

THE BRIEF *Case*

ZUL RAFIQUE & partners as co-sponsor
at the ALB Malaysia In-House Legal Summit 2016.



From left: *Ainal Marlinda, Tang Ai Leen, Lukman Sheriff Alias, P Jayasingam, Darren Kor, Hamdi Abdullah, Wong Keat Ching, Idza Hajar, and Teoh Alvare.*

ALB MALAYSIA 2016
IN-HOUSE LEGAL SUMMIT
KUALA LUMPUR - 24 AUGUST



A BRIEF NOTE...

by Dato' Zulkifly Rafique

Blood, sweat, tears... and perseverance

Winning in the Olympics and Paralympics is a symbol of excellence, recognised throughout the world. It is equivalent to hard work, perseverance and teamwork, amongst others.

The recent games united us as Malaysians. We braced ourselves for the heart-stopping, nail-biting matches and there was hardly a dry eye in the room when our boys and girls stood on the podium to receive their accolades.

The takeaway from the performances of our Malaysian athletes is not just the winning, but the fighting spirit, hard work, dedication and focus. As stated by Winston Churchill:

"Success is not final, failure is not fatal; it is the courage to continue that counts."

That is exactly what we, at **ZUL RAFIQUE & partners** strive to do – to improve, progress and evolve in order to deliver our best to our clients. On that note, we are proud to announce another feather in our cap by winning the Islamic Finance News Law Awards 2016 in the Trade Finance category.

Some of our clients and friends attended the Asian Legal Business In-House Legal Summit 2016 on 24 August 2016 which we co-sponsored. We hope you found the summit productive and enjoyable, as much as we did. We would like to thank you for making that event a success.

Let me end by saying *"Selamat Hari Malaysia!"*

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- **ZUL RAFIQUE & partners WINS IFN LAW AWARDS 2016**

ZUL RAFIQUE & partners has won the *Islamic Finance News* ("IFN") Law Awards 2016 in the Trade Finance category. In justifying the win it was stated by IFN: "ZUL RAFIQUE & partners is the perfect example of a local firm that has expanded its capabilities to a global standard, performing intricate and complex transactions at an exceptionally high quality and ideally demonstrating the strength and capabilities of the Malaysian market. Its sterling work has not only assisted its local and regional markets to develop but has supported cross-border trade and development to the benefit of the entire industry".

- **AMENDMENTS TO NLC**

Amendments to the National Land Code ("NLC") are to provide for heavier penalties for those found guilty of utilising government land without the approval of the relevant authorities. The amendments also aim to improve the registration procedure, service delivery, the revenue collection system, disposal procedures, and land development.

- **CHANGES TO UNIT TRUST REGULATORY REGIME**

Various guidelines by the Securities Commission Malaysia on the unit trust industry, namely, the Guidelines on Unit Trust Funds, Prospectus Guidelines for Collective Investment Schemes, and the Guidelines on Sales Practices of Unlisted Capital Market Products, have been amended to enhance the competitiveness of the unit trust industry in Malaysia. Key amendments ("the Amendments") include an expedited approval process for non-complex retail unit trust funds, and removal of the requirement to renew the prospectus annually. The Amendments came into force on 15 August 2016.

- **DRAGON LAW?**

The Malaysian Bar Council is currently looking into an alleged violation of the Legal Profession Act 1976 ("the LPA") by *Dragon Law*, a Hong Kong-based legal start-up offering drafting services. The LPA prohibits unregistered foreign lawyers from offering legal services that are customarily within the purview of an Advocate and Solicitor of the High Court of Malaya.

- **FINTECH REGULATORY FRAMEWORK IN Q4 2016**

The Financial Technology Enabler Group (FTEG) has been established by the Central Bank of Malaysia or *Bank Negara Malaysia* (BNM) to formulate the policies and

regulatory framework ("the Framework") for the adoption of technological innovations in the Malaysian financial services industry. A consultative paper on financial technology (*fintech*) entitled "Regulatory Sandbox" has been released in July 2016 and that the Framework for *fintech* is expected to be released by the final quarter of 2016.

