

LIQUIDATED AND ASCERTAINED DAMAGES (LAD)  
AND REQUIREMENTS OF MITIGATION

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*Specially dedicated to my family for your love and support*  
*“With love and appreciation”*

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## **ABSTRACT**

When a project is late in completion due to contractor's fault, the employer is entitled to a contractual remedy by enforcing the Liquidated and Ascertained Damages (LAD) provisions. However, contractors often seek to challenge the enforceability of LAD by alleging that the employers suffer no loss and that they are under a duty to mitigate their losses. Therefore, the objectives of the research are to determine the requirements of mitigation and the extent of the employer's duty to mitigate his losses when enforcing his right under the LAD clause. The objectives of this research are achieved by analysing relevant laws governing LAD and mitigation. The governing laws include relevant statutes, judicial decisions, and the Contracts Act 1950. The research found that although the requirements is silent in standard forms of contract, an employer is bound to comply with the requirements of mitigation in enforcing LAD by taking all reasonable steps to mitigate his losses. Furthermore, employer's duty to mitigate his losses is governed by the principles of mitigation. He is only bound to take all reasonable steps in order to comply with the requirements and does not has to embark on hazardous or uncertain courses of action that will cause him incur substantial expense or inconvenience, damage his reputation, or breach any contracts, in order to mitigate. The reasonable actions to mitigate will be determined on a case-to-case basis. In short, this research is expected to grab the attention of employers in enforcing LAD, so that they can safeguard their claims.

## ABSTRAK

Apabila sesuatu projek mengalami kelewatan disebabkan kegagalan kontraktor, majikan akan menuntut gantirugi tertentu dengan mengenakan klausa Ganti Rugi Tertentu (*Liquidated and Ascertained Damages, LAD*). Walau bagaimanapun, kontraktor sentiasa mencabar penerapan klausa tersebut dengan menyatakan bahawa pihak klien tidak mengalami kerugian dan mereka adalah dikehendaki mengurangkan kerugian yang dialami. Oleh yang demikian, kajian ini dijalankan untuk mengenalpasti keperluan pengurangan kerugian dan sejauh manakah klien perlu bertindak untuk mengurangkan kerugian yang dialami semasa mengenakan haknya dibawah klausa LAD. Objektif kajian ini dicapai dengan menganalisa undang-undang yang mengawal LAD dan pengurangan. Undang-undang kawalan yang berkaitan termasuklah statut, keputusan mahkamah dan Akta Kontrak 1950. Kajian ini mendapati walaupun kehendak tersebut adalah tidak dinyatakan, klien adalah terikat untuk mematuhi kehendak pengurangan semasa mengenakan LAD dengan mengambil langkah-langkah yang munasabah bagi mengurangkan kerugiannya. Tambahan pula, hak klien untuk mengurangkan kerugiannya adalah dikawal oleh dasar pengurangan. Klien hanya terikat untuk mengambil langkah-langkah munasabah bagi mematuhi kehendak tersebut dan tidak perlu bertindak sehingga menyebabkannya mengalami kerugian lanjutan atau ketidaksenangan, menjejaskan reputasinya, atau memungkiri mana-mana kontrak dalam usaha mengurangkan kerugian. Kemunasabahan tindakan untuk mengurangkan kerugian ditentukan berdasarkan kes-kes yang tersendiri. Secara ringkasnya, kajian ini dijangka akan menarik perhatian klien semasa mengenakan LAD, supaya mereka dapat mempertahankan tuntutan mereka.