

CHALLENGES AGAINST ARBITRAL AWARDS IN MALAYSIA

TOH CHIA HUA @ TOH WEE HUA

**A thesis submitted in partial fulfilment of the
requirement for the award of the degree of
Master of Science (Construction Contract Management)**

**Faculty of Built Environment
Universiti Teknologi Malaysia**

JANUARY 2018

DEDICATION

*To my beloved Grandfather, Father and Mother,
Sisters and Brother.*

Thank you for your support, guidance and everything.

ACKNOWLEDGEMENTS

A research of this nature may not be undertaken without resources rendered by Messrs. Azman, Davidson & Co, a legal firm, which I have been working since I finished my pupillage for more than 10 years ago and which I have been allowed free access to its reasonably comprehensive library that contains collection of law reports, and thereafter copying the cases for reading and analysis. In addition to that, the firm has rendered free printing for draft and fair copy of the thesis.

Extended thanks are also due to my colleague, Mr. Mak Hon Pan, a Partner of the firm, who is practicing in the law of arbitration and who always draws my attention on decided cases on mentioned and discussed in my thesis, be they reported or unreported.

I also wish to express my sincere appreciation to my friend, Ms. Wee Chiat Khee, whom I knew when she was doing internship with the firm and now doing her pupillage at Messrs. Azman, Davidson & Co, before her admission as an advocate & solicitor of the High Court of Malaya, for helping me to check the alternative citations to the reported cases as discussed in my thesis from online database and law reports, helping me to prepare the lists of cases and helping me to proof reading my draft thesis.

Most of all, I wish to express my deep sense of gratitude to my family, especially to my parents, brother and sisters for their never-ending support and encouragement.

Last but not least, thank you to all who have made this thesis possible.

ABSTRACT

The purpose of this study is to investigate the advantages and disadvantages of having arbitration as compared to court litigation for the purposes of challenging and enforcing the arbitral award and provisions in the Arbitration Act 2005 as interpreted by the Courts in respect of certain grounds to challenge an arbitral award. Arbitration Act 2005 (Act 646) was passed and became law on 15 March 2006 by virtue of Gazette P.U. (B) 65/2006 replacing the old Arbitration Act 1952 (Act 93) is the Act of Parliament which governs the law of arbitration in Malaysia, for both domestic arbitration and international arbitration. Malaysia is unlike Singapore, where it has different Acts of Parliament separately governing each of domestic arbitration and international arbitration. The Act 646 was based on the Model Law on International Commercial Arbitration, which was adopted by the United Nations Commission on International Trade Laws (UNCITRAL) on 21 June 1995 but with certain exceptions and modifications. However, since the Act became effective, there are numerous local cases decided by the High Court and Court of Appeal in respect of the approaches governing Section 37 and Section 42 of Arbitration Act 2005. Section 42 is not part of Model Law. There are conflicting approaches by the High Court and Court of Appeal on the test to be applicable as to when an arbitral award can be challenged on reference on a question of law. It is only until recently (more than 10 years since the Arbitration Act 2005 was enacted) that the Federal Court in *Far East Holdings Bhd v Majlis Ugama Islam dan Adat Resam Melayu Pahang* appears to settle the law on Section 42 and other issues.

ABSTRAK

Kajian ini dilakukan bertujuan mengkaji terhadap kebaikan dan keburukan timbang tara dengan membandingkan litigasi mahkamah bagi tujuan mencabar dan menguatkuasakan dan peruntukan-peruntukan dalam Akta Timbang Tara seperti yang ditafsirkan oleh Mahkamah-mahkamah terhadap alasan-alasan tertentu untuk mencabar sesuatu award timbang tara. Akta Timbang Tara 2005 (Akta 646) telah diluluskan dan dijadikan undang-undang pada 15 Mar 2006 kerana warta kerajaan P.U. (B) 65/2006 yang menggantikan Akta Timbangtara 1952 (Akta 93) yang lama, yang merupakan Akta Parliamen yang menentukan undang-undang timbang tara di Malaysia, bagi kedua-dua timbang tara domestik dan timbang tara antarabangsa. Malaysia tidak sama dengan Singapura di mana ia mempunyai dua Akta Parliamen yang berlainan menentukan timbang tara domestik dan timbang tara antarabangsa. Akta 646 adalah berlandaskan *Model Law on International Commercial Arbitration*, yang diterima oleh *United Nations Commission on International Trade Laws (UNCITRAL)* pada 21 Jun 1995 tetapi dengan sedikit kekecualian dan pengubahsuaian. Walaubagaimanapun, sejak Akta tersebut berkuatkuasa, terdapatnya banyak kes-kes tempatan yang diputuskan oleh Mahkamah Tinggi dan Mahkamah Rayuan berkenaan pendekatan-pendekatan yang menentukan Seksyen 37 dan Seksyen 42 Akta Timbang Tara 2005. Terdapatnya pendekatan-pendekatan yang bercanggah oleh Mahkamah Tinggi dan Mahkamah Rayuan terhadap ujian yang dipakai tentang bila sesuatu award timbang tara boleh dicabar atas rujukan mengenai soal undang-undang berdasarkan Seksyen 42. Ia adalah sehingga kebelakangan ini (melebihi 10 tahun sejak Akta Timbang Tara 2005 digubalkan) bahawa Mahkamah Persekutuan dalam *Far East Holdings Bhd v Majlis Ugama Islam dan Adat Resam Melayu Pahang* nampaknya telah menetapkan undang-undang atas Seksyen 42 dan isu-isu lain.

CONTENTS

Chapter	Contents	Page
	Supervisor's Declaration	ii
	Declaration	iii
	Dedication	iv
	Acknowledgements	v
	Abstract	vii
	Abstrak	viii
	Contents	ix
	List of Cases (mentioned in the thesis, arranged in alphabetical order)	xii
	List of Cases (read during preparing of this thesis, arranged in chronological of dates and names of judges)	xxv
	List of Cases (read during preparation of this thesis, arranged in alphabetical order)	xxxiv
1	INTRODUCTION	1
	1.1 Background Of The Study	1
	1.2 Problem Statement	3
	1.3 Objective of Study	7
	1.4 Research Scope	7
	1.5 Significance of Study	8
	1.6 Research Methodology	9

Chapter	Contents	Page
2	WHAT IS ARBITRATION? WHAT ARE THE ADVANTAGES & DISADVANTAGES?	11
	2.1 What is Arbitration? What Are The Advantages?	11
	2.2 What Are The Disadvantages?	19
3	CHALLENGING AWARD UNDER OLD LAW REGIME	34
	3.1. Introduction on Section 24 Arbitration Act 1952	34
	3.2 What Is Misconduct? What Is Error Of Law Patent On The Face Of The Award?	35
4	NEW ARBITRATION LAW REGIME: ARBITRATION ACT 2005	59
	4.1. Background To Enactment of New Law	59
	4.2. Provisions Governing Challenges On Arbitral Award	61
	4.3. Inconsistency of Approaches In Interpreting Section 8 – Challenges Filed Out of Time	63
	4.4. Successful Instances of Challenge Under Section 37 of Arbitration Act 2005 On Grounds of ‘Excess of Jurisdiction’ and ‘Breach of Natural Justice’	68
	4.5. Unsuccessful Instances of Challenge Under Section 37 of Arbitration Act 2005	73
	4.6. Question Of Law Under Section 42 Arbitration Act 2005	84

Chapter	Contents	Page
	4.7. Conflicting Approaches By High Court on Section 42	90
	4.8. Conflicting Approaches By The Court of Appeal On Section 42	102
	4.9. Developments of Law in 2017	109
5	CONCLUSION AND RECOMMENDATION	114
	References	117

LIST OF CASES (mentioned in the thesis, arranged in alphabetical order)

No.	Case Name	Page
1.	Absalom Ltd v Great Western (London) Garden Village Society Ltd [1933] AC 592	36, 55
2.	AC Ho Sdn Bhd v Ng Kee Seng (trading as Konsultant Senicipta) [1998] 2 AMR 1721; [1998] 2 MLJ 393; [1997] 2 MLRA 392	93
3.	African & Eastern (Malaya), Ltd v White, Palmer & Co, Ltd (1930) 36 Llyod's List Law Report 113	28, 38
4.	Ahmani Sdn. Bhd. v Petronas Penapisan (Melaka) Sdn. Bhd. & Other Cases [2015] 9 CLJ 782; [2015] 11 MLJ 32; [2015] MLRH 99	68, 70, 96
5.	Ahong Construction (S) Pte Ltd v United Boulevard Pte Ltd. [2000] 1 SLR 749	87
6.	Ajwa for Food Industries Co (MIGOP), Egypt v Pacific Inter-Link Sdn. Bhd. & Another Appeal [2013] 2 CLJ 395; [2013] 5 MLJ 625; [2013] MLJU 689; [2012] 3 MLRA 383	73
7.	AKN and Another v ALC and Others and Other Appeals [2015] SGCA 18; [2015] 3 SLR 488	13
8.	Albilt Resources Sdn. Bhd. v Casaria Construction Sdn. Bhd. [2010] 3 AMR 721; [2010] 7 CLJ 785; [2010] 3 MLJ 656; [2009] 4 MLRA 488	59

9. Arab-Malaysian Finance Bhd v Steven Phoa Cheng Loon & Ors and other appeals 31
[2003] 2 AMR 6; [2003] 1 CLJ 585; [2003] 1 MLJ 567; [2002] 2 MLRA 319
10. Aras Jalinan Sdn. Bhd. v Tipco Asphalt Public Company Ltd. & Ors 60, 64
[2008] 4 AMR 533; [2008] 5 CLJ 654; [2008] 1 MLRH 782
11. Archer Daniels Midland Co. Iwn TTH Global (M) Sdn. Bhd. 17
[2016] LNS 1282; [2017] 7 MLJ 325; [2016] MLRHU 1170
12. Asean Bintulu Fertilizer Sdn. Bhd. v Wekajaya Sdn. Bhd. 21, 27
[2016] 1 LNS 1089; [2016] MLJU 354; [2016] MLRHU 677
13. Asean Bintulu Fertilizer Sdn. Bhd. v Wekajaya Sdn. Bhd. 22
[2017] 7 AMR 421; [2017] 1 LNS 1574; [2017] MLJU 1530; [2017] MLRAU 1
14. Asean Security Paper Mills Sdn. Bhd. v CGU Insurance Bhd. 32
[2007] 2 AMR 329; [2007] 2 CLJ 1; [2007] 2 MLJ 301; [2007] 1 MLRA 12
15. Associated Provincial Pictures Houses Ltd v Wednesbury Corporation 89
[1948] 1 KB 223
16. Associated Tractors Sdn Bhd v Woo Sai Wa 33
[1996] 1 LNS 123; [1997] 5 MLJ 441; [1996] 4 MLRH 21
17. Attorney-General for Manitoba v Kelly and other 37
[1922] 1 AC 268