- **LIBERALISING REITS GUIDELINES**

Sixteen proposals ("the Proposals") to enhance the Guidelines on Real Estate Investment Trusts (REITs) have been made to promote stronger governance practices and to instill greater market confidence. The highlights of the Proposals include allowing REITs to acquire vacant land and undertake development activities of up to 15 per cent of their enlarged total asset value and that the REITs managers be allowed to enter into long term leases with registered proprietors of real estate.

- **NATIONAL SECURITY COUNCIL ACT NOW LAW**

The controversial National Security Council Act came into force on 1 August 2016. The new law provides for the establishment of the National Security Council, the declaration of security areas, the special powers of the security forces in the security areas and other related matters.

- **NEW COMPANIES ACT TO TAKE EFFECT 2017**

The Companies Act 2016 ("the New Act"), which will replace the current Companies Act 1965, is expected to be enforced in stages from 2017. The New Act, passed by the Malaysian Parliament in April 2016, emphasises better governance and internal controls in business operations.

- **PROPOSAL FOR LAW TO PROTECT SHARKS**

A new legislation known as the Protected Marine Species Act ("the Act") has been proposed to protect endangered species including sharks. The introduction of the new Act requires the Fisheries Act 1985 to be amended.

- **PROPOSED AMENDMENTS TO LPA**

Several amendments have been proposed to the Legal Profession Act 1976 ("the LPA"), the law governing the legal profession in Malaysia. Among the amendments are the appointment of two representatives by the Malaysian Federal Government to the Bar Council, and the quorum increase for the Annual General Meeting of the Malaysian Bar.

- **SPECIAL CYBER COURT** A special Cyber Court ("the Court") to hear cybercrime cases has been set up in September 2016. The Court is deemed necessary due to the increase in cyber-related crimes such as hacking, online scamming, web defacement, information theft, and online gambling. The first phase of the Court has commenced its operation in the Federal Territory of Kuala Lumpur.
- **TAKE-OVERS AND MERGERS FRAMEWORK REVISED** The Securities Commission Malaysia has revised the regulatory framework of Take-overs and Mergers to facilitate the market activities while ensuring shareholder protection. The Rules on Take-overs, Mergers and Compulsory Acquisitions 2016 ("the Rules"), provide for the requirements for the operational conduct in relation to takeovers. The Rules, together with the revised Malaysian Code on Take-overs and Mergers 2016, came into force on 15 August 2016.

AROUND THE WORLD... IN-BRIEF

- **INDIA: NEW INTERNATIONAL ARBITRATION CENTRE** The amendments to the Arbitration and Conciliation Act 1996 coupled with the proposed amendments to that Act, have made arbitration as one of the preferred choices for commercial disputes settlement in India. In light of such development, the Indian government is currently setting up a new arbitration centre ("the Arbitration Centre") in New Delhi. The Arbitration Centre is expected to provide an efficient management of cases at reasonable cost, as well as to act as an overarching body that is similar to the arbitration body under the Delhi High Court.
- **SINGAPORE: ADMINISTRATION OF JUSTICE (PROTECTION) BILL PASSED** The Administration of Justice (Protection) Bill ("the Bill") has been passed by the Singapore Parliament on 15 August 2016. The Bill is significant as it defines contempt of court and sets out the conduct amounting to *sub judice*, disobedience of court orders, and scandalising the courts.
- **SINGAPORE: CIVIL LAW (AMENDMENT) BILL INTRODUCED** The Civil Law (Amendment) Bill ("the Bill") has been introduced to enable third-party funding for international arbitrations in Singapore. The Bill allows professional third-party funders to help underwrite proceedings in exchange for monetary payouts. A solicitor in Singapore may recommend professional for-profit funders to his clients, provided there are no financial benefits for the solicitor concerned.
- **SOUTH EAST ASIA: CLAIMS OVER SOUTH CHINA SEA DETERMINED** The Permanent Court of Arbitration in Hague, in a claim brought by Philippines against China on the South China Sea, has ruled in favour of Philippines, since there was no evidence that China has exercised exclusive control over the South China Sea.
- **UK: BREXIT** The United Kingdom (UK) has voted to leave European Union (EU) via a referendum held on 23 June 2016. The UK would have to invoke Article 50 of the Lisbon Treaty in order to leave the EU.
- **UK: LANDMARK RULINGS FOR PERSONAL INJURY SETTLEMENTS** The Supreme Court of the United Kingdom in *Hayward v Zurich* has delivered a landmark decision allowing the personal injury settlements to be challenged if the claimant is subsequently found to have lied. In this case, the claimant, who alleged that he suffered serious back injury from an injury at work, was found to have exaggerated his injury conditions, after the settlement between him and his employer's insurer. The Supreme Court set aside the initial settlement and the claimant was awarded with a lesser sum.
- **US: LED ZEPPELIN CLEARED OF PLAGIARISM** A United States jury, in the suit brought on behalf of Randy Wolfe against *Led Zeppelin*, has found that *Led Zeppelin* did not plagiarise the opening chords of *Stairway to Heaven* from *Taurus* by *Spirit*. It was held that the riff of *Taurus*, that *Led Zeppelin* was accused of plagiarising, was not intrinsically similar to the opening of *Stairway to Heaven*. An appeal against this decision is expected.
- **US: POKEMON GO MAKERS SUED** A class action has been filed against the game makers of *Pokemon Go* for trespass on private property by its players. The allegation is that the defendants have disregarded the foreseeable consequences of populating the real world with virtual caricatures, without first seeking the permission of the respective property owners.

