

FORWARD

A YEARLY BULLETIN BY MESSRS. CLARISSA TAN & WONG



The Law Mirrors Society's Values;
Our Practice Reflects Ours.

ДЯВЛЯЮЩИЙ

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

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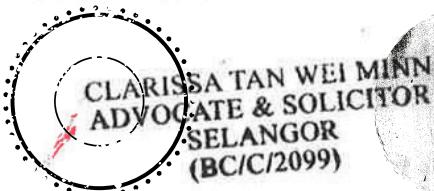
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These traditions need preserving
Legal education

Editor's Note

Every year, as we sit down to curate our yearly bulletin, it provides us with an opportunity to reflect deeply on the year that has passed. This ritual is not just about recounting events or compiling legal highlights; it is a moment to assess the journey we have taken as a nation, as a profession, and as a team. As part of this reflection, we have a tradition of choosing a symbol that encapsulates the essence of the year. For 2024, the symbol that resonates most profoundly is a mirror.

The mirror, a tool of reflection and truth, feels particularly fitting for this year. In Malaysia, we witnessed significant legal reforms aimed at aligning the law with the nation's evolving values and adapting to current realities. These changes are a reflection of Malaysia's commitment to justice, fairness, and progress. Equally remarkable were the Federal Court's landmark rulings that upheld justice and reminded us of the progress we're making as a society.

On a professional level, we also turned the mirror on ourselves. Does our work reflect the values we believe in? Does it show our commitment to integrity, fairness, and excellence? As we look back, we're proud to say that it does. Every case we've handled, every client we've advised, and every effort we've made reflects our dedication to delivering the best for those who rely on us.

We would also like to take this opportunity to express our heartfelt thanks to our clients and readers. Your trust, support, and engagement have been the foundation of our success. It is through your confidence in us that we have been able to grow and uphold the values we cherish. We are truly grateful for the opportunity to serve you and to share this journey with you.

This year's bulletin is more than a summary of legal developments; it is a reflection of the year that has shaped us all. Through its pages, you will find a chronicle of the challenges, triumphs, and transformations that have defined Malaysia's legal landscape in 2024. We hope it serves as a valuable resource for understanding the progress we have made and as inspiration for the road ahead.

The Forward Team



Making Strides That Matter

Creating an Impact Through Our Initiatives



LAUNCHING OF HONG KONG DESK

At Clarissa Tan & Wong, we believe in continually evolving to meet the diverse needs of our clients. This year, we are proud to announce the launch of our Hong Kong Desk, an initiative that expands our presence in the region and strengthens our commitment to providing comprehensive legal support to clients with interests in Hong Kong.

Building on the success of our China and Korea Desks, the Hong Kong Desk is designed to cater to the unique needs of businesses and individuals navigating the dynamic legal and regulatory landscape of Hong Kong. With its strategic location as a global financial hub and a gateway to Mainland China, Hong Kong presents unique opportunities and challenges. Our dedicated team of lawyers brings deep regional knowledge, cultural understanding, and specialized expertise to ensure our clients receive top-tier legal solutions.

Whether it's advising on corporate transactions, regulatory compliance, or dispute resolution, our Hong Kong Desk is equipped to offer practical and effective solutions tailored to the complexities of the region. Together with our China and Korea Desks, it represents our broader vision of being a trusted legal partner for clients across Asia.

CORPORATE SOCIAL RESPONSIBILITY



As part of our commitment to giving back to society, we wanted to show our support to a rural village in Malaysia. During the visit, we provided essential resources to help meet their immediate needs and spent time with the children, engaging in activities that brought smiles and joy to their day.



This CSR event served as a humbling reminder of the power of compassion and the profound impact that even small acts of kindness can have in touching lives. It was a privilege to connect with the community, and we were truly honoured to have this opportunity.

RAISING AWARENESS ON SEXUAL HARASSMENT IN THE WORKPLACE

This year, our team has proudly delivered six formal engagements requested by companies to address sexual harassment awareness in the workplace and empowered participants with knowledge about the legal protections available to victims.

These sessions brought together employees, managers, and HR professionals to discuss the realities of workplace harassment and explore proactive steps to prevent it.

Our talks also emphasized the importance of creating an organizational culture that prioritizes respect and inclusion. Topics ranged from identifying subtle forms of harassment to establishing clear reporting mechanisms and fostering accountability.

'It is our shared responsibility, ethical duty, and collective opportunity to create a world where progress and compassion go hand in hand.'



A professional headshot of a young woman with long dark hair, smiling. She is wearing a black blazer over a white blouse with a ruffled collar. Her arms are crossed. The background is a textured grey.

CHAN SZE MUN SAMANTHA

Associate Partner (Selangor Branch)
Head of Dispute Resolution Department
Head of Hong Kong Desk

LAWYER SPOTLIGHT:

Chan Sze Mun Samantha

1) WHAT INITIALLY DREW YOU TO LITIGATION, AND HOW HAS YOUR PRACTICE EVOLVED OVER THE YEARS?

I was drawn to litigation because of its dynamic and challenging nature. Each case presents a unique story, and it is rewarding to help clients navigate complex issues with tailored solutions. Crafting arguments, uncovering key points beyond conventional precedents, and delivering results is both exciting and fulfilling. Litigation's flexibility allows for creative and strategic problem-solving, which inspired me to pursue it.

