

TERMINATION OF CONTRACT: ABANDONMENT OF WORK

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DEDICATION

My Beloved Father and Mother

Mohd Jamil bin Abdullah

Nor Zahati binti Hassan

My Beloved Little Brothers and Sister

Nurul Hafizah Kamaliah, Mohd Nur Arif, Mohd Nur Amirul Amin, Mohd Nur

Hisyam Baharuddin

My Beloved Spouse

Fatima Azahara bt Mazuki

Lecturer who had always give encourages and supports

Mr. Jamaludin Yaakob

And Friends and Colleagues,

Joy and Sorrow, Smiling and Laughing together with you all,

I will never forget

Painful, resistance we face

This all teach us the meaning of life

To deal with the future of our days

Thanks for everything.....

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"In the name of Allah, Most Gracious, Most Merciful"

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ABSTRACT

The main objective of entering into a contract is generally to see it through to completion. However, not every contract will achieve its goal. It is not uncommon for a contractual relationship to terminate in the course of its performance, without achieving its objective. The major Malaysian standard form of contract contains express provisions that entitle the employers to terminate the contract in the event the contractors abandon the contracts. The inclusion of such an express clause is a prudent decision taken by employers in view of the possibility of contractors abandoning their works. However, a perusal of the law reports, both national and international shows that not many employers have utilized this provision or not successful in utilizing it. *JM Hill & Sons Ltd v Camden LBC*, the action by contractors as withdrawal of labour and most of plant after complaining about late payment and employer does not pay to the contractor the amount due to certificate by architect are still not tantamount to abandonment of work. Therefore, the objective of this research is to determine the essential elements of abandonment of construction by the contractor. The scope of study is the cases involve on termination specifically on abandonment of work by contractor and will be referred to standard form of contract express provision on abandonment or if any absent of this clause, it will referred to Contract Act. The methodology of study is case analysis which is use LexisMalaysia Search engine regarding the case of law on abandonment. The analysis cases focus on six cases from UK, Malaysia and Philippines. The study found the element of abandonment is by intention, conduct, without employer default and termination not accordance of procedure. As conclusion, the objective of this research achieved by this essentials element had been established.

ABSTRAK

Objektif utama dalam kontrak secara umumnya ialah mengikat dua pihak sehingga penyiapan. Walaubagaimanapun, tidak semua kontrak yang mencapai objektif tersebut. Adalah tidak menjadi kebiasaan dalam hubungan kontrak untuk menamatkan kontrak tanpa mencapai tujuan asalnya. Kebanyakan borang kontrak di Malaysia menyediakan peruntukan yang membenarkan majikan untuk menamatkan kontrak sekiranya kontraktor mengabaikan kontrak. Penyediaan fasal ini adalah tindakan yang berhemah sekiranya berlaku pengabaian kontrak oleh kontraktor. Walau bagaimanapun, semakan ke atas laporan undang-undang, dalam negara dan antarabangsa menunjukkan bahawa tidak banyak majikan telah menggunakan peruntukan ini atau tidak berjaya dalam menggunakannya. *JM Hill & Sons Ltd v Camden LBC*, tindakan oleh kontraktor mengeluarkan buruh dan kebanyakan loji setelah masalah pembayaran lewat dan majikan tidak membayar kepada kontraktor amaun yang perlu dibayar didalam perakuan bayaran oleh arkitek. Oleh itu, objektif kajian adalah untuk menentukan keadaan atau unsur pengabaian kerja-kerja yang merupakan perkara yang paling asas dalam melanggar undang undang kontrak dan majikan berhak untuk menamatkan kontrak tersebut. Skop kajian adalah kes-kes yang melibatkan atas penamatan khusus tentang peninggalan kerja oleh kontraktor dan akan dirujuk kepada bentuk piawai peruntukan nyata kontrak pembuangan atau ketiadaan fasal ini dalam kontrak, ia akan dirujuk kepada akta kontrak. Metodologi kajian adalah analisis kes yang menggunakan enjin carian LexisMalaysia mengenai kes undang-undang tentang pengabaian kontrak. Analisis kes tertumpu pada enam kes dari UK, Malaysia dan Filipina. Kajian mendapati elemen pengabaian ialah dengan niat, tindakan, tanpa kesilapan dari majikan dan penamatan tidak mengikut prosedur. Sebagai kesimpulan, objektif kajian ini dicapai dengan unsur-unsur ini.

