

EVIDENCE IN ARBITRATION

MALINJA TEH SHEAN EE

UNIVERSITI TEKNOLOGI MALAYSIA

EVIDENCE IN ARBITRATION

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for the award of the degree of
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DEDICATION

Dedicated to my father, mother, sister and brother.

Thank you for your support, guidance and everything

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ABSTRACT

In arbitration, evidence plays a vital role in establishing the case and is the most important basis for a just and fair award. Facts which are in issue in any legal proceedings are proved by means of evidence. Unlike litigation, there is no extensive rule of evidence in arbitration and the arbitrator is not bound by the Evidence Act 1950. This does not mean that the arbitrator can conduct the hearing according to their whims or fancy. The exclusion of the Act only means that the arbitrator need not follow the strict rules of evidence which is applied in court but it is subject to the non-violation of the rules of natural justice in the proceeding. However, the breaches of the rules of natural justice may be troublesome. The Arbitration Act 2005 does not clearly define what is meant by natural justice and the grounds that amount to the infringement of the rules of natural justice. Thus, this study intends to identify those circumstances. This study is carried out mainly through literature review and documentary analysis of law journals, such as Malayan Law Journal, Singapore Law Report, Building Law Report, etc. Basically, there are seven circumstances that have been identified and it appears to be very valuable and useful to look deeper into this apparent issue as it manages to provide a better guideline for the disputant parties in construction industries for a fair and justice of arbitration proceeding.

ABSTRAK

Dalam timbangtara, bukti memainkan peranan yang penting dalam mendirikan kes tertentu and ia merupakan dasar yang paling penting untuk keputusan yang adil dan wajar. Fakta yang terkandung dalam sebarang isu perbicaraan adalah ditentukan oleh bukti-bukti. Tidak seperti dalam proses mahkamah, ia tidak mempunyai peraturan penerangan yang ketat dalam proses timbangtara dan penimbangtara adalah tidak perlu mematuhi peraturan Akta Keterangan 1950. Ia tidak bermakna bahawa penimbangtara itu boleh mengabaikan segala peraturan penerangan and melaksanakan proses timbangtara secara sesuka hati. Kekecualian Akta tersebut hanya membenarkan penimbangtara supaya tidak perlu mengikuti peraturan penerangan yang ketat seperti dalam proses mahkamah tetapi dengan syarat tidak melanggar prinsip asal keadilan dalam proses timbangtara. Walaubagaimanapun, pelanggaran terhadap prinsip asal keadilan amat menyusahkan. Definasi prinsip asal keadilan and situasi-situasi yang melanggar prinsip asal keadilan dalam penerimaan bahan bukti dalam proses timbangtara juga tidak diuraikan dengan jelas dalam Akta Timbangtara 2005. Oleh itu, penyelidikan ini dijalankan untuk mengenalpasti situasi-situasi tersebut. Kajian ini dijalankan melalui kajian literatur dan analisis dokumen dari jurnal undang-undang and sebagainya. Pada dasarnya, terdapat tujuh situasi yang melanggar prinsip asal keadilan dalam penerimaan bahan bukti dalam proses timbangtara and penemuan ini adalah sangat berguna sebagai satu garis panduan untuk pihak-pihak yang berselisih dalam industri pembinaan ini untuk mendapatkan proses penimbangtara yang adil dan wajar.

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LIST OF ABBREVIATIONS

AC	-	Appeal Cases
ADR	-	Alternative Dispute Resolution
ADRLJ	-	Arbitration and Dispute Resolution Law Journal
ADRLN	-	Arbitration and Dispute Resolution Law Newsletter
All	-	Australian Law Librarian
All ER	-	All England Law Reports
BLR	-	British Law Reports
Bos & Pul	-	Bosanquet's & Puller's Common Pleas Reports
CB	-	Common Bench Reports
CBNS	-	Common Bench Reports by Manning Granger & Scott, New Series
Ch	-	Cases in Chancery
CIDB	-	Construction Industry Development Board
CILL	-	Construction Industry Law Letter
CLR	-	Commonwealth Law Reports
ConLR	-	Construction Law Reports
De G M & G	-	De Gex, Macnaghten & Gordon's Reports
DLR	-	Dominion Law Reports
DLR (2d)	-	Dominion Law Reports (2nd Series) (Canada)
Dowl	-	Dowling and Lowndes Bail Court Reports
EG	-	Estates Gazette (UK)
ER	-	English Reports
EWHC	-	High Court of England and Wales Decisions
Giff	-	Giffard's Chancery Reports
H&N	-	Hurlstone & Norman's Exchequer Reports
HL Cas	-	Clarke's House of Lords Cases

I.L.R	-	International Law Reports
IBID	-	Ibiden (in the same)
ICC	-	International Chamber of Commerce
IEM	-	Institution of Engineers Malaysia
J	-	Judge
JCT	-	Joint Contracts Tribunal
JP	-	Justice of the Peace Reports
JPL	-	Journal of Law Planning
KB	-	King's (or Queen's) Bench
KLRCA	-	Kuala Lumpur Regional Centre for Arbitration
LiL Rep	-	Lloyd's List Law Reports
Lloyd's Rep	-	Lloyd's Law Reports
LJQB	-	Law Journal Reports, Queen's Bench
LT	-	Law Times Reports
LTOS	-	Law Times Reports, Old Series 1843-1859
Man & G	-	Manning & Granger's Common Pleas Reports
MLJ	-	Malayan Law Journal
NYS 2d	-	New York Supplement (2nd Series 1938)
NZLR	-	New Zealand Law Reports
PAM	-	Pertubuhan Arkitek Malaysia /Malaysian Institute of Architects
PWD/JKR	-	Public Works Department/Jabatan Kerja Raya
QB	-	Queen's Bench Reports
QBD	-	Queen's Bench Division
SC (HL)	-	Session Cases (House of Lords) (Scotland)
SCR	-	Supreme Court Reports
SGHC	-	Singapore High Court (unreported judgments)
SLR	-	Singapore Law Reports
TCC	-	Technology Construction Courts
TLR	-	Times Law Reports
UNCITRAL	-	United Nations Commission on International Trade Law
UTM	-	Universiti Teknologi Malaysia
WLR	-	Weekly Law Reports

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