

# **LEAVE QUESTIONS ALLOWED BY FEDERAL COURT MALAYSIA:**

**(From 30 March 2015 till 30.5.2016)**

**We express our utmost respect and deepest appreciation to the Federal Court Judges,  
Counsels and to all those who gave us the opportunity to compile this summary of leave  
questions.**

**A special thanks to all Reporters of Thomas Philip and MLTIC ([www.mltic.my](http://www.mltic.my)) for your  
efforts in promoting free public access to law in Malaysia.**

**We look forward for your continuing support in the future.**

**THOMAS PHILIP, Advocates and Solicitors**

**30.5.2016 – 2.6.2016**

**Jang Kim Luang @ Yeo Kim Luang v Soon Seng Palm Oil Mill (Gemas) Sdn Bhd  
and 4 others**

1. In the event a full and final settlement is reached with some tortfeasors after judgement, are the remaining tortfeasors released?
2. When determining an account for profits (as opposed to damages), is each tortfeasor only liable to account and pay for his own profits or also for that of the other tortfeasors?
3. In the event a full and final settlement is reached with some tortfeasors after judgement, are the remaining tortfeasors released or alternatively ought the accounts of the said tortfeasors be excluded when determining the quantum of profits of the remaining tortfeasors?
4. If the judgement is silent, is liability of the tortfeasors joint or joint and several?
5. Whether a director is personally liable to account for the profits of his company and if so whether when a full and final settlement is reached with the tortfeasor company, the director may still be liable for the remaining profits?
6. In assessing the account of profits arising from the use of intellectual property which is the subject of the claim, whether a gain by one of the defendants from the sale of shares in another defendant(s) constitutes such profit?

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**23.5.2016 – 26.5.2016**

**Perbadanan Pengurusan Kiaramas Cendana v Kiaramas Development Sdn Bhd**

1. Whether a pursuant to Clause 19 of Schedule H of the Housing Development (Control & Licensing) Regulations 1989 it is mandatory for a Developer to collect monthly service charges from a purchase of a subdivided building for the maintenance and management of common property prior to the establishment of a Joint Management Body or Management Corporation?
2. Whether the Developer has the discretion to waive such monthly service charges or any part thereof as determined under the Fifth Schedule of Schedule H for any period without the prior written consent of the Controller of Housing?

**CIMB Bank Berhad v AMBANK (M) Berhad and 2 others**

Whether the charge comes within the meaning of “purchaser” under s340 (3) of the National Land Code 1965?

**16.5.2016 – 19.5.2016**

**Indira Gandhi A/P Mutho and Patmanathan A/L Krishnan (also known as Muhammad Riduan bin Abdullah)**

1. Whether the High Court has the exclusive jurisdiction pursuant to sections 23, 24, 25 and the Schedule of the Courts of Judicature Act 1964 (read together with Order 53 of the Rules of Court 2012) and/or its inherent jurisdiction to review the actions of the Registrar of Muallafs or his delegate acting as public authorities in exercising statutory powers vested by the Administration of the Religion of Islam (Perak) Enactment 2004;
2. Whether a child of marriage registered under the Law Reform (Marriage and Divorce) Act 1976 (“a civil marriage”) who has not attained the age of eighteen years must comply with both sections 96(1) and 106(b) of the Administration of the Religion of Islam (Perak) Enactment 2004 (or similar provisions in State laws throughout the country) before the Registrar of Muallafs or his delegate may register the conversion of Islam of that child; and
3. Whether the mother and father (if both are still surviving) of a child of a civil marriage must be consent before certificate of conversion of Islam can be issued in respect of that child.

**9.5.2016 – 12.5.2016**

**Bungsar Hill Holdings Sdn Bhd v Damansara Realty Berhad**

Whether the rightful owner to a land shall be entitled to interest against another disputing party who has made unsuccessful claims?

**20.4.2015**

**Indira Gandhi a/p Mutho v Ketua Polis Negara**

1. Whether an order of the nature of mandamus, under paragraph 1 of the Schedule to the Courts of Judicature Act 1964, can be directed to the Inspector General of Police to compel the same to comply, and to control and direct the relevant appropriate police officer(s) to comply with:-
  - a) A Warrant for Committal (Form 108 of the Rules of Court 2012) where what appears on the face of that warrant is not subject to any question and the warrant has not been cancelled; and
  - b) A Recovery Order under the Child Act 2001, where the said order has not been varied, reversed or set aside; When the Inspector General of Police has demonstrated a refusal to execute, or to command the execution of, the said Warrant for Committal and Recovery Order.

**11.4.2016 – 14.4.2016**

**Deepak Jaikishan v A. Santamil Selvi A/P Alau Malay @ Anna Malay and 3 others**

1. Whether as a matter of procedural law, an objection pertaining to a Notice of Appeal being defective and/or bad in law can be undertaken by way of a mere Preliminary objection?
2. Whether the filing of a single notice of appeal in respect of eight separate and distinct interlocutory applications is in compliance with the procedural rules as set out in the Rules of Court of Appeal 1995?
3. Whether as a matter of law a claim in conspiracy to injure can be maintained and/or is valid when the claims against all other alleged co-conspirators have been dismissed and/or struck out inter alia, on the basis that there were no reasonable causes of action raised by the Plaintiff?

**Syarikat Union Wood Industries Sdn Bhd v Chong Kok Yong @ Ku Low**

1. Whether it is permissible for the Court of Appeal to ex post facto declare the decisions made at a meeting null and void by the use of an interim injunction order at a time before final determination of the rights of the parties at the trial?