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LIST OF ABBREVIATIONS

AC	Law Reports
All ER	All England Law Reports
Build LR	Building Law Reports
CIDB	Construction Industry Development Board
CLJ	Current Law Journal
Const LR	Construction Law Reports
FC	Federal Court
HC	High Court
LR	Law reports
MLJ	Malayan Law Journal
MLJU	Malayan Law Journal Unreported
PAM	Pertubuhan Arkitek Malaysia
PC	Privy Council
PWD	Public Work Department

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CHAPTER 1

INTRODUCTION

1.1 Background of Research

The main objective of entering into a contract is generally to see it through to completion. In a simplified example, in the case of a construction contract between an employer and a contractor, the employer gets his project constructed and the contractor gets his payment. However, not every contract will achieve its goal. It is not uncommon for a contractual relationship to terminate in the course of its performance, without achieving its objective.

In relation to an agreement, termination can be defined as the end of the agreement.¹ Under the law of contract, termination of contract comes under the topic of discharge of contract.² Generally, a contract can be discharged by four main methods: by performance,³ by agreement,⁴ by frustration,⁵ and by breach of contract.⁶ It is suggested that a well drafted contract should *include a clause* that

¹ MacMillan English Dictionary for Advanced Learners, International Student Edition (2006)

² Contract Act 1950

³ Sections 40 – 56 of the Contract Act 1950

⁴ Section 63-64 (such as Novation agreement)

⁵ Section 57 of the Contract Act 1950

⁶ Section 40 of the Contract Act 1950

clearly defines the method and procedure for its termination in certain circumstances. All the standard forms of construction contract contain such express provisions.⁷

It is submitted that a great majority of contracts are discharged by performance.⁸ This kind of discharge does not give any legal problems that require adjudication either in arbitration or in court of law. Discharge by performance takes place when both of the parties to the contract have precisely performed their respective promises.⁹ It becomes an issue for the arbitrator's or the court's determination only when a party argues that the other party's performance is not precise or incomplete.¹⁰

Discharge by agreement may operate in two situations. One, it refers to the activation of the express termination clause in the contract.¹¹ Two, in the absence of such express provision, it refers to the consensus of the parties to end their contractual relationship in the form of mutual termination agreement.¹² The standard forms of construction contract contain terms of this nature, such as termination by convenience.¹³ A discharge by agreement may occur by way of novation¹⁴ or a waiver.¹⁵

Unlike discharge by performance where the contract comes to an end on its successful completion, the term termination of a contract normally refers to the bringing, prematurely, to an end, of a valid and enforceable contract.¹⁶ The

⁷ PWD 2010, clause 51 and 52; PAM 2006, clauses 25 and 26; CIDB 2000, clause 44 and 45; IEM 1989, clauses 51 and 52

⁸ Fisher, Michael J. and Greenwood, Desmond G., *Contract Law in Hong Kong* (Expanded 2nd ed), Hong Kong University Press, Hong Kong

⁹ *Sim Chio Huat v. Wong Ted Fui* (1983) 1 MLJ 151, *Yeoh Kim Pong (Realty) Ltd v. Ng Kim Pong* (1962) MLJ 118

¹⁰ *Cutter v Powell* [1795] 6 TR 320; *Vigers v Cook* [1919] 2 KB 475

¹¹ For example, clauses 25 or 26 of PAM 2006 relating termination by employer and contractor, respectively

