

**PROFILING OF SUMMARY JUDGEMENT IN CONSTRUCTION  
INDUSTRY**

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## **DEDICATION**

*Specially dedicated to  
Mama and Papa*

*Thank You for Everything*

*“With Love and Appreciation”*

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## **ABSTRACT**

The process of the litigation under civil takes longer time with many trials and also consume cost due to the process of getting delayed until judgement is given by the court which normally take two years or even more. The Rules of High Court ‘RHC’ introduced Summary judgement under Order 14 where the mechanism is able to reduce the time consumption and shorten the completion of cases. Summary judgment is applicable where the defendant has no valid defence but defendant able to defence the claim by raising the triable issues. For the construction industry, it is impossible to obtain summary judgement due to the nature of the industries which is complex as per viewed from the legal experts. Therefore, this research is conducted to profile the summary judgement cases in construction industry in organized form in order to cross check the effectiveness of summary judgement under Order 14 RHC. When the valid triable issue is raised by the defendant then Summary judgement will be not granted because triable issues will be a defend against summary judgement. Validation of triable issues are often determined by the court. Thus, the objective of this research is to determine the criteria of the triable issues to become valid issues in various contracts related to the construction industry. To achieve the objective of this research 20 cases were selected to be analyzed. Furthermore, this research found that there are three (3) points that can be criteria of the triable issue comprising a counterclaim links with claim, set off and claimed unconnected with the claim. Triable issues can be arise from any other issues but need to be proven that there are disputed issues on the facts or on the law. Furthermore, profiling of the summary judgment cases gives would be able to more understanding on the parties involved, standard form of contract, triable issues, criteria of triable issues, court judgment and level of court.

## ABSTRAK

Proses litigasi di bawah undang-undang sivil mengambil masa yang agak lama, sekurang-kurangnya dua tahun, serta melibatkan kos yang lebih tinggi disebabkan oleh beberapa peringkat yang perlu diikuti sebelum mendapat keputusan daripada mahkamah. Namun demikian, masa dan kos perbicaraan yang terlibat boleh dikurangkan dibawah akta Undang-Undang Mahkamah Tinggi dengan adanya mekanisma yang dikenali sebagai “PENGHAKIMAN TERUS” dibawah Order 14. Penghakiman Terus ini digunakan sebagai alternatif oleh pihak plaintif apabila defendan tidak mendapat pembelaan terhadap kes perbicaraan. Namun, ini boleh dikecualikan jika pihak defendan dapat menimbulkan isu yang dibicarakan itu sebagai sesuatu pembelaan. Malangnya, mengikut pakar undang-undang, kes-kes industri pembinaan gagal mendapat penghakiman terus disebabkan oleh kerumitan masalah yang terlibat. Kajian ini merumuskan dan mengaturkan kes-kes Penghakiman Terus dalam industri pembinaan untuk menunjukkan keberkesannya dibawah Oder 14. Pihak mahkamah berhak mengesahkan isu perbicaraan dan akan menolak Penghakiman Terus apabila isu perbicaraan ditimbulkan sebagai sesuatu pembelaan. Oleh itu, kajian ini dijalankan untuk mencari kriteria-kriteria sah yang terlibat dalam industri kontrak pembinaan yang boleh dijadikan sebagai isu perbicaraan sebagai sesuatu pembelaan. Sebanyak 20 kes telah dipilih dan dianalisis untuk mencapai objektif kajian ini. Daripada hasil kajian, didapati 3 kriteria penting yang boleh dijadikan sebagai isu perbicaraan sebagai pembelaan, iaitu, tuntutan ke atas kadar faedah, ‘set off’ dan mendakwa yang tidak berkaitan dengan tuntutan terlibat. Secara kesimpulannya, apa jua perkara juga boleh ditimbulkan sebagai isu perbicaraan untuk pembelaan tetapi elemen pertikaian perlu dibuktikan dari segi fakta atau undang-undang. Hasil rumusan kajian isu perbicaraan sebagai sesuatu pembelaan boleh meningkatkan pemahaman terhadap pihak yang terlibat, borang standard kontrak digunakan, isu dan kriteria yang dibincangkan, serta keputusan mahkamah yang ditentukan dan tahap mahkamah yang terlibat.