2. Whether the principle of determining the status quo stated in *Garden Cottage Ltd. V Marketing Board* (1984) 1 AC 130 is applicable where it is a continuing or ongoing state of affairs between the parties called the dynamic status quo up to the time of hearing of the injunction application?
3. Whether the Court of Appeal could declare the rights of parties at an interim stage for immediate application on the basis of legitimate grounds?

### **Akira Sales & Services (M) Sdn Bhd v Yong Peng Kean**

1. Whether a judgement by the COA for a monetary sum in favor of an undischarged bankrupt (the appellant) is a nullity when the appellant failed to disclose to the Court that he did not have the sanction of the Insolvency Department to prosecute the appeal?
2. Whether the interpretation of the Articles of Association of a company is subject to past practices of the directors in relation to its implementation or the exercise of the power under it?
3. Whether misconduct in employment law to warrant punishment is to the distinguished from criminal conduct by an employee and whether the COA was correct in law in concluding that in the absence of an allegation of “any form of criminal conduct” the complaint “taken objectively, will not qualify as misconduct”?

**25.8.2015**

**Inas Faiqah Binti Mohd Helmi v Kerajaan Malaysia dan 3 others**

“Whether the standard of proof for future damage is proof of a possible likelihood as decided by the Courts of Appeal of England and Canada in *Hawkins v New Mendip Engineering Ltd* [1966] 3 All ER 228 and *Schrump Et Al v Koot Et Al Lexsee* 18 O.R. (2D) 337, respectively, or a strict proof as decided by the learned trial judge and accepted by the Court of Appeal?”

**Ing Hua Fu Marine Line Sdn Bhd v Vitachem (M) Sdn Bhd.**

1. “Whether notice that the goods is dangerous without notifying its inflammable or explosive character will suffice under Article IV Rule 6 of the Hague Rules applicable in Malaysia under the Carriage of Goods by Sea Act 1950?”
2. Goods of an inflammable, explosive or dangerous nature to the shipment whereof the carrier, master or agent of the carrier, has not consented, with knowledge of their nature and character, may at any time before discharge be landed at any place or destroyed or rendered innocuous by the carrier without compensation, and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment.”



3. “What is the test of causation under Article IV Rule 6 of the Hague Rules?”
4. To what extent can evidence which is not pleaded, not raised in cross examination and not contained in witness statements be relied on?”

**Jayapalasingam A/L Kandiah v Tanalachimy A/P Thoraisamy & 139 others  
and Thamarai Holdings Sdn Bhd v Thanalachimy A/P Thoraisamy**

1. “What is the proper test to be applied in cases where the prospective relitigation is a collateral attack by different parties on an earlier decision of a court of competent jurisdiction?”
2. “Whether in law the doctrine of issue estoppel would apply where an issue has been decided by a court of competent jurisdiction and that very issue would not be allowed to be raised in separate proceedings between parties where the subject matter arises out of identical facts and is dependent on the same evidence?”
3. “Whether, the broader approach of the doctrine of estoppel per rem judicata includes issues that were raised and such other issues that could have been and which were not brought forward either deliberately or due to negligence or inadvertence, though not actually decided by the Court will apply to different parties in separate proceedings”.

4. “What is the proper test to be applied to determine ‘sufficient degree of identification’ between the parties in order to decide the Respondents are ‘privies’ or have ‘privity in interest’ with the Plaintiffs in OS 2004?

**6.8.2015**

**Ketua Setiausaha Kementerian Dalam Negeri and 11 others v Ghaur Chandram  
A/L Murugesu**

Whether general damages for pain and suffering can be awarded to a Plaintiff in a dependency claim brought under Section 7 of the Civil Law Act 1956 (Act 67).

**Liwayway Marketing Corporation v Oishi Group Public Company Limited**

1. Whether there is aggrievedness to sustain a rectification action under Section 46(1)(b) of the Trade Marks Act 1976 (TMA) against a registered trademark in a given class when non-use is purportedly shown in respect of goods of another registered mark in a different class of the same registered owner.
2. Whether the period of “continuous period of not less than three years” of Section 46(1)(b) of TMA may be truncated and computed segmentally such that non-use for only a part of the duration of three years up to one month before the filing of the rectification application.

## **Datuk Seri Khalid bin Abu Bakar & 3 others v N. Indra A/P Nallathamby**

1. Whether section 8(2) of the Civil Law Act 1956 [Act 67] which bars the awarding of exemplary damages in an estate claim is applicable where the death of the deceased is as a result of a breach of his constitutional right to life?
2. For the purposes of an estate claim under section 8 of the Civil Law Act 1956 [Act 67], whether the acts that make up the tort of misfeasance in public office must be the acts that occurred before the death of the deceased?
3. Whether a separate award for misfeasance in public office can be made in favor of the estate when the injury caused to the deceased is the exact injury for which an award for assault and battery has already been made in favor of the estate?

**5.8.2015**

## **Low Huat Heng & Anor v Rozdenil bin Toni**

Where the immediate purchaser of a registered land (and who has been a bona fide purchaser for value without notice throughout) has already transferred that registered land to a subsequent Purchaser (who also has been a bona fide purchaser for value without notice), is a claim in damages available to that true owner against that immediate purchaser pursuant to Section 340(2) of the National Land Code 1965?

## **Rozdenil bin Toni v Tan Goat Eng & Anor**

In quantifying the damages available to the true owner against the immediate purchaser pursuant to Section 340(2)(b) National Land Code 1960, whether the damages to be assessed is at the date of the true owner's deprivation or as at the date of judgement.