¹² *Pan Ah Ba & Anor v. Nanyang Construction Sdn Bhd* (1969) 2 MLJ 181

¹³ CIDB 2000, clause 46.1

¹⁴ Section 63 of the Contract Act 1950

¹⁵ Section 64 of the Contract Act 1950

¹⁶ Vincent Powell-Smith, John Sims (1985), *Determination and Suspension of Construction Contracts*, Collins, London

termination may be caused by impossibility of performance¹⁷ or frustration.¹⁸ In relation to frustration, section 57(2) of the Contract Act 1950 provides that

'A contract to do an act which, after the contract is made, becomes impossible, or by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful'

Under the English common law principle, according to Lord Radcliffe in the case of *Davis Contractors v. Fareham UDC*,¹⁹

*"Frustration occurs whenever the law recognises that without default of either party a contractual obligation has become incapable of being performed because the circumstances in which performance is called for would render it a thing radically different from that which was undertaken by the contract."*²⁰

Thus, a contract is brought to an end by event that makes its performance fundamentally different from that contemplated at the time the contract is made. The essence of the doctrine is that both parties are excused from further performance of their obligations and neither is liable to the other for any damage resulting there from.²¹

Breach may also lead to termination of contract as well. However, not all breaches entitle the innocent party to possess such right. The common law principle prescribes that the breach must be in relation to the fundamental term of the contract and not merely a warranty.²² The terms fundamental or condition and warranty are defined in section 12(1) of the Sale of Goods Act 1956. Apart from the common law principles of conditions and warranties, standard forms of contract also specify

¹⁷ Section 57 of the Contract Act 1950

¹⁸ *Taylor v. Caldwell* (1863) B & S 826; *Krell v. Henry* [1903] 2 KB 740; *Berney v. Tronoh Mines* [1949] MLJ 4; *V. Kandiah v. Fed. of Malaya* [1952] MLJ 97

¹⁹ [1956] AC 696

²⁰ Per Lord Radcliffe, at page 728

²¹ Lord Radcliffe, *Op.Cit*

²² *Tham Cheow Toh v Associated Metal Smelters* [1972] 1 MLJ. 171

certain breaches that entitle a party to terminate the contract.²³ According to Harban Singh, in practice, determination under contractual provision has been and remains the single most common mechanism for effecting determination of the contractor's employment in the bulk of engineering and construction contracts.²⁴

Abandonment of work is one of breaches of contract that goes to the root of the contract.²⁵ Essentially, any one of the two parties may commit a fundamental breach one of them abandons the works before completion.²⁶ The innocent party may then elect to treat the breach as repudiation and terminate the contract or, elect to continue with the contract. The Malaysian standard forms of construction contract contain express termination provision in the event the contractor abandons the work.²⁷ Likewise, FIDIC and ICE too contain similar provision.²⁸

²³ PWD 2010, clause 51 and 52; PAM 2006, clauses 25 and 26; CIDB 2000, clauses 44 and 45; IEM 1989, clauses 51 and 52

²⁴ Ir Harban Singh (2002), *Engineering and Construction Contract Management*, Post-Commencement Practice, LexisNexis

²⁵ *Estate & Forestry Consulting Management v Koperasi Permodalan Melayu Negeri Johor Bhd* (2010) 3 MLJ 840

²⁶ Chow Kok Fong (1981) *The Law relating Building Contracts Cases & Material*, Quins, Singapore

²⁷ PWD 2010, clause 51.1(a) (ii); PAM 2006, Articles of Agreement, article 7(q) and (bf)