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## LIST OF ABBREVIATIONS

AMR	-	All Malaysia
AIAC	-	Asian International Arbitration Centre
BLR	-	Building Law Report
CLJ	-	Current Law Journal (Malaysia)
CIDB	-	Construction Industry Development Board
COA	-	Court Of Appeal
CLR	-	Commonwealth Law Reports
IEM	-	The Institution Engineers of Malaysia
LR	-	Law Reports
MLJ	-	Malayan Law Journal
PAM	-	Pertubuhan Arkitek Malaysia
PWD	-	Public Work Department (Malaysia)
PAM	-	Pertubuhan Arkitek Malaysia
SO	-	Superintending Officer
UTM	-	Universiti Teknologi Malaysia

## LIST OF CASES

CASES NO.	CASES NAME
1.	Master Prestige Sdn Bhd v Pertubuhan
2.	Kebajikan Islam Malaysia (Perkim) (Bahagian Selangor) & Anor [2018] MLJU 1600
3.	Pembinaan Leow Tuck Chui & Sons Sdn Bhd v Dr Leela's Medical Centre Sdn Bhd [1995] 2 MLJ 57
4.	Seah Pei Yee v Hap Seng Star Sdn Bhd [2014] MLJ HC
5.	Jacobs v Booth Distillery Co.
6.	National Company for Foreign Trade v Kayu Raya Sdn Bhd [1984] 2 MLJ 300
7.	Express Newspaper v New (UK) Ltd & Ors [1990] HC
8.	Mercer v Craven Grain Storage Ltd [1994] CLC 328
9.	Mahkota Technologies Sdn Bhd v BS Civil Engineering Sdn Bhd [2000] 6 MLJ 505
10.	RHB Bank Bhd v Tan Swee Long Holdings Sdn Bhd [2008] 3 MLJ 130
11.	High Century Sdn Bhd v Liew Foot and Son Construction Sdn Bhd [2014] 11 MLJ 44
12.	Drake and Fletcher Ltd v Bachelor [1986]
13.	Rotheram v Priest [1879]

14. Permodalan Plantation Sdn Bhd v Rachuta Sdn Bhd [1985] 1 MLJ 157
15. Syarikat Bunga Raya Timor Jauh Sdn Bhd & Anor v Tractors Malaysia Bhd [1980] MLJ
16. QBE Supreme Insurance Bhd v Syarikat Chemas Pemborong Sdn Bhd [1986] MLJ
17. Kent v Griffiths [2001] QB at Pg 51
18. Swain v Hillman [ 2001] ER 91
19. E.D and F. Man Liquid Products Ltd v Patel [2003] EWCA Civil 472
20. Allied Dunbar Assurance PLC v Ireland [2001] ECWA Civ 1129
21. Gunung Bayu Sdn Bhd V Syarikat Pembinaan Perlis Sdn Bhd [1987] 2 MLJ 332
22. Ooi Boon Teong v MBF Construction Sdn Bhd [1994] 3 MLJ 413
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25. Southern Finance Bhd (formerly known as United Merchant Finance Bhd) v Sun City Development Sdn Bhd & Anor [2006] 6 MLJ 673
26. Jetara Sdn Bhd v Maju Holdings Sdn Bhd [2007] 3 MLJ 609
27. Alliance Finance Bhd (previously known as Bolton Finance Bhd) v Cahaya Kelang Construction Sdn Bhd & Ors [2007] 1 MLJ 294

28. Enco Systems Sdn Bhd v Soon Hin Hardware Sdn Bhd [2009] 9 MLJ 535
29. Matang Integrated Sdn Bhd V Usahasama SPNB-LTAT Sdn Bhd [2010] MLJU 937
30. PJDCP Malta Sdn. Bhd. V Lau Eng San and Anor [2010] MLJU 1692
31. Gadang Engineering (M) Sdn Bhd v Bluwater Developments Berhad [2010] MLJU 367
32. CYL Builders Sdn Bhd v Welepeq Sdn Bhd [2010] MLJU 1870
33. Uniphone Telecommunications Bhd v Bridgecon Engineering Sdn Bhd & Anor [2011] 5 MLJ 875
34. Iasb Construction Sdn Bhd v Pembinaan Purcon Sdn Bhd [2012] MLJU 31
35. CLLS Power System Sdn Bhd (No 2) V Sara Timur Sdn Bhd [2015] 11 MLJ 674
36. LK Insulation Engineering (M) Sdn Bhd v Apex Energy Sdn Bhd [2017] MLJU 772

# CHAPTER 1

## INTRODUCTION

### 1.0 Background of the Research

The drastic development of construction industry in this modern world need a good legalistic documentation by adapting the new culture of construction due to requirement of project itself for unique project , interest of parties and fair evaluation when any disputes arise in work place accidents and successful completion of project by managing the contracts. Construction industries is playing bigger role in the development of the Malaysian country. As construction projects get more and more expensive, and the pressure to complete as cheaply and quickly as possible may become the areas where disputes may arise also increase the root cause to payment default issues.