### **16.7.2015**

- **TRA Mining (Malaysia) Sdn Bhd v Thein Hock Teck & 4 others**
- **Mohd Afrizan Bin Hussain v Thein Hock Teck & 4 others**

1. "Whether the execution by a partner of an absolute Assignment pursuant to s. 4(3) of the Civil Law Act 1956 and an Irrevocable Power of Attorney for valuable consideration pursuant to s.6 (1) of the Powers of Attorney Act 1949 transfers all his rights and interests in the partnership firm in favor of its nominee/attorney and thereby confer legal status as a partner."
2. "Whether a partner, who entered a partnership pursuant to an assignment can on a true and proper construction of Section 33 of the Partnership Act 1961 be deemed a partner for the purposes of ascertaining the number of partners under Section 314(2) of the Company Act 1960."

### **14.7.2015**

## **Mycem Sdn Bhd v Maximum Marks Sdn Bhd & 2 others**

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1. “Whether, a sale and purchase agreement entered into by a liquidator appointed pursuant to a winding up order is valid and continues to be valid upon the said winding up order being annulled by another High Court, wrongfully;
2. Whether, the imposition of late payment interest to the purchase price or any part thereof in an agreement entered into by way of a private treaty in respect of a changed property of a wound up company with the consent on the charge bank contravenes s 8(2A) of the Bankruptcy Act 1976;
3. Whether, a charge bank is bound by the sale price of the security belonging to a wound up company which is the subject matter of private treaty consented to it by the charge bank;
4. Whether, in an appeal lodged by an Appellant at the Court of Appeal against only a part of decision of High Court, the Respondent may file a cross appeal seeking to set aside or reverse a substantive part of the decision of the High Court which was not the subject of the Appellant’s appeal;
5. Whether, in a case such as (4) above, it is competent for the Court of Appeal to proceed to hear the cross appeal;

6. Whether, in a case such as (4) above, the Respondent's cross appeal ought to be struck out for failure to file a proper and separate Notice of Appeal within the one month allowed for an appeal to be lodged.

**16.6.2015**

**Dato Seri Tiong King Sing v Dato Seri Ong Tee Keat & 1 others**

"Whether in its jurisdiction to hear appeals in any civil cause or matter pursuant to Section 67(1) of the CJA 1967, does or does not the Court of Appeal have jurisdiction to hear appeals from any order made in the course of trial."

**PLB-KH Bina Sdn Bhd v Hunza Trading Sdn Bhd**

"Whether the words "in respect of a matter which is the subject of an arbitration agreement" in section 10 of the Arbitration Act 2005 are strictly limited in their applications to actual signatories to the arbitration agreement. If the answer to this question is negative, in what circumstances can section 10 be applied to persons who are not signatories".

**26.5.2015**

**Tan Ong Ban v Teoh Kim Hang**

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1. “Whether the principle of beneficial ownership established by the decision of the Federal Court in *Borneo Housing Mortgage Finance Bhd v Time Engineering Bhd* [1996] 2 AMR 1537 applies to the statutory form of contract prescribed by the Housing Developer legislation.
2. Whether section 340(1) of the National Land Code applies to immovable strata property in respect of which no register document of title has been issued by the appropriate authority.

#### **Hajah Marina Binti Haji Mustafa v Suruhanjaya Perkhidmatan Awam**

1. “Whether a public officer, faced with a disciplinary action under Regulation 37 of the Public Officers (Conduct and Discipline) Regulations 1993 in which the public officer has denied/disputed the charge against him/her and has specifically requested for an oral hearing in his/her Representation, ought to be given a right to be orally heard under Article 135(2) of the Federal Constitution of Malaysia.
2. Whether, where a public officer has been dismissed from work or reduced in rank, the power of the court to interfere is limited to situations where the decision was arbitrary and/or a mala fide exercise of power and/or colorable exercise of power by the disciplinary authority (the strict approach).

#### **Durable Portfolio Sdn Bhd & 2 others v Pang Kee Hwi Realty Sdn Bhd & 2 others**

Is a transfer of shares by way of gift exempted from the Articles of Association of the company and from section 15 of the Companies Act 1965?

**Datuk Haji Abdul Wahab bin Abdul Jalil and 3 others v Penerbitan Fargoes Sdn Bhd,**

Whether Section 73A of the Evidence Act 1950 can be utilized to admit a photocopy of a document which has failed to fulfil the requirements of Section 65 of the Evidence Act 1950.

**Delpuri-Harl JV Sdn Bhd v PKNS.**

1. Where the Honourable Court rules that the Respondent/Defendant employer is liable for breaching a construction contract midway through its term and awards damages for loss of future profits, is the quantum of damages to be determined by the test of reasonable foreseeability and remoteness of damage, or by any test?
2. Where evidence adduced by the Appellant/Plaintiff for the quantum of loss of future profit is not challenged at all by the Respondent/Defendant, has the Appellant/Plaintiff satisfied the test of reasonable foreseeability and remoteness of damage in view of the admission by the Respondent/Defendant that the loss of future profit was indeed foreseeable? If so, can the Honourable Court reject the unchallenged evidence adduced for loss of future profit and instead award any lesser quantum or merely nominal damages?



## **Mesuma Sports Sdn Bhd v Majlis Sukan Negara Malaysia and 2 others**

1. Whether a claim for common law ownership over an indicator as a trade mark or source identifier could be answered by asking who designed or re-conceptualized the said indicator or source identifier, rather than by asking who was first in time to use said indicator or source identifier as a trademark in a trade mark sense in the course of trade.
2. Whether branding and image-promoting or image-directed activities involving a two dimensional marking as a source identifier in a trade mark sense in the course of trade sufficient for the commencement of a passing-off action for material misrepresentation of the goods of another as and for the goods of the Respondent.
3. Depending on the ruling of this Honourable Court, whether the Court of Appeal had correctly applied the general principles of law relating to the acquisition of trademark rights in respect of an unregistered identifier or indicator used otherwise than in connection with the manufacture and sales of goods.

