

ADMINISTRATIVE AND CONSTITUTIONAL LAW

Federal Court

1. Jamaluddin Bin Mohd Radzi & Ors v Sivakumar A/L Varatharaju Naidu (Claimed as Yang Dipertua Dewan Negeri Perak Darul Ridzuan) [2009] 4 MLJ 593

ALAUDDIN PCA, ARIFIN ZAKARIA CJ (MALAYA), NIK HASHIM, AUGUSTINE PAUL AND JAMES FOONG FCJJ

For the Appellants – Firoz Hussein Ahmad Jamalludin (Mohd Hafarizam Harun, Syed Faisal Syed Abdullah, Abu Bakar As-Sidek, Cheng Mai, Badrul Hishah Abd Wahap, Mohd Reza Hassan and Shahir Ab Razak with him) (Ong-Hanim & Badrul).

For the Respondent – Sulaiman Abdullah (Tommy Thomas, Philip Koh, Chan Kok Keong, Ranjit Singh, Razlan Hadri Zulkifli, Edmund Bon Tai Soon, Amer Hamzah Arshad, Yap Boon Hau and Zulqarnain Luqman and Leong Cheok Keng with him) (Chan & Associates).

For the Intervener – Abdul Gani Patail (Tun Abd Majid Tun Hamzah, Azizah Nawawi, Amarjeet Singh, Kamaluddin Md Said, Siti Salwa Musa and Suzana Atan with him) (Attorney General's Chambers).

Watching brief for the state of Perak – Ahmad Kamal Md Shahid (State Legal Advisor)

Watching brief for Malaysian Bar – Lim Kian Leong (Cheah Kit Yee with him)

Constitutional Law — Constitution — Pre-Merdeka law — Article 63 of the Perak Constitution — Whether a 'federal law' — Whether may be amended by state law — Amendment to substitute words 'Federal Court' to 'Supreme Court' — Whether amendment consistent with art 162(1) of the Federal Constitution

Constitutional Law — Courts — Federal Court — Jurisdiction — Whether Federal Court has jurisdiction to hear application by way of a direct reference under art 63 of the Perak Constitution — Whether Federal Court is conferred with necessary jurisdiction by art 63 — Federal Constitution art 121(2)(c)

Constitutional Law — Legislation — Validity of impugned legislation — Pre-Merdeka law — Amendment — Whether art 63 of the Perak Constitution may be amended by state law — Amendment to substitute words 'Federal Court' for 'Supreme Court' — Whether amendment consistent with art 162(1) of the Federal Constitution

Constitutional Law — Legislature — State Assembly — Determination of casual vacancy of state assembly seat — Right to declare casual vacancy vested in Election Commission — Whether Speaker may establish casual vacancy — Whether receipt by Speaker of a letter of resignation of assemblyman would cause seat become vacant — Perak Constitution art 36(5) — Federal Constitution art 72(1)

Court of Appeal

2. Suruhanjaya Pilihan Raya Malaysia v Dato' Dr Abd Isa Bin Ismail [2012] 2 MLJ 17; [2012] 1 CLJ 88; [2012] 2 AMR 245

RAMLY ALI, LINTON ALBERT AND AZIAH ALI JJCA

For the Appellant in W-01-386 of 2009 – Amarjeet Singh a/l Serjit Singh (Suzana Atan with him) (Senior Federal Counsel, Attorney General's Chambers).

For the Respondent in W-01-386 of 2009 – Sulaiman Abdullah (Edmund Bon Tai Soon and Zulkarnain bin Luqman with him) (Chooi & Co).

For the Appellant in W-02-2654 of 2009 – Mohd Hafarizam Harun (Firoz Hussein Ahmad Jamaluddin with him) (Hafarizam Wan & Aisha Mubarak).

For the Respondent in W-02-2654 of 2009 – Sulaiman Abdullah (Edmund Bon Tai Soon and Zulkarnain bin Luqman with him) (Chooi & Co).

Administrative Law — Remedies — Certiorari and mandamus — Judicial review application by speaker of Kedah state legislative assembly against Election Commission 'EC' — EC's decision that Kota Siputeh state seat was not vacant — Whether seat was vacant — Whether state assemblyman of Kota Siputeh constituency absent from two consecutive meetings of legislative assembly — Whether absence constituted breach of art 51 — Whether royal proclamation an interruption in succession of the two meetings — Laws of the Constitution of Kedah arts 51 & 53

Statutory Interpretation — Construction of statute — Literal approach — Whether trial judge erred in according plain and ordinary meaning to phrase 'two consecutive meetings' in art 51 — Whether meetings that ADUN was absent from were two consecutive meetings — Exercise of powers by HRH — Whether art 53(2) imposes obligation on HRH to prorogue or dissolve assembly — Laws of the Constitution of Kedah arts 51 & 53

3. Dato' Dr Zambry Bin Abd Kadir v Dato' Seri Ir. Hj Mohammad Nizar Bin Jamaluddin And Attorney General Of Malaysia (Intervener) [2009] 5 MLJ 464

RAUS SHARIF, ZAINUN ALI AND AHMAD MAAROP JJCA

For the Appellant – Cecil Abraham (Rishwant Singh and Farah Shuhadah Razali with him) (Zul Rafique & Partner).

For the Respondent – Sulaiman Abdullah (Philip Koh, Chan Kok Keong, Ranjit Singh, Razlan Hadri, Edmund Bon, Amer Hamzah, Leong Cheok Keng, Hanipa Maidin and Zulqarnain Lukman with him) (Leong & Tan).

For the Intervener – Abdul Ghani Patail (Abdul Majid Tun Hamzah, Azizah Nawawi, Amarjeet Singh a/l Sarjit Singh, Suzana Atan and Andi Razalijaya A Dadi with him) (Attorney General's Chambers).

Watching brief for Barisan Nasional – Hafarizam Harun (Firuz Hussien Jamaluddin and M Reza Hassan with him)

Watching brief for Pakatan Rakyat – Cheng Poh Heng.

Constitutional Law — Executive — Appointment of Menteri Besar — Whether appointment of new Menteri Besar valid and proper — Loss of confidence by majority of members of Legislative Assembly in previous Menteri Besar — Right of Sultan to

appoint new Menteri Besar — Perak State Constitution art XVIII(2)(a)

Constitutional Law — Executive — Dismissal of Menteri Besar — Menteri Besar ceasing to command confidence of majority members of State Legislative Assembly — Menteri Besar's request for dissolution of State Assembly rejected by Sultan — Refusal of Menteri Besar to tender resignation — Whether motion of no confidence is required to dismiss Menteri Besar — Whether Menteri Besar's office held at pleasure of Sultan — Whether dismissal of Menteri Besar by Sultan effective — Article XVI(6) of the Perak State Constitution

Constitutional Law — Legislature — State Assembly — Request to Sultan for dissolution of Perak State Assembly under art XVI(6) of the Perak State Constitution — Sultan refusing consent for dissolution — Royal prerogative — Whether decision of Sultan justiciable

Constitutional Law — Preservation of rights and powers of Sultan — Prerogative powers — Administration of State — Powers of appointing and dismissing Menteri Besar — Powers of agreeing or refusing to dissolution of State Assembly — Whether Sultan may make personal enquiries in course of exercising prerogative powers — Powers exercisable by Sultan in his absolute discretion — Whether justiciable

High Court

4. Mkini Dotcom Sdn Bhd & Ors v Chief Judge Of Malaya & Ors [2015] 9 CLJ 459

ASMABI MOHAMAD J

*For the Applicants - Ashok Kandiah (Eugene Jayaraj with him); M/s Kandiah Partnership
For the 1st & 3rd Respondents - Amarjeet Singh Serjit Singh; SFC*

For the putative Respondents - Mohd Hafarizam Harun (Norhazira Abu Haiyan & Nik Nuraisha Alia with him); M/s Hafarizam Wan & Aisha Mubarak

Administrative Law — Judicial review — Application for — Distribution of business among judges - Powers conferred to Chief Judge of Malaya pursuant to s. 20 of Courts of Judicature Act 1964 ('CJA') — Whether directives given by Chief Judge of Malaya under s. 20 of CJA open to challenge — Whether applicants' application for judicial review was frivolous, vexatious and filed out of time — Whether applicants had liberty to apply for recusal against assigned judge.