Application for Summary Judgment Summary Judgment is defined in the Dictionary of Law as: “Procedure where the court decides a claim or particular issue against claimant or defendant without trial” (Curzon, L.B., 2004). It means that the plaintiff can obtain judgment on his claim without going to trial. It will save in term of time and cost for trial and hearing process (Hamid et al.,1993). Summary judgment only can be used when there is no dispute as to the facts of the case, and the party entitled to judgments as a matter of law.

Looking into the construction industry, the development of methods used to efficiently dispute prevention and resolution over the past two decades, had increased greatly. As a matter of fact, construction industry is cited as the innovative brain in regards with the dispute resolution by the experts (Engineering News Record, 2000) Meaning, a dispute in the construction industry can be brought to their resolution



through Mediation, Adjudication, Arbitration, Negotiation, Mini-trial, Litigation, Dispute review board, and others (Izzati, N., 2012)

In the event of disputes arising between parties that are involved in a construction contract, most construction contracts usually indicates the type of dispute resolution that needs to be used for it. Clause 66, the standard form of the PWD 203A 2010 (Jabatan Kerja Raya, 2010) and IEM, clause 55, clearly indicates that if there are disputes arising among the contractual parties, only arbitration process will set right this matter.

In spite of that, should there be an arising dispute between the contractor and employer, both parties are permitted to choose either arbitration or mediation to resolve the dispute among them in accordance with clause 34 & 35 (PAM 2006) and Clause 47 (CIDB, 2000) standard form (Rajoo et al.2010 & Lian et al., 2000)

The summary judgment provided in Order 14 of the Rules of The High Court 1980. Under Order 14, RHC 1980 (Ravindran, N., 2004), if the defendant does not have any sufficient defence, then the plaintiff may apply for summary judgment on the claim or some particular part of the claim, when there is no defence against the claim. If there is an issue to be tried and the defendant is deemed unsuccessful in a bit to satisfy the court, the plaintiff will then be granted with an immediate judgement on the given claim or a part of it depending on the case. The procedure is to enable plaintiff to obtain early judgment in cases where the defendant has no hope of success and any defence he raises would merely have the effect of delaying judgment in case Jones v Stone (N.H.,1917). Just as the defendant enters the appearance, a summary judgement needs to be filed. There are three main cases in which a summary judgement is commonly sought and often granted: the claim or defense is too weak to be justified in a trial; the claim or defense is damaged in law, or not clear; where the case turns on the question of law or construction (Moore-Bick, J., 2003).

## 1.1 Problem Statement

In the case of *Master Prestige Sdn Bhd v Pertubuhan Kebajikan Islam Malaysia (Perkim) (Bahagian Selangor) & Anor [2008]MLJU 1600*, The plaintiff is a Main Contractor and first defendant is PERKIM Selangor as “employer”. The main contractor awarded a construction project of 2 Blocks of Building of 1 Storey and 5 Storey for PERKIM Complex with by the employer. The Main contractor undertook the work and made claims against the work done. Two certificates were issued by Developer consultant, Excel Consult. The Employer raised a triable issues where they not liable to pay the subcontractor because the subcontractor not complete the work on time and the contract having been terminated. Furthermore, the employer no owing the subcontractor for the claimed sum because of losses arising by subcontractor noncompliance. The application for summary judgment dismissed with cost by the Judge Lee Swee Seng giving explanation: -

*“This is an application for summary judgment in under Order 14 (Sweet & Maxwell,2018) ,It is rather uncommon in construction contracts disputes for almost every claim is met with a counterclaim; every allegation of wrongful termination is met with the argument of lawful termination. Every delay is blamed on the other party. Every loss claimed is met with a greater loss counterclaimed. This is not to say that summary judgment is impossible”.*

According to Judge Lee Swee Seng the summary judgment is not suitable for the construction contract where the disputes should be tried in full trial. Therefore, the question is whether summary judgement is suitable for construction contract cases or need to be referred to a full trial? It will be discovered thorough the profiling analysis of summary judgement cases in construction industry.

