

the **ZRp** brief

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ZUL RAFIQUE & *partners* was named (Legal) Employer of Choice 2011 by the *Asian Legal Business*.

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ZUL RAFIQUE & *partners*

A BRIEF NOTE...

by Dato' Zulkifly Rafique



Respect begets respect...

In March 2011, the Asian Legal Business named us (Legal) Employer of Choice 2011. This is the third time we have won the award, and I must say I am thrilled.

The question that has been posed to me is 'What is the hallmark of a good employer?' Monetary perks? A conducive environment? Upscale location? It may be a combination of things but I believe that a healthy environment is definitely a factor that may surpass the monetary benefits.

I have always maintained that a healthy and conducive environment is built on mutual respect, regardless of creed, race, religion or hierarchy. That is one factor that we can never compromise.

The fact remains that we are not a homogeneous society. We are still very divided by creed and culture. No matter how politically correct we try to be, we still have our prejudices and preferences – and that is all the more reason for making a conscious effort for tolerance, patience and respect for one another.

One should remember that respect begets respect, suspicion begets suspicion, hate begets hate and love begets love.

Let us therefore bear that in mind in our next encounter with anyone for that matter, irrespective of whether he is our friend, family or even foe. Everyone deserves respect!

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- *Guidelines/ Circulars/ Practice Notes issued between April 2011 and June 2011 by Bursa Malaysia, Securities Commission and Bank Negara Malaysia*

✦ BREAKING NEWS...

ZUL RAFIQUE & partners NAMED (LEGAL) EMPLOYER OF CHOICE It was a third consecutive win for **ZUL RAFIQUE & partners** after being named Employer of Choice 2011 by the Asian Legal Business (ALB), a leading provider of print and online legal news and information for legal professionals in China, North and South East Asia, Japan, Australia and the Middle East. The firm bagged the same award in 2010 and 2009.

In choosing the best law firm to work with in the respective jurisdictions, the ALB conducted an online survey between December 2010 and January 2011. Employees were asked to rate their preference based on criteria which included the quality of work, work-life balance, professional development and training.

The survey further revealed that legal firms in the Asian region had placed an importance on incorporating work-life balance strategies in its daily legal practice.

ZUL RAFIQUE & partners subscribes to the same view. It has made efforts to promote health awareness through activities such as a blood donation drive, yoga classes and lectures and seminars on health and fitness.

Moving to its new premises in an upscale township in Kuala Lumpur, the firm's spacious office allows the accommodation of an in-house gymnasium which is a reflection of the firm's commitment to the health and well-being of its employees.

A good boss makes his men realise they have more ability than they think they have so that they consistently do better work than they thought they could. – Charles Erwin Wilson

✦ BRIEF-FLASH...

- **BANKS INCREASE INTEREST RATES** Many banks have increased their base lending rate and base financing rate following the move by Bank Negara Malaysia to raise the Overnight Policy Rate by 25 basis points to 3%. Financial analysts believe that the hike is a move to keep inflation in check and to slow down the appreciation of the Ringgit. ✦
- **CAPITAL MARKET MASTERPLAN 2** Launched on 12 April 2011, the Capital Market Masterplan 2 outlines the growth strategies to transform the competitive dynamics of Malaysia's capital market over the next 10 years, as well as the governance strategies for investor protection and stability. ✦
- **CYBER SECURITY AWARENESS** CyberSecurity Malaysia has launched CyberSAFE (Cyber Security Awareness For Everyone) to educate the public on technological and social issues regarding Internet use. It provides information and resources on Internet security issues for all targeted groups. ✦
- **HIRE-PURCHASE ACT 1967 AMENDED** The Hire-Purchase Act 1967 has been amended to impose a mandatory B7 inspection of all used cars before they are approved for sale. This amendment, which aims to ensure the roadworthiness of vehicles, has taken effect from 15 June 2011. ✦
- **MONEYLENDERS ACT 1951 AMENDED** The Moneylenders Act 1951 has been amended to impose stiffer penalties on unlicensed moneylenders. Operating a moneylending business without a valid license could attract a fine of up to RM1million. New sections are incorporated to prohibit a moneylender from inviting a person to borrow money. It is also an offence to leave the interest rate blank to be filled after the execution of the moneylending agreement. ✦

