

**THE PROFILE OF SUPPLEMENTARY AGREEMENT LAW CASES**

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**THE PROFILE OF SUPPLEMENTARY AGREEMENT LAW CASES**

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Requirement of the award of the degree of  
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*To My Beloved Husband, Ir. Zainidi Mat Yusoff, thanks for your love and the countless hours of joy that we've shared throughout the years, and to my family, thanks for the thought and for giving me such a good start.*

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## ABSTRACT

A contract creates a legal obligation upon the contracting parties. Generally, when parties enter into a contract, they are not locked up into its terms forever. If certain requirements are not met, change of contract can become a source of contention particularly if the parties contest the sufficiency of the change and their respective rights and obligations under the contract. However, it becomes norm in Malaysia to have Supplementary Agreement (SA) after execution of main contract. This can be seen through Malayan Law Journal where more than 200 cases of SA appeared from the year of 1915 to 2012. For this study, the profile of SA case law is developed to determine the most common reasons for the use of SA and the legal issues arose that made the case been referred to the Court. The criteria of profiling are types of contract, types of Court, number of SA appeared, the parties involved, reason for SA and the issues arose. The cases are based on the Malaysian cases from the year of 1990 to 2011. From the analysis, the most reason for the use of SA is identified which is due to new issues that arise after the execution of main contracts, followed by the inadequacy of main contract and complexity of main contract. While for the legal issues, the issue arose are in terms the of validity of SA's and implementation of SA. For the cases that has no issues or dispute regarding SA, the Court did not prompt any question of existence of SA and accept it as a legal document. Hopefully, by make this profiling, it will help people who are potentially involved in contract in future to prevent and minimize the dispute among parties.

## ABSTRAK

Kontrak telah mewujudkan obligasi yang sah di antara pihak-pihak yang berkontrak. Secara amnya, apabila pihak-pihak memasuki kontrak, mereka tidak selamanya terikat dengan terma-terma kontrak tersebut. Apabila terdapat beberapa keperluan kontrak yang tidak dipenuhi, perubahan kontrak akan menjadi sumber pertikaian sekiranya pihak-pihak tersebut mempertikaikan kesempurnaan perubahan terhadap hak dan tanggungjawab masing-masing di bawah kontrak. Bagaimanapun, ia telah menjadi satu fenomena yang biasa di Malaysia untuk mengadakan Perjanjian Tambahan selepas kontrak utama berkuatkuasa. Ia telah dibuktikan melalui Lexis-Nexis di mana terdapat lebih 200 kes Perjanjian Tambahan berlaku di Malaysia bermula dari tahun 1915 hingga tahun 2012. Oleh itu, kajian ini dijalankan bagi membangunkan satu bentuk profil untuk mengenal pasti apakah sebab-sebab berlakunya Perjanjian Tambahan dan isu-isu perundangan yang telah berbangkit sehingga di bawa ke muka penghakiman. Kriteria-kriteria yang akan digunakan untuk memprofil kes-kes Perjanjian Tambahan adalah seperti jenis-jenis kontrak, jenis-jenis Mahkamah yang terlibat, pihak-pihak yang terlibat, bilangan Perjanjian Tambahan yang berlaku di dalam satu kes, sebab-sebab berlakunya Perjanjian Tambahan dan isu-isu perundangan yang berlaku. Kes-kes ini tersebut adalah berdasarkan kes-kes Malaysia bermula dari tahun 1990 hingga 2011. Daripada analisi ini, sebab-sebab berlakunya Perjanjian Tambahan berlaku kerana terdapat isu-isu baru yang timbul selepas kontrak utama dilakukan diikuti dengan sebab yang kedua iaitu, ketidaksempurnaan kontrak utama. Manakala bagi isu-isu perundangan adalah isu tentang kesahihan Perjanjian Tambahan dan isu pelaksanaan Perjanjian Tambahan. Diharapkan, dengan adanya profil kes Perjanjian Tambahan, ia dapat member panduan dan pihak-pihak yangterlibat dapat meminimakan pertelingkahan kontrak.

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## LIST OF CASES

### CASES

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Maher & Associates, Inc. v. Quality Cabinets, Division of Texwood Industries, Inc., 267 Ill.App.3d 69, 640 N.E.2d 1000, 1002, 2 03 Ill.Dec. 850 (2d Dist. 1994

Nagle v. General Merchandising Corp., 58 Ill.App.3d 344, 374 N.E.2d 1137, 16 Ill.Dec. 362 (3d Dist. 1978

Corrugated Metals, Inc. v. Industrial Commission, 184 Ill.App.3d 549, 540 N.E.2d 479, 484, 132 Ill.Dec. 739 (1st Dist. 1989)