Over the years, I've refined my approach to disputes, balancing empathy for my clients with a focus on achieving the best possible outcome. I've come to realize that not every client seeks litigation as the final goal, so understanding their priorities has become an essential part of my role.

2) LITIGATION OFTEN INVOLVES INTENSE AND HIGH-STAKES MOMENTS. COULD YOU SHARE A CASE OR EXPERIENCE THAT STANDS OUT TO YOU AND WHAT IT TAUGHT YOU ABOUT YOUR ROLE AS A LITIGATOR?

Actually, most of the court cases and international arbitration I've handled involve unique points of law that continually challenge me. Maybe that's why it's called "reading law" and not "learning law." There's always something new to absorb. Litigation, in particular, is dynamic, and while the foundational principles remain the same, each case is distinguishable and offers opportunities for new insights and strategies.

A favourable outcome often requires not just strategic planning and thorough preparation but also adaptability in dealing with unforeseen challenges. These experiences have taught me the importance of resilience and the need to remain flexible in my approach, as even the smallest detail can influence the outcome of a case. Above all, they have reinforced my commitment to continuous learning and adapting to the evolving landscape of the law.

3) WHAT INSPIRED YOU TO ESTABLISH AND LEAD THE HONG KONG DESK AT CLARISSA TAN & WONG, AND HOW DO YOU SEE IT ADDRESSING THE UNIQUE LEGAL NEEDS OF CLIENTS OPERATING IN OR CONNECTED TO HONG KONG?

Growing up with ties to Hong Kong through my family and holding the right of abode there, I've always been inspired by the city's dynamic culture and its thriving business environment. This personal connection, combined with my legal expertise, motivated me to establish the Hong Kong desk to bridge the legal and business landscapes of Hong Kong and Malaysia.

The desk is designed to meet the diverse needs of clients, covering areas such as migration opportunities like MM2H, corporate agreements, cross-border disputes, business advisory, and personal matters.

4) WHAT IS YOUR VISION FOR THE HONG KONG DESK, AND HOW DO YOU PLAN TO LEVERAGE YOUR EXPERTISE TO STRENGTHEN THE FIRM'S PRESENCE IN THE REGION?

My vision for the Hong Kong desk is to establish it as a trusted hub for cross-border legal services, connecting businesses and individuals in Malaysia, Hong Kong, and beyond. Hong Kong's status as a common law gateway makes it an ideal platform for Malaysian businesses looking to explore further opportunities, as well as for Hong Kong companies entering ASEAN markets.

By combining my expertise and understanding of both regions, I aim to empower businesses, particularly SMEs, to expand into new markets, overcome legal challenges, and achieve their corporate goals. Through this initiative, I hope to strengthen the firm's presence in the region while fostering meaningful connections between two dynamic markets.

Legal highlights in the area of administrative law, corporate, tort,
employment, family and land

HIGHLIGHT OF THE YEAR

Legal Development in Malaysia



ADMINISTRATIVE LAW

Administration of the Religion of Islam (Amendment) Enactment 2016

Au Kean Hoe v. Persatuan Penduduk D'villa Equestrian [2014] 10 CLJ 1

Federal Constitution

Lim Keng Jit v. Majlis Bandaraya Petaling Jaya [2023] 7 CLJ 745

Loh Siew Hong v. Pendaftar Mualaf Perlis & Ors [2024] 4 CLJ 903

CORPORATE LAW

Companies (Amendment) Act 2024

Companies Act 2016

Dato' Azizan Bin Abd Rahman & Ors v. Concrete Parade Sdn Bhd & Ors [2024] 3 MLJ 223

Low Cheng Teik & Ors v Low Ean Nee [2024] 9 CLJ

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TORT LAW

Julian Chong Sook Keong & Anor v. Lee Kim Noor & Anor [2024] MLJU 869

Limitation Act 1953

Qi Qiaoxian & Anor v. Sunway Putra Hotel Sdn Bhd [2024] MLJU 732

Seema Elizabeth Isoy v. Tan Sri David Chiu Tat-Cheong [2024] 5 AMR 341

EMPLOYMENT LAW

Industrial Relations Act 1967

Malaysia Standard Classification of Occupations 2020

Minimum Wage Order 2024

Tan Lay Peng v. Rhb Bank Bhd & Anor [2024] 6 CLJ 315

FAMILY LAW

Evidence Act 1950

MPPL & Anor v. CAS [2024] 8 CLJ 359

LAND LAW

Ang Ming Lee & Ors v Menteri Kesejahteraan Bandar, Perumahan dan Kerajaan Tempatan & Anor and other appeals [2020] 1 MLJ 281

Housing Development (Control and Licensing) Act 1966

Housing Development (Control and Licensing) Regulations 1989

Obata-Ambak Holdings Sdn Bhd v. Prema Bonanza Sdn Bhd & other appeals [2024] 8 CLJ 519

Prima Cahaya Sdn Bhd v. Pemungut Duti Setem [2024] 8 CLJ 109

Stamp Act 1949

Court Upholds RA's Right to Require Non-Paying Residents to Manually Operate Boom Gates

The Court of Appeal in *LIM KENG JIT v. MAJLIS BANDARAYA PETALING JAYA* [2023] 7 CLJ 745 addressed whether a Residents Association (RA) could impose a condition requiring non-paying members to get out of their vehicles to operate boom gates themselves without any security guard assistance.