- **NEW ISLAMIC MONETARY INSTRUMENT**
Bank Negara Malaysia has introduced the Bank Negara Monetary Notes-Istithmar (BNMN-Istithmar) to promote greater liquidity in the Islamic market. ✎
- **NEW RULE ON REGISTRATION OF CREDIT RATING AGENCIES**
The Securities Commission Malaysia has issued Guidelines on the Registration of Credit Rating Agencies which set out the regulatory and supervisory requirements for such agencies. These guidelines, issued on 30 March 2011, supersede the Practice Notes issued on 25 January 2006. ✎
- **PRICE CONTROL & ANTI-PROFITEERING ACT 2011**
The Price Control & Anti-Profiteering Act 2011 (the Act) has taken effect from 1 April 2011. The Act aims to protect consumers from unscrupulous traders who charge exorbitant prices for their goods and services. Under the Act, a Price Council Advisory is set up to monitor profiteering and other matters related to prices of goods and services. ✎
- **RENEWABLE ENERGY ACT**
Dewan Rakyat passed the Renewable Energy Bill on 4 April 2011. One of the aims of the Act is to establish and implement a special tariff system to catalyse the generation of renewable energy. ✎
- **REVISED GUIDELINES ON COMPLIANCE FUNCTION FOR FUND MANAGERS**
The Securities Commission of Malaysia has revised the Guidelines on Compliance Function for Fund Managers to enhance clients' asset protection and further safeguard the interests of investors. Fund management companies are required to highlight the unique features and characteristics of their investment products and to provide quarterly updates on the performance of each client's portfolio against the appropriate benchmarks. ✎

- **SPECIAL COURT TO TACKLE GRAFT**
Fourteen courts have been set up to hasten the trial of corruption cases. The courts are established as part of the Malaysian Government Transformation Programme. ✎

FOREIGN FLASH

- **BRODIE LAW AT WORKPLACE**
The Crimes Amendment (Bullying) Bill in Australia has been tabled to include workplace and cyber bullying. Known as the Brodie Law, after suicide victim, Brodie Panlock who suffered relentless bullying at her workplace, the Bill is expected to increase the penalties for bullies by imposing a maximum 10-year imprisonment term. ✎
- **DADS GET ADDITIONAL PATERNITY LEAVE**
With effect from 3 April 2011, fathers in the United Kingdom are entitled to 26 weeks' paternity leave if mothers return to work early or end their maternity leave entitlement. This new rule also applies to fathers of adopted children. ✎
- **'DO NOT TRACK' BILL**
The United States Senate has introduced the 'Do Not Track' Bill as a measure to protect online privacy of the Americans. Consumers have the right to determine the usage of their information and exercising an 'opt out' option of their data collection. In addition, companies are blocked from tracking online users' activity on the Internet. ✎
- **GRACE PERIOD FOR COOKIE LAW**
The enforcement of the European Union Privacy and Communication Directive on the Cookie Law has been postponed to next year. Initially scheduled for its enforcement in May 2011, the law requires websites in the United Kingdom to seek online users' consent before installing Cookies in their browser. Cookies are small text files which collect and store browsing history of Internet surfers. They are often used by third parties to analyse online users' browsing activities for advertising and marketing purposes. ✎

- **INDONESIA LIMITS FOREIGN**

ACCOUNTANTS Indonesia's House of Representatives has passed a Bill to restrict the presence of foreign accountants. These include the conditions that foreign public accounting firms must have five local partners for every foreign partner and that every foreign public accountant must be a member of their national public accountant professional associations. 🧩

- **INTERNET GIANTS CHALLENGE**

FRANCE'S PRIVACY LAW Facebook and Google are among the Internet heavyweights who are challenging the French Government's decree which require them to retain users' personal data for a year. The law allows the access of personal information if demanded by the police, fraud offices, customs, tax and social security bodies. 🧩

- **ANTI-PEOPLE SMUGGLING LAW**

The Indonesian government has imposed tougher sentence under its new anti-people smuggling law. Offenders would face a 15-year jail term or a fine of USD170,000. Previously, human traffickers were charged with minor immigration offences and slapped with a small fine. 🧩

- **SONY PLAYSTATION DATA THEFT**

The personal data of about 77 million Sony PlayStation users were stolen following hacking on the network. This is one of the largest data thefts in history. Personal data which includes purchase history and billing addresses may have been obtained and the leak of other personal information could be used to construct one's entire identity. 🧩

Dr Haizal Haron Kamar from Tropicana Medical Centre conducting a lecture "Heart Under Attack" at ZUL RAFIQUE & partners.



BRIEFING...

LEGAL & MEDICAL PROFESSION

FOR SERVICES RENDERED... Very recently, the Singapore High Court decided that the Singapore Medical Council should be allowed to investigate a complaint that Dr Susan Lim, a top Singapore surgeon who was slammed for issuing a multi-million dollar medical bill to a Brunei royal family member, had actually overcharged the patient.

This has resurrected the debate on whether professionals, including lawyers, charge too much, especially since suggestions were made by the former Bar Council President that the public should expect legal fees to increase by as much as 400%!

In this article, we examine the relevant legislation that regulates the imposition of legal and medical fees in Malaysia.