If there are triable issues showing evidence and defence from the defendant or plaintiff, the question is what amount of triable issues should be raised by the defendant and that the court will determine whether the raised triable issues are valid or not. Furthermore according to case of *Pebinaan Leow Tuck Chui & Sons Sdn Bhd*

v Dr Leela's Medical Centre Sdn Bhd [1995] 2 MLJ 57 the employer have raised triable issues which are:

- a) The employer demanded to be entitled to set-off the contractor's claim by its claim for damages.
- b) The employer demanded an entitlement to refute the validity of the payment certificate issued.
- c) The employer wanted to refer the disputes to an arbitration claims that was seem stated in the contract under the arbitration clause.

This case's judgement favored towards the employer as the employer has successfully raised triable issues in court. The court then granted unconditional leave to defend to the employers as they have come up with evidence in the form of triable issues to come in defense against the claims of the plaintiff. With such decision made, the plaintiff was unhappy about the ruling and hence decided to appeal through the court of appeal. The parties involved in this case, are the contractor who is the plaintiff and the defendant who is the employer. The plaintiff sought a summary judgement under order 14 from the rules of the High Court (RHC) and sued the defendant and the appeal to the Court of Appeal was granted thus a reverse of judgement was given.

The Employer carries the responsibility to settle off the payment amount stated in the certificate brought out by the architect. The previous judgement was set aside and the employer was obligated to pay the contractor after being served with the interim certificate. As evidently seen, there were no triable issues successfully raised against the contractor by the employer hence the bias judgement.

Therefore, the question of what are the criteria to identify the issues as triable issues in this case? As per discussion above, there must be a valid triable issue as defense against summary judgement in order to restrain the summary judgment. The

question will be what are the criteria of the triable issues to be considered as valid triable issues and also as defence against summary judgement. Profiling of summary judgement is importance where all summary judgement cases will be organized form for an easier understanding. Its will be a tool for the construction industry where the all parties etc. employer, main contractor, subcontractor and other discipline will get information about their rights and the understanding on summary judgment elements especially for triable issues. Other than that, construction industry will be more clarified with their actions towards law in obtaining summary judgement in construction case.

## **1.2 Objective of this Research**

Based on the problems and issues highlighted, the objective of this study are;

- a) To profile summary judgement cases in construction industries
- b) To determine criteria of the triable issues to restrain summary judgement to be granted

## **1.3 Scope and Limitation of Study**

The scope of studies will be list summary judgement cases and list of triable issues, where the criteria will be discuss based on court interpretations that arise under a construction contract. This study is conducted by literature law cases anlysis using e-electronic sources from Lexis Malaysia to find out the information from Malayan Law Journal (MLJ), Malayan Law Journal unreported (MLJU), Malayan Law Journal Articles (MLJA) and articles from Journal of Surveyor, seminar papers and previous research..

#### **1.4 Significance of Study**

The purpose of this study is to get a clear picture and answer on the subject detail of the study. In this study, output of study will be help on individually or organization to increase awareness of criteria to be considered as triable issues in summary judgement cases in construction industry. Profiling all summary judgment cases in manageable form by categorized in classification as per source of disputes. Usually all criteria and circumstances were analyzed based on the interpretation and judgements by the court. The results of this research will determine the requirement of criteria to be consider as triable issues are as a defense against summary judgment.

#### **1.5 Previous Research**

There is a topic in previous studies, which focused on the same topic as the current studies. Nevertheless, those researchers focused on different objective. The summary judgement: triable issues as a defense by Norhazren Izatie Binti Mohd (2012), emphasized on what are the triable issues that act as defence in order to restrain summary judgment to be granted.

Therefore, in this study will profiling the judgment in manageable form to determine summary judgement suitability for construction dispute and to determine the criteria of the triable issues in more details where the requirement of criteria to support the triable issues are as defense in order to restrain summary judgment to be granted.

## **1.6 Scope of Study**

The scope of this study established was from the case law related to dispute in variation which under various contract. The relevant cases were collected from Malaysia Law Journal (MLJ) which is available in the university database of Lexis Nexis website. Besides that, there were several cases obtained from other countries, which seem relevant to this research study.

## **1.7 Research Methodology**

An organized procedure to conduct this study is important to achieve the research objectives. The five major procedures involved in this study are identifying the research issue, literature review, data collection, data analysis, conclusion and suggestions.