INTERNATIONAL LAW

ALL ABOUT ARTICLE 50 The United Kingdom (UK), by virtue of the European Union referendum, also known as the *Brexit* referendum, which was held on 23 June 2016, had voted to leave the European Union (EU).

To commence the process of leaving the EU, the UK government must invoke Article 50 of the Lisbon Treaty. In this article, we examine the process for a Member State¹ to withdraw from the EU, as provided under Article 50.

ARTICLE 50 The Lisbon Treaty ("the Treaty"), which came into force in December 2009, is an agreement signed by the heads of state that are part of the EU. It is divided into two parts, namely, the Treaty on European Union and the Treaty on the Functioning of the European Union. In Article 50 ("the Article"), the Treaty also provides for the rights and procedure for a member state to withdraw from the European Union.

NOTIFICATION OF INTENTION TO WITHDRAW

Upon the decision to leave the European Union (EU), the United Kingdom (UK) must formally notify the European Council of its intention to withdraw. No timeframe is prescribed, but it is likely that the notification would be done in writing by the Prime Minister under prerogative powers. Whether parliamentary approval is required is still open to debate.

THE NEGOTIATIONS Withdrawal negotiations between the UK and the European Commission will commence once the UK provides the notification of intention to withdraw. The European Council will then draw up a negotiating guideline without the UK's participation. The European Council, with the consent of the European Parliament (EP), is responsible for concluding the agreement, acting on the basis of a qualified majority. At this stage, the UK will remain a Member State during the withdrawal negotiations and will continue to participate in EU activities, the EU institutions, and decision-making, until the point of withdrawal. However, they may neither participate, nor vote in any discussion of the European Council concerning its withdrawal. The negotiation period is two years from formal notification, but may extend upon the

¹ 'Member States' refer to the countries that form part of the European Union.

agreement of all Member States. Existing EU laws would also continue to apply during that period of time.

THE WITHDRAWAL AGREEMENT Article 50 of the Treaty does not specify the scope of the withdrawal agreement and this depends entirely on the negotiators. A qualified majority voting however is required to agree to a withdrawal agreement although voting on any separate post-exit agreement would require the unanimous agreement of EU Member States and consent of the EP.

Although the Member States could reject the withdrawal agreement, this would not stop the UK from leaving the EU.


THE FUTURE The UK, following its leave from the EU, would also leave the European Economic Area. Should the UK wish to rejoin the EU in the future, they would have to reapply under Article 49 of the Treaty with the usual application process for EU membership.

Article 50

1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.
2. A Member State which decides to withdraw shall notify the European Council of its intention. In light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union.

...

THE LAWS Although the UK Government may retain any EU-derived law within their domestic laws, the suggestion is to repeal the European Communities Act 1972, with savings provisions. However, any interpretation made by the Court of Justice while the UK was part of the EU, would still apply, with those made after the withdrawal not binding, but influential.