THE LEGAL PROFESSION Disparaging remarks and crude jokes about lawyers and doctors are aplenty and that actually seems to reflect the perception of the public. In fact such regard has been immortalised in novels and even movies (Remember that scene in *The Firm* where Tom Cruise's character was told that even if he thinks of a client in the shower, he should bill him for it!).

How do lawyers and doctors charge and why are their professional fees generally perceived to be exorbitant? In respect of non-contentious matters (such as transfers, charges, debentures, discharges, tenancies and leases), lawyers' fees are prescribed by the Solicitors' Remuneration Order 2005¹ which is based on the consideration or adjudicated value of the transaction. A salient feature of the SRO is that no discounts are permitted.

In contentious matters, fees differ from one lawyer to another. The Legal Profession Act 1976 and Legal Profession (Practice & Etiquette) Rules 1978 prescribe several factors that should be considered when determining fees, which include time, labour and skill required, the novelty and difficulty of the question involved and the seniority of the particular lawyer.

A doctor and a lawyer were attending a cocktail party when the doctor was approached by a man who asked advice on how to handle his ulcer. The doctor mumbled some medical advice, then turned to the lawyer and asked, "How do you handle the situation when you are asked for advice during a social function?" "Just send a bill for such advice" replied the lawyer.

The next morning the doctor arrived at his surgery and issued the ulcer-stricken man a \$50 bill. That afternoon he received a \$100 bill from the lawyer!

THE MEDICAL PROFESSION The medical profession has not been excluded from this debate. In the case of Dr Susan Lim, her lawyers argued that there is no benchmark or guideline to value special care given to patients.

In Malaysia, medical fees are divided into hospital charges and doctors' professional fees. Whilst professional doctors' fees are regulated by the Private Healthcare Facilities and Services Act 1998 and its Regulations², private hospitals charges are unregulated, but medical costs are relatively cheaper for government healthcare services than private healthcare services.

CONCLUSION Whilst clients and patients often wonder whether they are getting value for money, they run the risk of being sued for unsettled bills. One way of finding out how much one owes in fees for professional services is to request for an itemised bill, or to check the status of the bill, from time to time, during the period of service. 

1 The SRO came into force on 1 January 2006.

2 See Private Healthcare Facilities and Services Regulations 2006, regulation 433, Schedule XIII.

CONTRACT/ COMMERCIAL

AMENDMENTS TO THE HIRE-PURCHASE

ACT 1967 The highly debated amendments to the Hire-Purchase Act 1967 (HPA) came into force on 15 June 2011.

The amendments effected several changes to the HPA, most notably in relation to the inspection, booking fee, penalties, repossession and the reposessor.

We examine the implications of the amendments in this article.

THE INSPECTION The amendments have imposed a detailed inspection of second-hand vehicles before the sale. Previously, second-hand vehicles were required to undergo the B5 (four point) inspection at PUSPAKOM, the first Malaysian computerised vehicle inspection centre. Now, PUSPAKOM's 18-point inspection known as the B7 inspection must be completed and second-hand car sellers are expected to pay a fee of RM90.

THE BOOKING FEE Section 30A regulates the booking fee for goods. The booking fee stipulated must not exceed 1% of the cash price of the goods and it also forms part of the deposit pursuant to section 31 of the HPA. In the event of a withdrawal of an intended purchase, the owner or dealer must refund 90% of the booking fee to the intending hirer. This is a departure from the conventional rule of the 'non-refundable deposit' observed in most commercial transactions.

THE REPOSSESSION In the event of any breach of a hire-purchase agreement relating to the payment of instalments, the owner or lender of the goods, who would in most cases be a bank or financial institution, is not allowed to repossess the goods unless the following have occurred, namely, that (a) the payment of instalments amount to less than 75% of the total cash price of the goods; (b) there have been two successive payment defaults by the hirer and after the owner has served a written notice on the hirer; and (c) the notice has lapsed after 21 days from the date of service.

If the payment of instalments amounts to more than 75% of the total cash price of the goods, repossession is allowed only after obtaining a court order.

THE REPOSSESSOR Many unpleasant accounts have been told of repossessors and their unbecoming methods of repossession. New sections have been incorporated to address this issue. For instance, section 17A now requires a reposessor to obtain a permit from the Controller of Hire-Purchase, as appointed by the Minister of Domestic Trade, Cooperatives and Consumerism. The permit holder must be a Malaysian above 21 years of age and has undergone police screening for criminal records. The permit which costs RM20 is valid for two years and is renewable for a further two years at RM20. It is an offence for an owner to appoint a non-permit holder as his agent to repossess.

In relation to motor vehicles as goods, repossessors are required to act within the parameters prescribed by the Hire-Purchase Rules (Permit Acquisition and Repossession Procedures) 2011. No use of force is allowed and repossession may be undertaken only between 9am and 9pm daily. This is an attempt to minimise any abuse of power by the repossessors.