RULES OF COURT AND CIVIL PROCEDURE

Federal Court

1. Asia Pacific Higher Learning Sdn Bhd (Registered Owner And Licensee Of The Higher Learning Institution Lincoln University College) v Majlis Perubatan Malaysia & Anor [2020] 2 MLJ 1

AZAHAR MOHAMED CJ (MALAYA), DAVID WONG CJ (SABAH AND SARAWAK), ALIZATUL KHAIR, ZAWAWI SALLEH AND IDRUS HARUN FCJJ

For the Appellant – Steven Thiru (Gerard Lourdesamy, Gregory Das, Jeremiah Rais and AC Devi with him) (Gerard Samuel & Assoc).

For the Respondents – Mohd Hafarizam Harun (Nor Emelia Mohd Iszham with him) (Hafarizam Wan & Aisha Mubarak).

Civil Procedure — Appeals — Appeal against decision of High Court allowing amendment of re-amended statement of claim — Whether order made by High Court appealable — Whether right to appeal in civil matters under s 67 of the CJA subject to definition of ‘decision’ as found in s 3 of the CJA — Whether ruling made by High Court finally disposes of the rights of parties — Whether definition of ‘decision’ in s 3 of the CJA applies to civil appeals — Whether defendants’ appeal against decision of High Court incompetent and not properly brought before court of Appeal

Civil procedure — Jurisdiction — Court of Appeal — Appeal to Court of Appeal from High Court — High Court allowed amendment of re-amended statement of claim — Court of Appeal allowed appeal — Whether order made by High Court was appealable — Whether Court of Appeal had jurisdiction to hear and determine appeal — Whether Court of Appeal committed jurisdictional error when it heard appeal — Whether Court of Appeal breached s 3 of the CJA — Whether courts have inherent jurisdiction to set aside orders on grounds of want of jurisdiction at appellate stage

Statutes — Interpretation — Whether ‘decision’, ‘judgment’ or ‘order’ excludes a ruling made in the course of a trial or hearing that does not finally dispose of the rights of the parties — Whether s 67(1) read with ss 3 and 68(1) of the CJA precluded litigant’s right of appeal against High Court decision in an amendment application made in the course of trial that does not finally dispose of the rights of parties — Doctrine of stare decisis — Whether Federal Court is bound by its own previous decisions — Whether Federal Court should follow Kempadang’s case.

Court of Appeal

2. Tony Pua Kiam Wee v Dato' Sri Mohd Najib Tun Hj Abdul Razak [2020] 1 CLJ 260

HAMID SULTAN ABU BACKER JCA; HANIPAH FARIKULLAH JCA; LAU BEE LAN JCA
For the Appellant - Surendra Ananth & Tan Ch'eng Leong; M/s KP Lu & Tan

For the Respondent - Mohd Hafarizam Harun & Norhazira Abu Haiyan; M/s Hafarizam Wan & Aisha Mubarak

Civil Procedure — Action — Withdrawal of — Application to withdraw defamation suit whilst appeal process on interlocutory application pending in Federal Court — Whether withdrawal ought to have been allowed — Whether proceedings and prospective order should have been stayed pending outcome of appeal — Whether withdrawal of main suit would cause interlocutory applications to collapse — Whether application for withdrawal should be dismissed

3. Dato' Ahmad Johari Bin Tun Abdul Razak v A. Santamil Selvi A/P Alau Malay @ Anna Malay & Ors And Another Appeal [2020] MLJU 562

TENGGU MAIMUN TUAN MAT, (NOW CJ), SURAYA OTHMAN, JCA, STEPHEN CHUNG HIAN GUAN, JCA

For the Appellant – Dinesh Bhaskaran (with him Serena Azizuddin) (Shearn Delamore & Co) Rishwant Singh (Cecil Abraham & Partners) B. Thangaraj (Thangaraj & Assoc) Satharuban Sivasubramaniam (with him Anne Sangeetha) (Satha & Co) Datuk Wira Mohd Hafarizam Harun (with him Norhazira Abu Haiyan) (Hafarizam Wan & Aisha Mubarak) Chong Ian Shin (Arulampalam & Co).

For the Respondents – Datuk Seri Gopal Sri Ram (with him Americk Sidhu, Chin Yan Leng, Damien Chan and Khairul Anwar) (Americk Sidhu).

Civil Procedure — Appeal — Adducing fresh evidence — Application to adduce new evidence at appeal against dismissal of striking out application — Whether new evidence could not have been obtained with reasonable diligence for use at trial — Whether new evidence had important influence on results of case — Whether new evidence material, relevant or probative to determination of appeals — Whether delay in filing notices of motion explained by appellants — Courts of Judicature Act 1964 s 69(2) — Rules of Court of Appeal 1994 r 7

Civil Procedure — Striking out — Appeal against order dismissing striking out — Plaintiff brought action against defendant grounded on tort of conspiracy to injure — High Court dismissed defendants' application to strike out plaintiffs' writ and statement of claim — Whether claim ought to be struck out — Whether doctrine of res judicata applied — Whether claim barred by limitation pursuant to s 6(1)(a) of Limitation Act 1953 — Rules of Court 2012 O 18 r 19

4. Majlis Perubatan Malaysia & Anor v Asia Pacific Higher Learning Sdn Bhd (Pemilik Berdaftar Dan Pemegang Lesen Institusi Pengajian Tinggi Swasta Atas Nama Lincoln University College) [2018] MLJU 710

TENGGU MAIMUN, NALLINI PATHMANATHAN AND ZABARIAH YUSOF JJCA

For the appellants – Mohd Hafarizam Harun (Nor Emelia Iszham with him) (Hafarizam Wan & Aisha Mubarak).

For the respondent – Gerard Lourdesamy (AC Devi with him) (Gerard Samuel & Assoc) for the respondent.

Civil Procedure — Amendment — Statement of claim — High Court allowed plaintiff to amend statement of claim in civil suit to add new multi-million ringgit

special damages claim mid-way through the trial — Whether claim should rightly have been made in judicial review application plaintiff had filed earlier against the same defendants — Whether judge exercised discretion correctly in allowing the amendment in accordance with the law governing amendments

Civil Procedure — Mode of commencement — Public law rights versus private law rights — Whether potential litigant should adopt proper procedural mode of commencing proceedings after determining whether rights and reliefs he sought for lay predominantly in public law or private law — Whether choosing wrong mode could result in it being struck out for abuse of process

5. Mukhriz Mahathir v Datuk Seri Mohd Najib Tun Hj Abdul Razak & Anor [2018] 6 CLJ 573

TENGGU MAIMUN TUAN MAT JCA; ABDUL RAHMAN SEBLI JCA; HASNAH MOHAMMED HASHIM JCA

For the appellant - Mohamed Haniff Khatri Abdulla & Mohd Irzan Iswatt bin Mohd Noor; M/s Haniff Khatri

For the 1st respondent - Mohd Hafarizam Harun, Yazid Mustaqim Roslan & JR Teh; M/s Hafarizam Wan & Aisha Mubarak

Civil Procedure — Committal proceedings — Application for — Application made ex parte — Judge directed parties to serve cause papers and make submissions — Whether Judge erred in hearing matter — Whether application to be heard ex parte — Whether there was prima facie case of contempt — Whether court could retain discretion to order matter be heard inter parte — Rules of Court 2012, O. 52 r. (3)

6. Dato' Sri Mohd Najib Bin Tun Haji Abdul Razak & Anor v Mohd Rafizi Ramli And Another Appeal [2017] MLJU 1699

ROHANA YUSUF, IDRUS HARUN AND MARY LIM JJCA

For the appellants – Mohd Hafarizam Harun (Nik Nuraisa Alia Hanafi with him) (Hafarizam Wan & Aisha Mubarak).