In this case, the appellant, representing the RA of Parkville Sunway Damansara, challenged Majlis Bandaraya Petaling Jaya (MBPJ) for rejecting the RA's request to impose a rule that non-paying residents or non-members must get out of their vehicles and manually operate the boom gates themselves. The rejection was based on complaints from residents and the RA's non-compliance with MJPB's guidelines, which prohibited such conditions. The RA had been approved as a guarded community under MJPB's issued guidelines, which explicitly disallowed the imposition of such rules.

The RA contended that the condition was fair to ensure non-paying members would not enjoy the benefits of the guarded community without contributing financially. The RA relied on the Federal Court's decision in *AU KEAN HOE v. PERSATUAN PENDUDUK D'VILLA EQUESTRIAN*, which upheld a similar rule requiring non-paying residents to operate boom gates themselves.

The Court of Appeal ruled in favour of the RA, holding that MJPB's refusal to allow the condition was unreasonable, as it disregarded the larger interest of community security. The Court found the RA's rule justified, highlighting that manually operating boom gates was a small inconvenience compared to ensuring fair contributions and protecting the neighbourhood. Consequently, MJPB's decision was quashed, and the RA's application was upheld.

Nevertheless, developments in this matter are still ongoing, as the Federal Court has recently granted MJPB leave to appeal the Lim Keng Jit case on three points of law, one of which is whether an RA could prevent or impede the access of non-paying residents to public roads through boom gates.



Both Parents' Approval Required for Children's Religious Conversion

LOH SIEW HONG v. PENDAFTAR MUALAF PERLIS & ORS [2024] 4 CLJ 903



“ The Court of Appeal addressed the legality of the unilateral conversion of children to Islam and its compliance with the Federal Constitution. ”

The appellant, a Buddhist mother, was granted sole custody of her three children following a divorce. Despite this, the father unilaterally converted the children to Islam in 2020 without the appellant's consent. This conversion was conducted under Section 117(b) of the Administration of the Religion of Islam (Amendment) Enactment 2016 (Perlis), which states that the conversion of children to Islam merely requires the consent of either parent. The appellant filed for judicial review, arguing that the conversion was unconstitutional.

The central issue was whether the unilateral conversion of the children to Islam was valid under the Federal Constitution, particularly Article 12(4), which states that for children under eighteen (18), their parent or guardian must decide their religion.

The Court of Appeal ruled that under Article 12(4) of the Federal Constitution, the term “parent” refers to both parents. Therefore, Section 117(b), which allows conversion with the consent of only one parent, is inconsistent with the Federal Constitution and deemed null and void. Without the mother's consent, the unilateral conversion violated the constitutional rights of the appellant, rendering the conversion unlawful.

The Companies (Amendment) Act 2024:
Enhancing Corporate Transparency Through Mandatory Disclosure of Beneficial Ownership



THE COMPANIES (AMENDMENT) ACT 2024 (“Amendment Act”), effective from 1 April 2024, significantly enhances corporate transparency by introducing a mandatory framework for the disclosure of beneficial ownership (“BO”). This framework aims to identify individuals who ultimately own or control companies, aligning Malaysia’s corporate governance standards with international best practices.

A beneficial owner is defined as a natural person who owns or exercises effective control over a company, even if such ownership or control is indirect. While legal ownership may rest with a nominee, the BO is the individual driving the company’s decisions and benefiting from its activities.



The Registrar's guidelines outline six (6) criteria for identifying a BO:-

1. Holds, directly or indirectly, at least 20% of the shares.
2. Holds, directly or indirectly, at least 20% of the voting rights.
3. Exercises ultimate effective control over the company or its management.
4. Can appoint or remove directors holding a majority of voting rights.
5. Controls the majority of voting rights through agreements with other members.
6. Exercises significant control despite holding less than 20% of shares or voting rights.

The Amendment Act mandates all companies to maintain a BO Register, recording detailed information about each beneficial owner. This includes their full name, identification details, and the date they became or ceased to be a beneficial owner. Companies must update the register within fourteen (14) days of any changes and lodge a notice with the Registrar.

Beneficial owners themselves are also required to notify the company of their status, provide accurate information, and report any changes promptly.

Non-compliance with these requirements carries significant penalties. Companies or beneficial owners who fail to adhere to the BO disclosure obligations may face fines of up to RM20,000.00. For ongoing offences, an additional penalty of RM500.00 per day may be imposed after conviction. These stringent measures are designed to deter non-compliance and promote adherence to the new framework.

The Amendment Act represents a critical advancement in Malaysia's corporate governance landscape. By mandating transparency around beneficial ownership, the Amendment Act strengthens the accountability of corporate entities, reducing the risk of abuse and aligning Malaysia with global standards in combating financial misconduct. This framework fosters a more transparent, fair, and competitive business environment.



Distinction Between Oppression and Derivative Actions



The Federal Court in *LOW CHENG TEIK & ORS v. LOW EAN NEE* [2024] 9 CLJ 171 clarified the critical distinction between oppression actions and derivative actions under the Companies Act 2016 (“CA 2016”). The case involved the alleged wrongful assignment of trademarks owned by SNE Marketing Sdn Bhd (“the Company”) to SNE Global Sdn Bhd for a nominal sum.

The Company, a supplier of nutritional supplements, had four shareholders, with the respondent holding 50% of the shares. The dispute arose from the first appellant’s unilateral assignment of the Company’s trademarks to SNE Global without board approval. The respondent initially considered a derivative action under Section 347 but instead pursued an oppression action under Section 346, claiming the act unfairly prejudiced her interests as a shareholder.