THE PENALTIES Higher penalties are prescribed by the amendments. An offence under the HPA may attract a fine of up to RM100,000 for the first offence, and RM250,000 for each subsequent offence for a body corporate; or up to RM25,000 for the first offence, and RM50,000 for each subsequent offence for any person not a body corporate.

CONCLUSION While these amendments aim to protect consumers as a whole, they have resulted in more cumbersome procedures for the second-hand vehicle industry. Many have lamented that the amendments would be more of a pain than a panacea, thus creating a situation where one man's meat is another man's poison. 

INTELLECTUAL PROPERTY

A LOTUS BY ANY OTHER NAME...

Whether it is the *Lotus Elan* (made famous by Diana Rigg in *The Avengers*), the *Lotus Europa* (driven by George Best in the 1960s) or the *Lotus Esprit* (linked to Roger Moore as *James Bond*) the name *Lotus* is associated with cars that represent charisma, character and cutting-edge technology.

On 27 May 2011, the High Court of the United Kingdom delivered the decision in the case of *Group Lotus Plc & Anor v 1 Malaysia Racing Team Sdn Bhd & Ors*.

In this article we examine what led to the dispute and how (or whether) it was resolved.

THE HISTORY Car manufacturer, Lotus Cars, was established in 1958. Three years later, Team Lotus International Ltd (TLIL) was incorporated for the purposes of racing the cars that were manufactured by Lotus Cars.

Lotus Cars then changed its name to Group Lotus Car Company Ltd and later to Group Lotus Plc (GL). In the mid-eighties, GL was bought by General Motors. General Motors then sold the company to another owned by Romano Artioli. In 1996, a majority share in GL was sold to *Perusahaan Otomobil Nasional Bhd* (Proton).

TLIL began its activity in competitive Formula One (F1) running the racing team *Team Lotus* in the 1950's. This ended in 1994 when TLIL assigned its business to Team Lotus Ltd (TLL). Team Lotus Ventures Ltd (TLVL) eventually became the successors-in-title of TLL.

It is important to note that prior to 2011, GL had never raced in F1 directly although it had raced through TLIL from 1960 to 1994. There has never been a car racing in F1 under the name *Group Lotus* or just *Lotus*.

THE AGREEMENT On 21 December 2009, as a result of an agreement (the licence) between GL and 1Malaysian Racing Team (1MRT), the latter acquired various rights including the right to race in F1 under the name *Lotus Racing*. *Lotus Racing* was, however at that time, unrelated to *Team Lotus*. A dispute subsequently arose between GL and 1MRT resulting in the termination of the licence for future seasons.

GL then entered into a fresh relationship with Renault to enter a car in F1 with the name *Lotus* or *Lotus Racing* or possibly *Lotus Renault*, and the organisers of F1 accepted that entry.

1MRT on the other hand announced that they had acquired TLVL and with it, full ownership of the rights of the *Team Lotus* brand and heritage which included the *Lotus* trademark.

THE ISSUES One of the main issues was whether 1MRT had the right to race in F1 in cars which bore the name *Lotus* or *Lotus* in combination with the word *Team*.

A major aspect of the decision of the High Court was that the judge revoked the trademark registration in TLVL's name for non-use. The goodwill, however, associated with *Team Lotus* still remained and was protectable. This meant that 1MRT could race in F1 in cars bearing the name *Team Lotus*.

It was held that GL too was not excluded from using the name *Lotus* since it had the goodwill associated with *Lotus*.

LOTUS V LOTUS The effect of the judgment meant that both GL and 1MRT had the right to use the name *Lotus* although the latter was allowed to use it only as a combination with the word *Team*.

GL however announced that they are seeking leave to appeal because they believe the judgment will cause confusion in the eyes of spectators and television viewers. 

CRIMINAL LAW

IT'S A DOG'S LIFE! Cruelty towards animals has been highlighted in the newspaper in light of recent incidents.

Current legislation is deemed to be insufficient to address the relevant issues. Calls therefore have been made for amendments of the relevant statutes.

ANIMALS ACT 1953 The Animals Act 1953 (AA) has been viewed as ineffective in protecting animals from abusive situations unless they are seriously harmed. In fact even in worst cases of animal abuse, the penalty provided by the AA is a mere fine of RM200 or six months' jail or both³.

PENAL CODE The Penal Code is another statute that contains provisions addressing animal abuse. However, although the Code provides for the protection of animal rights, the nature and type of offence depends on the value of the animal. For instance, an offence is said to be committed if a person commits mischief by killing, poisoning, maiming, or rendering useless any animal of the value of RM5 or upwards, and this attracts a maximum punishment of a two-year jail term, or fine, or both⁴.