For the respondent in Civil Appeal No W-02(IM)(NCVC)-1094-06 of 2016 – Ranjit Singh (Sun & Michele).

For the respondents in Civil Appeal No W-02(IM)(NCVC)-1095-06 of 2016 – Ng Wai Yen (Yeoh & Joanne).

Civil Procedure — Striking out — Application for — Tort of defamation action — Application to strike out defence and counterclaim — Whether impugned paragraphs sustainable and obvious to merit striking out — Whether court would be able to make findings as to whether impugned statements were comments purely by looking at pleadings — Whether witnesses needed to be adduced — Rules of Court 2012 O 18 r19

Tort — Defamation — Libel — Defence of fair comment — Remarks made during speech — Whether remarks defamatory of claimants — Whether remarks qualified as fair comment — Whether words complained of were comments — Whether words

consisted of or included inferences of facts — Whether comments matter of public interest — Whether comments based on facts — Whether comment was one which a fair-minded person could honestly make on facts proved — Whether defence of fair comment successful

7. Dawn City Car (M) Sdn Bhd v Bank Islam Malaysia Berhad [2016] 4 MLJ 86

ABDUL AZIZ ABDUL RAHIM, ROHANA YUSUF AND PRASAD ABRAHAM JJCA
Mohd Hafarizam (KC Tang and Nor Emelia Iszham with him) (KC Tang & Co) for the appellant.

Ganesan Karuppannan (Subashini Ramakrishan with him) (Ganesan & Irmohizam) for the respondent.

Civil Procedure — Summary judgment — Defence of mere denial — Whether defendants failed to raise triable issue to answer plaintiff's summary judgment application — Whether defendants failed to prove plaintiff's certificate of indebtedness was wrong — Whether limitation period with regard to plaintiff's cause of action revived by defendant's part-payment acknowledging debt — Limitation Act 1953 s 26(2)

8. Mazlan Bin Aliman & Anor v Lembaga Kemajuan Tanah Persekutuan [2016] MLJU 1049; [2016] 1 LNS 971; [2016] MLJU 1049 COA; [2016] MLJU 1782

HAMID SULTAN BIN ABU BACKER ZAMANI BIN A RAHIM AND HASNAH BINTI DATO' MOHAMMED HASHIM, JJCA

For the appellant - (Mohamed Hanipa & Associates).

For the respondent - (Hafarizam Wan & Aisha Mubarak).

Tort — Appeal — Defamation — Publishing of a book which contains defamatory words — Whether “without prejudice” letters are admissible in court — Whether there was a concluded agreement between the parties to record a consent judgment as per the letters

9. A Santamil Selvi a/p Alau Malay @ Anna Malay & Ors v Dato' Seri Mohd Najib bin Tun Abdul Razak & Ors [2015] 4 MLJ 583

ZAWAWI SALLEH, ABDUL RAHMAN SEBLI AND ZAMANI A RAHIM JJCA,

For the first and second applicants - Mohd Hafarizam Harun (Hafarizam Wan & Aisha Mubarak)

For the third applicant - Dhinesh Bhaskaran (Denise Tan Kae Ji with him) (Shearn Delamore & Co)

For the fourth applicant - Archana Rajagopal (Thangaraj & Assoc).

For the fifth and sixth applicants - Darryl SC Goon (Zul Rafique & Partners).

For the seventh applicant - Satharuban Sivasubramaniam (Satha & Co).

For the ninth applicant - Chong Ian Shin (Arupalam & Co).

For the respondents - Americk Sidhu (Americk Sidhu).

Civil Procedure — Appeal — Notice of appeal — One single notice of appeal filed against eight separate decisions to strike out appellants' claim — Whether notice of appeal bad in law — Whether there was sufficient compliance with statutory requirement — Whether notice of appeal improper for being ambiguous and uncertain — Whether defect in notice could be cure

10. Sivakumar A/L Varatharaju Naidu v Ganesan A/L Retanam [2010] MLJU 980

ABDUL MALIK BIN ISHAK JCA, K N SEGARA JCA, ABDUL WAHAB BIN PATAIL JCA
For the Plaintiff/ Appellant - Chan Kok Keong (Cheong Sek Kwan with him) (Chan & Associates)

For the Defendant/ Respondent - Firoz Hussein (Datuk Mohd Hafarizam bin Harun, Cheng Mai and Haji Badrul Hishak bin Abdul Wahab with him) (Ong-Hanim & Badrul)

Civil Procedure — Pleadings — Material facts to be pleaded — Plaintiff applied for injunction to prevent defendant or defendant's agents from assaulting him — Whether fact pleaded — Whether courts bound by pleadings — Whether omission in statement of claim can be made good by affidavit evidence

Civil Procedure — Pleadings — Striking out — Principles — Whether plaintiff's prayer for injunctions plainly and obviously unsustainable — Suit commenced by plaintiff as Speaker of State Assembly — Whether plaintiff's capacity as Speaker existed at time of filing of action — Whether proceedings in Assembly justiciable — Whether allegations made in suit scandalous — Whether suit amounted to abuse of process — Rules of the High Court 1980 O 18 r 19

Constitutional Law — Legislature — State Assembly — Appointment and removal of State Assembly Speaker — Whether removal of plaintiff and appointment of defendant as Perak State Assembly Speaker valid — Whether Assembly has power or jurisdiction to elect or dismiss Speaker during proceedings — Whether validity of appointment of Speaker within court's jurisdiction — Federal Constitution art 72(1)

Constitutional Law — Legislature — State Assembly — Speaker — Immunity — Whether acts of speaker during sitting of Assembly privileged and covered with immunity

High Court

11. Tony Pua Kiam Wee v Dato' Sri Mohd Najib Bin Tun Haji Abdul Razak & Anor [2018] 8 MLJ 43

FAIZAH JAMALUDIN JC

For the plaintiff - Gobind Singh Deo (Joanne Chua and Michelle Ng with him) (Gobind Singh Deo & Co).

For the first defendant - Cecil Abraham (Mohd Hafarizam Harun, Rishwant Singh and Nik Nuraisha Alia Hanafi with him) (Hafarizam Wan & Aisha Mubarak).

For the second defendant - Alice Loke Yee Ching (Senior Federal Counsel, Attorney General's Chambers).

Civil Procedure — Striking out — Writ and statement of claim — Plaintiff brought action against first defendant for tort of misfeasance in public office — Defendants filed application to strike out plaintiff's writ and statement of claim under O 18 r 19(1) and O 92 r 4 of the Rules of Court 2012 — Whether plaintiff had antecedent legal rights or interests to bring action — Whether first defendant public officer — First defendant's state of mind when he committed alleged acts — Whether first defendant's acts caused loss and damages claimed by plaintiff — Whether damages recoverable

Tort — Misfeasance in public office — Ingredients of — Plaintiff brought action against first defendant for tort of misfeasance in public office — Defendants filed application to strike out plaintiff's writ and statement of claim under O 18 r 19(1) and O 92 r 4 of the Rules of Court 2012 — Whether plaintiff had antecedent legal rights or interests to bring action — Whether first defendant public officer — First defendant's state of mind when he committed alleged acts — Whether first defendant's acts caused loss and damages claimed by plaintiff — Whether damages recoverable

12. Dato' Sri Mohd Najib Bin Tun Haji Abdul Razak lwn Tony Pua Kiam Wee & satu lagi [2017] 7 MLJ 337

ROSLAN BAKAR PK

Bagi pihak plaintiff - Mohd Hafarizam (Reza Hassan dan Norhazira Abu Haiyan bersamanya) (Hafarizam Wan & Aisha Mubarak).

Bagi pihak defendan pertama - Gobind Singh Deo (Allif Benjamin Suhaimi dan Joanne Chua Tsu Fae bersamanya) (Thomas Philip).

Bagi pihak defendan kedua - N Surendran (Shahid Adli bin Kamarudin dan Raul Lee bersamanya) (Daim & Gamany).