Oppression actions address unfair conduct targeting minority shareholders directly, causing personal harm. In contrast, derivative actions allow shareholders to bring claims on behalf of the company to remedy corporate wrongs when the company fails to act. The key issue was whether the claim should have been brought as an oppression action or as a derivative action.

The Federal Court established a three-step test to decide the appropriate action:-

1. Identify the wrongful act.
2. Determine if the act was oppressive, discriminatory, or personally prejudicial to the shareholder.
3. Assess whether the harm and cause of action belong to the shareholder (oppression) or the company (derivative).

Applying this test, the Court concluded:-

1. The wrongful assignment of the trademarks was a corporate wrong causing harm to the Company, not distinct to the respondent.
2. Any financial loss suffered by the respondent was reflective of the Company’s loss, which benefits all shareholders equally.
3. The respondent’s claim should have been pursued as a derivative action, as the proper plaintiff was the Company.

The Federal Court allowed the appeal, emphasizing that the respondent’s personal grievances did not meet the statutory threshold for oppression under the CA 2016.

On 26 March 2024, the Federal Court delivered a landmark decision in DATO' AZIZAN BIN ABD RAHMAN & ORS v. CONCRETE PARADE SDN BHD & ORS [2024] 3 MLJ 223, addressing the application of Section 85 (pre-emptive rights to new shares) of the Companies Act 2016. Pre-emptive rights give existing shareholders the first opportunity to subscribe to new shares issued by a

company, ensuring their voting and distribution rights remain proportionate.

In this case, Concrete Parade Sdn. Bhd., a minority shareholder of Apex Equity Holdings Berhad, a minority shareholder of Apex Equity Holdings Berhad, challenged the company's actions during a proposed merger with Mercury Securities Sdn. Bhd. As part of the merger, Apex Equity

planned a private placement—a sale of new shares directly to select third parties instead of offering them to all existing shareholders. Concrete Parade argued this diluted its shareholding and violated its statutory pre-emptive rights under Section 85 of the Companies Act 2016.

The main issue was whether the private placement breached Concrete Parade's

Federal Court Rules Pre-Emptive Rights Are Subject to Company Constitution and Shareholder Resolutions

pre-emptive rights because existing shareholders were not offered the new shares first. Additionally, the case questioned whether directors must explicitly explain pre-emptive rights and obtain clear waivers from shareholders before issuing shares to third parties.

The Federal Court held that pre-emptive rights under Section 85 are subject to the

company's constitution and shareholder resolutions. Shareholders can waive their rights by voting in favour of a resolution that approves new share issuance. The Court clarified that directors are not required to explicitly remind shareholders of their pre-emptive rights in such cases. By voting in favour of the merger, shareholders implicitly agreed to the private placement and the dilution of their shareholding.

This decision emphasizes the flexibility provided under Section 85, balancing the protection of shareholder rights with the company's ability to raise capital efficiently through private placements. It reaffirms that shareholder resolutions at general meetings are sufficient to manage pre-emptive rights without needing explicit waivers.

Limitation Period for Negligence

Claims Starts from the Occurrence of Actual Damage



The Federal Court in JULIAN CHONG SOOK KEONG & ANOR v. LEE KIM NOOR & ANOR [2024] MLJU 869 addressed key questions concerning the limitation period for negligence claims. A limitation period refers to the time frame within which a legal claim must be filed. Once this period expires, the claimant loses the right to bring the case to court, even if the claim is valid.

In Malaysia, limitation periods are governed by the Limitation Act 1953, which sets different time limits for various types of legal actions. For negligence claims, the standard limitation period is six (6) years.

In this case, the appellants, a husband and wife, sued their solicitors for negligence in preparing a Sales and Purchase Agreement (SPA) for a property purchase in 2004. The solicitors failed to conduct a land search and omitted material information about an existing charge by Bank Islam. In 2011, the appellants learned of potential issues when informed by the Land Office (*Pejabat Tanah & Galian*) about redemption obligations.

Bank Islam demanded RM900,000.00 in 2014, prompting the appellants to sue for negligence in 2015. The solicitors argued that the claim was time-barred under the Limitation Act 1953.

The Federal Court clarified that, for negligence claims, the limitation period begins when actual damage occurs rather than at the time of the negligent act. A mere contingent or potential loss is insufficient to trigger the limitation period; the damage must be definitive and substantial. In this case, the limitation period started in 2014 when Bank Islam enforced its charge, creating a tangible loss for the appellants.

The Court also emphasized the importance of knowledge or reasonable discoverability of the breach in determining when the cause of action accrues. It is found that the appellants acted reasonably in seeking clarification from their solicitors regarding the land searches and could not have discovered the negligence earlier. This lack of prior knowledge safeguarded the claim from being time-barred under the law.

Hotel Found Liable for Guest's Drowning: Court of Appeal Rules Negligence and Breach of Duty of Care

The case of QI QIAOXIAN & ANOR v. SUNWAY PUTRA HOTEL SDN BHD [2024] MLJU 732 revolves around the tragic drowning of Qi Xiangqing, a 22-year-old tourist, in the swimming pool of Sunway Putra Hotel. On February 14, 2017, Qi Xiangqing checked into the hotel and subsequently drowned in its swimming pool, a facility provided for guests. The deceased's mother, Qi Qiaoxian, brought an action against the hotel, alleging negligence and occupier's liability, and seeking damages for the loss of her child.