²⁸ FIDIC, Clause 15.2(b); ICE, clause 63 and 64

1.2 Issues of Research

The major Malaysian standard forms of contract, such as PWD 2010, PAM 2006, CIDB 2000 and IEM 1/89, and some other countries' (international) standard forms, such as JCT 05,²⁹ FIDIC red book,³⁰ ICE,³¹ contain express provisions that entitle the employers to terminate the contract in the event the contractors abandon the contracts. The inclusion of such an express clause is a prudent decision taken by employers in view of the possibility of contractors abandoning their works. However, a perusal of the law reports, both national and international, using the Lexis Malaysia online search engine shows that not many employers have utilized this provision or not successful in utilizing it.³²

Under the common law, abandonment of work is a fundamental breach of contract.³³ If a contractor abandons his work, this allows the employer to determine the contractor's employment.³⁴ It is contended that the express clauses on abandonment in the major standard forms in Malaysia and international contracts goes to suggest that abandonment is a term that goes to the root of the contract. However, the exercise of the provision is not so straight forward.

Generally, whether or not the contractor has abandoned the work, is a question of fact.³⁵ In practice, it is submitted that, abandonment does not occur immediately at the spur of the moment. Usually, there are series of events that take place preceding the abandonment.

The common event that gives rise to the occasion is employer's non-payment of the interim certificate. Thereafter, there are series of failed negotiations. The contractor makes threatening remarks to the employer, goes slow with the work,

²⁹ Clause 8 of JCT 05

³⁰ Clause 15.2(b)

³¹ Clause 63 and 64

³² HDK Ltd v Sunshine Ventures Ltd and another [2010] All ER (D) 48 (Mar)

³³ Estate & Forestry Consulting Management v Koperasi Permodalan Melayu Negeri Johor Bhd (2010) 3 MLJ 840

³⁴ Galway City Council V Samuel Kingston Construction Ltd. [2010] IESC 18

³⁵ JM Hill & Sons Ltd v London Borough of Camden (1980) 18 BLR 31

remove workmen, plant and materials from the site. The employer then considers this as an act of abandonment and takes the drastic decision of terminating the contractor's employment.³⁶ The next phase is, the contractor disputes the allegation and brings the issue to the arbitration or to the court.

The most likely verdict that an arbitrator or a judge will make of this is that, the contractor's actions are not sufficient and clear enough as to amount to abandonment. Since the termination is invalid, it then turns against the employer. It is in fact the employer that has repudiated the contract wrongfully. The employer will be liable to the contractor for damages for breach of contract.³⁷

Such a scenario is a common occurrence in construction contracts. There are many case law that demonstrate such situation: *HDK Ltd (t/a Unique Home) v Sunshine Ventures Ltd and another*,³⁸ *Hackney Empire Ltd v Aviva Insurance UK Ltd (formerly t/a Norwich Union Insurance Ltd)*,³⁹ *Alexander Construction Ltd. v. Al-Zaibak*,⁴⁰ and *Hill & Sons Ltd v Camden LBC*.⁴¹ A local case on the point is the case of *Estate & Forestry Consulting Management v Koperasi Permodalan Melayu Negeri Johor Bhd*.⁴²

A brief analysis of those cases shows that there is a misunderstanding among the employers relating to the meaning of abandonment and what constitute abandonment. This misunderstanding and confusion may lead to disputes. The employers on the other hand deliberate the contractor conducts amount to abandonment and take the drastic action of terminating the contract. The contractors, on the other hand, consider the termination as invalid. In addition the employers also call the performance bond, engage new contractor to continue with the works.

³⁶ *HDK Ltd v Sunshine Ventures Ltd and another* [2010] All ER (D) 48 (Mar)

³⁷ *Ibid*

³⁸ [2009] EWHC 2866

³⁹ [2011] EWHC 2378 (TCC)

⁴⁰ 2011 BCSC 590

⁴¹ (1980) 18 BLR 31

⁴² [2010] 3 MLJ 840

1.3 Objective of Research

From the discussion of issues, the author had set the objective of the research. The objective of this research is to determine the essential elements of abandonment of construction by the contractor.