If the offence is committed on an elephant, camel, horse, mule, buffalo, bull, cow or ox (whatever their value may be) or any other animal which is worth more than RM25, the penalty involved is imprisonment up to a maximum term of five years, or fine, or both⁵.

PROTECTION OF WILDLIFE ACT 1972

Currently, under the Protection of Wildlife Act 1972 (PWA)⁶, the attempt, act, or an abetment of an unlawful shooting, killing or taking of wildlife leads to a criminal conviction punishable with a fine and imprisonment. Cruelty to wildlife is also a criminal offence under the PWA⁶.

However, in dealing with sophisticated wildlife criminals and their syndicates, this 39-year-old law has not achieved what it had set out to do in the 1970s. The PWA is out-dated and there are many loopholes which unscrupulous criminals may take advantage of, and at the expense of wildlife. The PWA needs to be comprehensively reviewed urgently⁷.

We have enslaved the rest of the animal creation, and have treated our distant cousins in fur and feathers so badly that beyond doubt, if they were able to formulate a religion, they would depict the Devil in human form. - William Ralph Inge

WILDLIFE CONSERVATION ACT 2010

The Wildlife Conservation Act 2010 which took effect from 28 December 2010 enables the Ministry to regulate the management of zoos, circus activities and wildlife exhibits more effectively. The emphasis of the Act is on the well-being of the wildlife.

THE FUTURE Although some quarters blame the laws, claiming it to be out-dated, archaic and ineffective, others blame the lack of enforcement as the main cause of prevalence of animal abuse. This is evident on the lack of prosecution.

Suggestions have been made to amend the AA to impose stiffer penalties of up to RM50,000 and a longer jail term. Calls have also been made to introduce legislation such as the Animal Welfare Act and for an Animal Welfare Council to be established. 

3 Section 44

4 Section 428

5 Section 429

6 Section 92

7 Comments by Malaysian Nature Society (MNS) executive director Dr Loh Chi Leong reported in *Flawed Wildlife law* in *The Star* on May 20, 2008

BRIEF-CASE...

CONTRACT LAW – Restraint of trade clause – Whether ‘restraint of trade’ or ‘restrictive of trade’

**KAMARUDIN MERICAN NOORDIN
V KAKA SINGH DHALIWAL** [2011] 4
CLJ 286, High Court

FACTS The plaintiff is a race horse trainer licensed by the Malaysian Racing Association (MRA), a body empowered to regulate the horse profession and sport including horse racing in Malaysia and Singapore. The defendant is the Secretary of the MRA. Rule 230 of the MRA Rules was amended to read ‘**No horse trainer shall train, have charge of or have in his stable or at his spelling station less than an average of 20 horses a month over a period of one year**’. The plaintiff commenced an action against the defendant to seek a declaration that rule 230 is *ultra vires*, null and void and unenforceable under the law and also an order that the defendant and the MRA be restrained from enforcing rule 230 against the plaintiff or any members of the Association of West Malaysian Race Horse Trainers.

ISSUE The issue concerned the validity and enforceability of rule 230.

It is a policy decision of MRA and it may well turn out to be a bad policy. However that is for MRA to suffer the consequences and perhaps to eat humble pie and then say ‘we shall suspend the operation of r 230.’ - per Lee Swee Seng JC

HELD In dismissing the plaintiff’s claim, the court held that there is a difference between a contract *restrictive of trade* and a contract in *restraint of trade*. Every profession is entitled to set certain parameters for its members to carry out. There was insufficient evidence to suggest that rule 230 is a restraint of trade clause. 

TORT LAW – Defamation – Libel – Pupil In Chambers misleading court – Whether any defence available – Absolute Privilege – Qualified privilege – Fair comment

**S ASHOK KANDIAH & ANOR V
DATO YALUMALLAI MUTHUSAMY &
ANOR** [2011] 1 CLJ 460, Court of Appeal

FACTS According to the facts, the second plaintiff, who was a pupil at that time, assisted the first plaintiff by handing over copies of authorities to the judge. He was wearing professional attire appropriate for a counsel appearing in court. The first defendant was curious of his presence and requested the judge to query his identity. The judge directed the second plaintiff to vacate the Bar table after the court was told that he was a clerk in the first plaintiff’s office (but was later discovered to be a Pupil in Chambers). The first defendant subsequently wrote a letter to the first plaintiff, copied to the Sessions Court, claiming that the plaintiffs had knowingly misled the court. The plaintiffs filed a defamation suit against the defendants. The High Court ruled in favour of the plaintiffs and the defendants appealed.

ISSUES Whether the defendants could rely on the defences of absolute privilege, justification, qualified privilege and fair comment.