CONCLUSION The withdrawal process for the UK to leave the EU will undeniably be a long and arduous process, coupled with uncertainty on the UK's position, politically and economically, as well as its relationship with the rest of the EU. 

TORT

THE TORT OF SEXUAL HARASSMENT The Malaysian Federal Court in the case of *Mohd Ridzwan bin Abdul Razak v Asmah bt Hj Mohd Nor*² recently delivered a landmark judgment, ruling that victims of sexual harassment will now be able to seek civil remedies under the tort of sexual harassment. This is the first case involving a sexual harassment victim at a workplace who sought remedy from the civil court. There was previously no avenue for a civil action for sexual harassment under Malaysian law.

In this article, we examine the facts, issues and rulings of the case.

INTRODUCTION The law on sexual harassment is contained in a non-binding guideline, namely the Malaysian Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace ("the Code"). In addition to the Code, a recent amendment to the Malaysian Employment Act 1955³ merely imposed a duty on employers to adequately deal with sexual harassment complaints at their workplace.

THE FACTS The plaintiff and the defendant were employees of a company ("the Company"). The defendant reported directly to the plaintiff. In July 2009, the defendant lodged a complaint ("the Complaint") to the Chief Executive Officer of the Company claiming sexual harassment by the plaintiff. An inquiry was conducted, and although there was insufficient evidence to warrant disciplinary action, a strong administrative reprimand was issued to the plaintiff.

The plaintiff, in December 2011 issued a writ against the defendant seeking, *inter alia*, a declaration that he had not sexually harassed her and that he had been defamed by the Complaint made by the defendant. The defendant filed her defence and also a counterclaim against the plaintiff. In her counterclaim, the defendant particularised the sexual harassment. The defendant also pleaded that her allegations were upheld by their employer and that a serious disciplinary warning was issued to the plaintiff pursuant to the Complaint. The defendant counterclaimed for damages predicated on sexual harassment.

The High Court found that the plaintiff failed to prove his defamation claim against the defendant and allowed the defendant's counterclaim. This was upheld by the Court of Appeal. Dissatisfied, the plaintiff appealed to the Federal Court.

THE ISSUE The main issue for consideration was whether the defendant had a valid cause of action in a civil claim on the grounds of sexual harassment.

THE DECISION In the High Court, the plaintiff's claim was dismissed as he had failed to prove that the defendant had defamed him through the contents of the complaint letter. The defendant's counterclaim, however, was allowed and she was awarded damages amounting to MYR120,000 since there was a direct link between her mental, physical and emotional pain and suffering, and the sexual harassment committed by the plaintiff. However, no clarification was made as to the pleaded tort of sexual harassment.

The decision of the High Court was upheld by the Court of Appeal. It was further held that where acts of sexual harassment are serious to cause adverse psychological effect on the victim, those acts would fall within the tort of intentionally causing nervous shock. Therefore, since the plaintiff's actions did amount to sexual harassment, and that the plaintiff had knowledge of the defendant's vulnerability which had adversely affected her, the plaintiff's actions fell within the tort of intentionally causing nervous shock.

On further appeal to the Federal Court, it was held that since the tort of sexual harassment was pleaded at the High Court, coupled with the fact that there was ample evidence to establish it, the introduction of the tort of harassment was justified.

CONCLUSION The Federal Court decision proves to be significant as the recognition of the tort of sexual harassment provides an avenue for victims, both women working in the formal and informal working sector, to seek civil remedy, which goes beyond the remedies provided under the Code and the Malaysian Employment Act 1955.

² [2016] 4 MLJ 282.

³ Employment (Amendment) Act 2012.

INTELLECTUAL PROPERTY

FROM PEAKS TO PIECES Six years ago, the cultural and historical sculpture, *Lunar Peaks* or *Puncak Purnama* ("the Sculpture") made the national headlines when an unprecedented sum was awarded to compensate its sculptor, the late Datuk Syed Jamal, a household name in the Malaysian arts scene, for the unauthorised modifications made to the Sculpture. Recently, the Sculpture made its way back to the local dailies when it was demolished on 1 July 2016.