Schwinder v. Austin Bank of Chicago, 348 Ill.App.3d 461, 809 N.E. 2d 180, 189, 284 Ill.Dec. 58 (1st Dist. 2004)

Nebel, Inc. v. Mid-City National Bank of Chicago, 329 Ill.App.3d 957, 769 N.E.2d 45, 53, 263 Ill.Dec. 843 (1st Dist. 2002)

MAJS Investment Inc. v Albany Bank & Trust & Co (1988

Dryer v. National By-Products

United States ex rel. Crane Co. v. Progressive Enterprises, Inc., 418 F. Supp. 662 [E.D. Va. 1976]  
Schwinder v. Austin Bank of Chicago (2004). 348 III App.3d 461  
Dawson Ltd v Bonnin (1922) 2 A.C 413  
May and Butcher v The King (1934) 2 KB 17n  
Bushwell Properties Ltd v Vortex Properties Ltd (1976) 1 W.L.R  
Poh Boon Construction Sdn Bhd v Aw Boon Hwa (2009) 5 MLJ 624  
Zasalim Development Sdn Bhd v Lum Siew & Sons Sdn Bhd (2002) 7 MLJ 119  
Syarikat Binaan Utara Jaya v Koperasi Serbaguna Sungai Glugor Bhd (2009) 2 MLJ 546  
KK Land Sdn Bhd v Sabah Economic Development Corporation & Anor (2010) MLJU 1465  
General Holdings Sdn Bhd v Multi-Purpose Holdings Bhd (2001) 1 MLJ 467  
Multi-Purpose Holdings Bhd v General Holdings Sdn Bhd (2003) 2 MLJ 252  
Wisma Denmark Sdn Bhd v Landcorp Finance Bhd (2007) 7 MLJ 757  
Kidurong Land Sdn Bhd & Anor v Lim Gaik Hua & Ors (1990) 1 MLJ 485  
Mawar Biru Sdn Bhd v Lim Kai Chew (1992) 1 MLJ 336  
NVJ Menon v The Great Eastern Life Assurance Co LTd (2004) 3 MLJ 38  
Looh Hoon Loi & Ors v Viewpoint Properties (Sabah) Sdn Bhd (1995) 4 MLJ 804  
JKP Sdn Bhd v PPH Development (M) Sdn Bhd (2003) 6 MLJ 192  
Seraya Sdn Bhd v Government of Sarawak (2007) MLJU 595  
Johari Bin Hassan v Salwan Corporation Berhad & Ors (2008) MLJU 442  
Rakyat Corporation Sdn Bhd v Haji Kassim Bin Mamat (2000) MLJU 117

Transfield Projects (M) Sdn Bhd & Anor v Malaysian Airlines Systems Bhd (2007) 7 MLJ 583

Lim Kuok Teck & Anor v Tseng Choon Ching @ Tay Bak Hui & Ors (1995) MLJU 329

Lim Kuok Teck & Anor v Tseng Choon Ching @ Tay Bak Hui & Ors (1995) MLJU 329

YCS Corporation Berhad v Syarikat Kerjasama Perkhidmatan Awam Bhd & Anor (2011) MLJU 155

Estatequest Sdn Bhd v Zalpoint Tanah Point Sdn Bhd (2009) MLJU 381

Mintyre Properties Sdn Bhd v Yayasan Melaka (2006) 6 MLJ 420

Keytrade Sdn Bhd v Bumiputra Commerce Bank Berhad (2009) MLJU 1601

Ong Hong Development Sdn Bhd v Great Budget Sdn Bhd (2008) MLJU 0756

Affin Bank Berhad v Precision Tube Product (Malaysia) Sdn Bhd & Ors (2010) MLJU 119

Bungsar Hill Properties Sdn Bhd & Anor v Puspambekhai D/O Ramanathan (1999) MLJU 316

Ching Yik Development Sdn Bhd v Setapak Heights Development Sdn Bhd (1994) MLJU 7

Skarf Development Sdn Bhd v KM Engineering Development Sdn Bhd (1998) MLJU 275

Expo Holdings Sdn Bhd v Saujana Triangle Sdn Bhd (2009) MLJU 1600

Foo Nyuk Fung v Mohamad Bin Ahmad & Ors (2010) MLJU 0525

BCM Development Sdn Bhd v The Titular Roman Catholic Bishop of Malacca Johore (2010) 5 MLJ 778

Kokomewah Sdn Bhd v Desa Hatchery Sdn Bhd (1995) 1 MLJ 214

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## CHAPTER 1

### INTRODUCTION

#### 1.1 Background of Study

A contract is an agreement entered voluntarily by two or more parties with the intention of creating a legal obligation. It is stated in the Contracts Act 1950, section 2(h), that a contract is '*an agreement enforceable by law*'. One of the roles of contract is to bind the parties with the responsibilities, the performances that need to be done by parties and provide what is to happen if things go wrong<sup>1</sup>.