The primary legal issue was whether the hotel was liable under the tort of occupier's liability and negligence for the death of the deceased. Occupier's liability refers to the legal responsibility of someone who controls or manages a property (the occupier) to ensure that the premises are safe for visitors or lawful entrants. If the occupier fails to take reasonable care to prevent hazards, they can be held liable for injuries or damages that occur on their property.

The Court of Appeal held the hotel liable for negligence, overturning the decisions of the Sessions Court and

the High Court. The Court outlined under the principle of occupier's three elements for occupier's liability:

a. Control over the premises:

In this case, the hotel was the operator and manager of the swimming pool, which meant it had full authority and responsibility for maintaining the pool's safety and ensuring it posed no risks to guests.

b. The deceased was a lawful guest:

The deceased, being a paying guest at the hotel, had the right to use the facilities, including the swimming pool. This established a duty of care owed by the hotel to the deceased

c. The pool posed an "unusual danger":

The pool had a depth of up to 3 meters, making it inherently risky for inexperienced swimmers. Despite this, the hotel failed to implement adequate safety measures, such as employing a lifeguard or ensuring active monitoring via CCTV, which would have been standard practice for a five-star hotel. This lack of precaution created an unusual danger, breaching the occupier's duty to prevent foreseeable risks.



“A half-truth statement that represents a false impression and that harms the reputation of a person is no doubt, defamatory. This kind of statement can safely be considered false in the circumstances.”

SEEMA ELIZABETH ISOY v. TAN SRI DAVID CHIU TAT-CHEONG [2024] 5 AMR 341



Federal Court Ruled: **Half-Truths in Statements Can Constitute Defamation**

The Federal Court recently addressed the concept of “half truths” in defamation law. The issue in *SEEMA ELIZABETH ISOY v. TAN SRI DAVID CHIU TAT-CHEONG* [2024] 5 AMR 341 was whether a half-truth—an incomplete but technically accurate statement—could be defamatory under Malaysian law.

The case arose from a WhatsApp message sent by the Appellant, stating that the Respondent, a prominent businessman, had been arrested and charged with conspiracy to falsify documents. However, the message omitted the critical fact that the Respondent had been acquitted of these charges. The Respondent claimed the omission distorted the truth, damaging his reputation and lowering him in the eyes of society.

The Federal Court held that a half-truth is capable of being defamatory if it presents a false impression by omitting key facts that would alter its meaning.

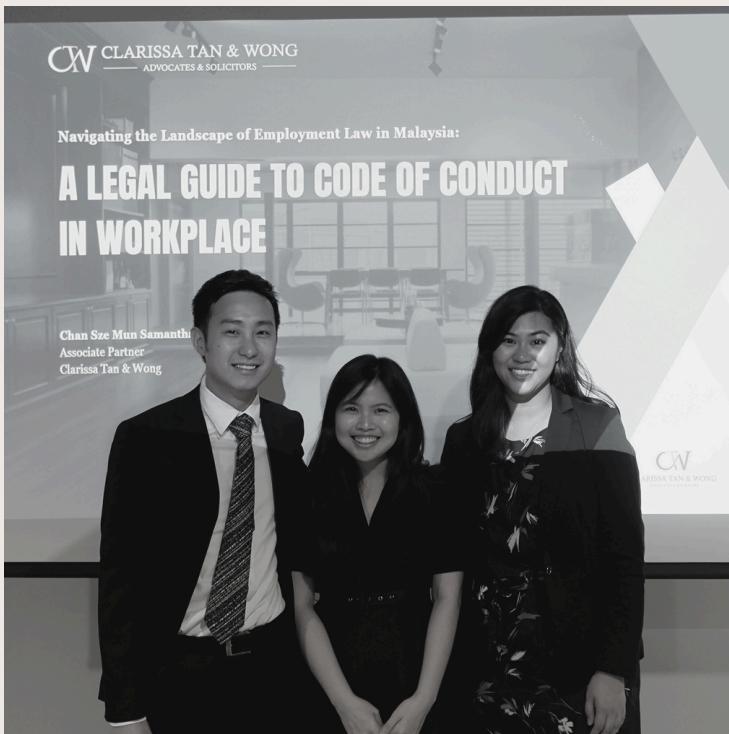
The Court emphasized that truth must be stated fully, as leaving out exculpatory details could unfairly taint someone’s reputation. Applying the established two-step process for defamation, the Court found that the message was capable of and, in fact, was defamatory.

The Appellant’s defences of justification, qualified privilege, and fair comment were rejected. The Court ruled that the omission of the acquittal demonstrated malice, undermining these defences. Furthermore, the statement was not “substantially true” as required under the Defamation Act 1957.

The Federal Court affirmed the Court of Appeal’s decision, holding that the half-truth message was defamatory and upholding the RM100,000.00 damages award.

This case reinforces the principle that half-truths, though partially accurate, can be legally actionable if they mislead and harm reputations.

BEHIND THE SCENES





New Minimum Wage Order 2024

Minimum Wage Set to Rise to RM1,700 Starting February 2025



On 4 December 2024, the Malaysian government gazetted the Minimum Wage Order 2024 [PU(A)276/2024], introducing a new national minimum wage of RM1,700.00 per month. This marks a significant step in Malaysia's effort to ensure fair compensation for workers across various sectors.