1.4 Scope of Research

The study will be discussed on the termination of contract, the element of breach that is tantamount to determination of contract. It also involves the case of termination. Narrowly on the subject of termination of contract, the discussion will focused on abandonment of work as one of the breach of contract whereby the action by contractor allow employer put an end of contract.

The cases involves on this study will determine on the element of abandon the contract or work by either employer or contractor. Some cases may not refer to abandonment clauses but still had fraction element of abandon the work or referred to common law as refused to perform and clauses related will be included as discussion to be clearer. The study will referred to standard form of contract which is expressly provision on the abandonment of work or contract either in Malaysia or International.

1.5 Significance of Research

The study will describe the elements of abandon of the work as act of default by contractor that entitled to employer to terminate the contract. In some of standard form which is absent of the clauses, this study also will related the contractual provision and the application in common law. The cases that will be includes is cases that involve on termination of contract based on this defaults.

It is significance of knowing when contractor has abandoned the work. This relates to the right of the innocent party for example the employer. The right of innocent party to apply determination under abandonment clause to contractor who had abandons their work in the case of a construction contract. If there is no provision in construction contract, employer may refer to common law principle.

The significance of study also related to wrongly termination by employer. If the contractor's action are inadequate to amount to abandonment and the employer had terminate the contract. The fact that employer has committed to the breach of condition and may be liable for damages to the contractor.

1.6 Previous Study

For this research, researcher had analysis some previous research as reference on scope and objective the research had been done. The previous research are not in the same objectives of this research but can be guided for the process to achieve the finding of objective. Some of the research is:

(a) Determination of Contract by Employer in Construction Industry

This research is done by Tay Lee Yong. The issue is about the employer had to terminate the contract if contractor do not have the intention to perform and contractor had repudiate breach. The researcher also included the issue by the newspaper on termination of contract by the employer by some due cause. The objective of this research is to identify the most frequent disputes association with the determination of contract by employer in construction project which are referred to the court. The scope of the research is on PWD 203A and PAM. It is found that the most frequent default by the contractor that bring the contract to an end is contractor failure to proceed the works regularly and diligently and the second is contractor had suspend the works because of payment as repudiation of breach.

(b) Time is Essence and Termination in Construction Contract

This research is done Liew Li Ming. The issues is on the cases of Shawton Engineering Ltd v DGP International Ltd, The Lloyd LJ in the court of Appeal held that the determination held under basic of time is essence was unlawful since evidence fail to proved time had been made of the essence in the said case. However in the case of City Top Engineering Ltd v Lee Shing Yue Construction Company Ltd & Ors, the termination in the basis of time is essence is lawfully as long as they had proved time is of the essence in the contract. The objective of the research is to identify the employer's right to terminate the construction in the event of the breach relating to time. The scope of the study is in PAM, PWD, CIDB, FIDIC and JCT

1.7 Research Methodology

This research has been carried out based on a legal research methodology unlike empirical research; this study was not done based on statistical study. The primary data for this research are; one, clauses in the PAM 2006 and PWD 2010 standard forms of contract, two, the provision in the Contract Act 1950, relating to discharge of contract and three, the relevant law cases. The law cases form an important source of the primary data. The cases are retrieval from LexisMalaysia online database. The keywords used to retrieve the cases are: “building contract and termination”; “building contract and abandonment”; “building contract and contractor abandons work”

The secondary data are obtained from books, journals, articles, conferences, newspaper articles and internet articles regarding termination of contract. These secondary data materials are sought and referred to aid the literature review write up. Eventually, all primary data and secondary data are be analyzed carefully. Documentary analyses are made to provide answer for the objective of this research.

1.7.1 Stage 1: Identifying the Research Issue

Through the learning process and discussions with supervisor, the research issues are identified. Analysis is made to evaluate the relevant issues. Research issues obtained as well after simultaneous reading from the sources and constant discussion with supervisor.