- | | | |
|-----|--|---------------------|
| 18. | Awangku Dewa Pgn Momin & Ors v Superintendent of Lands and Surveys, Limbang Division
[2015] AMEJ 328; [2015] 3 CLJ 1; [2015] 3 MLJ 161; [2015] 2 MLRA 299 | 105 |
| 19. | Binastra Ablebuild Sdn. Bhd. v JPS Holdings Sdn. Bhd. & Another Case
[2017] 7 AMR 105; [2017] 1 LNS 1248; [2017] MLJU 1260; [2017] 6 MLRH 11 | 20 |
| 20. | BLC v BLB
[2014] 4 SLR 79 | 14 |
| 21. | British Westinghouse Electric & Manufacturing Co Ltd v Underground Railways Co of London Ltd
[1912] AC 673 | 36 |
| 22. | Cairn Energy India Pty Ltd.& Anor v The Government of India
[2010] 2 CLJ 420; [2009] 6 MLJ 795; [2009] 3 MLRA 366 | 12, 29, 36 |
| 23. | Canada (Director of Investigation and Research) v Southam Inc,
[1997] 1 SCR 748 | 89 |
| 24. | Canterbury Pipe Lines v Christchurch Drainage
[1979] 16 BLR 76 | 50 |
| 25. | Chain Cycle Sdn. Bhd. v Government of Malaysia
[2014] 10 CLJ 196; [2015] 9 MLJ 214; [2014] MLRHU 649 | 73 |
| 26. | Chain Cycle Sdn. Bhd. v Kerajaan Malaysia
[2015] AMEJ 1479; [2016] 1 CLJ 218; [2016] 1 MLJ 681; [2016] 1 MLRA 295 | 62, 73,
107, 109 |
| 27. | Champsey Bhara Co v The Jivraj Balloo Spinning & Weaving Co Ltd
1923 AIR PC 66 | 39 |

28. Chow Yee Way & Anor v Choo Ah Pat 31
[1978] 1 LNS 32; [1978] 2 MLJ 4; [1978] 1 MLRA 461
29. Christopher Martin Boyd v Deb Brata Das Gupta 14
[2015] 1 AMR 621; [2014] 9 CLJ 887; [2014] MLJU 1817; [2015] 1 MLRA 173
30. Covington Marine Corp and others v Xiamen Shipbuilding Industry Co Ltd. 88
[2005] EWHC 2912 (Comm)
31. Crystal Realty Sdn. Bhd. v Tenaga Insurance (Malaysia) Sdn. Bhd. 53, 102
[2008] 3 CLJ 791; [2007] 2 MLRA 586
32. Dato' Dr Muhammad Ridzuan bin Mohd Salleh & Anor v Syarikat Air Terengganu Sdn. Bhd. 61, 65, 67, 114
[2012] 3 MLJ 737; [2012] 2 MLRH 430
33. Dato' Teong Teck Kim & Ors v Dato' Teong Teck Leng 29
[1996] 1 AMR 737; [1996] 2 CLJ 249; [1996] 1 MLJ 178; [1995] 2 MLRA 292
34. Eastern & Oriental Hotel (1951) Sdn. Bhd. v Ellarious George Fernandez & Anor 32
[1989] 1 MLJ 35; [1988] 2 CLJ 734; [1988] 1 CLJ Rep 50; [1988] 1 LNS 161; [1987] 1 MLRA 665
35. Exceljade Sdn. Bhd. v Bauer (Malaysia) Sdn. Bhd. 85, 90, 103, 104, 106
[2014] 1 AMR 253; [2013] 1 LNS 1470; [2013] MLJU 1202; [2013] MLRHU 986
36. Fajar Menyensing Sdn. Bhd. v Angsana Sdn. Bhd. 52
[1998] 2 AMR 1530; [1998] 1 LNS 88; [1998] 6 MLJ 80; [1998] 5 MLRH 536
37. Far East Holdings Bhd & Anor v Majlis Ugama Islam Dan Adat Resam Melayu Pahang & Another Appeal 25, 27, 68, 71, 106, 107
[2015] AMEJ 1144; [2015] 8 CLJ 58; [2015] 4 MLJ 766; [2015] MLRAU 255

38. Far East Holdings Bhd v Majlis Ugama Islam dan Adat Resam Melayu Pahang [2017] 8 AMR 313; [2017] 1 LNS 1695; [2018] 1 MLJ 1; [2017] MLRAU 1 6, 25, 27, 71, 88, 110, 111, 115
39. Fortuna Holdings Pty Ltd v The Deputy Commissioner of Taxation [1978] VR 83 19
40. Ganda Edible Oils Sdn. Bhd. v Transgrain B.V. [1987] 2 CLJ 394; [1987] CLJ (Rep) 95; [1988] 1 MLJ 428; [1987] 1 MLRA 235 38, 43, 44, 53
41. Gan Yook Chin (P) & Anor v Lee Ing Chin @ Lee Teck Seng & Ors [2004] 6 AMR 781; [2004] 4 CLJ 309; [2005] 2 MLJ 1; [2004] 2 MLRA 1 31, 32
42. Geden Operations Ltd. v Dry Bulk Handy Holdings Inc M/V “Bulk Uruguay” [2014] EWHC 885 (Comm) 88
43. Georges SA v Trammo Gas Ltd (The Belarus) [1993] 1 Lloyd’s Rep 215 104
44. Globe Engineering Sdn. Bhd. v Bina Jati Sdn. Bhd. [2014] 4 AMR 793; [2014] 7 CLJ 1; [2014] 5 MLJ 145 75
45. Gold and Resource Development (NZ) Ltd v Doug Hood Limited [2000] 3 NZLR 318 105
46. Government of the Lao People’s Democratic Republic v Thai-Lao Lignite Co Ltd. [2011] 1 LNS 1903 65, 66, 67, 114
47. Government of the Lao People’s Democratic Republic v Thai-Lao Lignite Co Ltd & Anor [2011] 5 AMR 753; [2012] 10 CLJ 399; [2011] MLJU 361; [2011] 5 MLRH 8 65, 66, 67, 114

48. Government of the Lao People’s Democratic Republic v Thai-Lao Lignite Co Ltd. 68
[2013] 2 AMR 375; [2012] 10 CLJ 399; [2013] 3 MLJ 409; [2013] MLJU 165
49. Government of Kelantan v Duff Development Co Ltd 37
[1923] AC 395
50. Gurbachan Singh Bagawan Singh & Ors v Vellasamy Pennusamy & Other Appeals 83
[2015] 2 AMR 1; [2015] 1 CLJ 719; [2015] 1 MLJ 773; [2015] 1 MLRA 107
51. Hartela Contractors Ltd v Hartecon JV Sdn. Bhd. & Anor 44, 52
[1999] 2 AMR 2501; [1999] 2 CLJ 788; [1999] 2 MLJ 481; [1999] 1 MLRA 201
52. Henderson v Foxworth Investment Ltd and Another 31
[2014] UKSC 41; 2014 SCLR 692; [2014] WLR(D) 290; 2014 SC (UKSC) 203; 2014 SLT 775; [2014] 1 WLR 2600; 2014 GWD 23-437
53. Hodgkinson v Fernie 36
3 CB (NS) 189; (1857) 3 CBNS 189; 140 ER 712
54. Intelek Timur Sdn. Bhd. v Future Heritage Sdn. Bhd. 29, 35, 41,
[2004] 2 AMR 481; [2004] 1 CLJ 743; [2004] 1 MLJ 52, 55, 89
401; [2004] 1 MLRA 50
55. Invar Realty Pte Ltd. v JDC Corp. 86
[1988] 1 SLR 444
56. Ipoh Tower Sdn. Bhd. v Taki Engineering Sdn. Bhd. 100
(and Another Originating Summons)
[2016] 4 AMR 569; [2016] LNS 874; [2016] MLJU 1509; [2016] MLRHU 446
57. JHW Reels Sdn. Bhd. v Syarikat Borcos Shipping Sdn. Bhd. 65, 114
[2012] 6 AMR 47; [2013] 7 CLJ 249; [2012] MLRHU 1544

58. Johor Coastal Development Sdn. Bhd. v Constrajaya Sdn. Bhd. 99
[2009] 6 AMR 733; [2009] 4 CLJ 56; [2009] 4 MLJ 445; [2009] 1 MLRA 654
59. Kah Seng Construction Sdn, Bhd, v Selsin Development Sdn. Bhd. 50
[1997] 1 CLJ 448; [1996] MLJU 359
60. Karpal Singh a/l Ram Singh v DP Vijandran 26
[2003] 2 AMR 617; [2003] 2 CLJ 77; [2003] 2 MLJ 385; [2003] 1 MLRA 204
61. Kejuruteraan Bintai Kindeko Sdn. Bhd. v Serdang Baru Properties 97, 109
[2017] 4 AMR 216; [2017] 1 LNS 693; [2017] MLJU 528; [2017] 4 MLRH 546
62. Kembang Serantau Sdn. Bhd. v Jeks Engineering Sdn. Bhd. 65, 66, 114
[2016] 1 AMR 261; [2016] 2 CLJ 427; [2015] MLJU 1189; [2015] MLRHU 1032
63. Kerajaan Malaysia v Perwira Bintang Holdings Sdn. Bhd. 6, 68, 77, 79, 95, 96, 100, 103, 106, 107, 109, 111
[2014] AMEJ 1550; [2015] 1 CLJ 617; [2015] 6 MLJ 126; [2015] 2 MLRA 92
64. Kershaw Mechanical Services Ltd v Kendrick Construction Ltd. 88
[2006] All ER (D) 21 (Mar)
65. King and Duveen 37, 55
[1913] 2 KB 32
66. Kluang Health Care Sdn Bhd v Lee Yong Beng & Another Case 73
[2016] 1 CLJ 281; [2015] MLJU 773; [2015] MLRHU 763