### **1.7.1 Identifying the Research Issue**

The first stage of research process is the initial stage of the whole research. This involves identifying the research issue. Firstly, it includes a discussion with the lecturer and reading on variety sources of published materials, such as journals, articles, and previous research papers to get an idea of the research issue that studied. The objectives of the study identified through the research issues that gathered from the first stage. The outline will be prepared to identify the type and sources of data related to the research.

### **1.7.2 Literature Review**

Literature review is the second stage of the research process after the research issue and objective identified. This stage will be involved in the collection of documents which are from secondary data. Generally, secondary data were several sources such as books, journals, research papers, and newspaper. Indeed, published reported court cases are the most helpful in this literature review stage. It is important to identify the general state of knowledge concerning the subject area of summary judgement cases as such as background, definition, procedures, and relevant events.

### **1.7.3 Data Collection**

The third stage of research process is the methodology adopted in the preparation of this report which detail out the stages of the research study from inception until completion. Data collection is made for complete information pertaining to this research. The methods of data collection will be used, namely secondary data. In this study, case analysis became the instrument of study. This research used many case law to analyses the issues. Therefore, the data was collected from the Malayan Law Journal (MLJ) which using the university's online library data base Lexis-Nexis website. Other sources such as journals, articles books and website were also used in this research to obtain the data.

### **1.7.4 Data Analysis**

The fourth stage of research process is the data analysis. This stage involves data analysis, interpretation and data arrangement. This process is to process and convert the data collected into information that is useful for the research. The study will identify the nature of summary judgement, Order of summary judgment, triable issues, criteria of triable issues related in construction studies. This chapter will

include data analysis and findings will be tabulated in organized form that acquired from this research to achieve all the objectives.

### **1.7.5 Conclusion and Suggestions**

Conclusion and recommendations is the final stage of the research. In this stage, the whole process of study will be reviewed with the intention to identify whether the research objective has been achieved. The findings will be able to show the result of the research. A conclusion will be drawn in-line with the objectives of the research.