In this article, we attempt to discuss issues arising from the recent demolition of the iconic *Lunar Peaks* in light of moral rights under the Malaysian copyright law.

THE STRUCTURE The 30-year old structure comprises two broad-based right-angled triangles enveloped in luminous white ceramic tiles. *Lunar Peaks*, a masterpiece by the late Datuk Syed Jamal ("the Sculptor"), is well known for its play of light, the union of sky-earth-water and its ascending stepped surfaces inspired by the mythical *Gunung Ledang*.

Lunar Peaks was commissioned by UMBC Harta Sdn Bhd in 1985. It was completed in 1986 and its commissioner handed the Sculpture over to the Kuala Lumpur City Hall, also known as *Dewan Bandaraya Kuala Lumpur* (DBKL), in November of the same year, as a gift to fellow residents of Kuala Lumpur.

A few years later, DBKL modified the Sculpture without permission from its author. The white ceramic tiles were removed and replaced with stainless steel plates. Steel tubing was fixed along the perimeter of the Sculpture and black tiles were used to replace the deep blue tiles in the reflecting pool of the Sculpture.

THE LAWSUIT The Sculptor sued⁴ DBKL for the unauthorised modifications, claiming that his moral rights were infringed. He was awarded damages in the sum of MYR750,000 and was granted a declaration to the effect that he had the absolute right to replicate the Sculpture at other places.

The rulings were celebratory, especially for the arts fraternity, as they were exemplary of the legal implications of any wilful defacement of an artwork.

THE DEMOLITION Since then, the stainless steel plates were removed and no restoration works were made to the Sculpture. On 1 July 2016, the Sculpture was demolished by DBKL, claiming that it was "lifeless". The demolition caused an outcry amongst members of the arts community and heritage lovers, with some labelling it as an "institutionalised vandalism" and "a great loss to the nation's cultural heritage". The question that arises, however, is whether the demolition of the Sculpture has infringed the moral rights of the Sculptor.

RIGHTS OF AN AUTHOR The Malaysian Copyright Act 1987 ("the Act") protects the economic and moral rights of an author. Economic rights allow an author to derive economic benefits and financial rewards from the use of his works by others. The economic rights are granted to an author as the first copyright owner of the work. However, these rights may be transferred to a third party through a license or assignment.

Moral rights, on the other hand, protect the non-economic facets of an author's work, such as, preserving his reputation and honour. Unlike economic rights, moral rights are personal rights that are non-transferrable and will remain vested in the author, regardless of whether he owns the economic rights.

DIMENSIONS OF MORAL RIGHTS Moral rights of an author are embodied in section 25(2) of the Act. Two aspects, namely, right to paternity and right of integrity are protected under the realm of moral rights.

The right to paternity provides an author with a right to be identified as the author of the work. Thus, any presentation of the author's work without naming or identifying the author is disallowed.

The right of integrity, on the other hand, protects an author against derogatory treatment of his work. In this regard, section 25(2)(b) of the Act explicitly prohibits any distortion, mutilation or other modification of the work that significantly alters the author's work, which has the effect of compromising his honour or reputation.

⁴ *Syed Ahmad Jamal v Dato Bandar Kuala Lumpur* [2011] 2 CLJ 569, High Court.

Section 25 - Moral rights

(2) Subject to this section, where copyright subsists in a work, no person may, without the consent of the author, or, after the author's death, of his personal representative, do or authorize the doing of any of the following acts:

- (a) the presentation of the work, by any means whatsoever, without identifying the author or under a name other than that of the author; and
- (b) the distortion, mutilation or other modification of the work if the distortion, mutilation or modification –
 - (i) significantly alters the work; and
 - (ii) is such that it might reasonably be regarded as adversely affecting the author's honour or reputation.

TIME LIMIT Moral rights will last for the whole duration of copyright in the work, which is the lifetime of the author, with an additional 50 years after his death. Once the copyright in a work expires, the moral rights in such work will also cease. Although the Sculptor passed away in 2011, his moral rights in the Sculpture continue to subsist as the Sculpture is within the copyright protection period. The infringement of his moral right is actionable by his personal representatives.