67. Kodros Shipping Corporation v Empresa Cubana de Fletes (No 2) (“The Evia”) [1983] 1 AC 736 92
68. Lembaga Kemajuan Ikan Malaysia v WJ Construction Sdn. Bhd. [2013] 8 CLJ 655; [2013] 5 MLJ 98; [2013] 5 MLRH 370 94, 95, 104
69. Len Min Kong v United Malayan Banking Corp Bhd. and another appeal [1998] 3 AMR 2641; [1998] 2 CLJ 879; [1998] 2 MLJ 478; [1997] 2 MLRA 441 32
70. Lim Chor Ching & Anor v Idris Abdul Karim and Anor Appeal [1998] 3 AMR 3182; [1998] 3 CLJ Supp 145; [1998] 1 MLRH 367 32
71. Loo Hon Kong v Loo Kim Lim @ Loo Kim Leong [2004] 4 AMR 591; [2004] 4 CLJ 1; [2004] MLRA 711 32
72. Lubenham Fidelities & Investment Co Ltd v South Pembrokeshire District Council & Wigley Fox Partnership 33 BLR 39 50
73. Magna Prima Construction Sdn. Bhd. v Bina BMK Sdn. Bhd. and Another Case [2015] AMEJ 559; [2015] 11 MLJ 841; [2015] 3 MLRH 116 68, 69, 100
74. Maimunah Deraman v Majlis Perbandaran Kemaman [2011] 9 CLJ 689; [2009] MLJU 1697; [2010] 3 MLRH 938 103
75. Majlis Amanah Rakyat v Kausar Corp Sdn. Bhd. [2011] 3 AMR 315; [2009] 1 LNS 1766; [2009] MLJU 1697; [2009] 14 MLRH 331 94, 103, 104

76. *Maju Holdings Sdn. Bhd. v Fortune Wealth (H-K) Ltd and other appeals* 32
 [2004] 6 AMR 319; [2004] 4 CLJ 282; [2004] 4 MLJ 105; [2004] 1 MLRA 832
77. *Malayan Flour Mill Bhd. v Raja Lope & Tan Co.* 20
 [2000] 3 AMR 3750; [2000] 7 CLJ 288; [2000] 6 MLJ 591; [2002] 2 MLRH 702
78. *Malaysian Newsprint Industries Sdn. Bhd. v Bechtel International, Inc & Anor* 59
 [2008] 4 AMR 73; [2008] 1 LNS 222; [2008] 5 MLJ 254; [2008] 5 MLRH 178
79. *MMC Engineering Group Bhd & Anor v Wayss & Freytag (M) Sdn. Bhd.* 85, 94, 96, 100, 111
 [2015] AMEJ 1096; [2015] 1 LNS 703; [2015] 10 MLJ 689; [2015] MLRHU 514
80. *Mobikom Sdn. Bhd. v Inmiss Communications Sdn. Bhd.* 19
 [2007] 3 AMR 195; [2007] 3 CLJ 295; [2007] 3 MLJ 316; [2006] 2 MLRA 700
81. *MRI Trading AG v Erdenet Mining Corporation LLC* 88
 [2012] EWHC 1988 (Comm)
82. *Northern Elevator Manufacturing Sdn. Bhd. v United Engineers (Singapore) Pte Ltd (No 2)* 86
 [2004] 2 SLR 494
83. *Pembinaan LCL Sdn. Bhd. v SK Styrofoam (M) Sdn. Bhd.* 29, 30, 46
 [2007] 3 AMR 124; [2007] 7 CLJ 185; [2007] 4 MLJ 113; [2007] 1 MLRA 251
84. *Perbadanan Pembangunan Pulau Pinang v Trikkon Construction Sdn. Bhd.* 100
 [2012] 10 CLJ 111; [2012] 2 MLJ 28; [2012] 3 MLRA 264

85. Perembun (M) Sdn. Bhd. v Bina BMK Sdn. Bhd. and Another Case 73
[2015] 11 MLJ 447; [2015] MLRHU 410
86. Petronas Penapisan (Melaka) Sdn. Bhd. v Ahmani Sdn. Bhd. 68, 71, 108, 109
[2016] 2 AMR 264; [2016] 3 CLJ 403; [2016] 2 MLJ 697; [2016] 2 MLRA 407
87. Pioneer Shipping Ltd v BTP Tioxide Ltd (“The Nema”) 92
[1982] AC 724
88. PT Prima International Development v Kempinski Hotels SA and Other Appeals 80
[2012] SGCA 35; [2012] 4 SLR 98
89. Puri Construction Pvt Ltd v Union of India 29, 46, 52
AIR 1989 SC 777
90. Sami Mousawi-Utama Sdn. Bhd. v Kerajaan Negeri Sarawak 58
[2004] 2 AMR 652; [2004] 2 CLJ 186; [2004] 2 MLJ 414; [2004] 1 MLRA 110
91. Sanlaiman Sdn. Bhd. v Kerajaan Malaysia 94, 103, 107
[2013] 2 AMR 523; [2012] 1 LNS 796; [2013] 3 MLJ 755; [2012] MLRHU 1743
92. SDA Architects (sued as a firm) v Metro Millenium Sdn. Bhd. 79, 95, 96, 102, 109
[2014] 3 AMR 343; [2014] 3 CLJ 632; [2014] 2 MLJ 627; [2014] 2 MLRA 377
93. Selva Kumar a/l Murugiah v Thiagarajah a/l Retnasamy 99
[1995] 2 AMR 1097; [1995] 2 CLJ 374; [1995] 1 MLJ 817; [1995] 1 MLRA 188

94. Sharikat Pemborong Pertanian & Perumahan v Federal Land Development Authority 2, 29, 30, 35, 40, 42, 44, 51
[1969] 1 LNS 172; [1971] 2 MLJ 210; [1969] 1 MLRH 233
95. Taman Bandar Baru Masai Sdn. Bhd. v Dindings Corporation Sdn. Bhd. 73, 103
[2010] 2 AMR 151; [2010] 5 CLJ 83; [2009] MLJU 0793; [2009] 4 MLRH 171
96. Thai-Lao Lignite Co Ltd & Anor v Government of The Lao People's Democratic Republic 69
[2014] AMEJ 0665; [2014] 1 LNS 525; [2014] 1 MLRAU 1
97. Thai-Lao Lignite Co Ltd & Anor v Government of The Lao People's Democratic Republic 69
[2017] 6 AMR 219; [2017] 9 CLJ 273; [2017] MLJU 1196; [2017] 5 MLRA 104
98. The Government of India v Cairn Energy India Pty Ltd & Anor 73
[2014] 9 MLJ 149; [2013] MLRHU 1058
99. The Government of India v Cairn Energy India Pty Ltd.& Anor 29, 35, 40, 54, 58, 79
[2011] 6 AMR 573; [2012] 3 CLJ 423; [2011] 6 MLJ 441; [2012] 3 MLRA 214
100. The Government of Sarawak v Sami Mousawi-Utama Sdn. Bhd. 57
[2000] 7 CLJ 228; [2000] 6 MLJ 433; [2000] 2 MLRH 654
101. Thomas v Thomas 30, 31
[1947] AC 484
102. Tjong Very Sumito and Others v Antig Investments Pte Ltd 13, 17, 78
[2009] 4 SLR 732

103. Tridant Engineering (M) Sdn Bhd v Ssangyong Engineering and Construction Co Ltd. 60, 65, 73, 84
[2017] 2 CLJ 393; [2016] 6 MLJ 166; [2017] 3 MLRA 575
104. Triumph City Development Sdn. Bhd. v Kerajaan Negeri Selangor Darul Ehsan 25, 66, 114
[2017] 8 AMR 411; [2017] 1 LNS 1511; [2017] MLJU 1518; [2017] MLRHU 1078
105. Tune Insurance Malaysia Berhad (formerly known as Orient Capital Assurance Berhad) & Anor v Messrs. K Sila Dass & Partners 99
[2015] 4 AMR 741; [2015] 9 CLJ 93; [2016] 12 MLJ 571; [2015] 6 MLRH 253
106. Union of India v Rallia Ram 29, 52
AIR 1963 SC 1685
107. Vinava Shipping Co. Ltd. v Finelvet A.G. (The Chrysalis) 88, 90, 108
[1983] 1 WLR 1469; [1983] 2 All ER 658; [1983] 1 Lloyd's Rep 503, QBD
108. Watt v Thomas 30, 31
[1947] AC 484
109. Wuhan Ocean Economic & Technical Cooperation Co. Ltd. and another v Schiffahrts-Gesellschaft "Hansa Murcia" MBH & Co KG 88
[2012] EWHC 3104 (Comm)
110. Yoong Sze Fatt v Pengkalen Securities Sdn Bhd 31
[2011] 1 CLJ 484; [2011] 4 MLJ 805; [2009] 3 MLRA 112
111. Zenbay Sdn. Bhd. v Yong Choo Kui Shipyard Sdn. Bhd. 94
[2015] 6 AMR 883; [2015] 10 CLJ 924; [2015] MLJU 907; [2015] MLRHU 1394

112. Zermalt Holdings SA v Nu-Life Upholstery Repairs Ltd.
[1985] EGLR 14 78

**LIST OF CASES (read during preparation of this thesis, arranged in
chronological of dates and name of judges)**

Date	Case Name	Judge Name
24-6-1971	Sharikat Pemborong Pertanian & Perumahan v Federal Land Development Authority [1969] 1 LNS 172; [1971] 2 MLJ 210; [1969] 1 MLRH 233	Raja Azlan Shah J
23-11-1982	Vinava Shipping Co. Ltd. v Finelvet A.G. (The Chrysalis) [1983] 1 WLR 1469; [1983] 2 All ER 658; [1983] 1 Lloyd's Rep 503, QBD	Mustill J
1-8-1987	Ganda Edible Oils Sdn. Bhd. v Transgrain B.V. [1987] 2 CLJ 394; [1987] CLJ (Rep) 95; [1988] 1 MLJ 428; [1987] 1 MLRA 235	Syed Agil Barakbah SCJ
16-4-1999	Hartela Contractors Ltd v Hartecon JV Sdn. Bhd.& Anor [1999] 2 AMR 2501; [1999] 2 CLJ 788; [1999] 2 MLJ 481; [1999] 1 MLRA 201	Gopal Sri Ram JCA
1-11-2002	Future Heritage Sdn. Bhd. v Intelek Timur Sdn. Bhd. [2003] 1 AMR 185; [2003] 1 CLJ 103; [2003] 1 MLJ 49; [2002] 2 MLRA 224	Richard Malanjum JCA
19-1-2004	Intelek Timur Sdn. Bhd. v Future Heritage Sdn. Bhd. [2004] 2 AMR 481; [2004] 1 CLJ 743; [2004] 1 MLJ 401; [2004] 1 MLRA 50	Siti Norma Yaakob FCJ
20-1-2004	Sami Mousawi-Utama Sdn. Bhd. v Kerajaan Negeri Sarawak [2004] 2 AMR 652; [2004] 2 CLJ 186; [2004] 2 MLJ 414; [2004] 1 MLRA 110	Rahmah Hussain JCA