The Minimum Wage Order 2024 (MWO 2024) will be implemented in two phases:-

From 1 February 2025

1. Employers with five or more employees must comply with the new minimum wage.
2. Employers engaging in professional activities, as defined by the Malaysian Standard Classification of Occupations (MASCO 2020), must also comply regardless of the number of employees.

From 1 August 2025

1. Employers with fewer than five employees and not engaged in professional activities will also be required to adhere to the new minimum wage. Until then, these employers may continue paying the current minimum wage of RM1,500.

Professional activities under MASCO 2020 include jobs that typically require higher educational qualifications, specialized knowledge, or specific technical skills, such as Medicine and healthcare (e.g., doctors, dentists, pharmacists), Engineering and architecture (e.g., civil engineers, architects), Legal services (e.g., lawyers, legal advisors), Financial and accounting services (e.g., chartered accountants, auditors), Information and communication technology (e.g., software developers, web developers) and others.

Contract Test is Reaffirmed as Sole Standard for Constructive Dismissal

On 4 April 2024, the Federal Court delivered a significant ruling in *TAN LAY PENG v. RHB BANK BHD & ANOR* [2024] 6 CLJ 315, addressing the appropriate test for determining constructive dismissal in Malaysia. The Court reaffirmed the "contract test" as the definitive legal standard, rejecting the "reasonableness test" as a primary criterion.

The contract test examines whether the employer's conduct constitutes a fundamental breach of the employment contract, such as actions undermining its core terms or indicating an intention not to be bound by its terms. In contrast, the reasonableness test considers whether the employer acted fairly, reasonably, and in good faith.

This case arose from a claim by Mr. Tan Leong Huat, an employee of RHB Bank. Mr. Tan served as the Head of Operations for the bank's Thailand operations and had been transferred to oversee various branches, including Ayutthaya. In 2015, the bank issued a transfer order requiring Mr. Tan to return to Malaysia to report to the Head of International Infrastructure. The bank maintained that his grade and terms of employment would remain unchanged. However, Mr. Tan objected to the transfer, asserting that it lacked reasonable justification and would negatively impact his career. He declared constructive dismissal and lodged a claim under the Industrial Relations Act 1967, citing the following reasons:

1. The transfer constituted a demotion from his significant leadership role in Thailand.
2. The new position in Malaysia was vaguely defined, creating uncertainty about his job scope and prospects.
3. The transfer would harm his professional standing and career trajectory.



Under the contract test, Mr. Tan's claim failed because the employment contract explicitly allowed the bank to transfer employees within the organization. The transfer did not alter his grade or terms of employment, nor did it breach mutual trust and confidence. Conversely, under the reasonableness test, the sudden transfer to Malaysia without clear justification, the lack of a defined role, the perceived career downgrade, and the absence of good faith in handling the transfer could be deemed unreasonable. A reasonable employee might view such actions as unfair and detrimental, making continued employment untenable.

While the transfer might have been seen as unfair under the reasonableness test, the Federal Court affirmed that reasonableness could not override the contract test in Malaysian law. The Court concluded that the bank's actions, though contested, did not constitute a fundamental breach of Mr. Tan's contract. As a result, the appeal was dismissed, and the dismissal was deemed not unfair.

In the case of MPPL & ANOR v. CAS [2024] 8 CLJ 359, the dispute centered on paternity and the presumption of legitimacy under Section 112 of the Evidence Act 1950. The defendants, D1 (the mother) and D2 (her husband), were a married couple, with D1 working as a flight attendant and D2 as a pilot. They were married in 2007, and during their marriage, D1 gave birth to a child, C, in 2008. By the presumption of legitimacy under Section 112 of the Evidence Act 1950, a child born during a valid marriage is presumed legitimate, with the husband presumed to be the father. However, the plaintiff, who is also a pilot claims to be C's biological father and decided to challenge this presumption.

The plaintiff alleged that he had a sexual relationship with D1 before and during her marriage to D2, which lasted until 2014. He claimed that D1 informed him and his mother that he was the biological father of C. Furthermore, he asserted that he had regular access to C from her birth until 2013 and maintained a close parental relationship with her. He also provided financial support to D1 for C's upbringing until 2014, when D1 closed her bank account. To substantiate his claim, the plaintiff sought an order for a DNA test to confirm paternity, along with a declaration of his biological status and rights to access and maintain the child.

The defendants opposed the plaintiff's application, relying on the presumption of legitimacy under Section 112 of the Evidence Act 1950. D2, C's legal father as per the birth certificate, did not dispute his role or challenge the presumption. The defendants argued that C's legitimate status should not be disturbed and filed an application to dismiss the plaintiff's claim, emphasizing that compelling a DNA test would violate C's rights and disrupt her welfare.

The Federal Court ruled in favor of the defendants, emphasizing that the welfare of the child must take precedence over the plaintiff's desire to establish biological paternity. The Court upheld the presumption of legitimacy under Section 112 of the Evidence Act, noting that it could only be rebutted by evidence of lack of sexual access between the husband and wife. The Court also found that compelling a DNA test would infringe upon C's personal autonomy, disrupt her established status quo, and potentially

A Battle Over Biological Fatherhood: Can Courts Order DNA Tests to Reveal the Truth?

expose her to stigma and harm. Consequently, the Federal Court allowed the defendants' appeal, declining to order a DNA test and preserving C's legitimacy and welfare as paramount considerations.