Prosedur Sivil — Pliding — Pembatalan — Plaintiff melalui tindakan asal memfailkan saman fitnah terhadap defendan-defendan — Plaintiff memohon untuk membatalkan perenggan 6, 7 dan 8 pernyataan pembelaan defendan kedua di bawah A 18 k 19(1)(a) atau (b), (c) dan (d) Kaedah-Kaedah Mahkamah 2012 ('KKM') — Sama ada butiran dalam perenggan 6, 7 dan 8 pernyataan pembelaan defendan kedua 'on the face of it obviously unsustainable' — Sama ada keperluan di dalam A 78 k 3 KKM dipatuhi — Sama ada butiran fakta dalam perenggan 6, 7 dan 8 adalah suatu 'rolled-up plea' — Sama ada 'impugned words' suatu komen berpatutan atau pernyataan fakta — Sama ada wujud unsur-unsur di bawah A 18 k 19(1)(a) atau (b), (c) dan (d) KKM — Kaedah-Kaedah Mahkamah 2012 A 18 k 19(1) & A 78 k 3

13. DMG United Construction Sdn Bhd v Universiti Telekom Sdn Bhd [2017] 1 LNS 2088

WAN AHMAD FARID WAN SALLEH JC

For the plaintiff - Wira Mohd Hafarizam Harun & Nur Hazira; M/s Hafarizam Wan & Aisha Mubarak

For the defendant - P Jeyakumar & Nur Hidayah; M/s Zahir Jeya & Zainal

Civil Procedure — Application for Striking Out of Writ and Statement of Claim under O. 18 r. 19 (1) (a), (b), (c) and/or (d) of the Rules of Court 2012 ("ROC") — (a) Since the plaintiff had failed to fulfill the conditions precedent as stated in the LA within the stipulated time of 60 days and that no extension of time was given thereto, the LA is deemed to have been terminated — The plaintiff is not a party to the Concession Agreement between the defendant and Bigphase, and therefore has no cause of action against the defendant under the doctrine of the privity of contract — If at all the plaintiff and/or Muhammad Ghani had expended any money for Phase 2 of the Project, the cause of action lies against the liquidators of Bigphase and not the defendant.

14. Export-Import Bank Of Malaysia Berhad v Great Colour Holdings Sdn Bhd & Ors [2017] 1 LNS 1679

HANIPAH FARIKULLAH J

For the plaintiff - Lim Koon Huan & Mashan Singh; M/s Skrine

For the 1st, 2nd, 3rd, 5th & 6th defendants - Khairul Nizam, Tajul Hasnan, Ellia Zuraini & Umi Farhanah; M/s Raja Riza & Associates

For the 4th defendant - Wira Mohd Hafarizam Harun & Nor Emilia Iszahan; M/s Hafarizam Wan & Aisha Mubarak

Civil Procedure — Summary judgement — Plaintiff is recovering sums due from the Defendant guarantors under the relevant guarantee agreements — Whether there were events of default payment made by the Defendants in pursuant to the Guarantee Agreement and the Independent Checking Engineers — Whether there are triable issues which have been raised by the Defendants which Defendants have failed to answer the plaintiff's summary judgment application

15. Phang Shyue Ming v Couture Homes Sdn Bhd [2017] 8 MLJ 204

ROZANA ALI JC

For the plaintiff - Mohd Hafarizam (Her Lerk Yau and Nurshafiqah Balqish with him) (Hafarizam Wan & Aisha Mubarak).

For the defendant - Justin Voon (Alvin Lai and Lin Pei Sin with him) (Justin Voon Chooi & Wing).

Civil Procedure — Striking out — Writ and statement of claim — Plaintiff brought action against defendant claiming ownership of commercial unit in project developed by defendant — Defendant filed application to strike our plaintiff's writ and statement of claim under O 18 r 19(1)(a), (b) or (d) of the Rules of Court 2012 — Whether

defendant fulfilled contractual obligation under sale and purchase agreement — Whether plaintiff's claim obviously unsustainable, frivolous, vexatious and abuse of court's process

Land Law — Ownership — Claim for — Plaintiff brought action against defendant claiming ownership of commercial unit in project developed by defendant — Defendant filed application to strike out plaintiff's writ and statement of claim under O 18 r 19(1)(a), (b) or (d) of the Rules of Court 2012 — Whether defendant fulfilled contractual obligation under sale and purchase agreement — Whether plaintiff's claim obviously unsustainable, frivolous, vexatious and abuse of court's process — Rules of Court 2012 O 18 r 19

16. Tun Dr Mahathir Mohamad & Ors v Datuk Seri Mohd Najib Tun Hj Abdul Razak (No 2) [2017] 8 CLJ 350

ABU BAKAR JAIS J

For the plaintiffs - Haniff Khatri, Muhammad Rafique, Ahmad Razlan Che Kassim & Ilyani Noor Khuszainy; M/s Haniff Khatri

For the defendant - Cecil Abraham, Mohd Wira Hafarizam Harun, Rishwant Singh Amarjeet Singh, Norhazira Abu Haiyan & Iqmar Shafiq (PDK); M/s Hafarizam Wan & Aisha Mubarak

Civil Procedure — Pleadings - Striking out - Statement of claim - Declaratory relief — Allegations of financial improprieties against Prime Minister — Misfeasance and breach of fiduciaries in public office — Failure to prove Prime Minister a 'public officer' holding 'public office' - Whether fatal - Whether action frivolous and vexatious and abuse of court process — Whether ought to be struck out — Rules of Court 2012 O. 18 r.19(1)(a),(b),(c)&(d).

Tort — Misfeasance in public office - Breach of fiduciaries in public office — Ingredients and proof — Tortuous allegations made against Prime Minister — Whether Prime Minister a 'public officer' holding 'public office' — Constitutional provisions — Whether Prime Minister in 'public service' — Whether 'a member of the administration' — Interpretation Acts 1948 & 1967 s. 3 — Federal Constitution arts. 132, 160

17. Tun Dr Mahathir Bin Mohamad & Ors v Datuk Seri Mohd Najib Bin Tun Haji Abdul Razak [2017] 9 MLJ 1

ABU BAKAR JAIS J

For the plaintiffs - Haniff Khatri (Muhammad Rafique, Ahmad Razlan Che Kassim, and Ilyani bt Noor Khuszainy with him) (Haniff Khatri).

For the defendant - Cecil Abraham (Wira Mohd Hafarizam Harun, Rishwant Singh a/l Amarjeet Singh, Norhazira Abu Haiyan and Iqmar Shafiq with him) (Hafarizam Wan & Aisha Mubarak).

Civil Procedure — Striking out — Application for — Plaintiffs sued defendant for tort of misfeasance in public office and/or breach of fiduciaries in public office —

Defendant applied to strike out plaintiffs' suit pursuant to O 18 r 19(1)(a), (b), (c) and (d) of the Rules of Court 2012 — Whether plaintiffs' action was plain and obvious to be struck out — Whether defendant was public officer — Whether common law should be applicable to interpret terms of 'public officer' and 'public office' — Civil Law Act 1956 s 3(1) — Federal Constitution art 132 — Interpretation Acts 1948 and 1967 s 3 — Rules of Court 2012 O 18 r 19(1)

18. Abdullah Bin Arshad Dan Lain-Lain Lwn Lembaga Kemajuan Tanah Persekutuan (Felda) Dan Satu Lagi Dan Guaman Lain [2016] MLJU 843

HASSAN ABDUL GHANI PK

Bagi pihak plaintif-plaintif - Latheefa Koya (Shahid Adli bin Kamarudin bersamanya) (Daim & Gamany).

Bagi pihak defendan-defendan - Mohamad Hafarizam bin Harun (Nur Hazirah bt Abu Hayan bersamanya) (Hafarizam Wan & Aisha Mubarak).