THE HURDLE? A scrutiny of section 25(2) of the Act suggests that acts infringing moral rights of an author include alterations that adversely affect the author's honour or reputation resulting from the distortion, mutilation, and modification thereof. The question that arises, however, is whether the act of demolishing altogether is a violation of moral rights. Copyright law⁵ in the United States expressly states that violation of an author's moral rights extends to any intentional or grossly negligent destruction of a work. Thus, the jury is still out on whether the act of demolition would fall within the scope of section 25(2) of the Act.

CONCLUSION The outcome of the suit, if at all, will not change the harsh reality that *Lunar Peaks* is now a heap of rubble. This incident has been a lesson to many about appreciating an author's work, as each and every piece is the manifestation of his intellect and personality that may not be expressed monetarily. 🌀

⁵ US Code: Title 17 – Copyrights, section 106A: Rights of certain authors to attribution and integrity.

CONSTITUTIONAL LAW – Peaceful assembly – Responsibilities of organiser – Damage to property – Whether organiser had statutory obligations – Whether such obligations could amount to ground for private action by Government – Peaceful Assembly Act 2012, section 6

**KERAJAAN MALAYSIA V AMBIGA
SRENEVASAN & 14 OTHERS** [Civil Appeal
No. W-01 (NCVC)(W)-48-02/2015], Court of Appeal

FACTS The appellant (plaintiff) is the Federal Government of Malaysia while the respondents (defendants) are the organisers of the *Bersih 3.0* Assembly ("the Assembly"). On the day of the Assembly, as the crowd started dispersing at the conclusion of the Assembly, a group of unidentified persons had breached the barricades set by the police. This in turn led to the use of water cannons and the firing of tear gas canisters by the police to disperse the crowd, which resulted in the damage of the appellant's property ie the police vehicles. The appellant initiated a legal action against the respondents at the High Court seeking damages for the damage caused. The appellant alleged that the respondents had breached section 6⁶ ("the Section"), particularly paragraph (2)(g)⁷ ("the Paragraph") of the Peaceful Assembly Act 2012 ("the Act"). The respondents, on the other hand, counterclaimed against the appellant. The High Court held that vicarious liability was not ascribed to the respondents as there was no special relationship established between the respondents and those who caused damage to the appellant's property. The appellant appealed to the Court of Appeal.

ISSUE The main issue was whether the statutory obligations under the Section are grounds for a private action by the appellant against the respondents for the damage caused during the Assembly.

HELD In dismissing the appeal, the court held that the objectives of the Act and the use of the word "ensure" in the Paragraph, merely connote a guideline instead of a legally binding obligation. Thus, the responsibilities spelt out in the Section do not amount to a statutory duty and that any violation or omission will not result in any liability on the respondents, which in turn cannot constitute a private cause of action. 🌀

⁶ Responsibilities of organisers.

⁷ *The organiser shall ensure that the assembly will not endanger health or cause damage to property or the environment.*

TORT – Libel – Storage of outdated financial information – Access to information on subscription basis – Whether such access constituted publication – Whether information defamatory

TAN AH HONG V CTOS DATA SYSTEM SDN BHD [2016] 1 LNS 90, Court of Appeal

FACTS The appellant is an individual while the respondent is a company providing credit rating information of individuals. The respondent stores the financial information of individuals in its database which is accessible by subscribers. A dispute arose when the respondent published outdated financial information (“the Information”) which did not reflect the appellant’s contemporary financial status. The Information showed records of the appellant’s bankruptcy proceedings and debts owed to various institutions.

However, at the time of accessing the Information from the respondent’s database, the appellant had cleared his debt and had been discharged from bankruptcy. The appellant alleged that the Information was defamatory. At the High Court, the judge decided in the respondent’s favor as the appellant failed to prove the element of publication that was necessary in an action for libel. Dissatisfied, the appellant appealed.

ISSUES The issues were (i) whether access to the Information by subscribers constituted publication to third parties, and (ii) whether such Information was defamatory.