This landmark case highlights the balance courts must strike between a child's welfare and the pursuit of biological truth, reinforcing the sanctity of the presumption of legitimacy in Malaysian law.

Stamp Duty Assessments:

Market Value Must Reflect Practical Realities and Economic Context, Rules High Court



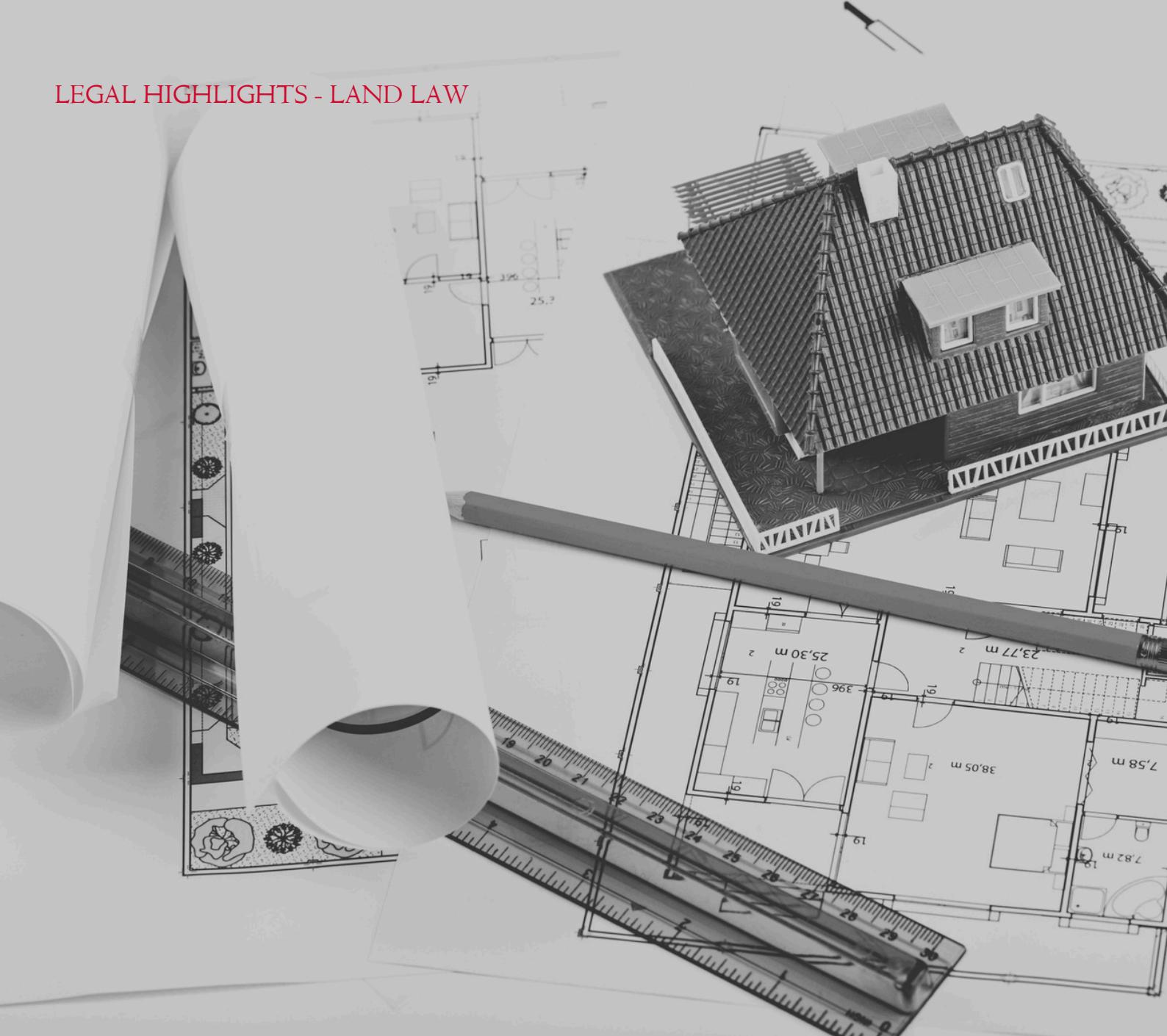
The Kuala Lumpur High Court delivered a critical judgment in *PRIMA CAHAYA SDN BHD v. PEMUNGUT DUTI SETEM* [2024] 8 CLJ 109, addressing the methodology for determining market value in stamp duty assessments under the Stamp Act 1949. The case focused on whether the market value should reflect the sale price agreed upon in an arm's-length transaction or the valuation provided by the Valuation and Property Services Department (JPPH).

In this case, Prima Cahaya Sdn. Bhd. acquired rights to a distressed property for RM117,000,000.00 through a Deed of Assignment after multiple failed auctions. The Collector of Stamp Duty assessed the property's value at RM227,250,000.00 based on a JPPH valuation. Dissatisfied with the assessment, Prima Cahaya challenged it, arguing that the SPA price reflected the true market value.

The Court found the JPPH valuation flawed because:

- The JPPH report was prepared after the notice of assessment and relied on comparables that were outdated or unrelated. Site visits were conducted only after the taxpayer appealed.
- Many comparables used by the JPPH were untransacted, outdated, or from a period of economic peak in 2011, failing to account for the pandemic's impact on market conditions.
- The property's price was determined through multiple auctions and reflected its distressed state. The RM117,000,000.00 sale price was agreed upon by a willing buyer and seller in an arm's-length transaction.