Prosedur Sivil — Meminda Pernyataan Tuntutan Terpinda Semula Plaintif-Plaintif di bawah Aturan 20 kaedah 5 Kaedah-Kaedah Mahkamah 2012 selepas pengurusan kes dan kes telah ditetapkan untuk perbicaraan — Memasukkan kausa tindakan berkaitan dengan pelanggaran kewajipan fidusiari dan penipuan berdasarkan equity — Pindaan penjualan dan pembelian kelapa sawit oleh Defendan-Defendan diperinchi, dikemaskini dan dikembangkan — Sama Ada Permohonan Pindaan Plaintif-Plaintif dibuat secara Bona Fide Mahkamah bersetuju dengan penghujahan peguam terpelajar Plaintif-Plaintif bahawa permohonan pindaan ini adalah bona fide dan Plaintif-Plaintif langsung tidak berniat untuk melengahkan masa mahkamah — Samada Prejudis Yang Dialaml Oleh Defendan-Defendan Boleh Diganti Dengan Kos — Sama Ada Pindaan Itu Mengubah Sifat Dan Kausa Tindakan Plaintif-Plaintif — Samada Terdapat Penjelasan Kenapa Permohonan Tersebut Difaillkan Lewat

19. Dato' Sri Mohd Najib Bin Tun Haji Abdul Razak Dan Satu Lagi v Nga Kor Ming [2016] 11 MLJ 333

SITI KHADIJAH H

Bagi pihak plaintif - Mohd Hafarizam bin Harun (Reza Hassan, Nurshafiqah Balqish bt Jaffri dan Nik Nuraisha Alia Hanafi bersamanya) (Hafarizam Wan & Aisha).

Bagi pihak defendan - Gobind Singh (Joanne Chua Tsu Fei, Dennis Goh Teik Chuan dan Alex Tan Chie Sian bersamanya) (Wong Kian Kheong).

Prosedur Sivil — Bantahan awalan — Pelupusan kes dalam perkara undang-undang — Plaintif-plaintif memfailkan saman fitnah terhadap defendan — Plaintif-plaintif memohon pernyataan pembelaan defendan diputuskan mengenai perkara undang-undang di bawah A 14A k 1 Kaedah-Kaedah Mahkamah 2012 — Defendan mengemukakan bantahan awalan — Sama ada plaintif pertama mempunyai locus standi — Sama ada perkataan-perkataan ditujukan dalam kapasiti plaintif pertama sebagai Perdana Menteri atau dalam kapasiti peribadi

20. A. Santamil Selvi A/P Alau Malay @ Anna Malay & Ors v Dato' Sri Mohd Najib Bin Tun Abdul Razak & Ors [2015] MLJU 185

HASNAH BINTI DATO' MOHAMMED HASHIM J

For the plaintiff - Americk Sidhu (Americk Sidhu).

For the first & second defendants - Mohd Hafarizam Harun (Nazeera Hanifa with him) (Hafarizam Wan & Aisha Mubarak).

For the third defendant - Dhinese Baskaran (Shearn Delamore & Co).

For the fourth defendant - B Thangaraj (Thangaraj & Associates).

For the fifth and sixth defendants - Darryl Goon (Rishwant Singh & Maidzuara with him) Zul Rafique & Partners.

For the seventh defendant - Satha (Satha & Co).

For the eighth defendant - Gabriel Daniel (Paul Ong & Associates).

For the ninth defendant - Chong Ian Shin (Arulampalam & Co).

Civil Procedure — Striking Out — Order 18 rule 19(1)(b) and/or (d) of the Rules of Court 2012 — Defendant's application to strike out the Respondent's/Plaintiff's Writ and Statement of Claim ("SOC") — Whether the Plaintiffs are competent or have locus standi to commence or maintain this suit against the Defendants

21. Anina binti Saadudin v Datuk Seri Tengku Adnan Tengku Mansor & Anor [2016] 1 AMR 209; [2015] MLJU 2372; [2016] 1 CLJ 266

S NANTHA BALAN JC

For the plaintiff - Hanif Khatri Abdullah (Irzan Iswat with him) (Hanif & Rajendran).

For the defendants - Hafarizam Harun (Norhazira Abu Haiyan with him) (Hafarizam Wan & Aisha Mubarak).

Unincorporated Associations — Societies — Political party (UMNO) — Membership — Expulsion, legality of — Whether membership automatically invalidated upon member filing legal action against party — Jurisdiction — Whether court clothed with jurisdiction to hear and adjudicate disputes — Whether purely an internal party matter — Societies Act 1966, s. 18C — Applicability

22. Dato' Ahmad Sudin Lwn. Dato' Ariffin Man [2014] 1 LNS 1434

ABU BAKAR KATAR PK

Bagi pihak Plaintiff - Abdul Fareed Abdul Gafoor; (Lim Boo Chang bersamanya); T/n Lim Boo Chang & Co

Bagi pihak defendan - Mohd. Hafarizam Harun; (Aisha Mubarak bersamanya); T/n Hafarizam Wan & Aisha Mubarak

Prosedur Sivil — Borang mahkamah — Penyimpangan daripada borang yang telah ditetapkan — Notis permohonan — Borang 57 — Kegagalan menyatakan secara khusus peruntukan undang-undang yang dirujuk dan alasan-alasan permohonan dalam notis permohonan — Sama ada notis permohonan yang gagal mematuhi A. 32 k. 1 Kaedah-Kaedah Mahkamah 2012 wajar ditolak — Sama ada peruntukan dibawah A. 32 k. 1 Kaedah-Kaedah Mahkamah 2012 bersifat mandatori

Prosedur Sivil — Peguamcara — Pelepasan peguam — Permohonan pelepasan peguam — Kesahihan permohonan — Salah laksana keadilan — Sama ada permohonan wajar dibenarkan

23. *Elegant Advisory Sdn Bhd v Pegawai Awam, Barisan Nasional (Bn) (Selaras Dengan Peruntukan S 9(C) Akta Pertubuhan 1966) & Ors* [2011] MLJU 1087

MOHAMAD ARIFF J

For the plaintiff - Zulhasmi bin Zakaria (Mohd Nazruddin bin Abdullah with him) (Termizi & Co).

For the defendant - Mohd Hafarizam Harun (Nor Emelia Mohd Iszham with him) (Hafarizam Wan & Aisha Mubarak).

Civil Procedure — Defendant applied for striking out of Writ and Statement of Claim under Ord. 18, r. 19 (1)(a) or (b), (c) and (d) and/or Ord. 92, r.4 of the Rules of the High Court 1980 — Relied on grounds of res judicata and limitation — Whether the claim filed by the Plaintiff in 2011 was barred by limitation under section 6(1) of the Limitation Act 1953 since the non-payment on the invoices occurred in 2004

24. *Av Asia Sdn Bhd (Company No: 419764-K) v Measat Broadcast Electronic (M) Sdn Bhd (Company No: 240064-A) And Anor* [2010] MLJU 1836

AZAHAR BIN MOHAMED, J

For the Plaintiff - Feroz Hussin (RS Sodhi, Dato' Hafarizam & Reza Hassan with him) (Peters & Mohd)

For the 1st defendant - N Navaratnam (CH Wong with him) (Kadir, Andri & Partners)

For the 2nd defendant - Dato' Seri Kumar (Kumar Partnership).

Civil Procedure — Whether the 1st Defendant can seek for an order that all further proceedings in the suit herein against the 1st Defendant be stayed pending reference to arbitration pursuant to Section 10 of the Arbitration Act 2005 — Whether the 1st Defendant is entitled to have the dispute referred to Arbitration under s. 10 of the Arbitration Act.

25. *Sivakumar A/L Varatharaju Naidu v Ganesan A/L Retanam* [2010] 7 MLJ 355

AZAHAR MOHAMED J

For the plaintiff - Chan Kok Keong (Leong Cheok Keng and Mohd Asri Othman with him) (Chan & Associates).

For the defendant - Mohd Hafarizam Harun (Firoz Hussein, Badrul Hishah Abd Wahap, Cheng Mai, Abu Bakar As Sidek, Faizul Hilmy and Syed Faisal Syed with him) (Ong-Hanim & Badrul).