**19.5.2015**

**Tenaga Nasional Berhad v Taiwan Chief Precision Technology Sdn Bhd**

1. Whether the words “shall be prima facie evidence” in Section 38(4) of the Electricity Supply Act 1990 imposes a burden on the consumer to establish that there is a manifest error in the calculations of Tenaga in arriving at the amount of loss of revenue or the expenses incurred by Kenanga under Section 38(4) of the Electricity Supply Act 1990?
2. Whether for the purposes of rebutting the “prima facie evidence” in Section 38(4) of the Electricity Supply Act 1990, it is sufficient for a consumer to merely suggest possible reasons as to why Tenaga’s calculations of the loss of revenue or the expenses incurred by Kenanga is incorrect? Can the consumer discharge its burden without the need to lead concrete oral or documentary evidence in this respect?

**30.3.2015**

**Millenium Medicare Services v Nagedevan A/L Mahalingam**

Whether the expression “in anticipation of a dissolution” appearing in Exception 2 to s 28 of Contracts Act 1950 requires an express provision in a Partnership Agreement to that effect?

# **LEAVE QUESTIONS ALLOWED BY FEDERAL COURT MALAYSIA**

**(From May 2014)**

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Counsels and to all those who gave us the possibility to compile the leave questions.  
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**THANK YOU**

**26.03.2015**

**Lembaga Lebuhraya Malaysia v Mohamad ILYAN Bin Yahya & 2 Lagi**

In a consideration and determination on the issue as to whether leave to commence judicial review can be granted is the fact that the party cited is not the decision maker nor in any way responsible for the impugned decisions of any relevance or consequence.

**Majlis Perbandaran Subang Jaya v Mohamad ILYAN bin yahya & 2 lagi**

1. Whether a leave to commence Judicial Review ought to be granted against a local authority, when an applicant in a JR application withdraws and abandon wholly its claim for the prerogatives orders, such as Writ of Certiorari?
2. Whether the granting of leave to commence JR proceedings for declaratory orders, damages and damages for misfeasance in public office amounts to a conversion of cause of action founded on public law into a private law cause of action?

**17.03.2015**

- **Dr Hari Krishnan & 1 Lagi v Megat Noor Ishak bin Megat Ibrahim & 1 Lagi**
- **The Tun Hussein Onn National Eye Hospital v Megat Noor Ishak Bin Megar Ibrahim & 2 Lagi**

1. Whether it is the Bolam test or the test in the Australian case of Rogers v Whittaker [1993] 4 Med LR 79 ) which should be applied to the standard of care in medical negligence, following, after the decision of the Federal Court in Foo Fio Na Na v Dr Soo Fook Mun & Anor [2007] 1 MLJ 593, conflicting decisions of the Court of Appeal of Malaysia, conflicting decisions of the High Court in Malaya, and legislative changes in Australia, including the re-introduction there of a modified Bolam test; and
2. Whether aggravating factors should be compensated for as general damages, therefore rendering a separate award of aggravated damages unnecessary, as decided by the English Court of Appeal in Richardson v Howie [2004] EWCA Civ 1127 and explained in Michael Jones' Medical Negligence, 4th edn., 2008, para 12-011?
3. Where the doctors are qualified professionals in a private hospital and working as independent contractors by virtue of a contract between the private hospital and

the doctors, can the private hospital be held vicariously liable for the sole negligence of the doctors?

**16.03.2015**

- **Positive Vision Labuan Limited v Ketua Pengarah Hasil Dalam Negeri**
- **Ga Investment Limited v Ketua Pengarah Hasil Dalam Negeri**
- **Avenue Zone Inc v Ketua Pengarah Hasil Dalam Negeri**

1. Whether the Ministry of Finance could by a policy or administrative decision declare that an exemption order, to wit, Income Tax (Exemption)(No. 22) Order 2007 PU(A)437/2007, which is subsidiary legislation under the Interpretation Acts 1948 and 1967, would cease to apply from a stipulated date without revoking the same?
2. Whether a Labuan offshore company which elects under Section 3A of the Labuan Business Activity Tax Act 1990 to be taxed under the Income Tax Act 1967 and Exemption Order acquires a vested right that remains so long as the Exemption Order remains in force?
3. Whether an offshore company which has elected to be taxed under Section 3B of the Income Tax Act 1967 which is now known as a Labuan company for the

purposes of the Labuan Business Activity Tax Act 1990, is entitled to the tax exemption granted under the Income Tax (Exemption) (No. 22) Order 2007?

**11.03.2015**

**Yeah Siew Kean v Tay & Helen Wong**

Whether nominal damages are to be awarded as a matter of course when a liability on negligence is established against the solicitor?

**11.2.2015**

**Silver Corridor Sdn Bhd v Gallan Acres Sdn Bhd & 1 lagi**

Whether the doctrine of fraudulent or undue preference applies to a relationship of Vendor and Purchaser or only confined to a relationship of Debtor and Creditor?

**4.2.2015**

**Palm Spring Joint Management Body dan 2 lagi v Muafakat Kekal Snd Bhd dan 2 lagi**

Whether a Joint Management Body can be formed under s. 4 of the Building and Common Property (Maintenance and Management) Act 2007 even though

a strata register for Management Corporation has been opened pursuant to s. 39 of the Strata Titles Act 1985 but the Annual General Meeting of the Management Corporation has not been convened pursuant to s. 41 of the Strata Titles Act 1985?

**22.1.2015**

**Kerajaan Negeri Sembilan & 4 Lagi v Mohammed Juzaili bin Mohd. Khamis & 2 Lagi**

Whether S.66 of the Syariah Criminal Enactment 1992 (Negeri Sembilan) contravenes Articles 5(1), 8(1), 8(2), 9(2) and 10(1)(a) of the Federal Constitution?