13-3-2007	Pembinaan LCL Sdn. Bhd. v SK Styrofoam (M) Sdn. Bhd. [2007] 3 AMR 124; [2007] 7 CLJ 185; [2007] 4 MLJ 113; [2007] 1 MLRA 251	Gopal Sri Ram JCA
9-5-2008	Aras Jalinan Sdn. Bhd. v Tipco Asphalt Public Company Ltd. &Ors [2008] 4 AMR 533; [2008] 5 CLJ 654; [2008] 1 MLRH 782	Badariah Sahamid JC
6-1-2009	Usahasama SPNB-LTAT Sdn. Bhd. v Borneo Synergy (M) Sdn. Bhd. [2009] 2 AMR 647; [2009] 7 CLJ 779; [2009] 2 MLJ 308; [2009] 2 MLRH 55	Ramly Ali J
11-9-2009	Taman Bandar Baru Masai Sdn. Bhd. v Dindings Corporation Sdn. Bhd. [2010] 2 AMR 151; [2010] 5 CLJ 83; [2009] MLJU 0793 [2009] 4 MLRH 171	Hamid Sultan Abu Backer JC
30-9-2009	Albilt Resources Sdn. Bhd. v Casaria Construction Sdn. Bhd. [2010] 3 AMR 721; [2010] 7 CLJ 785; [2010] 3 MLJ 656; [2009] 4 MLRA 488	Low Hop Bing JCA
13-10-2009	Cairn Energy India Pty Ltd. & Anor v The Government of India [2010] 2 CLJ 420; [2009] 6 MLJ 795; [2009] 3 MLRA 366	Suriyadi Halim Omar JCA
30-11-2009	Majlis Amanah Rakyat v Kausar Corp Sdn. Bhd. [2011] 3 AMR 315; [2009] 1 LNS 1766; [2009] MLJU 1697; [2009] 14 MLRH 331	Mohamad Ariff Md Yusof J
30-7-2010	Maimunah Deraman v Majlis Perbandaran Kemaman [2011] 9 CLJ 689; [2009] MLJU 1697; [2010] 3 MLRH 938	Mohamad Ariff Yusof J
17-1-2011	Cahaya Kelang Constructon Sdn. Bdn. v Worldwide Holdings Sdn. Bhd. [2011] 1 LNS 127; [2011] 3 MLRH 57	Hamid Sultan Bin Abu Backer J

- 16-5-2011 Ajwa for Food Industries Co (MIGOP), Egypt v Pacific Inter-Link Sdn. Bhd.& Another Appeal [2013] 2 CLJ 395; [2013] 5 MLJ 625; [2013] MLJU 689; [2012] 3 MLRA 383 Ramly Ali JCA
- 26-7-2011 Government of the Lao People's Democratic Republic v Thai-Lao Lignite Co Ltd. [2011] 1 LNS 1903 Ramly Ali JCA
- 11-10-2011 The Government of India v Cairn Energy India Pty Ltd.& Anor [2011] 6 AMR 573; [2012] 3 CLJ 423; [2011] 6 MLJ 441; [2012] 3 MLRA 214 Richard Malanjum CJ (Sabah & Sarawak)
- 16-12-2011 Food Ingredients LLC v Pacific Inter-Link Sdn. Bhd. and Another Applications [2011] 1 LNS 1631; [2012] 8 MLJ 585; [2012] 3 MLRH 402 Mary Lim J
- 14-3-2012 Dato' Dr Muhammad Ridzuan bin Mohd Salleh & Anor v Syarikat Air Terengganu Sdn. Bhd. [2012] 3 MLJ 737; [2012] 2 MLRH 430 Lee Swee Seng JC
- 27-3-2012 Lembaga Kemajuan Terengganu Tengah v Mendza Builder Sdn. Bhd. [2012] 1 LNS 248; [2013] 2 MLJ 265; [2012] 3 MLRA 1 Low Hop Bing JCA
- 3-5-2012 Kelana Erat Sdn. Bhd. v Niche Properties Sdn. Bhd. and Another Application [2013] 4 CLJ 1172; [2012] 5 MLJ 809; [2012] 4 MLRH 481 Lee Swee Seng JC
- 18-5-2012 JHW Reels Sdn. Bhd. v Syarikat Borcos Shipping Sdn. Bhd. [2012] 6 AMR 47; [2013] 7 CLJ 249; [2012] MLRHU 1544 Mohamad Ariff Md Yusof J

7-8-2012	Twin Advance (M) Sdn. Bhd. v Polar Electro Europe BV [2013] 3 CLJ 294; [2013] 7 MLJ 811; [2012] MLRHU 1547	Chew Soo Ho JC
20-9-2012	Sanlaiman Sdn. Bhd. v Kerajaan Malaysia [2013] 2 AMR 523; [2012] 1 LNS 796; [2013] 3 MLJ 755; [2012] MLRHU 1743	Mohamad Ariff Md Yusof J
27-12-2012	Government of the Lao People's Democratic Republic v Thai-Lao Lignite Co Ltd. [2013] 2 AMR 375; [2012] 10 CLJ 399	Lee Swee Seng JC
1-3-2013	[2013] 3 MLJ 409; [2013] MLJU 165	
25-2-2013	AV Asia Sdn Bhd v Pengarah Kuala Lumpur Regional Centre for Arbitration & Anor [2013] 10 CLJ 115; [2013] MLJU 183; [2013] 6 MLRH 175	Mary Lim J
19-3-2013	Lembaga Kemajuan Ikan Malaysia v WJ Construction Sdn. Bhd. [2013] 8 CLJ 655; [2013] 5 MLJ 98; [2013] 5 MLRH 370	Mary Lim J
16-3-2013	Ajwa for Food Industries Co (MIGOP), Egypt v Pacific Inter-Link Sdn. Bhd. & Another Appeal [2013] 4 AMR 789; [2013] 7 CLJ 18; [2013] 5 MLJ 625; [2013] 5 MLRA 85	Zulkefli Makinudin CJ (Malaya)
18-11-2013	The Government of India v Cairn Energy India Pty Ltd & Anor [2014] 9 MLJ 149; [2013] MLRHU 1058	Mary Lim J
29-11-2013	Exceljade Sdn. Bhd. v Bauer (Malaysia) Sdn. Bhd. [2014] 1 AMR 253; [2013] 1 LNS 1470; [2013] MLJU 1202; [2013] MLRHU 986	Nallini Pathmanathan J
20-1-2014	SDA Architects (sued as a firm) v Metro Millenium Sdn. Bhd. [2014] 3 AMR 343; [2014] 3 CLJ 632; [2014] 2 MLJ 627; [2014] 2 MLRA 377	Hamid Sultan JCA; Aziah Ali JCA

- 29-5-2014 Thai-Lao Lignite Co Ltd & Anor v Mohd
Government of The Lao People's Democratic Republic Hishamudin
Yunus JCA
[2014] AMEJ 0665; [2014] 1 LNS 525;
[2014] 1 MLRAU 1
- 29-5-2014 Telekom Malaysia Bhd. v Eastcoast Nallini
Technique (M) Sdn. Bhd. and Another Pathmanathan J
summons
[2014] 6 CLJ 1067; [2014] 1 LNS 657;
[2014] 11 MLJ 525' [2014] 5 MLRH 434
- 21-8-2014 Chain Cycle Sdn. Bhd. v Government of Azizul Azmi JC
Malaysia
[2014] 10 CLJ 196; [2015] 9 MLJ 214;
[2014] MLRHU 649
- 3-11-2014 Christopher Martin Boyd v Deb Brata Das Raus Sharif
Gupta PCA
[2015] 1 AMR 621; [2014] 9 CLJ 887; [2014]
MLJU 1817; [2015] 1 MLRA 173
- 9-12-2014 Kerajaan Malaysia v Perwira Bintang Mohamad Ariff
Holdings Sdn. Bhd. Yusof JCA
[2014] AMEJ 1550; [2015] 1 CLJ 617;
[2015] 6 MLJ 126; [2015] 2 MLRA 92
- 6-2-2015 Magna Prima Construction Sdn. Bhd. v Bina Mary Lim J
BMK Sdn. Bhd. and Another Case
[2015] AMEJ 559; [2015] 11 MLJ 841;
[2015] 3 MLRH 116
- 2-3-2015 Murray & Roberts Australia Pty Ltd. v Earth Wong Kian
Support Company (SEA) Sdn. Bhd. Kheong JC
[2015] 3 AMR 152; [2015] 6 CLJ 649; [2015]
1 LNS 134; [2015] 3 MLRH 578
- 11-2-2015 Awangku Dewa Pgn Momin & Ors v Mohd
Superintendent of Lands and Surveys, Hishamudin
Limbang Division Yunus JCA
[2015] AMEJ 328; [2015] 3 CLJ 1; [2015] 3
MLJ 161; [2015] 2 MLRA 299

- 11-5-2015 MMC Engineering Group Bhd & Anor v Mary Lim J
Wayss & Freytag (M) Sdn. Bhd.
[2015] AMEJ 1096; [2015] 1 LNS 703;
[2015] 10 MLJ 689; [2015] MLRHU 514
- 27-5-2015 Tune Insurance Malaysia Berhad (formerly Hasnah
known as Orient Capital Assurance Berhad) Mohammed
& Anor v Messrs. K Sila Dass & Partners Hashim J
[2015] 4 AMR 741; [2015] 9 CLJ 93; [2016]
12 MLJ 571; [2015] 6 MLRH 253
- 31-5-2015 Pasukhas Constructions Sdn. Bhd. & Anor v Lau Bee Lan J
MTM Millenium Holdings Sdn. Bhd.
[2015] 4 AMR 377; [2015] 1 LNS 591;
[2015] MLJU 957; [2015] 5 MLRH 237
- 3-6-2015 Perembun (M) Sdn. Bhd. v Bina BMK Sdn. Mary Lim J
Bhd. and Another Case [2015] 11 MLJ 447;
[2015] MLRHU 410
- 10-6-2015 Ahmani Sdn. Bhd. v Petronas Penapisan Mary Lim J
(Melaka) Sdn. Bhd. & Other Cases
[2015] 9 CLJ 782; [2015] 11 MLJ 32; [2015]
MLRH 99
- 8-7-2015 The Government of India v Cairn Energy David Wong
India Pty Ltd & 2 Others Dak Wah JCA
[2015] MLJU 2164
- 28-7-2015 Zenbay Sdn. Bhd. v Yong Choo Kui Shipyard Wong Kian
Sdn. Bhd. Kheong JC
[2015] 6 AMR 883; [2015] 10 CLJ 924;
[2015] MLJU 907; [2015] MLRHU 1394
- 31-7-2015 Far East Holdings Bhd & Anor v Majlis Aziah Ali JCA
Ugama Islam Dan Adat Resam Melayu
Pahang & Another Appeal
[2015] AMEJ 1144; [2015] 8 CLJ 58; [2015]
4 MLJ 766; [2015] MLRAU 255
- 10-8-2015 Brunfield Project Management Sdn. Bhd. v Idrus Bin Harun
Ingeniur Bersekutu Consulting Engineers JCA
[2015] 1 LNS 1546; [2015] MLJU 2203