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<sup>1</sup>J Beatson (2002). *Anson's Law of Contract 28<sup>th</sup> Edition*. Oxford University Press. Pg 3



Generally, once a contract has been formed, it cannot be changed unless all parties to the contract agree upon it<sup>2</sup>. If certain requirements are not met, parties will make a change of contract, but leaves the general purpose undisturbed<sup>3</sup>. This is a contradiction with the law of contract.

The change or modification of a contract has been introduced in various terms such as addendum, alteration, amendment, additional agreement, supplementary agreement and so on. But this study focussed on the use of **Supplementary Agreement (SA)**. This supplementary agreement (SA) will be added together with the original contract.

Changes to existing contract will give an effect to the parties involved and the implementation of it. For example, the changes will be interpret as an including agreement to rescind the inconsistent term in the earlier contract and failure to comply with the terms will lead to a breach in contract<sup>4</sup>. Later, when disputes arise between the parties upon the Supplementary Agreement (SA), then it will be brought to the Court.

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<sup>2</sup> Lawyers.Com. (2012). Contract Modification. <http://contracts.lawyers.com/contracts/Contract-Modification.html>

<sup>3</sup> Briane L. Crowe & Suzanne L. Sias (2006) *Modification of Contracts*. Shefsky & Froelich Ltd, Chicago.Pg 3

<sup>4</sup> Briane L. Crowe & Suzanne L. Sias (2006) *Modification of Contracts*. Shefsky & Froelich Ltd, Chicago.Pg 10

The changes of contract will be represented as a SA and will be read in conjunction with the main contract<sup>5</sup>. There are many reasons of parties make changes. Those would include extending a contract, to change the duration of contract, to add additional items or to change the payment terms<sup>6</sup>.

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<sup>5</sup> KK Land Sdn Bhd v Sabah Economic Development Corporation & Anor (2010) MLJU 1465

<sup>6</sup> Lawyers.Com. (2012). Contract Modification. <http://contracts.lawyers.com/contracts/Contract-Modification.html>

<sup>7</sup> Supplementary Agreement No. 1 (2010). Jabatan Kerja Raya.

## 1.2 Problem Statements

It has been common scenario where SA appeared after the execution of main contract. For example, there is a SA in Public Work Department (PWD) formed after execution of main contract where the reason of SA is give extension of time regarding late payment by Employer<sup>7</sup>. Apart from that, by searching the cases regarding the SA using Lexis-Nexis Malaysia, there are more than 200 cases appeared from the year of 1915 to 2012.

By doing profiling, we can look into details what are the common reasons of SA and the legal issues arose in SA law cases. Besides, when the SA law cases have been referred to the Court, this study can determine the most significant questions arose in solving disputes regarding SA law cases.

Based on Crowe & Sias (2006), generally the issues of SA that brought to the Court are regarding to its requirements such as offer, acceptance and consideration. But, this is just a general effect of the changes of contract into SA. It does not include the criteria of the project, parties involved, different company or firms, different size, part of country with different skills and capabilities and always subject to changing environment.

Thus, the study of SA law cases will be carried out to form the profile of SA law cases due to some criteria such as types of contract, types of Court, number SA occur, the parties involved in SA, reason for implementing of SA and lastly, the Court judgments. A 'profile' can be defined as a set of data often in graphic form portraying the significant features of something by test or rating<sup>8</sup>. Since the disputes have been one of the major factors affecting cost and time of the completion and successful of the contract, it is necessary to determine the reasons of SA formed and the legal issues through the SA law cases.

By having all the information and knowledge into profiling, it will definitely give a parties involved to the contract especially in the construction industry to anticipate the problems in early stage.

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<sup>8</sup> Merriam Webster (2012). <http://www.merriam-webster.com/dictionary/profile>

### **1.3 Objective of Study**

The objective of this study is to develop the profile of SA law cases due to the criteria outlined below:

- i. Types of Contract,
- ii. Type of Court,
- iii. Number of SA Occur
- iv. The parties involved in the contract,
- v. Reason for SA, and
- vi. Court Judgments.

The profile would be used as a guideline to the parties to the contract especially in the construction industry before entering into contracts. This provision would be included in the terms and conditions of contract or as part of the conditions of acceptance.