**Sentul Raya Sdn Bhd v Balbeer Singh A/L Karam Singh & 6 Ors**

1. Whether damages in lieu of specific performance can be awarded to a party despite a finding that the relief of specific performance was not or no longer available at the time the action was filed?
2. Whether, in cases of non-delivery (as opposed to late delivery), a purchaser is only entitled to recover damages for breach under Section 74 of the Contracts Act, 1950 or damages in lieu of specific performance under Section 18 of the Specific Relief Act, 1950?



3. Whether in such cases, that is, non-delivery (as opposed to late delivery), a purchaser is precluded from recovering liquidated and ascertained damages for late delivery which are intended to be comprehensive relief for late delivery?
4. Whether the duty to mitigate damages requires a party to a contract to take steps to limit its claim for liquidated and ascertained damages or otherwise not to keep alive such a claim artificially?
5. Whether, in ordering :-
  - (a) liquidated and ascertained damages;
  - (b) a refund of the deposits paid with interest from the date such amounts were paid; and
  - (c) damages to be assessed;

there has been double or triple recovery in favour of the purchasers.

1. Whether indefeasibility under Section 340 of the National Land Code (NLC) has relevance where the complaint is of an admitted mistake in the charge form (Borang 16A) where the charge was erroneously described and registered as a 1st party legal charge instead of a 3rd party legal charge?
2. Whether in the case of a mistake in an instrument of dealing under the NLC, the applicable provisions are Sections 207 and 380 of the NLC and Section 62 of the Interpretation Act 1967 to determine if the mistake is a correctable error?
3. Whether the appropriate test to determine if the error is of a matter of substance under the NLC and the Interpretation Act is whether the deviation has changed the character of the instrument or calculated to mislead the parties concerned?
4. Whether Section 417 of the NLC envisages a two stage procedure whereby a party has to first obtain a judgment or order in separate proceedings before the court can be moved under Section 417 to issue the appropriate directive to the Registrar or Land Administrator to give effect to the order?

**20.1.2015**

**Berjaya Sompo Insurance Berhad v Jardine Lloyd Thompson Sdn Bhd**

1. Whether the “loss of monies” claimed by the Respondent as a result of the Risk Management Program does or does not fall within the Optional Extension clauses of the Professional Indemnity Policy?
2. Whether the construction and/or definition of the term “loss of monies” as enunciated in the case of **Rouleston Clarke Pty. Ltd. (in Liquidation) v FAI General Insurance Company Ltd. (2000) TASSC 63** is applicable in Malaysia?

**14.1.2015**

- **Viran a/l Nagappan v Deepa a/p Subramaniam (Recovery order)**
  - **Viran a/l Nagappan v Deepa a/p Subramaniam (Custody order)**
  - **Peguam Negara Malaysia & Ketua Polis Negara v Deepa a/p Subramaniam (intervenor)**
1. Whether in the context of Art 121(1A) of the Federal Constitution, where a custody order is made by the Syariah Court or the Civil High Court, on the basis that it has jurisdiction to do so, whether there is jurisdiction for the other court to make a conflicting order?

2. Whether on the interpretation of s 52 & s 53 of the Child Act 2001, a Recovery Order can be made when there exist a Custody Order given by the Syariah Court which is enforceable at the same time?

**1.12.2014**

**Kilo Asset Sdn Bhd v Hew Tai Hong**

Whether a Winding Up Court has the discretion to accept an affidavit in reply to an affidavit in opposition to a petition which is filed more than three (3) days of the date of service on the petitioner of the said affidavit in opposition, contrary to Rule 30(2)?

**24.11.2014**

**Mahanom bt Abdul Karim & 2 lagi v APT Associations Sdn Bhd**

Where the effect of a judgment is to grant a plaintiff specific performance of an agreement to purchase immoveable property, whether the High Court has the jurisdiction to grant such judgment in default without an application being made by the Plaintiff under Order 81 r.2 Rules of Court 2012 (in pari materia with the Rules of the High Court 1980)?

**Malaysian Reinsurance Berhad v Syarikat Weifong Industries Sdn Bhd**

1. Whether the principle enunciated by the Federal Court in the case of Sumatec Engineering and Construction Sdn Bhd v Malaysian Refining Company Sdn Bhd [20120] 4 MLJ 1 should be extended to allow a claim by an applicant of an unconditional and irrevocable on demand bank guarantee against a beneficiary, who is not a party to the underlying contract, to claim monies received by the said beneficiary under the terms of the guarantee?
2. Is there an obligation in law on a beneficiary of an 'on demand unconditional bank guarantee' to inquire on any objection raised by, either a party to the underlying contract or the applicant of the bank guarantee, before making a demand on the guarantee?

**10.11.2014**

**Tenaga Nasional Berhad v Pelantar Cergas Sdn Bhd**

For the purpose of Section 38(4)(a) of the Electricity Supply Act 1990, whether the Applicant is entitled to employ any one of the methods of calculation (for loss of revenue or the expenses incurred by the Applicant) as provided for in the Applicant's relevant guidelines, Panduan C1/2006?

**27.10.2014**

**Dewan Undangan Negeri Selangor & 2 lagi v Mohd Hafarizam bin Harun**

1. Whether the Dewan Negeri Selangor has the capacity to be impleaded in legal proceedings?
2. Whether the secretary of the committee or rights and privileges and the committee of rights and privileges have the capacity to be impleaded in legal proceedings?
3. Whether upon a true construction of Article 72(1) of the Federal Constitution the expression "proceedings in the Legislative Assembly of any State" includes anything said or done by a non-member of a Legislative Assembly outside its precincts?