10-9-2015	Kluang Health Care Sdn Bhd v Lee Yong Beng & Another Case [2016] 1 CLJ 281; [2015] MLJU 773; [2015] MLRHU 763	Mary Lim J
23-9-2015	Pembinaan BLT Sdn. Bhd. v Debessa Development Sdn. Bhd. [2015] 6 AMR 198; [2015] 1 LNS 788; [2015] MLRHU 739	Azizul Azmi Adnan JC
8-10-2015	Chain Cycle Sdn. Bhd. v Kerajaan Malaysia [2015] AMEJ 1479; [2016] 1 CLJ 218; [2016] 1 MLJ 681; [2016] 1 MLRA 295	Varghese George JCA
13-10-2015	Sigur Ros Sdn. Bhd. v Master Mulia Sdn. Bhd. [2015] 1 LNS 1094; [2015] MLRHU 1405	Wong Kian Kheong JC
19-11-2015	Kembang Serantau Sdn. Bhd. v Jeks Engineering Sdn. Bhd. [2016] 1 AMR 261; [2016] 2 CLJ 427; [2015] MLJU 1189; [2015] MLRHU 1032	Mary Lim J
12-2-2016	Ipoh Tower Sdn. Bhd. v Taki Engineering Sdn. Bhd. (and Another Originating Summons) [2016] 4 AMR 569; [2016] LNS 874; [2016] MLJU 1509	Mary Lim Thiam Suan J
12-6-2016	[2016] MLRHU 446	
17-2-2016	Petronas Penapisan (Melaka) Sdn. Bhd. v Ahmani Sdn. Bhd. [2016] 2 AMR 264; [2016] 3 CLJ 403; [2016] 2 MLJ 697; [2016] 2 MLRA 407	Hamid Sultan Abu Backer JCA; Prasad Sandosham Abraham JCA
22-3-2016	Sintrans Asia Services Pte Ltd. v Inai Kiara Sdn. Bhd. [2016] 5 CLJ 746 [2016] 2 MLJ 660; [2016] 4 MLRA 648	Prasad Sandosham Abraham JCA

- 9-5-2016 Kerajaan Malaysia (Kementerian Sumber Asli dan Alam Sekitar) v Kumpulan Sakata Sdn. Bhd. Lee Swee Seng J
[2016] 3 AMR 843; [2016] 7 CLJ 412; [2016] 4 MLRH 572
- 9-5-2016 Asean Bintulu Fertilizer Sdn. Bhd. v Wekajaya Sdn. Bhd. Lee Swee Seng J
[2016] 1 LNS 1089
- 18-7-2016 [2016] MLJU 354; [2016] MLRHU 677
- 16-5-2016 Government of India v Petrocon India Ltd. Arifin Zakaria
[2016] 4 AMR 225; [2016] 6 CLJ 321; [2016] 3 MLJ 435; [2016] 4 MLRA 361 CJ
- 15-6-2016 Alami Vegetable Oil Products Sdn Bhd v Hafeez Iqbal Oil & Ghee Industries (PVT) Ltd. Hamid Sultan
Abu Backer
JCA
[2016] 7 CLJ 19; [2016] 12 MLJ 169; [2016] MLJU 746; [2017] 3 MLRA 106
- 4-8-2016 Tridant Engineering (M) Sdn Bhd v Ssangyong Engineering and Construction Co Ltd. David Wong
JCA
[2017] 2 CLJ 393; [2016] 6 MLJ 166; [2017] 3 MLRA 575
- 28-8-2016 Archer Daniels Midland Co. lwn TTH Global (M) Sdn. Bhd. Has Zanah
Mehat J
[2016] LNS 1282; [2017] 7 MLJ 325; [2016] MLRHU 1170
- 30-9-2016 Jan De Nul (Malaysia) Sdn. Bhd. & Anor v Vincent Tan Chee Yioun & Anor and Other Cases Lee Swee Seng J
[2016] AMEJ 2020; [2016] 1 LNS 1234; [2016] MLJU 914
- 24-11-2016 Messrs. K Sila Dass & Partners v Tune Insurance Malaysia Berhad & Anor Mohd Nazlan
Mohd Ghazali
JC
[2017] 5 AMR 894; [2017] 10 CLJ 475; [2016] MLJU 1818; [2016] MLRHU 1618

- 31-1-2017 Sime Darby Property Berhad v Garden Bay Sdn. Bhd. (and Another Originating Summons) Lee Swee Seng J
[2017] 2 AMR 462; [2017] 6 CLJ 107; [2017] MLJU 145; [2017] MLRHU 154
- 21-4-2017 Kejuruteraan Bintai Kindeko Sdn. Bhd. v Serdang Baru Properties Lee Swee Seng J
[2017] 4 AMR 216; [2017] 1 LNS 693; [2017] MLJU 528; [2017] 4 MLRH 546
- 10-8-2017 CTI Group Inc v International Bulk Carriers SpA Zaharah Ibrahim FCJ
[2017] 6 AMR 344; [2017] 1 LNS 1131; [2017] 5 MLJ 314; [2017] 5 MLRA 451
- 17-8-2017 Thai-Lao Lignite Co Ltd & Anor v Government of The Lao People's Democratic Republic Jeffrey Tan FCJ
[2017] 6 AMR 219; [2017] 9 CLJ 273; [2017] MLJU 1196; [2017] 5 MLRA 104
- 18-8-2017 Binastra Ablebuild Sdn. Bhd. v JPS Holdings Sdn. Bhd. & Another Case Lee Swee Seng J
[2017] 7 AMR 105; [2017] 1 LNS 1248; [2017] MLJU 1260; [2017] 6 MLRH 11
- 20-9-2017 Triumph City Development Sdn. Bhd. v Kerajaan Negeri Selangor Darul Ehsan Mohd Yazid Mustaffa J
[2017] 8 AMR 411; [2017] 1 LNS 1511; [2017] MLJU 1518; [2017] MLRHU 1078
- 20-10-2017 Asean Bintulu Fertilizer Sdn. Bhd. v Wekajaya Sdn. Bhd. Hamid Sultan Abu Backer JCA
[2017] 7 AMR 421; [2017] 1 LNS 1574; [2017] MLJU 1530; [2017] MLRAU 1
- 15-11-2017 Far East Holdings Bhd v Majlis Ugama Islam dan Adat Resam Melayu Pahang Jeffrey Tan FCJ
[2017] 8 AMR 313; [2017] 1 LNS 1695; [2018] 1 MLJ 1; [2017] MLRAU 1

**LIST OF CASES (read during preparation of this thesis, arranged in
alphabetical order)**

No.	Case Name	Judge Name
1.	Ahmani Sdn. Bhd. v Petronas Penapisan (Melaka) Sdn. Bhd. & Other Cases [2015] 9 CLJ 782; [2015] 11 MLJ 32; [2015] MLRH 99	Mary Lim J
2.	Ajwa for Food Industries Co (MIGOP), Egypt v Pacific Inter-Link Sdn. Bhd.& Another Appeal [2013] 2 CLJ 395; [2013] 5 MLJ 625; [2013] MLJU 689; [2012] 3 MLRA 383	Ramly Ali JCA
3.	Ajwa for Food Industries Co (MIGOP), Egypt v Pacific Inter-Link Sdn. Bhd.& Another Appeal [2013] 4 AMR 789; [2013] 7 CLJ 18; [2013] 5 MLJ 625; [2013] 5 MLRA 85	Zulkefli Makinudin CJ (Malaya)
4.	Alami Vegetable Oil Products Sdn Bhd v Hafeez Iqbal Oil & Ghee Industries (PVT) Ltd. [2016] 7 CLJ 19; [2016] 12 MLJ 169; [2016] MLJU 746; [2017] 3 MLRA 106	Hamid Sultan Abu Backer JCA
5.	Albilt Resources Sdn. Bhd. v Casaria Construction Sdn. Bhd. [2010] 3 AMR 721; [2010] 7 CLJ 785; [2010] 3 MLJ 656; [2009] 4 MLRA 488	Low Hop Bing JCA
6.	Aras Jalinan Sdn. Bhd. v Tipco Asphalt Public Company Ltd. &Ors [2008] 4 AMR 533; [2008] 5 CLJ 654; [2008] 1 MLRH 782	Badariah Sahamid JC
7.	Archer Daniels Midland Co. lwn TTH Global (M) Sdn. Bhd. [2016] LNS 1282; [2017] 7 MLJ 325; [2016] MLRHU 1170	Has Zanah Mehat J