1.7.2 Stage 2: Literature Review

After identify the research issue, literature review had been made to support the argument of research issues. Sources of the literature reviews will consists of articles in journals, magazines, published conference articles, books, websites and handouts of published modules and legal cases obtained from LexisMalaysia search engine.

1.7.3 Stage 3: Data Collection

Collection of data can be divided into two categories, namely collection of primary data and collection of secondary data. To collect primary data, court decisions analyses are vital in the collection of primary data. Legal cases obtained through LexisMalaysia search engine which provides important facts and data about determination of contract by employer basis on abandon the contract shall be analyzed carefully and critically. Analysis of these documents and cases shall be able to answer the objective of this research.

On the other hand, secondary data will be obtained from analysis and researchers done by people such as books, journals, articles, conference, newspaper articles and internet articles. Information about legal cases regarding to determination

by contractor and even standard form of contracts available locally and internationally shall be referred to aid in the literature review write up.

1.7.4 Stage 4: Research Analysis

All the data such as clauses from standard form of contracts and court decision shall be analyzed qualitatively. By taking a deep look and review court decisions in various jurisdiction of country, writing up will be made to answer the objective of the research

1.7.5 Stage 5: Conclusion and Recommendations

The summary of the study will be formed according to the analysis made before. The objective of research will be achieved based on analysis. All relevant details will be prepared systematically in accordance with the formal required. The produced report writing will then send for documentation and binding.