Civil Procedure — Pleadings — Material facts to be pleaded — Plaintiff applied for injunction to prevent defendant or defendant's agents from assaulting him — Whether fact pleaded — Whether courts bound by pleadings — Whether omission in statement of claim can be made good by affidavit evidence — Whether plaintiff estopped from

asserting defendant or defendant's agents assaulted him

Civil Procedure — Pleadings — Striking out — Whether plaintiff's prayer for injunctions plainly and obviously unsustainable — Suit commenced by plaintiff as Speaker of State Assembly — Whether plaintiff's capacity as Speaker existed at time of filing of action — Whether proceedings in Assembly justiciable — O 18 r 19 of the Rules of the High Court 1980

Constitutional Law — Legislature — State Assembly — Appointment and removal of State Assembly Speaker — Whether removal of plaintiff and appointment of defendant as Perak State Assembly Speaker valid — Article 36A of the Laws of the Constitution of Perak Darul Ridzuan — Whether Assembly has power or jurisdiction to elect or dismiss Speaker during its proceedings — Whether validity of appointment of Speaker within court's jurisdiction — Federal Constitution art 72(1)

26. *Elegant Advisory Sdn Bhd v Ishak Abd Rahman* [2009] 1 LNS 1537

K ANANTHAM

For the Plaintiff - Ahmad Termizi Abdullah and Mohd Nazruddin Abdulah; M/s Termizi & Co

For the Defendant - Dato' Hafarizam Harun; M/s Hafarizam Wan & Aisha Mubarak

Civil Procedure — Defendant filed application under O. 18 r. 19 (a)(b)(c)(d) of the RHC 1980 with affidavits to support setting aside of the default judgment application — Whether there is no privity of the contract between the Plaintiff and the Defendant — Whether the pleaded cause of action is barred by the principle of *res judicata*

27. *Genisys Integrated Engineers Pte Ltd v Uem Genisys Sdn. Bhd. & Ors* [2001] MLJU 11

RAMLY ALI, J

Loh Siew Cheang with E. T. See (M/s Cheang & Ariff),

Mohd. Hafarizam Harun (M/s Rashid & Lee)

Civil Procedure — Appeal — Notice of — Notice of appeal failed to state the order sought by the appellant — Effect of failure — Whether notice of appeal to be set aside

CONSTITUTIONAL LAW (No 2)

Federal Court

1. Salihudin bin Hj Ahmad Khalid & Ors v Pendaftar Pertubuhan Malaysia & Anor (unreported)

Constitutional Law – Jurisdiction of the Court is ousted by section 18C of the Societies Act – Section 18C is in accordance with Article 121(1) of the Federal Constitution – The wording of Section 18C must be given its plain and ordinary meaning – The case of Semenyih Jaya and Indira Gandhi are not applicable to this case – Whether the Appellants have diverted entirely on their questions posed to the Federal Court by making a colorable attempt in submitting points on Section 16 before this Honourable Court – Whether Section 16 is applicable to this case – Whether the questions posed before this Honourable Court which has now been rendered academic should be entertained

Judicial Review – The Appellants have no locus standi to pursue the Judicial Review – The reliefs seek under the Judicial Review have become academic

2. Dewan Undangan Negeri Selangor & Ors v Mohd Hafarizam Harun [2016] 7 CLJ 143

ZULKEFLI AHMAD MAKINUDIN CJ (MALAYA); SURIYADI HALIM OMAR FCJ; HASAN LAH FCJ; ZAINUN ALI FCJ; AZIAH ALI FCJ

For the appellants - Gopal Sri Ram, Chan Kok Keong, Robin FS Lim & David Yii; M/s Chan & Assocs

For the respondent - Firoz Hussein, Cheng Mai, Norhazira & Abu Haiyan; M/s Hafarizam Wan & Aisha Mubarak

Amicus Curiae - Amarjeet Singh Serjit Singh; SFC

Watching Brief - Nizam Bashir; Bar Council Legal Aid Centre

Constitutional Law — Legislature — State Legislative Assembly — Secretary of the Committee of Rights and Privileges ('Secretary') issued summons against solicitor for issuance of letter of demand against Speaker of Assembly — Letter of demand contained indecent and threatening words — Contempt of Assembly — Allegation against — Solicitor filed suit against State Legislative Assembly, Secretary and Committee of Rights and Privileges — Whether parties had capacity to be impleaded in legal proceedings - Whether Legislative Assembly entitled to rely on immunity conferred under art. 72(1) of the Federal Constitution — Whether Assembly had power to punish acts of contempt committed beyond its walls - Powers of Assembly - Whether limited by Laws of the Constitution of Selangor 1959

Constitutional Law — Legislature - State legislative powers — Privileges of Legislative Assembly — Secretary of the Committee of Rights and Privileges ('Secretary') issued summons against solicitor for issuance of letter of demand against Speaker of Assembly — Letter of demand contained indecent and threatening words — Contempt of Assembly — Allegation against — Solicitor filed suit against State Legislative Assembly, Secretary and Committee of Rights and Privileges - Whether Assembly acted within its constitutional and legal powers before invoking protection under art. 72(1) of the Federal Constitution — Whether Assembly had power to punish acts of contempt committed beyond its walls

Constitutional Law — Parties — Proper parties to be sued — State Legislative Assembly - Secretary of the Committee of Rights and Privileges ('Secretary') issued summons against solicitor for issuance of letter of demand against Speaker of Assembly — Letter of demand contained indecent and threatening words — Contempt of Assembly — Allegation against — Solicitor filed suit against State Legislative Assembly, Secretary and Committee of Rights and Privileges — Whether parties had capacity to be impleaded in legal proceedings

3. Dato' Dr Abd Isa Ismail v Dato' Abu Hasan Sarif & Anor [2013] 2 CLJ 857

ZULKEFLI MAKINUDIN CJ (MALAYA); HASHIM YUSOFF FCJ; AHMAD MAAROP FCJ; ZALEHA ZAHARI FCJ; ZAINUN ALI FCJ

For the 1st respondent - Mohd Hafarizam Harun (Abu Bakar Isa Ramat & Nor Emelia Mohd Iszeham with him); M/s Hafarizam Wan & Aishah Mubarak

For the 2nd respondent - Amarjeet Singh Serjit Singh SFC

Watching brief for the Government of the State of Kedah - Anas Ahmad Zakie

Constitutional Law — State Assemblyman — State Legislative Assembly meetings - Attendance — Failure of State Assemblyman to attend 5th Meeting of First Session and subsequent 1st Meeting of Second Session thereof — Whether having absented from 'two consecutive meetings' of the Assembly — Whether in breach of s. 51 of Kedah Constitution - Whether causing relevant state seat to fall vacant — Constitution of the State of Kedah arts. 2, 39, 51, 53

Statutory Interpretation — Constitution — Constitution of the State of Kedah - Section 51 — Interpretation of words "two consecutive meetings" therein — State Legislative Assembly meetings — Failure of State Assemblyman to attend two meetings thereof — Effect and consequence — Whether causing relevant state seat to fall vacant — Constitution of the State of Kedah ss. 2, 39, 51, 53

4. Dato' Abu Hasan Sarif v Dato' Dr Abd Isa Ismail [2012] 2 CLJ 649

ZULKEFLI MAKINUDIN CJ (MALAYA); HASHIM YUSOFF FCJ; AHMAD MAAROP FCJ

For the applicant - Dato' Firoz Hussein Ahmad Jamaluddin (Datuk Mohd Hafarizam Harun & Chieng Mai with him); M/s Hafarizam Wan & Aisha Mubarak

For the respondent - Edmund Bon Tai Soon (Zulqarnain Lukman with him); M/s Chooi & Co

Watching brief for the State Government of Kedah - Ruzaimah Mohd Ridzuan; State Legal Advisor

Constitutional Law — Courts — Federal Court — Jurisdiction to review — Whether having inherent power to review its own decision as well as decisions of Court of Appeal — Whether equipped with power to uphold fair administration of justice and to prevent injustice and/or abuse of process — Rules of the Federal Court 1995, r. 137

Constitutional Law — Courts — Court of Appeal — Power to order stay of own decision — Court of Appeal ordering stay of own decision in respect of declaratory relief — Whether a misdirection in law — Whether causing injustice — Whether decision to stay could be reviewed by Federal Court — Rules of the Federal Court 1995, r. 137

Jurisdiction — Federal Court — Inherent powers — Power to review on decision — Whether having power to review its own decision as well as decisions of Court of Appeal — Rules of the Federal Court 1995, r. 137

5. Jamaluddin Bin Mohd Radzi & Ors v Sivakumar A/L Varatharaju Naidu (Claimed As Yang Dipertua Dewan Negeri Perak Darul Ridzuan), Election Commission, Intervener [2009] 4 MLJ 593

ALAUDDIN PCA, ARIFIN ZAKARIA CJ (MALAYA), NIK HASHIM, AUGUSTINE PAUL AND JAMES FOONG FCJJ

For the appellants - Firoz Hussein Ahmad Jamalludin (Mohd Hafarizam Harun, Syed Faisal Syed Abdullah, Abu Bakar As-Sidek, Cheng Mai, Badrul Hishah Abd Wahap, Mohd Reza Hassan and Shahir Ab Razak with him) (Ong-Hanim & Badrul).