The Court held that market value must consider practical realities and economic context. The agreed sale price, reflecting a willing buyer and seller, better represented the market value than the inflated JPPH valuation. Therefore, the stamp duty should be based on the purchase price of RM117,000,000.00.



Federal Court Upholds Validity of 54-Month Delivery Clause in Housing SPAs Signed Before Ang Ming Lee Ruling

On 26 July 2024, the Federal Court delivered a significant ruling in *OBATA-AMBAK HOLDINGS SDN BHD v. PREMA BONANZA SDN BHD & OTHER APPEALS* [2024] 8 CLJ 519, addressing the legal implications of extensions of time (EOT) granted under Regulation 11(3) of the Housing Development (Control and Licensing) Regulations 1989 (HDR).

Under the HDR, the standard completion period for residential properties is twenty four (24) months for landed properties and thirty six (36) months for stratified properties, as specified in the statutory Sale and Purchase Agreements (SPAs). However, Regulation 11(3) allowed developers to apply to the Minister of Housing, via the Controller of Housing, for an extension of time (EOT) to extend these timelines.

Prior to the landmark Federal Court ruling in Ang Ming Lee's case, developers often applied for EOT for housing project completion periods, which, upon the Controller's approval, were incorporated into SPAs and made known to purchasers before execution. However, Ang Ming Lee established that the Controller lacked the power to waive or modify provisions in SPAs, rendering Regulation 11(3) of the HDR *ultra vires*.

In the current case, the appellant, Obata-Ambak Holdings, purchased two condominium units from the respondent, Prema Bonanza, under SPAs governed by the Housing Development (Control and Licensing) Act 1966. These SPAs incorporated an extended completion period of fifty four (54) months, approved by the Controller of Housing two (2) years before the SPAs were executed. Following the Federal Court's decision in Ang Ming Lee, which invalidated Regulation 11(3), the appellant sought to challenge the validity of the EOT and claim additional liquidated ascertained damages (LAD) for delayed completion.

The principal issue before the Court was whether Ang Ming Lee's invalidation of Regulation 11(3) should apply retrospectively, potentially rendering previously approved EOTs invalid, or prospectively, preserving their validity for contracts signed before the decision.

The Federal Court affirmed the prospective application of Ang Ming Lee. It held that EOTs approved under Regulation 11(3) prior to the decision remain valid. The Court reasoned that invalidating these EOTs retrospectively would have severe ramifications for the housing industry, particularly for developers who relied on the regulation in good faith. Further, the Court emphasized that the parties to the SPAs had accepted the extended completion periods as valid terms.

This ruling highlights the Federal Court's pragmatic approach in balancing legal principles with commercial realities. By applying Ang Ming Lee's decision prospectively, the Court mitigated systemic disruptions while ensuring clarity in housing development regulations. This decision reaffirms that changes in the law must respect past agreements entered into under the legitimate expectations of the parties involved.

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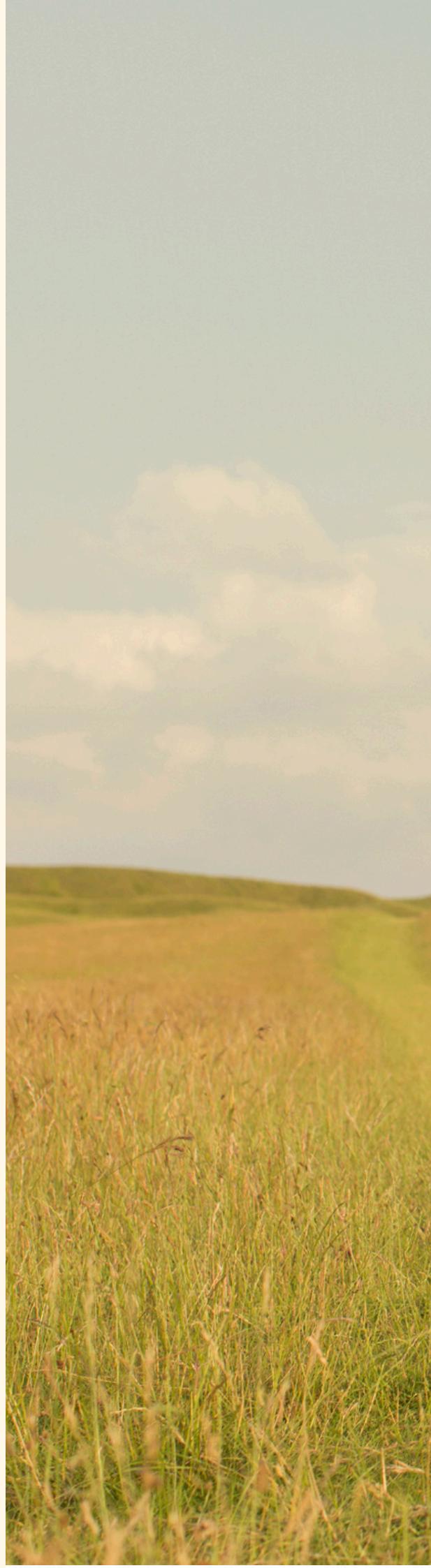
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