8. Asean Bintulu Fertilizer Sdn. Bhd. v Wekajaya Sdn. Bhd.
[2017] 7 AMR 421; [2016] 1 LNS 1089; [2016] MLJU 354; [2016] MLRHU 677 Lee Swee Seng J
9. Asean Bintulu Fertilizer Sdn. Bhd. v Wekajaya Sdn. Bhd.
[2017] 1 LNS 1574; [2017] MLJU 1530; [2017] MLRAU 1 Hamid Sultan Abu Backer JCA
10. AV Asia Sdn Bhd v Pengarah Kuala Lumpur Regional Centre for Arbitration & Anor
[2013] 10 CLJ 115; [2013] MLJU 183; [2013] 6 MLRH 175 Mary Lim J
11. Awangku Dewa Pgn Momin & Ors v Superintendent of Lands and Surveys, Limbang Division
[2015] AMEJ 328; [2015] 3 CLJ 1; [2015] 3 MLJ 161; [2015] 2 MLRA 299 Mohd Hishamudin Yunus JCA
12. Binastra Ablebuild Sdn. Bhd. v JPS Holdings Sdn. Bhd. & Another Case
[2017] 7 AMR 105; [2017] 1 LNS 1248; [2017] MLJU 1260; [2017] 6 MLRH 11 Lee Swee Seng J
13. Brunsfield Project Management Sdn. Bhd. v Ingeniur Bersekutu Consulting Engineers
[2015] 1 LNS 1546; [2015] MLJU 2203 Idrus Bin Harun JCA
14. Cahaya Kelang Constructon Sdn Bdn v Worldwide Holdings Sdn Bhd
Originating Motion No. D-25NCC(ARB)-3-2010
[2011] 1 LNS 127; [2011] 3 MLRH 57 Hamid Sultan Bin Abu Backer J
15. Cairn Energy India Pty Ltd.& Anor v The Government of India
[2010] 2 CLJ 420; [2009] 6 MLJ 795; [2009] 3 MLRA 366 Suriyadi Halim Omar JCA

16. Chain Cycle Sdn. Bhd. v Government of Malaysia
[2014] 10 CLJ 196; [2015] 9 MLJ 214; [2014] MLRHU 649
Azizul Azmi
JC
17. Chain Cycle Sdn. Bhd. v Kerajaan Malaysia
[2015] AMEJ 1479; [2016] 1 CLJ 218; [2016] 1 MLJ 681; [2016] 1 MLRA 295
Varghese
George JCA
18. Christopher Martin Boyd v Deb Brata Das Gupta
[2015] 1 AMR 621; [2014] 9 CLJ 887; [2014] MLJU 1817; [2015] 1 MLRA 173
Raus Sharif
PCA
19. CTI Group Inc v International Bulk Carriers SpA
[2017] 6 AMR 344; [2017] 1 LNS 1131[2017] 5 MLJ 314; [2017] 5 MLRA 451
Zaharah
Ibrahim FCJ
20. Dato' Dr Muhammad Ridzuan bin Mohd Salleh & Anor v Syarikat Air Terengganu Sdn. Bhd.
[2012] 3 MLJ 737; [2012] 2 MLRH 430
Lee Swee Seng
JC
21. Exceljade Sdn. Bhd. v Bauer (Malaysia) Sdn. Bhd.
[2014] 1 AMR 253; [2013] 1 LNS 1470; [2013] MLJU 1202; [2013] MLRHU 986
Nallini
Pathmanathan
J
22. Far East Holdings Bhd & Anor v Majlis Ugama Islam Dan Adat Resam Melayu Pahang & Another Appeal
[2015] AMEJ 1144; [2015] 8 CLJ 58; [2015] 4 MLJ 766; [2015] MLRAU 255
Aziah Ali JCA
23. Far East Holdings Bhd v Majlis Ugama Islam dan Adat Resam Melayu Pahang
[2017] 8 AMR 313; [2017] 1 LNS 1695; [2018] MLJ 1; [2017] MLRAU 1
Jeffrey Tan
FCJ
24. Food Ingredients LLC v Pacific Inter-Link Sdn. Bhd. and Another Applications
[2011] 1 LNS 1631; [2012] 8 MLJ 585; [2012] 3 MLRH 402
Mary Lim J

25. Future Heritage Sdn. Bhd. v IntelekTimurSdn. Bhd. Richard Malanjum JCA
[2003] 1 AMR 185; [2003] 1 CLJ 103; [2003] 1 MLJ 49; [2002] 2 MLRA 224
26. Ganda Edible Oils Sdn. Bhd. v Transgrain B.V. Syed Agil Barakbah SCJ
[1987] 2 CLJ 394; [1987] CLJ (Rep) 95; [1988] 1 MLJ 428; [1987] 1 MLRA 235
27. Government of India v Petrocon India Ltd. Arifin Zakaria CJ
[2016] 4 AMR 225; [2016] 6 CLJ 321; [2016] 3 MLJ 435; [2016] 4 MLRA 361
28. Government of the Lao People's Democratic Republic v Thai-Lao Lignite Co Ltd. Ramly Ali JCA
[2011] 1 LNS 1903
29. Government of the Lao People's Democratic Republic v Thai-Lao Lignite Co Ltd. Lee Swee Seng JC
[2013] 2 AMR 375; [2012] 10 CLJ 399; [2013] 3 MLJ 409; [2013] MLJU 165
30. Hartela Contractors Ltd v Hartecon JV Sdn. Bhd.& Anor Gopal Sri Ram JCA
[1999] 2 AMR 2501; [1999] 2 CLJ 788; [1999] 2 MLJ 481; [1999] 1 MLRA 201
31. Intelek Timur Sdn. Bhd. v Future Heritage Sdn. Bhd. Siti Norma Yaakob FCJ
[2004] 2 AMR 481; [2004] 1 CLJ 743; [2004] 1 MLJ 401; [2004] 1 MLRA 50
32. Ipoh Tower Sdn. Bhd. v Taki Engineering Sdn. Bhd. (and Another Originating Summons) Mary Lim Thiam Suan J
[2016] 4 AMR 569; [2016] LNS 874; [2016] MLJU 1509; [2016] MLRHU 446
33. Jan De Nul (Malaysia) Sdn. Bhd. & Anor v Vincent Tan Chee Yioun & Anor and Other Cases Lee Swee Seng J
[2016] AMEJ 2020; [2016] 1 LNS 1234; [2016] MLJU 914

34. JHW Reels Sdn. Bhd. v Syarikat Borcos Shipping Sdn. Bhd. Mohamad Ariff Md Yusof J
[2012] 6 AMR 47; [2013] 7 CLJ 249; [2012] MLRHU 1544
35. Kejuruteraan Bintai Kindeko Sdn. Bhd. v Serdang Baru Properties Lee Swee Seng J
[2017] 4 AMR 216; [2017] 1 LNS 693; [2017] MLJU 528; [2017] 4 MLRH 546
36. Kelana Erat Sdn. Bhd. v Niche Properties Sdn. Bhd. and Another Application Lee Swee Seng JC
[2013] 4 CLJ 1172; [2012] 5 MLJ 809; [2012] 4 MLRH 481
37. Kembang Serantau Sdn. Bhd. v Jeks Engineering Sdn. Bhd. Mary Lim J
[2016] 1 AMR 261; [2016] 2 CLJ 427; [2015] MLJU 1189; [2015] MLRHU 1032
38. Kerajaan Malaysia (Kementerian Sumber Asli dan Alam Sekitar) v Kumpulan Sakata Sdn. Bhd. Lee Swee Seng J
[2016] 3 AMR 843; [2016] 7 CLJ 412; [2016] 4 MLRH 572
39. Kerajaan Malaysia v Perwira Bintang Holdings Sdn. Bhd. Mohamad Ariff Yusof JCA
[2014] AMEJ 1550; [2015] 1 CLJ 617; [2015] 6 MLJ 126; [2015] 2 MLRA 92
40. Kluang Health Care Sdn Bhd v Lee Yong Beng & Another Case Mary Lim J
[2016] 1 CLJ 281; [2015] MLJU 773; [2015] MLRHU 763
41. Lembaga Kemajuan Terengganu Tengah v Mendza Builder Sdn. Bhd. Low Hop Bing JCA
[2012] 1 LNS 248; [2013] 2 MLJ 265; [2012] 3 MLRA 1

42. Lembaga Kemajuan Ikan Malaysia v WJ Construction Sdn. Bhd.
[2013] 8 CLJ 655; [2013] 5 MLJ 98; [2013] 5 MLRH 370 Mary Lim J
43. Magna Prima Construction Sdn. Bhd. v Bina BMK Sdn. Bhd. and Another Case
[2015] AMEJ 559; [2015] 11 MLJ 841; [2015] 3 MLRH 116 Mary Lim J
44. Maimunah Deraman v Majlis Perbandaran Kemaman
[2011] 9 CLJ 689; [2009] MLJU 1697; [2010] 3 MLRH 938 Mohamad Ariff Yusof J
45. Majlis Amanah Rakyat v Kausar Corp Sdn. Bhd.
[2011] 3 AMR 315; [2009] 1 LNS 1766; [2009] MLJU 1697; [2009] 14 MLRH 331 Mohamad Ariff Md Yusof J
46. Messrs. K Sila Dass & Partners v Tune Insurance Malaysia Berhad & Anor
[2017] 5 AMR 894; [2017] 10 CLJ 475; [2016] MLJU 1818; [2016] MLRHU 1618 Mohd Nazlan Mohd Ghazali JC
47. MMC Engineering Group Bhd & Anor v Wayss & Freytag (M) Sdn. Bhd.
[2015] AMEJ 1096; [2015] 1 LNS 703; [2015] 10 MLJ 689; [2015] MLRHU 514 Mary Lim J
48. Murray & Roberts Australia Pty Ltd. v Earth Support Company (SEA) Sdn. Bhd.
[2015] 3 AMR 152; [2015] 6 CLJ 649; [2015] 1 LNS 134; [2015] 3 MLRH 578 Wong Kian Kheong JC
49. Pasukhas Constructions Sdn. Bhd. & Anor v MTM Millenium Holdings Sdn. Bhd.
[2015] 4 AMR 377; [2015] 1 LNS 591; [2015] MLJU 957; [2015] 5 MLRH 237 Lau Bee Lan J

50. Pembinaan BLT Sdn. Bhd. v Debessa Development Sdn. Bhd.
[2015] 6 AMR 198; [2015] 1 LNS 788; [2015] MLRHU 739
Azizul Azmi
Adnan JC
51. Pembinaan LCL Sdn. Bhd. v SK Styrofoam (M) Sdn. Bhd.
[2007] 3 AMR 124; [2007] 7 CLJ 185; [2007] 4 MLJ 113; [2007] 1 MLRA 251
Gopal Sri Ram
JCA
52. Perembun (M) Sdn. Bhd. v Bina BMK Sdn. Bhd. and Another Case
[2015] 11 MLJ 447; [2015] MLRHU 410
Mary Lim J
53. Petronas Penapisan (Melaka) Sdn. Bhd. v Ahmani Sdn. Bhd.
[2016] 2 AMR 264; [2016] 3 CLJ 403; [2016] 2 MLJ 697; [2016] 2 MLRA 407
Hamid Sultan
Abu Backer
JCA; Prasad
Sandosham
Abraham JCA
54. Sami Mousawi-Utama Sdn. Bhd. v Kerajaan Negeri Sarawak
[2004] 2 AMR 652; [2004] 2 CLJ 186; [2004] 2 MLJ 414; [2004] 1 MLRA 110
Rahmah
Hussain JCA
55. Sanlaiman Sdn. Bhd. v Kerajaan Malaysia
[2013] 2 AMR 523; [2012] 1 LNS 796; [2013] 3 MLJ 755; [2012] MLRHU 1743
Mohamad
Ariff Md
Yusof J
56. SDA Architects (sued as a firm) v Metro Millenium Sdn. Bhd.
[2014] 3 AMR 343; [2014] 3 CLJ 632; [2014] 2 MLJ 627; [2014] 2 MLRA 377
Hamid Sultan
JCA; Aziah Ali
JCA
57. Sharikat Pemborong Pertanian & Perumahan v Federal Land Development Authority
[1969] 1 LNS 172; [1971] 2 MLJ 210; [1969] 1 MLRH 233
Raja Azlan
Shah J
58. Sigur Ros Sdn. Bhd. v Master Mulia Sdn. Bhd.
[2015] 1 LNS 1094; [2015] MLRHU 1405
Wong Kian
Kheong JC