**Siang Eaw Keong v Kota Buminas Sdn Bhd & 1 lagi AND The Yoke Hoon & 2 lagi v Kota Buminas Sdn Bhd & 1 lagi (Jointly heard)**

1. Whether, notwithstanding the permissive wordings of O.45 r.1 of the Rules of High Court 1980, a litigant, having obtained an order of court in his favour for the payment of money, is obliged to avail himself of any other means of enforcement open to him, as is the position according to case laws, to enforce the same, before seeking to enforce that order by means of committal?

2. Whether the Court, in the absence of an express power/ jurisdiction to impose a custodial sentence in default of fine under O.52 r.8 of the Rules of High Court 1980 or the common law, may in sentencing a contemnor, impose a custodial sentence in default of a fine?
3. Whether the Court, having sentenced a contemnor to a determined fine to secure his compliance of an order, may, in the absence of any express power/ jurisdiction under O.52 r.8 of the Rules of High Court 1980 or the common law, impose a further sentence of fine on a day-to-day basis to perpetuity until the contemnor complies with the said order?

**Dato' Suhaimi bin Ibrahim v Hi-Summit Construction Sdn Bhd and Lim Chew Yin**

1. Whether the internal proceedings of a company (the 1st the form of a general meeting and/or a meeting of the Board of Directors with the participation of the majority shareholder (the 2nd to be exhausted and must be satisfied before the minority shareholders (the Applicants) can make an application and have any relief under Section 181A of the Companies Act 1965?
2. Whether the minority shareholders (the Applicants) are entitled to make an application for leave under Section 181A of the Companies Act 1965, which is made in the best interest of the company, before and without Respondent) have

awaiting the passing of a resolution by the shareholders in respect of the legal action of the company?

3. Whether the criteria in Section 181B(4) of the Companies Act 1965 are exhaustive in that the Court shall grant leave under Section 181A of the Companies Act 1965 whenever the minority shareholders (the Applicants) are acting in good faith and the granting of said leave is prima facie in the best interest of the company?
4. Whether the minority shareholders (the Applicants) are entitled to relief under Section 181A of the Companies Act 1965 as a pre-emptive measure to preserve the right of action of the company (the 1st of the majority shareholder (the 2nd Respondent) manifesting an intention to act in a manner which would prejudice the company irreparably and extinguish the said right of action?

**Khairy Jamaluddin dan 2 lagi v Dato' Seri Anwar Ibrahim dan 2 lagi**

1. Whether the common law defence of "partial justification" as propounded in Goody v Odhams Press Ltd (1966) 3 AER 369 is available as a defence in Malaysia against any defamation actions?
2. Do the amendments by the Applicant/ defendant fall within the applicable and legal parameters (which enable amendments) of the three-fold test in Yamaha



Motors and Order 20 rule 5 of the Rules of court 2012 where "partial justification" was proposed in the amendments (at paragraph 12 of the proposed amended defence) based on specific findings in the federal Court in the decision of Dato' Seri Anwar Ibrahim v PP (2004) 3 CLJ 737 which was upheld in the federal Court in 2014 in CRIMINAL APPLICATION NUMBER 07-2-03/2013(W) upon the Respondent attempting to expunge the specific paragraph in the said 2004 Federal Court decision?

**18.10.2014**

**OSK Trustees Berhad v Kerajaan Malaysia**

1. (a) The interpretation of the words used in the letter of support to ascertain if they are sufficiently promissory in nature to be held to be contractual, as set out in the case of Banque Brussels Lambert SA v Australian National Industrial Ltd [1989] 21 NSWLR 502; or  
  
(b) The background circumstances or factual matrix to a Letter of Support to ascertain the intent of the parties, as set out in the case of North South Properties Sdn Bhd & Ors v David Teh Teik Lim & Anor [2005] 2 CLJ 510?
2. Whether in a commercial transaction, there is a presumption that a Letter of Support issued is intended to create legal relations between parties?

3. Where a presumption arises in a commercial transaction that a Letter of Support is intended to create legal relations between parties, whether the Letter of Support will be construed in a manner to preserve the legal obligations thereunder in the event of any perceived ambiguity in the terms of the Letter of Support?

**10.10.2014**

**Letchumanan Chettiar Alagappan @L.Alagappan dan 2 lagi v Secure Plantation Sdn Bhd**

1. Whether a complaint of forgery in civil proceedings is necessarily in law a complaint of fraud?
2. Whether it is correct in law for a court to treat a complaint of forgery as a complaint of fraud given the different standards of proof presently in civil proceedings between forgery and fraud?
3. Whether a case of forgery can only be proved by means of the opinion of a handwritten expert?

4. Whether it is correct in law to cast the burden of proving that the sale of a property was not genuine on the plaintiff or alleged vendor?
5. According from the question above, whether the correct position in law is that the burden of proving that he is a bona fide purchaser for value without notice is rightfully to be placed on the purchaser?
6. Whether a bona fide purchaser for value can be registered as a proprietor of a land in a situation when a formal transmission from a Deceased to a personal representative pursuant to section 346(5) of the National Land Code 1965 was not registered?

**Paper and Paper Products Manufacturing Employees' Union v Tri-Wall (Malaysia)  
Sdn Bhd**

1. Whether the High Court in exercising its supervisory capacity can quash Agreed Articles in a Collective Agreement?
2. Whether under s30(4) of the Industrial Relations Act 1967, the Industrial Court in determining the wage structure and salary conversion has jurisdiction to award annual salary increments and salary adjustments?