### 1.7.6 Flow Chart of Research Methodology

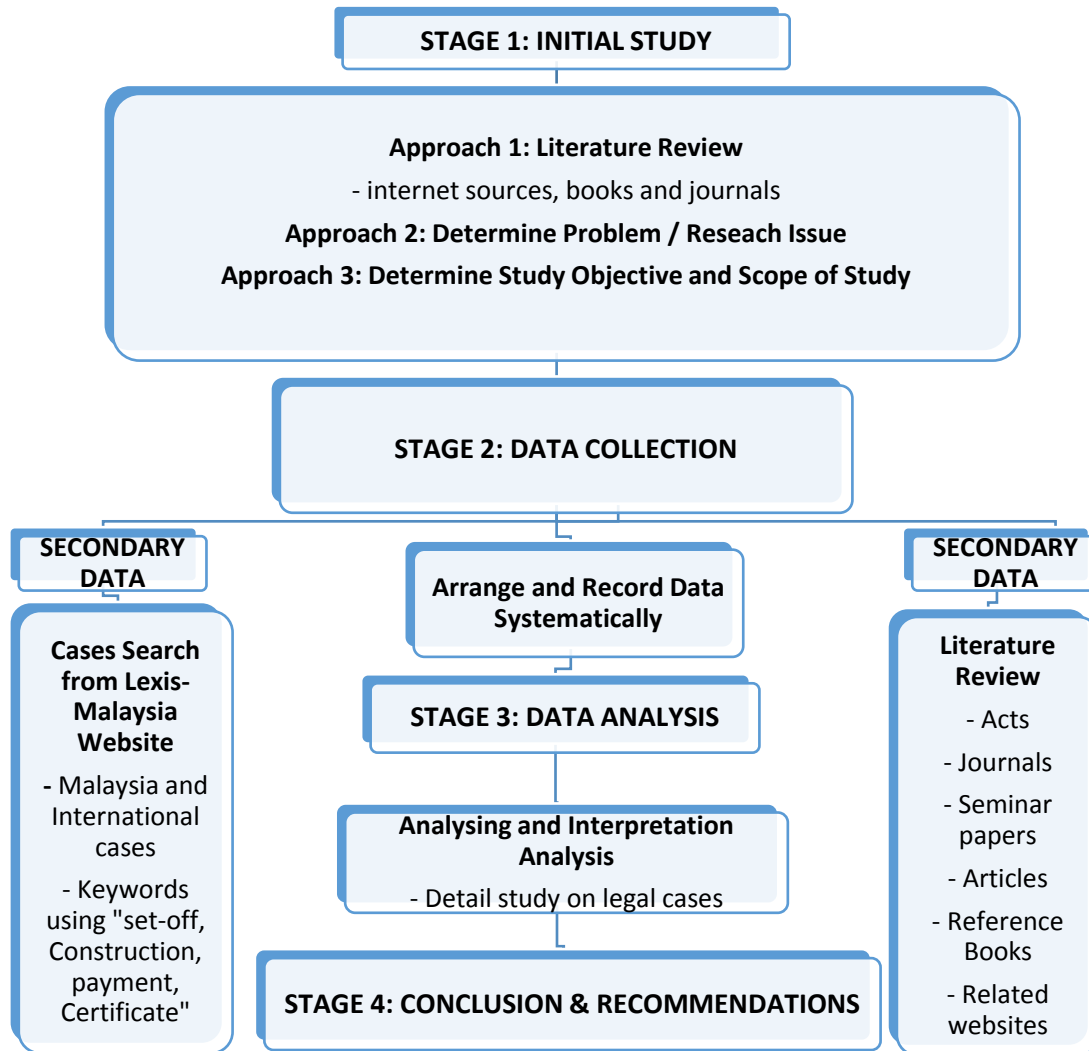


Figure 1.1 Flow chart of research methodology

## REFERENCES

- Clearly and Plaul, J. (1994) Summary Judgments in Oklahoma: Suggestion for Improving a “Disfavored” Procedure
- Elizabeth, A.M., and Jonathan (2006) Law “A Dictionary of Law – Sixth Edition”; Oxford University Press
- Fasken and fisher, V. (2018). “ Summary Judgement civil proceedings ”
- Bogdan and Robert (1992). Qualitative research for education: An introduction to theory and methods Sari Knopp Biklen-2nd edition.
- Rajoo, S., Davidson, W.S.W., Harbans, S.K.S. (2010) Clause 34 & 35, The PAM Standard Form of Contract 2006
- Lian, O.S., IM, T.S., Kheng, O.C. (2000) Guidance Noted on the CODB Standrad, Clause 47, CIDB Standard Form of Contract 2000 Edition
- IEM Form of Contracts for Electrical and Mechanical Works (2012) Board of Engineers of Malaysia, Second Edition, Clause 55 , I.E.M Standard Form of Contract
- Curzon, L.B. (2004). Dictionary of Law 2. 2nd Edition. International Law Book Services.
- Elliot, R.F. (1985). Building Contract Litigation. Longman Professional, 2nd Edition.
- Engineering News-Record. (2000). “Arbitrators Found on the Web.” Engineering News-Record, 245 (7), 37.
- Hamid, N. and Ravichandran, S.S. (1993). Summary Judgement, Central Law Book Corporation.
- Hon. Mr. Justice Moore-Bick (2003) Commercial Court, London ““Fast-Track” Judgments - A survey of the principles and practice adopted in England under the Civil Procedure Rules” UCL; London Global University
- Izati, N. (2012). Triable Issue as Defence. Thesis of Faculty of Built Environment, UTM, Malaysia
- Jabatan Kerja Raya (2010), Standard Form of Contract To Be used Where Bills of Quantities Form Part of The Contract, Government of Malaysia, P.W.D. Form 203A (Rev 1)

- Janic, Aurini, Malanie & Stephani (2016). The how to of Qualitative Research, SAGE Publication Inc
- Jones v. Stone, 78 N.H. 504 (N.H. 1917)
- Khai, Y.Y. (2007). Common Applications in civil proceedings, Statutory Provisions & Form. Sweet & Maxwell Asia (pp133-159)
- Nie, L.S. (2012). Profile of set off cases in Malaysian Construction Industry
- Nixon, L.(2012) “Federal Rules for a Summary Judgment” eHow
- Oscola (2012) Summary Judgment, Oxford University Press, Oxford University; Forth Edition, Chapter 34
- Ravindran, N.(2004). Practical Guide to Civil Procedure in Malaysia. International Law Book Services.
- Rocco, Tonnette, S., Timothy, G., Hatcher and Creswell, J.( 2011). Handbook of scholarly writing and publishing. Hoboken, NJ: Jossey-Bass
- Sri Ram, G., Sweet and Maxwell (2012). Rules of Court 2012, Malaysia
- Sri Ram, G., Sweet and Maxwell (2018). Rules of Court 2018, Malaysia
- UCLA Law (2000), Dispute on Material Fact
- Whitney, W.D. (2012). Century Dictionary and Cyclopedia “Definition of Triable Issue”