59. Sime Darby Property Berhad v Garden Bay Sdn. Bhd. (and Another Originating Summons) [2017] 2 AMR 462; [2017] 6 CLJ 107; [2017] MLJU 145; [2017] MLRHU 154 Lee Swee Seng J
60. Sintrans Asia Services Pte Ltd. v Inai Kiara Sdn. Bhd. [2016] 5 CLJ 746[2016] 2 MLJ 660; [2016] 4 MLRA 648 Prasad Sandosham Abraham JCA
61. Taman Bandar Baru Masai Sdn. Bhd. v Dindings Corporation Sdn. Bhd. [2010] 2 AMR 151; [2010] 5 CLJ 83; [2009] MLJU 0793 [2009] 4 MLRH 171 Hamid Sultan Abu Backer JC
62. Telekom Malaysia Bhd. v Eastcoast Technique (M) Sdn. Bhd. and Another summons [2014] 6 CLJ 1067; [2014] 1 LNS 657; [2014] 11 MLJ 525' [2014] 5 MLRH 434 Nallini Pathmanathan J
63. Thai-Lao Lignite Co Ltd & Anor v Government of The Lao People's Democratic Republic [2014] AMEJ 0665; [2014] 1 LNS 525; [2014] 1 MLRAU 1 Mohd Hishamudin Yunus JCA
64. Thai-Lao Lignite Co Ltd & Anor v Government of The Lao People's Democratic Republic [2017] 6 AMR 219; [2017] 9 CLJ 273; [2017] MLJU 1196; [2017] 5 MLRA 104 Jeffrey Tan FCJ
65. The Government of India v Cairn Energy India Pty Ltd & 2 Others [2015] MLJU 2164 David Wong Dak Wah JCA
66. The Government of India v Cairn Energy India Pty Ltd & Anor [2014] 9 MLJ 149; [2013] MLRHU 1058 Mary Lim J
67. The Government of India v Cairn Energy India Pty Ltd.& Anor [2011] 6 AMR 573; [2012] 3 CLJ 423; [2011] 6 MLJ 441; [2012] 3 MLRA 214 Richard Malanjum CJ (Sabah & Sarawak)

68. Tridant Engineering (M) Sdn Bhd v Ssangyong Engineering and Construction Co Ltd. David Wong
JCA
[2017] 2 CLJ 393; [2016] 6 MLJ 166; [2017] 3 MLRA 575
69. Triumph City Development Sdn. Bhd. v Kerajaan Negeri Selangor Darul Ehsan Mohd Yazid
Mustaffa J
[2017] 8 AMR 411; [2017] 1 LNS 1511; [2017] MLJU 1518; [2017] MLRHU 1078
70. Tune Insurance Malaysia Berhad (formerly known as Orient Capital Assurance Berhad) & Anor v Messrs. K Sila Dass & Partners Hasnah
Mohammed Hashim J
[2015] 4 AMR 741; [2015] 9 CLJ 93; [2016] 12 MLJ 571; [2015] 6 MLRH 253
71. Twin Advance (M) Sdn. Bhd. v Polar Electro Europe BV Chew Soo Ho
JC
[2013] 3 CLJ 294; [2013] 7 MLJ 811; [2012] MLRHU 1547
72. Usahasama SPNB-LTAT Sdn. Bhd. v Borneo Synergy (M) Sdn. Bhd. Ramly Ali J
[2009] 2 AMR 647; [2009] 7 CLJ 779; [2009] 2 MLJ 308; [2009] 2 MLRH 55
73. Vinava Shipping Co. Ltd. v Finelvet A.G. (The Chrysalis) Mustill J
[1983] 1 WLR 1469; [1983] 2 All ER 658; [1983] 1 Lloyd's Rep 503, QBD
74. Zenbay Sdn. Bhd. v Yong Choo Kui Shipyard Sdn. Bhd. Wong Kian
Kheong JC
[2015] 6 AMR 883; [2015] 10 CLJ 924; [2015] MLJU 907; [2015] MLRHU 1394

CHAPTER 1

INTRODUCTION

1.1 Background Of The Study

Arbitration Ordinance XIII of 1809 was our nation first legislation on arbitration¹. Such Ordinance was applicable to Straits Settlement which was governed under British India. Then it was followed by Arbitration Ordinance 1890. The colonial government enacted the Arbitration Ordinance in 1952 to govern all Federation of Malaya States. This 1952 Ordinance was a wholesale adoption from United Kingdom's Arbitration Act 1950. The 1952 Ordinance was intended to serve as a simple and clear statute to regulate the practice of arbitration². The Act gave wide powers to the court to intervene in the arbitral process³ and the basis to set aside an award, largely by Section 24 on 'misconduct' of which the term was not defined under any provision of the Act. Thereafter the Ordinance was revised to become Arbitration Act 1952 (Act 93).

¹ Syed Ahmad Idid and Umar A Oseni, "The Arbitration (Amendment) Act 2011: Limiting Court Intervention In Arbitral Proceedings in Malaysia" [2014] 2 MLJ cxxxii

² Sundra Rajoo, "Law, Practice and Procedure of Arbitration – The Arbitration Act 2005 Perspective" [2009] 2 MLJ cxxxvi

³ Teng Kam Wah, "Section 34 of The Arbitration Act 1952" [2004] 1 CLJ iii

In 1984, the Act 93 went through an amendment at section 34 where three types of arbitration were excluded⁴ from the operation of the Act.

Malaysian courts have consistently since from the High Court case in *Sharikat Pemborong Pertanian & Perumahan v Federal Land Development Authority*⁵ adopted the English common law ground of setting aside, namely “*error of law patent on the face of award*”, when it set aside an arbitral award pursuant to section 24 of Arbitration Act 1952 for ‘misconduct’.

On 30 December 2005, Parliament enacted the new Arbitration Act 2005 (“the new Act”) to substitute the Arbitration Act 1952. The New Act was based on the Model Law on International Commercial Arbitration as adopted by the United Nations Commission on International Trade Laws (UNCITRAL) on 21 June 1995. At the same time the Convention on the Recognition and Enforcement of Foreign Arbitral Awards Act 1985 (Act 320)⁶ was also abolished. The New Act would be applied to the arbitrations which was started after 15-3-2006 and makes the distinctions on the Malaysian Courts’ supervisory roles with regards to in respect of domestic and international arbitrations respectively.

In 2011, Section 8 of the New Act which originally read “*Unless otherwise provided, no court shall intervene in any of the matters governed by this Act*” was substituted with “*No court shall intervene in matters governed by this Act, except where so provided in this Act.*”. The significance of such amendment was discussed in some court cases to mean that the Court shall adopt a minimalist approach or non intervention approach against the arbitral award.

⁴ Teng Kam Wah (2004). Section 34 of The Arbitration Act 1952 [2004] 1 CLJ iii

⁵ [1969] 1 LNS 172; [1971] 2 MLJ 210; [1969] 1 MLRH 233

⁶ This Act enacted the New York Convention.

The New Act provides new grounds of challenging arbitral award by section 37 and sections 42 where they are different from section 24 of Arbitration Act 1952. This thesis will provide a literature review on decided cases in respect of the comparison of old law and new law on such challenges.

1.2 Problem Statement

W.S.W. Davidson and Sundra Rajoo⁷ were of the views that the amendment to section 34 of Arbitration Act 1952 was to promote the usage on the Kuala Lumpur Regional Centre for Arbitration in the region who did not want to get involved in the interference by Malaysian courts during the course of proceedings or post award. They held the view that the 1980 amendment adopted the chosen regime through the arbitration agreement but failed to follow the norm and sensible division between ‘international’ and ‘domestic’ arbitrations as practised by other countries.

The Arbitration Act 2005 used different approach by abdicating the ‘copy and paste adoption’ of the English Arbitration Act 1996 as previously experienced in the Arbitration Act 1952. However it partly adopts certain characteristics of English Arbitration Act 1996 and substantially follows with the general principles as laid down by the UNCITRAL Model Law.⁸

⁷ W.S.W. Davidson and Sundra Rajoo, “The New Malaysian Arbitration Regime 2005” [2006] 4 MLJ cxxx

⁸ Syed Ahmad Idid and Umar A Oseni, “The Arbitration (Amendment) Act 2011: Limiting Court Intervention In Arbitral Proceedings in Malaysia” [2014] 2 MLJ cxxxii

The New Zealand Arbitration Act 1996 had influenced the enactment of the New Act. This New Act makes the distinctions of ‘domestic’ and ‘international’ arbitrations for the purposes of courts’ interference towards the arbitral awards.

By virtue of section 3(2), Parts 1, II and IV of the New Act shall apply (meaning that they cannot be excluded even if the parties want to do so) and Part III shall apply if the parties do not exclude it in writing with regard to the domestic arbitration. The choice to exclude is generally regarded as ‘opt out’, meaning that Part III ‘will be deemed’ to apply unless the parties expressly exclude its operation.

With regard to the international arbitration where Malaysia is having the seat, the applicability of Parts 1, II and IV of the New Act is same as domestic arbitration but Part III is not applicable unless both parties adopt it in writing by virtue of section 3(3). The choice of adoption is generally regarded as ‘opt in’, meaning that Part III will be not applicable unless the parties expressly adopt its operation.

Chapter 7 governs the recourse or challenge against award. It falls under Part II of the Act where section 37 is the provision regulating an application by the dissatisfied party of the arbitral award applying to set aside an award on certain limited circumstances.

