Ying* is a pivotal decision in Malaysian family law, particularly regarding the rights of children born out of customary marriages and the interpretation of inheritance laws. The case arose following the death of Tan Kah Ying, who died intestate, leaving behind assets and family members including his wife, daughters, and other relatives.

Central to this case was the legal status of the second appellant, a child born from the deceased's second marriage, which was a Chinese customary marriage not registered under the Law Reform (Marriage and Divorce) Act 1976. The primary question was whether this child was entitled to inherit from the deceased's estate under the laws of intestacy as stipulated in the Distribution Act 1958.

The Federal Court undertook a detailed examination of the terms "child" and "issue" within the context of the Distribution Act. The Court applied the purposive approach to statutory interpretation, aiming to understand the legislature's intent behind the law. This led to a broader interpretation of these terms, effectively including all descendants of a deceased person, regardless of the legitimacy of their birth. This interpretation was significant as it expanded the scope of beneficiaries under the intestate succession laws.

Furthermore, the Court deliberated on the legitimacy of children from void or unregistered marriages, especially in light of changing societal norms and legal frameworks. The judgment recognized the need to protect the rights of all children, irrespective of the marital status of their parents.

The Federal Court's decision marked a significant step in recognizing the rights of illegitimate children in succession matters, ensuring a non-discriminatory interpretation of the term 'child' and 'issue' under Malaysian succession law. This ruling highlights the evolving legal landscape regarding the rights of children born out of customary marriages not recognized under formal law.



ASK US

If you have questions, drop us an e-mail at
generalkl@ctwlaw.my

FOLLOW US

FORWARD is a yearly bulletin. For more of our frequent content, follow us at
Instagram: @ctwlaw.my
LinkedIn: Clarissa Tan & Wong
Facebook: Clarissa Tan & Wong
Website: www.ctwlaw.my

CONTACT US

Send us documents, postcards or chocolates at
Clarissa Tan & Wong (Main Branch)

B-08-03, Plaza Kelana Jaya,
Jalan SS 7/13a, Kelana Jaya,
47301 Petaling Jaya,
Selangor Darul Ehsan
Tel: +603 7865 0370

Clarissa Tan & Wong (Penang Branch)
5850, First Floor,
Jalan Kampung Paya,
12200 Butterworth,
Pulau Pinang
Tel: +6016 - 432 8032
Email: generalpg@ctwlaw.my

Clarissa Tan & Wong (Johore Branch)
8-1, Jalan Prima Sakeh 3,
Pusat Perniagaan Prima Sakeh,
Jalan Sakeh,
84000 Muar,
Johore
Tel: +6017 - 212 9810



”

FORGING PATHS

EMBRACING GROWTH

WE STRIDE FORWARD

– @ctwlaw.my



S e l a n g o r | P e n a n g | J o h o r e
w w w . c t w l a w . m y