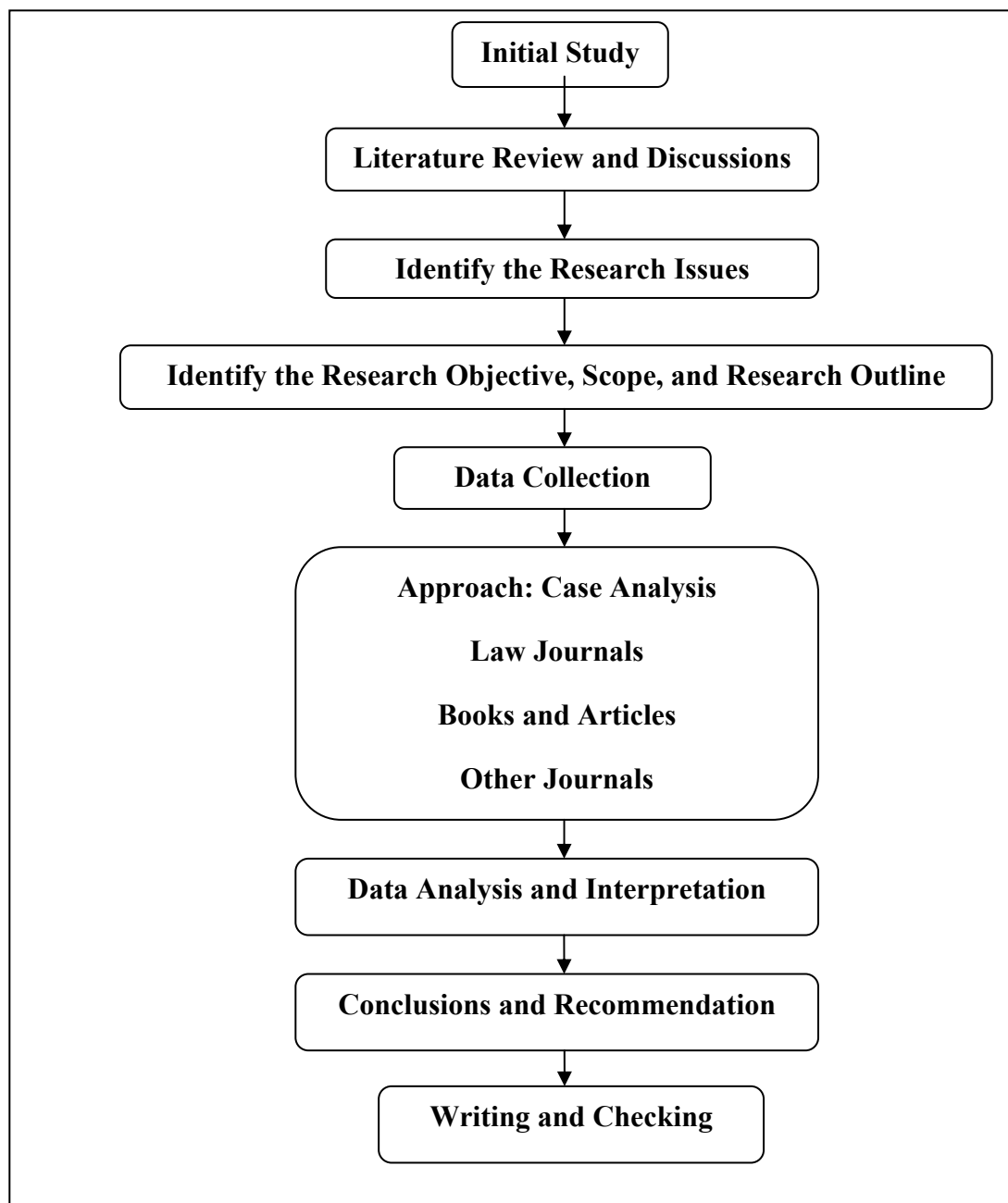


Figure 1: Research Process and Methods Approach

REFERENCE

Agreement and Condition of PAM Contract 2006

B. Eggleston(1994), *The ICE Design and Construct: A Commentary*, Blackwell Scientific Publications, Australia

Beatrix Vohrah, Wu Min Aun (2010), *The Commercial Law of Malaysia*, Second Edition, Longman, Malaysia

Curzon L.B., *A Dictionary of Law*, Longman

Chappell, Marshall, Powell-Smith and Cavender (2003), *Building Contract Dictionary*, 3rd Edition, Wiley-Blackwell, London

Chow Kok Fong (1981) *The Law relating Building Contracts Cases & Material*, Quins, Singapore

Chow Kok Fong, Philip CF Chan (2003), *Construction Law Casebook Volume 2*, LexisNexis, Malaysia

CIDB Building Contract 2000

Contract Act 1950

FIDIC Conditions of Contract For Construction for Building and Engineering Works

Fisher, Michael J. and Greenwood, Desmond G., *Contract Law in Hong Kong* (Expanded 2nd ed), Hong Kong University Press, Hong Kong

ICE Condition of Contract

IEM Condition of Contract

Ir Harbans Singh (2002), *Engineering and Construction Contract Management, Post-Commencement Practice*, LexisNexis

Ir Harbans Singh (2002), *Engineering and Construction Contracts Management- Commencement and Administration*, LexisNexis

Issaka Ndekugri and Michael Rycrof (2009), *JCT 05 Standard Building Contract Law and Administration* (2nd ed), Elsevier, Oxford

John Adriaans(2010), *Construction Contract Law, The Essentials*, Palgrave MacMillan, London

MacMillan English Dictionary for Advanced Learners, International Student Edition (2006)

Nigel M Robinson, Anthony P Lavers (1988), *Construction Law in Singapore and Malaysia*, Butterworths, Singapore

Public Work Department Standard Form of Contract (PWD 203A rev 2010)

Robinson, Nigel, et all, (1996), *Construction Law in Singapore and Malaysia* (2nded), Butterworth Asia, Singapore

Sundra Rajoo, Dato' WSW Davidson, Ir Harbans Singh, (2010) *The PAM 2006 Standard Form of Building Contract*, LexisNexis

Vincent Powell-Smith, John Sims (1985), *Determination and Suspension of Construction Contracts*, Collins, London

Vincent Powell-Smith, Michael Furmston (1987), *A Building Contract Casebook*, BSP Professional Books, Great Britain