Section 37 contains a provision that also allows the court to set aside an award that conflicts with the Malaysian public policy. The breach of public policy is now inclusive of breach of the rules of natural justice in connection with the making of the award or during the arbitral proceedings. W.S.W. Davidson and Sundra Rajoo were of the view that the “*expansion of the public policy concept in addition to the grounds of the award was induced or affected by fraud or corruption*” was debatable. They worried that floodgates might be

opened if the limited grounds to set aside as provided under the Model Law would be expanded to cases demanding a thorough scrutiny on the procedure applied during the arbitration.

Problems also occur when section 37 of Arbitration Act 2005 does not lay down the guidelines in very precise wordings on “*award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration*” and “*decisions on matters beyond the scope of the submission to arbitration*” and thus let the courts’ hand very wide in interpreting the situations when an arbitral award may be challenged.

Part III contains an important provision, namely section 42, where the courts have powers to wholly or partly vary / remit / set aside the award on “*reference on any question of law arising out of an award*”. In this sense, section 42 gives the courts wider powers than section 37 that the award is either partially or wholly set aside if successfully challenged.

According to Mohamad Ariff bin Md Yusof⁹, there was no equivalent provision in the Model Law for section 42 but similar provisions exist in UK Arbitration Act 1979, now section 1(2) of Arbitration Act 1996; section 69(2)(a), Clause 5, Schedule 2 of New Zealand Arbitration Act 1996; section 23(2) – (4) of Hong Kong Arbitration Ordinance (Cap 34) and section 49(1) of Singapore (Domestic) Arbitration Act 2001 (Cap 10). In all these jurisdictions, they provide for ‘*an appeal on questions of law*’ and the filtering mechanism ‘*leave of court*’ must be obtained prior to filing the intended appeal.

⁹ Mohamad Ariff bin Md Yusof (2016). Chapter 14. Challenge of Arbitral Awards In Arifin Zakaria and Sundra Rajoo (2016). *Arbitration in Malaysia – A Practical Guide*, Malaysia: Sweet & Maxwell. Also see: Sundra Rajoo & WSW Davidson (2007). “The Arbitration Act 2005: UNCITRAL Model Law as applied in Malaysia”. Malaysia: Sweet & Maxwell Asia.

Sundra Rajoo¹⁰ held the view that section 42 was vaguely worded to allow any question law of law to be raised without providing necessary guidance to filter out vexatious applications which might lead to delay the enforcement of arbitral award proceedings.

The problem also occurs when section 42 does not lay down what the meaning of and test of “*question of law arising out of an award*” is. Such omission has caused the judiciary to be in conflicts as to the applicable test when an arbitral award can be challenged on ‘question of law’.

In *Kerajaan Malaysia v Perwira Bintang Holdings Sdn. Bhd.*¹¹, the Court of Appeal laid down 10 non exhaustive guidelines in respect of ‘*reference on question of law*’ under section 42. One of the guidelines was that ‘*the court should intervene if the award is manifestly unlawful and unconscionable*’. Sanjay Mohanasundram¹², a practising lawyer in the area of arbitration, referring to this guideline commented that this “*is a departure from the strictly non interventionist approach taken by many other jurisdictions. The implication is that if an arbitrator has incorrectly applied the law the court can in appropriate case set aside the award.*”

The problem seems to be settled on 15 November 2017 when the Federal Court in *Far East Holdings Bhd v Majlis Ugama Islam dan Adat Resam Melayu Pahang*¹³ preferred one approach rather than another approach established by intermediate appellate court, the Court of Appeal. But the problem is contemplated to recur in the future on other issues.

¹⁰ Sundra Rajoo, “Law, Practice and Procedure of Arbitration – The Arbitration Act 2005 Perspective” [2009] 2 MLJ cxxxvi

¹¹ [2014] AMEJ 1550; [2015] 1 CLJ 617; [2015] 6 MLJ 126; [2015] 2 MLRA 92

¹² Sanjay Mohanasundram (2015). Malaysia: Challenging arbitration awards. Published at www.iflr.com/Article/3439498/Malaysia-Challenging-arbitration-awards.html

¹³ [2017] 8 AMR 313; [2017] 1 LNS 1695; [2018] 1 MLJ 1; [2017] MLRAU 1

1.3 Objective of Study

To compare and contrast the advantages and disadvantages of having disputes resolved by arbitration with court litigation and identifying and discussing the multi approaches taken by court when facing application to challenge arbitral award pursuant to certain grounds under section 37 and section 42 of Arbitration Act 2005.

1.4 Research Scope

The approach implemented in this thesis is substantially based on caselaw. However, several relevant textbooks and articles published in Malayan Law Journal and websites on the subject of study will be referred to. The relevant court cases are restricted to those hard copy of law reports published by All Malaysian Reports (AMR), Current Law Journal (CLJ), Malayan Law Journal (MLJ), unreported cases by the aforesaid corresponding publishers in the collection of All Malaysian Electronic Journal (AMEJ), Legal Network Series (LNS), Malayan Law Journal (MLJU). Unreported cases from the official website: www.kehakiman.gov.my will be obtained if the cases are not accessible from AMEJ, LNS or MLJU. Several cases from Singapore Law Reports (SLR) and English cases will be procured whenever they were referred in Malaysian cases.

1.5 Significance of Study

The results of this study is to build up knowledge for the stakeholders in the commercial world of the advantages and disadvantages in preferring to resolve their commercial disputes by way of litigation in court or alternative dispute resolution by way of arbitration. They have to conduct the balancing exercise on the advantages and disadvantages when choose arbitration or court litigation. The results of the research will also provide them an understanding on the various decided court cases pertaining to the application involving certain grounds to challenge an arbitral award as provided by section 37 of the New Act as a result of:

- (a) The arbitrator's excess of jurisdiction resulting from:
 - (i) the award dealt with a dispute outside the terms of the submission to arbitration; or
 - (ii) the award contained decisions beyond the parameter of the submission to arbitration.

- (b) Conflicting with the Malaysian public policy when there is a breach of the natural justice during the arbitral proceedings or in connection with the making of the award.

The findings of the research will provide the commercial stakeholders an understanding on the various decided court cases pertaining to the ambit of section 42 of Arbitration Act 2005 as to what extent an arbitral award may be varied partly or wholly or set aside partly or wholly by the courts due to "*reference on question of law arising from the award*" when the arbitrator has made error(s) on question of law.

Discussion on section 42 will enhance the stakeholders' knowledge in respect of conflicting approaches taken by the courts pertaining to the correct test applicable for '*question of law arising from an award*' and how to apply the test in their case at hand.

Discussion on section 8 as amended will enhance the stakeholders' knowledge in respect of the conflicting approaches taken by the courts as to whether they have the powers to grant an extension of time to a dissatisfied party to file application to challenge the arbitral award when the time frame stipulated by sub section (4) is 90 days for section 37 challenge and by sub section (2) is 42 days for section 42 challenge.

1.6 Research Methodology

Relevant leading textbook and articles published in Malayan Law Journal on arbitration will be referred to for the purposes of understanding the history of arbitration legislations in the country, purposes on enactment of new Arbitration Act 2005, its tracing on the corresponding Articles in the Model Law, operation and implementation of sections 37 & 42 as decided by court cases. The referred court cases in the articles and textbook will be searched and read in order to analyse the significance and conflicting approaches in respect of the challenges on arbitral award.

Past decided cases pertaining to section 24 of Arbitration Act 1952, sections 8, 37 and 42 of Arbitration Act 2005 will be manually searched from the hardcopy of the law reports such as All Malaysian Reports, Current Law

Journal and Malayan Law Journal. Cases referred by a particular case will be traced and read in order to compare and contrast the reasoning of that particular decided case with the referred cases. The process of searching and reading the referred cases will be repeated until a sufficient number of decided cases is collected and read. If the reported cases have referred to unreported cases cited in All Malaysian Electronic Journal (AMEJ), Legal Network Series (LNS), Malayan Law Journal (MLJU), then such unreported cases will be searched and read to enable the author to have better understanding on the practice of the law and issues at hand.

Attention is also drawn by the author's colleague on unreported cases which are only obtainable from official website from the Malaysian Courts. Then all searches cases will be printed or photocopied and will be manually arranged according to the date of decision and relevant sections from Arbitration Act 1952 or Arbitration Act 2005. The alternative citations, whether reported or unreported, to the reported case will be searched using computer database of the Current Law Journal and Malayan Law Journal. For the alternative citations in the All Malaysian Reports, they will be manually searched by referring to the hardcopy of the law reports kept in the author's working legal firm's library. Lastly the arranged cases will be read and understood in the chronology of dates in order to follow the development of law on the subject under review and to have better analysis that any particular earlier decided cases have not been referred in a particular subsequent case. It is however noted that not all cases which were read will be discussed in the thesis.

REFERENCES

Arifin Zakaria and Sundra Rajoo (2016). *Arbitration in Malaysia – A Practical Guide*, Malaysia: Sweet & Maxwell

Henry J. Brown and Aurther L. Marriott. (1999). *ADR Principles and Practice*, Second Edition, London: Sweet & Maxwell

Sanjay Mohanasundram (2015). *Malaysia: Challenging arbitration awards*. Published at www.iflr.com/Article/3439498/Malaysia-Challenging-arbitration-awards.html

Sundra Rajoo (2003). *Privacy and Confidentiality In Arbitration* [2003] 2 MLJ lx

Sundra Rajoo & WSW Davidson (2007). *The Arbitration Act 2005: UNCITRAL Model Law as applied in Malaysia*. Malaysia: Sweet & Maxwell Asia.

Sundra Rajoo (2009), *Law, Practice and Procedure of Arbitration – The Arbitration Act 2005 Perspective* [2009] 2 MLJ cxxxvi

Sundra Rajoo (2016). *Law, Practice and Procedure of Arbitration*. (2nd ed) Kuala Lumpur: Lexis Nexis.

Sundra Rajoo (2005). *Drafting Effective Arbitration Agreement* [2005] 1 MLJ vii

Sundra Rajoo. *International Commercial Arbitration – Basic Concepts and Introduction To Practice and Procedure*.

Syed Ahmad Idid and Umar A Oseni (2014). The Arbitration (Amendment) Act 2011: Limiting Court Intervention In Arbitral Proceedings in Malaysia [2014] 2 MLJ cxxxii

WSW Davidson & Sundra Rajoo (2006). The New Malaysian Arbitration Regime 2005 [2006] 4 MLJ cxxx