3. Whether transport allowance can be subject matter of a trade dispute under the Industrial Relations Act 1967?

**6.10.2014**

**Asian Mining Services Sdn Bhd & Anor v Sim Tze Chui**

1. Whether an application to set aside a final order can be made in the same action as decided by the Court of Appeal herein, thereby departing from previously decided cases, is correct in law?
2. Whether an application to set aside a final order regularly obtained can be made in the same action other than on grounds set out in *Huck Hua Bank Bhd v Sahari bin Murid* [1981] 1 MLJ 143?
3. Can the Court of Appeal set aside a regularly obtained order under Order 92 Rule 4 of the Rules of the High Court 1980 when the specific rules i.e. Order 42 Rule 13 has not been complied with?

**Shencourt Sdn Bhd & 4 lagi v Wanfy (M) Sdn Bhd**

1. Is a monetary judgement enforceable by an order of committal?

2. Where a consent judgement is alleged to have been induced by misrepresentation, is a party to that judgment entitled to invoke the contempt jurisdiction of the High Court?
3. Where an application for committal is moved against a limited company, does the High Court have jurisdiction or power to proceed against the directors of that company and punish them without them having been named as parties?

**15.09.2014**

**HLE Engineering Sdn Bhd v HTE Letrik Bumi JV Sdn Bhd,**

1. Whether upon a proper reading of section 233(2) and section 236(2) of the Companies Act 1965, sanction from the Official Receiver or Liquidator is necessary for the legal proceedings to continue?
2. Whether upon an Order from the Court for stay under section 243 of the Companies Act 1965 reinstates the company to its original status and no longer requires any sanction from the Official Receiver or Liquidator in any proceedings filed before the winding up?

**Audrey Gertrude De Souza v Sunway D'Mont Kiara Sdn Bhd;**

1. In determining whether a contract is illegal or void ab initio, whether a Court of Law is confined to the law as it stood at that material time when the contract was executed?
2. If question (1) is answered in the affirmative, whether the said contract can be validated by later amendments to the law pertaining to the same?

**25.08.2014**

**Inas Faiqah Binti Mohd Helmi v Kerajaan Malaysia dan 3 Lagi**

Whether the standard of proof for future damage is proof of a possible likelihood as decided by the Courts of Appeal of England and Canada in *Hawkins v New Mendip Engineering Ltd* [1966] 3 All ER 228 and *Schrump Et Al v Koot Et Al* Lexsee 18 O.R. (2D) 337, respectively, or a strict proof as decided by the learned trial judge and accepted by the Court of Appeal?

**Ing Hua Fu Marine Line Sdn Bhd v Vitachem (M) Sdn Bhd**

1. Whether notice that the goods is dangerous without notifying its inflammable or explosive character will suffice under Article IV Rule 6 of the Hague Rules applicable in Malaysia under the Carriage of Goods by Sea Act 1950?

2. Goods of an inflammable, explosive or dangerous nature to the shipment whereof the carrier, master or agent of the carrier, has not consented, with knowledge of their nature and character, may at any time before discharge be landed at any place or destroyed or rendered innocuous by the carrier without compensation, and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment?
3. What is the test of causation under Article IV Rule 6 of the Hague Rules?
4. To what extent can evidence which is not pleaded, not raised in cross examination and not contained in witness statements be relied on?

**Jayapalasingam A/L Kandiah v Tanalachimy A/P Thoraisamy & 139  
Lagi and Thamarai Holdings Sdn Bhd v Thanalachimy A/P Thoraisamy,**

1. What is the proper test to be applied in cases where the prospective relitigation is a collateral attack by different parties on an earlier decision of a court of competent jurisdiction?
2. Whether in law the doctrine of issue estoppel would apply where an issue has been decided by a court of competent jurisdiction and that very issue would not be allowed to be raised in separate proceedings between parties where the subject matter arises out of identical facts and is dependent on the same evidence?
3. Whether, the broader approach of the doctrine of estoppel per rem judicatam, includes issues that were raised and such other issues that could have been and which were not brought forward either deliberately or due to negligence or inadvertence, though not actually decided by the Court will apply to different parties in separate proceedings?
4. What is the proper test to be applied to determine 'sufficient degree of identification' between the parties in order to decide the Respondents are 'privies' or have 'privity in interest' with the Plaintiffs in OS 2004?

**18.8.2014**

**Johor Coastal Development Sdn Bhd v Kerajaan Negeri Johor Darul Takzim**



1. What are the test and the elements to be considered by the Court in handing down a permanent stay of arbitration?
2. Whether the Court in Malaysia has jurisdiction under the Arbitration Act 1952 to grant a permanent stay of arbitration proceeding?
3. Whether the Court in Malaysia has jurisdiction under the Arbitration Act 1952 to grant a permanent stay of arbitration proceeding when there has been a partial compliance with interim orders?

**7.7.2014**

**Majlis Perbandaran Kajang v Karunmas Ehsan Sdn Bhd and Majlis Perbandaran Kajang v Siew Yaw Jen**

1. Whether the issuance of a Certificate of Fitness ('CF') by the Applicant discharges the duties/responsibilities of the Developer and/or the Architect under the existing law in particular the Developer's and/or the Architect's duty to build the Retaining Walls in accordance with the Approved Plan?

2. Whether the CF issued by the Applicant was valid, lawful and enforceable considering the fact that it was issued by the Applicant based on a false declaration by the Architect in Borang PJ?

**30.6.2014**

**Koh Heng Jin Holdings v Phuah Beng Hoi & 1 Lagi**

Is the power of the High Court under para 3 of the schedule of the Courts of Judicature Act 1964, inter alia, to order the sale of any land or part thereof, an additional power independent of the power to order a sale of the land or order the termination of co-proprietorship on a land under Section 145 of the National Land Code 1965?

**17.6.2014**

**Panglima Tentera Laut Diraja Malaysia v Simathari A/L Somenaidu,**

Whether the Queen's Regulations for the Royal Navy 1997 is applicable in Malaysia?