HELD In allowing the appeal, the court held that the respondent had published the Information and that access to such Information, although limited by way of subscription, was irrelevant. This is because the respondent had deliberately and intentionally uploaded the Information onto its database to be accessed by the subscribers. The court further ruled that the Information is defamatory as such Information would lead the reader to be suspicious of the appellant’s creditworthiness. ❄️

TORT – Defamation – Article criticising Chief Minister – Whether Chief Minister has *locus standi* to sue for defamation – Freedom of speech and expression – Federal Constitution, article 10(1)(a)

UTUSAN MELAYU (MALAYSIA) BHD V DATO’ SRI DIRAJA HJ ADNAN HJ YAAKOB [2016] 5 CLJ 857, Court of Appeal

FACTS The respondent is the Chief Minister of Pahang (“Chief Minister”), whilst the appellant is a publisher of a mainstream newspaper. The dispute arose when the appellant published an article (“the Article”) criticising the respondent’s administration as Chief Minister. The respondent alleged that the content was libellous and malicious. He subsequently sued the appellant at the High Court claiming damages and an apology.

The High Court judge found that the respondent had *locus standi* to institute the action on the basis that the action was initiated in his personal capacity, as the respondent’s name was cited without “Chief Minister” as his official title. The appellant appealed to the Court of Appeal.

ISSUE The main issue was whether the respondent lacked the *locus standi* in initiating and maintaining the present action for defamation.

HELD In allowing the appeal, the court held that the principle in *Derbyshire County Council v Times Newspapers Ltd*⁸ applies where it was decided that, in a free democratic society, the public should be able to criticise a governmental body, and that refraining from doing so would be contrary to public interest and the freedom of speech. This principle protects the right to free speech and expression under article 10(1)(a) of the Federal Constitution that encompasses the right of citizens to discuss the public affairs and state administration of the Government and its officials. Thus, the respondent in the present case did not have *locus standi* to initiate and maintain the present suit in his capacity as Chief Minister. ❄️

⁸ [1993] 1 All ER 1011.

ACTS

NATIONAL SECURITY COUNCIL ACT 2016


National Language

Akta Majlis Keselamatan Negara 2016

No
776

Date of coming into operation
1 August 2016

Notes

This is an Act to provide for the establishment of the National Security Council, the declaration of security areas, the special powers of the Security Forces in the security areas and other related matters. 

TRADITIONAL AND COMPLEMENTARY MEDICINE ACT 2016

National Language

Akta Perubahan Tradisional dan Komplementari 2016

No
775

Date of coming into operation
1 August 2016 for sections 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 42, 43, 44, 45, 46, 47, 60, 61, and subsections 63(1) and 63(3).

Notes

This is an Act to provide for the establishment of the Traditional and Complementary Medicine Council to regulate the traditional and complementary medicine services in Malaysia and to provide for matters connected therewith. 

AMENDMENT ACTS

EMPLOYEES PROVIDENT FUND (AMENDMENT) ACT 2016


National Language

Akta Kumpulan Wang Simpanan Pekerja (Pindaan) 2016

No
A1504

Date of coming into operation
1 August 2016 for sections 3, 5, 7, 8, 9, 10, 17, 18 and paragraph 24(a).

Notes

The highlights of the amending Act include the introduction of new sections 23A, 23B, 23C, and 23D for the establishment of the Shariah Advisory Committee and other matters in connection with such establishment. The new section 43A allows the members of the Employees Provident Fund to elect for his account to be managed according to *Shariah*. 

SUBSIDIARY LEGISLATION

- PU(B) 356/2016: Malaysian Code on Take-overs and Mergers 2016 – *Effective Date: 15 August 2016*
- PU(A) 216/2016: Employees Provident Fund (Simpanan Shariah Account) Rules 2016 – *Effective Date: 1 August 2016*
- PU(B) 305/2016: Malaysian Aviation Consumer Protection Code 2016 – *Effective Date: 1 July 2016*

**GUIDELINES/RULES/CIRCULARS/
DIRECTIVES AND PRACTICE NOTES ISSUED
BETWEEN
JULY AND SEPTEMBER 2016
BY BANK NEGARA MALAYSIA,
BURSA MALAYSIA AND
SECURITIES COMMISSION MALAYSIA**

BANK NEGARA MALAYSIA (BNM)