HELD In allowing the appeal, it was held that the letter was protected by absolute privilege and that the defendants’ allegations in the letter were justified. The defendants were able to establish that the plaintiffs had misled the court on the identity of the second plaintiff. The publication of the letter was done with the sense of duty as an officer of the court in the administration of justice instead of reckless indifference or falsity. Based on the available evidence, the defendants also succeeded in the defence of fair comment. 

TORT LAW – Invasion of privacy – Photographs taken by doctor – Photographs taken in the course of surgical procedure – Whether invasion of privacy a recognised cause of action in Malaysia

LEE EWE POH V DR LIM TEIK MAN & ANOR [2011] 1 MLJ 835, High Court

FACTS The plaintiff learned from a nurse that the first defendant, a colorectal surgeon had taken photographs of her private parts during surgery. She subsequently commenced a suit against the defendants for violation of her privacy and dignity. The plaintiff claimed that the photographs had been taken without her prior knowledge and consent. The defendants submitted that a claim on invasion or violation of privacy was not a recognised tort or cause of action in Malaysia. The photographs were taken in a clinical environment for the plaintiff's medical record and there was no publication. It was further claimed that it was an acceptable medical practice for photographs to be taken in the course of surgical procedure.

ISSUE The main issue for consideration was whether the plaintiff's cause of action for invasion of privacy is an actionable tort.

HELD In allowing the plaintiff's claim, it was held that invasion of a female's privacy in relation to her modesty, decency and dignity is an actionable tort. Alternatively, the plaintiff could bring a cause of action for breach of trust or confidence. The plaintiff's consent was an absolute requirement when it involved photographs of intimate parts of her body which may expose her modesty. Such photographs ought to be surrendered or destroyed as agreed by the plaintiff if taken without her consent. 

TORT LAW – Negligence – Registration of land title – Forged memorandum of transfer – Public authorities – Limitation period

KOBCHAI SOSOTHIKUL (WAKIL HARTA PUSAKA BOONSOM BOONYANIT @ SUN YOK ENG, SI MATI) V PENGARAH TANAH GALIAN, PULAU PINANG [2011] 2 AMR 621, High Court

FACTS The plaintiff is the representative of the estate of his late mother, Boonsom Boonyanit (Boonsom) who lost her land through fraud. Following the unsuccessful series of litigation, the plaintiff took action against the defendant and claimed that the defendant was negligent and failed to take reasonable precaution in exercising its statutory duties when it registered the transfer of Boonsom's land to Adorna Properties. The defendant denied the negligence and averred that the plaintiff's claim was time barred under the Public Authorities Protection Act 1948 (PAPA).

ISSUES The issues considered were whether the defendant was negligent in its statutory duties and whether the plaintiff's claim was time barred by virtue of section 2(a) of the PAPA.

HELD In dismissing the plaintiff's claim, it was held that although negligence was found, the limitation period of 36 months under the PAPA had expired. The period of limitation ran from the date the damage was first suffered. In this context, damage occurred the moment the legal title was lost and not at the end of the litigation in the Federal Court. 

CONTRACT/ LEGAL PROFESSION

– Contract – Whether plaintiffs entitled to legal fees – Whether oral representation is enforceable – Discharge of solicitors

SHANKAR A/L RAM POHUMALL @ SHANKAR RP ASNANI & ANOR V JEFFREY LAW SIEW SU & ORS [2011] 7 MLJ 643, High Court

FACTS An agreement was signed between the partners of Thomas Shankar Ram & Co (the plaintiffs) and the first defendant who was the director of the third defendant. Under Clause 5 of the agreement, the defendants were to pay a non-refundable fee of RM200,000 being the retainer fee to engage the plaintiffs' services in a writ action. The retainer fee did not include fees, disbursements and costs of any appeal. Later, the plaintiffs filed a suit against the defendants for not paying their legal fees in respect of the writ action and two civil appeals that arose from interlocutory applications. The defendants contended that the first plaintiff, a partner of the firm, Mr Shankar, gave an oral representation that the legal fees were to be paid only if the plaintiff successfully obtained an interlocutory injunction in the writ action.

ISSUE The issue concerned the interpretation of the retainer agreement.

HELD By virtue of section 15 of the Advocates Ordinance of Sarawak, a retainer must be in writing in order to be valid. The court held that it must give effect to the meaning of the words used in the agreement. The clauses in the agreement clearly showed that the retainer fee of RM200,000 was non-refundable and excluded fees, disbursements and costs of any appeals. The alleged oral representation made by the first plaintiff relied upon by the defendants was champertous and illegal. Thus, the plaintiffs were entitled to their legal fees. 