#### **1.4 Scope and Limitation of Study**

This research will be limited to the followings:

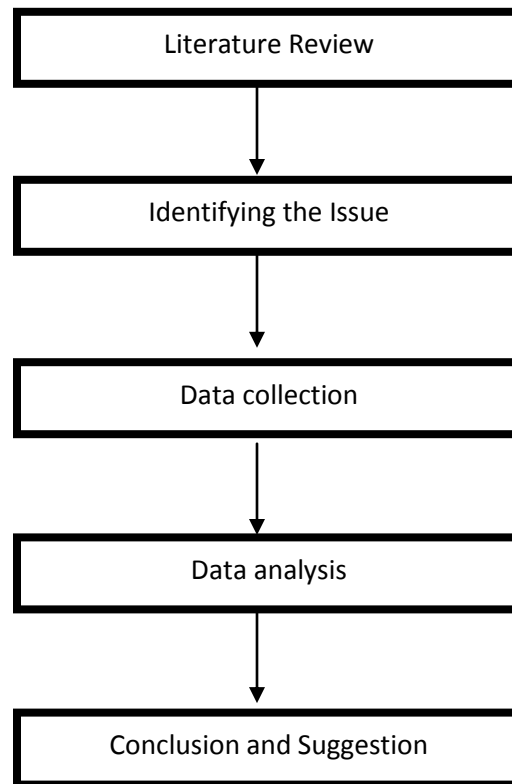
- i. Malaysian cases only.
- ii. The cases that being reported with adequate information for the profiling criteria.

#### **1.5 Significant of the Study**

This research is very important as it can be a guideline for those who are involved in the construction industry mainly to the employer and contractor especially when there is a possibility that supplementary agreement will be formed later. This study may help the parties to the contract to know when the supplementary agreement can be used and what are the issues normally arise.

## 1.6 Research Methodology

This research will be based on the systematic process in order to achieve the objective of the study. It will have five stages of identified issues such as literature review, data collection, data analysis, conclusion and suggestion.



### **1.6.1 Stage 1: Literature Review**

After the issues and the objectives have been defined, literature review related to the study field will be collected in order to give more understanding and the idea of how this objective will be achieved. All the data related will be collected from books, journals, previews research, reports and internet.

### **1.6.2 Stage 2 : Identifying The Research Issue**

The study issue arises from my working experience, intensive reading of books, journals and articles which can be attained from the UTM library, Building Construction Information Centre (BCIC) and Resource Centre of Alam Bina (RC). From study issue, the objective of the study has been identified.



### **1.6.3 Stage 3: Data Collection**

In this stage, after identifying all the background and relevant issues through literature review, legal cases based on written opinions of courts which are related to the invitation to treats will be collected from different sources such as All England Law Reports, Malayan Law Journals, Singapore Law Report and etc. via UTM library electronic database, namely Lexis-Nexis Legal Database.

### **1.6.4 Stage 4: Research Analysis**

The case study will be started by reviewing and clarifying all the facts of the selected cases.

### **1.6.5 Stage 5 : Conclusion And Recommendation**

After the discussions have been made from previous stages, I will make a conclusion from the analysis. After presenting the research findings, further study will be suggested. I will also review the whole process of the study to identify whether the objective of the study have been achieved.

**REFERENCES**

J Beatson (2002). *Anson's Law of Contract 28<sup>th</sup> Edition*.

Oxford University Press. Pg, 3,10

Briane L. Crowe & Suzanne L. Sias (2006) *Modification of Contracts*.

Shesky & Froelich Ltd, Chicago. Pg. 3,10

Lawyers.Com. (2012). *Contract Modification*.

<http://contracts.lawyers.com/contracts/Contract-Modification.html>

Lawyers.Com. (2012). *Contract Modification*.

<http://contracts.lawyers.com/contracts/Contract-Modification.html>

Merriam Webster (2012). <http://www.merriam-webster.com/dictionary/profile>

Section 2(h), Contracts Act 1950.

*Contracts Modification*. [www.acquisition.gov/far/90-34/pdf/43.pdf](http://www.acquisition.gov/far/90-34/pdf/43.pdf)

*Procedure of Issuing Unilateral Modification*.

[www.hnd.usace.army.mil/chemde/cap/s14.pdf](http://www.hnd.usace.army.mil/chemde/cap/s14.pdf)

*Contracts Modification*. [www.acquisition.gov/far/90-34/pdf/43.pdf](http://www.acquisition.gov/far/90-34/pdf/43.pdf)

*Bilateral Modification.*

<http://www.businessdictionary.com/definition/bilateral-modification.html>

*Contracts Outline: The UCC and Restatement Second of Contracts (1L).*

[http:// Contracts Outline The UCC and Restatement Second of Contracts \(1L\)  
Legal Three.htm](http://Contracts Outline The UCC and Restatement Second of Contracts (1L) Legal Three.htm)

Contracts Act 1950, Section 24

<http://www.merriam-webster.com/dictionary/profiling>

Richard Stone (2008). *The Modern Law of Contract Seventh Edition*. Taylor and Francis Group. Pg 5.

<http://www.investopedia.com/terms/s/salesandpurchase.asp#ixzz1xHHa5Ebf>