- BNM Policy Document on *Ijarah* – Effective date: 1 August 2018, except for paragraph 38 which came into force on 19 August 2016
- BNM Policy Document on *Hibah* – Effective date: 31 July 2018, except for paragraph 26 which came into force on 3 August 2016
- BNM Policy Document on *Qard* – Effective date: 31 July 2018, except for paragraph 22 which came into force on 3 August 2016
- BNM Policy Document on *Wadi'ah* – Effective date: 31 July 2018, except for paragraph 27 which came into force on 3 August 2016
- BNM Policy Document on *Wakalah* – Effective date: 1 July 2018, except for paragraph 28 which came into force on 24 June 2016
- BNM Guidelines on Stress Testing – Date issued: 1 September 2016
- BNM Policy Document on Reference Rate Framework – Effective date: 18 August 2016
- BNM Policy Document on Shareholder Suitability – Effective date: 18 August 2016
- BNM Guidelines on Restricted Committed Liquidity Facility – Effective date: 15 August 2016
- BNM Policy Document on Transfers of Business – Effective date: 5 August 2016
- BNM Policy Document on Corporate Governance – Date issued: 3 August 2016
- BNM Policy Document on *Kafalah* – Date issued: 2 August 2016

- BNM Guidelines on Capital Adequacy Framework (Basel II – Risk-Weighted Assets) – Effective date: 1 August 2016
- BNM Notification on Change in Terminology: “Private Debt Securities” to “Corporate Bond and/or *Sukuk*” – Date issued: 22 July 2016
- BNM Policy Document on Prohibited Business Conduct – Date issued: 15 July 2016
- BNM Policy Document on Financing Facilities with Connected Parties – Date issued: 13 July 2016
- BNM Policy Document on Securities Borrowing and Lending of RENTAS Securities – Date issued: 1 July 2016

BURSA MALAYSIA

- Amendments to the Rules of Bursa Malaysia Derivatives Bhd in relation to the 5-Year MGS Futures Contract, 3-Year MGS Futures Contract and 10-Year MGS Futures Contract – Effective date: 13 September 2016
- Consolidated Rules of Bursa Malaysia Derivatives Bhd – As at: 13 September 2016
- Best Practices in Islamic Stockbroking Services Undertaken by Participating Organisations – As at: 1 September 2016
- Best Practices for *Shariah* Investing – As at: 1 September 2016
- Amendments to the Rules of Bursa Malaysia Derivatives Berhad in relation to inspections, investigations, disciplinary actions and settlement disputes; and for consistency with the Capital Markets and Services Act 2007 and the Securities Commission Malaysia Act 1993 – Effective date: 1 September 2016
- Consolidated Main Market Listing Requirements – As at: 1 July 2016
- Consolidated ACE Market Listing Requirements – As at: 1 July 2016
- Consolidated Questions and Answers in relation to Bursa Malaysia Securities Main Market Listing Requirements – As at: 1 July 2016
- Consolidated Questions and Answers in relation to Bursa Malaysia Securities Berhad ACE Market Listing Requirements – As at: 1 July 2016

SECURITIES COMMISSION

- SC Rules on Take-overs and Mergers and Compulsory Acquisitions – *Effective date: 15 August 2016*
- SC Guidelines on Sales Practice of Unlisted Capital Market Products – *Effective date: 15 August 2016*
- SC Guidelines on Unit Trust Funds – *Effective date: 15 August 2016*
- SC Prospectus Guidelines for Collective Investment Schemes – *Effective date: 15 August 2016*

WORD OF THE BRIEFCASE...**McKenzie friend:**

“McKenzie Friend” means a person who attends a trial as a friend of either party, to assist the party with the proceeding.

“McKenzie Friend” originates from an English divorce case *Mckenzie v Mckenzie* [1970] 3 All ER 1034, in which the *dicta* of Lord Tenterden CJ in *Collier v Hicks* (1831) 2 B & Ad 663 “*any person, whether he be a professional man or not, may attend as a friend of either party, may take notes, may quietly make suggestions, and give advice; but no one can demand to take part in the proceedings as an advocate, contrary to the regulations of the court as settled by the discretion of the justices*” was approved.

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