LEGAL PROFESSION – Right of audience – Arbitration proceedings in Sabah – Admission of advocate and solicitor from West Malaysia – *Ad-hoc* admission to Sabah Bar

IN RE MOHAMED AZAHARI MATIASIN (APPLICANT) [2011] 2 CLJ 630, High Court

FACTS Arbitration in respect of a dispute between the claimants and the respondent was pending. The respondent's counsel sought one Mr Lam from Messrs Shook Lin Bok, Kuala Lumpur to appear as co-counsel in the arbitration. The claimants objected to Mr Lam's presence on the ground that he was not a member of the Sabah Bar and that if he wished to appear in the proceedings, he should apply for an *ad-hoc* admission to the Sabah Bar.

ISSUE The issue for consideration was whether Mr Lam should be granted permission to practise as counsel for the respondent in connection to the arbitration proceedings.

The claims in the arbitration proceedings, as gathered from the affidavits filed, concern construction of provisions in the joint-venture (JV) agreement, legality of various Powers of Attorney and the enforceability of the JV agreement in the context of the Sabah Land Ordinance read with section 24 of the Contracts Act. These claims in my view are 'run of the mill' claims which any local qualified lawyer would be more than competent to prosecute especially as it relates to the local Land Ordinance which is peculiar to Sabah only. – per David Wong Dak Wah J

HELD The application for an *ad-hoc* admission would be granted only if the matter is complicated. The present claim which concerned the construction of provisions in the joint venture agreement was the kind of 'run of the mill' claim that any local qualified lawyer would be more than competent to handle. There was no evidence to indicate why the services of Mr Lam were needed. Thus, his application of *ad-hoc* admission to the Sabah Bar was dismissed. 

BRIEF-UP...

AGENSI INOVASI MALAYSIA ACT 2010

No
718

Date of coming into operation
15 April 2011

Notes

An Act to incorporate the *Agensi Inovasi Malaysia*, to stimulate and develop the innovation eco-system in Malaysia towards achieving Vision 2020, and to provide for matters connected and incidental thereto. 

HIRE-PURCHASE (AMENDMENT) ACT 2010

No
A1384

Date of coming into operation
15 June 2011

Amendment

Long Title, Sections 4A, 4B, 5, 16, 31, 36, 38, 45, 50, 51, 51B and 57

Introduction

Sections 4E, 4F, 4G, 17A, 17B, 30A, 50A, 50B, 51C, 51D, 51E, 55B, 55C and 56B

Substitution

Sections 46, 53, 55, 55A and 56 

HIRE-PURCHASE (APPLICATION OF PERMIT AND PROCEDURE OF REPOSSESSION) REGULATIONS 2011

No
PU(A) 192/2011

Date of coming into operation
15 June 2011

Notes

The Regulations are made pursuant to section 57(2)(b) of the Hire-Purchase Act 1967. 

MONEYLENDERS (AMENDMENT) ACT 2011

No
A1390

Date of coming into operation
15 April 2011

Amendment

Sections 1, 2, 2A, 4, 4A, 5, 5F, 6, 8, 9A, 9F, 10B, 10D, 10E, 10F, 10G, 10H, 10J, 10K, 10P, 11, 11A, 16, 17, 17A, 18, 19, 20, 21, 23, 25, 26, 29A, 29B, 29F and 29H

Introduction

Sections 9H, 10GA, 10GB, 10OA, 10OB, 10OC, 27A, 27B, 29AA, 29I, 29J, 29K and First Schedule A

Substitution

First Schedule 

PRICE CONTROL AND ANTI-PROFITEERING ACT 2011

No
723

Date of coming into operation
1 April 2011

Notes

An Act to control prices of goods and charges for services and to prohibit profiteering and to provide for matters connected therewith or incidental thereto. 

ENFORCEMENT AGENCY INTEGRITY COMMISSION ACT 2009

No
700

Date of coming into operation
1 April 2011

Notes

An Act to provide for the establishment of the Enforcement Agency Integrity Commission and to provide for its functions and powers and for other matters connected therewith. 

GUIDELINES/ CIRCULARS/ PRACTICE NOTES ISSUED BETWEEN APRIL 2011 AND JUNE 2011 BY BURSA MALAYSIA, SECURITIES COMMISSION AND BANK NEGARA MALAYSIA

BURSA MALAYSIA

- Amendments to the Rules of Bursa Malaysia Securities Berhad and Directives in relation to the Liquidity Risk Management Framework – *Effective Date: 28 June 2011*
- Item 19 of Part VII (Fees and Charges) of the Amendments to the Rules of Bursa Malaysia Depository Sdn Bhd in relation to e-Dividend – *Effective Date: 19 April 2011*
- Amendments to the Rules of Bursa Malaysia Securities Berhad to replace Session Order with Day Order and to replace Session Limit with Day Limit – *Effective Date: 18 April 2011*
- Amendments to the Rules of Bursa Malaysia Derivatives Berhad in relation to Specified Exchanges – *Effective Date: 11 April 2011*
- Amendments to the Rules of Bursa Malaysia Depository Sdn Bhd in relation to the Issuance of Statements of Account for Inactive Accounts – *Effective Date: 1 April 2011*