For the respondent - Sulaiman Abdullah (Tommy Thomas, Philip Koh, Chan Kok Keong, Ranjit Singh, Razlan Hadri Zulkifli, Edmund Bon Tai Soon, Amer Hamzah Arshad, Yap Boon Hau and Zulqarnain Luqman and Leong Cheok Keng with him) (Chan & Associates).

For the intervener - Abdul Gani Patail (Tun Abd Majid Tun Hamzah, Azizah Nawawi, Amarjeet Singh, Kamaluddin Md Said, Siti Salwa Musa and Suzana Atan with him) (Attorney General's Chambers).

Watching brief for the state of Perak - Ahmad Kamal Md Shahid (State Legal Advisor).

Watching brief for Malaysian Bar Council - Lim Kian Leong (Cheah Kit Yee with him).

Constitutional Law — Constitution — Pre-Merdeka law — Article 63 of the Perak Constitution — Whether a 'federal law' — Whether may be amended by state law — Amendment to substitute words 'Federal Court' to 'Supreme Court' — Whether amendment consistent with art 162(1) of the Federal Constitution

Constitutional Law — Courts — Federal Court — Jurisdiction — Whether Federal Court has jurisdiction to hear application by way of a direct reference under art 63 of the Perak Constitution — Whether Federal Court is conferred with necessary jurisdiction by art 63 — Federal Constitution art 121(2)(c)

Constitutional Law — Legislation — Validity of impugned legislation — Pre-Merdeka law — Amendment — Whether art 63 of the Perak Constitution may be

amended by state law — Amendment to substitute words 'Federal Court' for 'Supreme Court' — Whether amendment consistent with art 162(1) of the Federal Constitution

Constitutional Law — Legislature — State Assembly — Determination of casual vacancy of state assembly seat — Right to declare casual vacancy vested in Election Commission — Whether Speaker may establish casual vacancy — Whether receipt by Speaker of a letter of resignation of assemblyman would cause seat become vacant — Perak Constitution art 36(5) — Federal Constitution art 72(1)

6. YAB Dato' Dr Zambry Abd Kadir & Ors v Yb Sivakumar Varatharaju Naidu; Attorney-General Malaysia (Intervener) [2009] 4 CLJ 253

ALAUDDIN MOHD SHERIFF, PCA; ARIFFIN ZAKARIA, CJ (MALAYA); NIK HASHIM, FCJ; AUGUSTINE PAUL, FCJ; ZULKEFLI MAKINUDIN, FCJ

For the appellants - Firoz Hussein Ahmad Jamaluddin (Datuk Mohd Hafarizam Harun, Syed Faisal Syed Abdullah, Abu Bakar As Sidek Mohd Sidek, Cheng Mai, Badrul Hishah Abd Wahap, Mohd Reza Hassan & Shahir Ab Razak with him); M/s Ong-Hanim & Badrul
For the respondent - Hj Sulaiman Abdullah (Philip Koh, Ranjit Singh, Chan Kok Keong, Razlan Hadri Zulkifli, Edmund Bon Tai Soon, Amer Hamzah, Leong Cheok Keng, Nga Hock Cheh & Hanipa Maidin with him); M/s Chan & Assoc

For the intervener - Tan Sri Abdul Gani Patail (Tun Abd Majid Tun Hamzah, Dato' Kamaludin Md Said, Azizah Hj Nawawi, Amarjeet Singh & Suzana Atan with him); A-G Chambers

Watching brief for Kerajaan Negeri Perak - Dato' Ahmad Kamal Md Shahid; State Legal Advisor, Perak

Constitutional Law — Legislature — State Assembly — Decision of Speaker suspending and prohibiting applicants from attending State Legislative Assembly — True interpretation of art. XLIV Perak State Constitution read together with Standing Orders of Legislative Assembly and Legislative Assembly (Privileges) Enactment 1959 — Commencement of action — Justiciability of orders sought — Whether applicants' suspension on account of alleged contempt null and void — Federal Constitution, art. 72(1)

Constitutional Law — Legislature — State legislative powers — Decision of Speaker suspending and prohibiting applicants from attending State Legislative Assembly — True interpretation of art. XLIV Perak State Constitution read together with Standing Orders of Legislative Assembly and Legislative Assembly (Privileges) Enactment 1959 — Commencement of action — Justiciability of orders sought — Whether applicants' suspension on account of alleged contempt null and void — Federal Constitution, art. 72(1)

Constitutional Law — Legislature — Contempt — Decision of Speaker suspending and prohibiting applicants from attending State Legislative Assembly — True interpretation of art. XLIV Perak State Constitution read together with Standing Orders of Legislative Assembly and Legislative Assembly (Privileges) Enactment 1959 — Commencement of action — Justiciability of orders sought - Whether applicants' suspension on account of alleged contempt null and void — Federal

Constitution, art. 72(1)

Constitutional Law — Constitution — Perak — Decision of Speaker suspending and prohibiting applicants from attending State Legislative Assembly — True interpretation of art. XLIV Perak State Constitution read together with Standing Orders of Legislative Assembly and Legislative Assembly (Privileges) Enactment 1959 — Commencement of action — Justiciability of orders sought - Whether applicants' suspension on account of alleged contempt null and void — Federal Constitution, art. 72(1)

Statutory Interpretation — Construction of statutes — Literal approach — Decision of Speaker suspending and prohibiting applicants from attending State Legislative Assembly — True interpretation of art. XLIV Perak State Constitution read together with Standing Orders of Legislative Assembly and Legislative Assembly (Privileges) Enactment 1959 — Whether applicants' suspension on account of alleged contempt null and void

Civil Procedure — Action — Commencement — Mode of commencement — Declaratory relief — Declaration of applicants' legal right — Appropriate form of relief — Rules of the High Court 1980, O. 15 r. 16, O. 53 — Specific Relief Act 1950, s. 41

Civil Procedure — Declaratory relief — Declarations of right — Mode of commencement of action — Declaration of applicants' legal right - Appropriate form of relief - Rules of the High Court 1980, O. 15 r. 16, O. 53 — Specific Relief Act 1950, s. 41

Court of Appeal

7. Tun Dr Mahathir Bin Mohamad & Ors v Datuk Seri Mohd Najib Bin Tun Hj Abdul Razak [2018] 3 MLJ 466

IDRUS HARUN, VERNON ONG AND ABDUL RAHMAN SEBLI JJCA

For the appellants - Haniff Khatri (Ilyani Noor Khuszairy with him) (Haniff Khatri).

For the respondent - Cecil Abraham (Rishwant Singh, Mohd Hafarizam Harun and Norhazira Abu Haiyan with him) (Hafarizam Wan & Aisha Mubarak).