**Foo Jong Wee & 3 Others v Haji Afifi b. Haji Hassan.**

Clarify the position with regards to the application of principles of illegal contracts and winding up petitions presented under the just and equitable ground in view of the principles in *Holman v Johnson* [1775-1802] All ER Rep 98, KBD.

**30.5.2014**

**Tenaga Nasional Berhad v Sumbang Projek Sdn Bhd**

1. Has the Court of Appeal deviated from settled law by rejecting the methodology and formula to calculate back billing losses using the sudden drop method, practiced by the Appellant/Applicant over the years and adopted by the Courts as a proper method of calculation of losses over these years in Malaysia?
2. Whether the Court of Appeal in rejecting the losses claimed, has deviated from settled law and gone beyond their jurisdiction and powers by concluding that the method of calculation of back billing losses using the 'sudden drop' method, practiced by the Appellant/Applicant pursuant to their rights under the Electricity Act 1990 and adopted by the courts over the years is not reliable and is not a reasonable method to calculate losses?

**26.05.2014**

### **Tan Ong Ban v Teoh Kim Hang**

1. Whether the principle of beneficial ownership established by the decision of the Federal Court in *Borneo Housing Mortgage Finance Bhd v Time Engineering Bhd* [1996] 2 AMR 1537 applies to the statutory form of contract prescribed by the Housing Developers legislation?
2. Whether section 340(1) of the National Land Code applies to immovable strata property in respect of which no register document of title has been issued by the appropriate authority?

### **Hajah Marina Binti Haji Mustafa v Suruhanjaya Perkhidmatan Awam**

1. Whether a public officer, faced with a disciplinary action under Regulation 37 of the Public Officers (Conduct and Discipline) Regulations 1993 in which the public officer has denied/disputed the charge against him/her and has specifically requested for an oral hearing in his/her Representation, ought to be given a right to be orally heard under Article 135(2) of the Federal Constitution of Malaysia?

2. Whether, where a public officer has been dismissed from work or reduced in rank, the power of the court to interfere is limited to situations where the decision was arbitrary and/or a mala fide exercise of power and/or colourable exercise of power by the disciplinary authority (the strict approach)?

**Durable Portfolio Sdn Bhd & 2 lagi v Pang Kee Hwi Realty Sdn Bhd & 2 lagi**

Is a transfer of shares by way of gift exempted from the Articles of Association of the company and from section 15 of the Companies Act 1965?

**Datuk Haji Abdul Wahab bin Abdul Jalil and 3 others v Penerbitan Fargoes Sdn Bhd**

Whether Section 73A of the Evidence Act 1950 can be utilised to admit a photocopy of a document which has failed to fulfil the requirements of Section 65 of the Evidence Act 1950?

**Delpuri-Harl JV Sdn Bhd v PKNS.**

1. Where the Honourable Court rules that the Respondent/Defendant employer is liable for breaching a construction contract midway through its term and awards damages for loss of future profits, is the quantum of damages to be determined

- by the test of reasonable foreseeability and remoteness of damage, or by any test?
2. Where evidence adduced by the Appellant/Plaintiff for the quantum of loss of future profit is not challenged at all by the Respondent/Defendant, has the Appellant/Plaintiff satisfied the test of reasonable foreseeability and remoteness of damage in view of the admission by the Respondent/Defendant that the loss of future profit was indeed foreseeable? If so, can the Honourable Court reject the unchallenged evidence adduced for loss of future profit and instead award any lesser quantum or merely nominal damages?

**Mesuma Sports Sdn Bhd v Majlis Sukan Negara Malaysia and 2 others**

1. Whether a claim for common law ownership over an indicator as a trade mark or source identifier could be answered by asking who designed or re-conceptualized the said indicator or source identifier; rather than by asking who was first in time to use said indicator or source identifier as a trademark in a trade mark sense in the course of trade?
2. Whether branding and image-promoting or image-directed activities involving a two dimensional marking as a source identifier in a trade mark sense in the course of trade sufficient for the commencement of a passing-off action for

material misrepresentation of the goods of another as and for the goods of the Respondent?

3. Depending on the ruling of this Honourable Court, whether the Court of Appeal had correctly applied the general principles of law relating to the acquisition of trademark rights in respect of an unregistered identifier or indicator used otherwise than in connection with the manufacture and sales of goods?

**19.5.2014**

**Tenaga Nasional Berhad v Taiwan Chief Precision Technology Sdn Bhd**

1. Whether the words "shall be prima facie evidence" in Section 38(4) of the Electricity Supply Act 1990 imposes a burden on the consumer to establish that there is a manifest error in the calculations of Tenaga in arriving at the amount of loss of revenue or the expenses incurred by Kenaga under Section 38(4) of the Electricity Supply Act 1990?
2. Whether for the purposes of rebutting the "prima facie evidence" in Section 38(4) of the Electricity Supply Act 1990, it is sufficient for a consumer to merely suggest possible reasons as to why Tenaga's calculations of the loss of revenue or the expenses incurred by Kenaga is incorrect? Can the consumer discharge its

burden without the need to lead concrete oral or documentary evidence in this respect?

**9.5.2014**

**Tan Ah Tong v Datuk Kim Kok Khin @Kim Kok Khen**

1. Whether the Court has the discretion or power under Order 14A(1)(a) of the Rules of Court not to make a determination on a proposed issue to be heard under Order 14A if the Court is of the opinion that the proposed issue is not suitable for determination without the full trial of the action?
2. Upon dismissing an application under Order 14A by the Court on the ground that the proposed issue is not suitable for determination without the full trial of the action, can the Court consider the same issue at full trial?