SECURITIES COMMISSION (SC)

- Guidelines issued under Fund Management – Guidelines on Compliance Function for Fund Management Companies – *Date Updated : 23 May 2011*
- Guidelines issued under Stock broking – Guidelines on Market Conduct and Business Practices for Stockbrokers and Licensed Representatives – *Date Revised: 29 April 2011*

- Guidelines issued under Bond – In relation to Debt Securities – Guidelines on Registration of Credit Rating Agencies – *Date Issued: 30 March 2011*

BANK NEGARA MALAYSIA (BNM)

- Guidelines & Circulars Listing – Guidelines issued under Banking – In relation to Prudential Limits & Standards – Classification and Impairment Provision for Loans/Financing – *Date Updated: 7 June 2011*
- New Circular on Liberalisation of the Foreign Exchange Administration Rules – *Effective Date: 1 June 2011*
- Guidelines & Circulars Listing – Guidelines issued under Insurance & Takaful – In relation to Capital Adequacy – Risk-Based Capital Framework for Insurers – *Date Updated: 13 May 2011*
- Guidelines & Circulars Listing – Guidelines issued under Banking & Takaful – In relation to Prudential Limits & Standards – Statutory Reserve Requirement – *Date Updated: 6 May 2011*
- Guidelines & Circulars Listing – Guidelines issued under Banking – In relation to Prudential Limits & Standards – Guidelines on Corporate Governance for Licensed Institutions – *Date Updated: 17 March 2011*
- Guidelines & Circulars Listing – Guidelines issued under Banking – In relation to Prudential Limits & Standards – Guidelines on Fit and Proper for Key Responsible Persons – *Date Issued: 10 March 2011*
- Guidelines & Circulars Listing – Guidelines issued under Insurance and Takaful – In relation to Prudential Limits & Standards – Guidelines on Fit and Proper for Key Responsible Persons – *Date Issued: 10 March 2011*

BIG DEAL!

- **GIC SUKUK** Under the helm of corporate partner, Jerry Ong, **ZUL RAFIQUE & partners** advised the Royal Bank of Scotland Berhad in the RM3.5billion *Sukuk Wakalah bi Istithmar* Programme issued by the Gulf Investment Corporation (GIC). The Sukuk was rated AAA by RAM Ratings Services Berhad. 
- **PRIMUS (MALAYSIA) SDN BHD V RIN KIN MEI & 13 ORS** The High Court's decision in dismissing an oppression petition by Primus (Malaysia) Sdn Bhd (Primus) against the directors and several shareholders of EON Capital Berhad (EONCap) was upheld by the Court of Appeal recently. The dispute arose out of the proposed acquisition of all the assets and liabilities of EONCap by Hong Leong Bank Berhad. *Tan Sri Dato' Cecil Abraham, S Nantha Balan, Sunil Abraham, Idza Hajar Ahmad Idzam and Farah Shuhadah Razali* from **ZUL RAFIQUE & partners** represented the independent directors of EONCap. 
- **PROJECT CRIMSON ZUL RAFIQUE & partners** was mandated to act as the sole Malaysian counsel for Barclays Bank PLC, the Royal Bank of Scotland plc and Standard Chartered Bank in the issuance of a 5-year USD300 million senior bonds by Hong Leong Bank Berhad. Partner **Loh Mei Mei** led the team in this landmark transaction. 
- **STARHILL ASSET BACK SECURITISATION** **Loh Mei Mei** together with partners **Lim Mun Lai** and **Tang Ai Leen** acted for YTL Pacific Star REIT Management Limited, Singapore in the RM1.25billion cross-border asset-backed securitisation. Completed in June 2010, the transaction required the team to navigate the complexities which involved a number of regulatory and cross-jurisdictional issues. 

A blood donation drive was held at the premises of **ZUL RAFIQUE & partners** on 11 May 2011. The drive, initiated by **Dato' David Morais** of **M David Morais** saw the involvement of 40 persons from several companies and law firms.



Mohd Razman Mohd Ridzuan Sethu and Oscar Tan from LexisNexis Malaysia Sdn Bhd



Abdul Rahim Mohd Alif from Sunrise DCS Sdn Bhd



Dato' David Morais from M David Morais

ZRp **IN-BRIEF...**

The ZRp Brief is published for the purposes of updating its readers on the latest development in case law as well as legislation. We welcome feedback and comments and should you require further information, please contact the Editors at:

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