Constitutional Law — Government — Prime Minister — Whether Prime Minister of Malaysia a ‘public officer’ who could be sued for ‘misfeasance in public office’ and ‘breach of fiduciaries in public office’ — Whether mere fact Prime Minister occupied public office did not mean he was ‘public officer’ — Whether s 3 of the Interpretation Acts 1948 and 1967 read together with arts 132(1), 132(3) and 160(2) of the Federal Constitution showed that Prime Minister was ‘member of the administration’ appointed by King whereas ‘public officer’ was one who held and exercised functions of office in any of ‘public services’ and was appointed by Public Services Commission — Whether ‘public services’ excluded office of any ‘member

of the administration’ — Whether meaning given to phrase ‘public officer’ by Interpretation Acts and Federal Constitution must be preferred over the common popular meaning given to it under English common law — Whether suit against Prime Minister plainly unsustainable and had to be struck out under O 18 r 19 of the Rules of Court 2012

English Law — Tort — Misfeasance in public office — Whether English common law failed to precisely define who a ‘public officer’ for purposes of tort of misfeasance in public office — Whether no authority existed to state whether or not the Prime Minister of England was a public officer — Whether Malaysian law had to be resorted to decide whether the Prime Minister of Malaysia was a ‘public officer’ — Whether Malaysian Interpretation Acts 1948 and 1967 read together with arts 132(1), (3) and 160(2) of the Federal Constitution showed that the Prime Minister of Malaysia was not a ‘public officer’ but only a ‘member of the administration’ — Whether ‘public officer’ was one who held office in any of the ‘public services’ which term excluded the office of any ‘member of the administration’ — Whether proviso to s 3(1) of the Civil Law Act 1956 could not be used to assign popular dictionary meaning of ‘public officer’ under English common law to Prime Minister of Malaysia

Tort — Misfeasance in public office — Breach of fiduciaries in public office — Whether appellants failed to prove primary ingredient common to both torts that Prime Minister of Malaysia was ‘public officer’ — Whether appellants failed to show existence of fiduciary relationship based on mutual trust and confidence between themselves and Prime Minister of Malaysia — Whether appellants’ pleadings failed to particularise facts on which two torts were based and did not show how they suffered damages because of respondent’s acts or omissions

8. Dewan Undangan Negeri Selangor & Ors v Mohd Hafarizam Harun [2015] 1 LNS 1545

ZAHARAH IBRAHIM JCA; MOHD ZAWAWI SALLEH JCA; UMI KALTHUM ABDUL MAJID JCA

For the appellants - Chan Kok Keong & Lim Fang Say; M/s Chan & Associates

For the respondent - Firoz Hussein & Cheng Mai; M/s Hafarizam Wan & Aisha Mubarak
Amicus Curiae - Amarjeet Singh, Senior Federal Counsel, Attorney-General's Chambers, Putrajaya

Constitutional Law — Appeal against the decision of the High Court allowing the declarations sought by the Plaintiff in relation to the summons issued by the 2nd Defendant summoning the Plaintiff to attend a hearing of the 3rd Defendant, the Committee of Rights and Privileges of the Selangor State Legislative Assembly — Whether the Court's jurisdiction in relation to the Summons is ousted by Article 72 of the Federal Constitution — Whether the Summons issued by the 2nd Defendant was issued ultra vires the Selangor State Constitution

9. Jamil Dzulkarnain v Mohamad Kamil Shafie [2015] 2 CLJ 1079

MOHAMAD ARIFF YUSOF JCA; MOHD ZAWAWI SALLEH JCA; IDRUS HARUN JCA

For the appellant - Chan Kok Keong (James Huntzen Ong with him); M/s Chan & Assocs
For the respondent - Mohd Hafarizam Harun (Choo Shi Jin with him); M/s Hafarizam Wan & Aisha Mubarak

Election — Disqualification — Member of State Legislative Assembly — Application for — Grounds — Respondent not resident of state - Whether respondent fulfilled constitutional requirement - Whether appellant discharged onus probandi of proving that respondent was not residing in or was absent from state with no intention of returning — Laws of the Constitution of Perak, art. XXX — Election Offences Act 1954, s. 32(e) — Federal Constitution, art. 118

Constitutional Law — Election — Method of challenging — Allegation that member of State Legislative Assembly not resident of state — Application by way of originating summons — Whether action fell under art. 118 of Federal Constitution — Whether correct mode of commencement — Whether application had effect of vitiating election

10. Sivakumar A/L Varatharaju Naidu v Ganesan A/L Retanam [2010] 7 MLJ 355

AZAHAR MOHAMED J

For the plaintiff - Chan Kok Keong (Leong Cheok Keng and Mohd Asri Othman with him) (Chan & Associates).

For the defendant - Mohd Hafarizam Harun (Firoz Hussein, Badrul Hishah Abd Wahap, Cheng Mai, Abu Bakar As Sidek, Faizul Hilmy and Syed Faisal Syed with him) (Ong-Hanim & Badrul).

Civil Procedure — Pleadings — Material facts to be pleaded — Plaintiff applied for injunction to prevent defendant or defendant's agents from assaulting him — Whether fact pleaded — Whether courts bound by pleadings — Whether omission in statement of claim can be made good by affidavit evidence — Whether plaintiff estopped from asserting defendant or defendant's agents assaulted him

Civil Procedure — Pleadings — Striking out — Whether plaintiff's prayer for injunctions plainly and obviously unsustainable — Suit commenced by plaintiff as Speaker of State Assembly — Whether plaintiff's capacity as Speaker existed at time of filing of action — Whether proceedings in Assembly justiciable — O 18 r 19 of the Rules of the High Court 1980

Constitutional Law — Legislature — State Assembly — Appointment and removal of State Assembly Speaker — Whether removal of plaintiff and appointment of defendant as Perak State Assembly Speaker valid — Article 36A of the Laws of the Constitution of Perak Darul Ridzuan — Whether Assembly has power or jurisdiction to elect or dismiss Speaker during its proceedings — Whether validity of appointment of Speaker within court's jurisdiction — Federal Constitution art 72(1)

11. Dato' Dr Zambry Bin Abd Kadir v Dato' Seri Ir. Hj Mohammad Nizar Bin Jamaluddin And Attorney General Of Malaysia (Intervener) (Dissenting Avail Mlju (09) 0551) [2009] 5 MLJ 464

RAUS SHARIF, ZAINUN ALI AND AHMAD MAAROP JJCA

For the appellant - Cecil Abraham (Rishwant Singh and Farah Shuhadah Razali with him) (Zul Rafique & Partner).

For the respondent - Sulaiman Abdullah (Philip Koh, Chan Kok Keong, Ranjit Singh, Razlan Hadri, Edmund Bon, Amer Hamzah, Leong Cheok Keng, Hanipa Maidin and Zulqarnain Lukman with him) (Leong & Tan).

For the intervener - Abdul Ghani Patail (Abdul Majid Tun Hamzah, Azizah Nawawi, Amarjeet Singh a/l Sarjit Singh, Suzana Atan and Andi Razalijaya A Dadi with him) (Attorney General's Chambers).

Watching brief for Barisan Nasional - Hafarizam Harun (Firuz Hussien Jamaluddin and M Reza Hassan with him).

Watching brief for Pakatan Rakyat - Cheng Poh Heng.

Constitutional Law — Executive — Appointment of Menteri Besar — Whether appointment of new Menteri Besar valid and proper — Loss of confidence by majority of members of Legislative Assembly in previous Menteri Besar — Right of Sultan to appoint new Menteri Besar — Perak State Constitution art XVIII(2)(a)

Constitutional Law — Executive — Dismissal of Menteri Besar — Menteri Besar ceasing to command confidence of majority members of State Legislative Assembly — Menteri Besar's request for dissolution of State Assembly rejected by Sultan — Refusal of Menteri Besar to tender resignation — Whether motion of no confidence is required to dismiss Menteri Besar — Whether Menteri Besar's office held at pleasure of Sultan — Whether dismissal of Menteri Besar by Sultan effective — Article XVI(6) of the Perak State Constitution

Constitutional Law — Legislature — State Assembly — Request to Sultan for dissolution of Perak State Assembly under art XVI(6) of the Perak State Constitution — Sultan refusing consent for dissolution — Royal prerogative — Whether decision of Sultan justiciable

Constitutional Law — Preservation of rights and powers of Sultan — Prerogative powers — Administration of State — Powers of appointing and dismissing Menteri Besar — Powers of agreeing or refusing to dissolution of State Assembly — Whether Sultan may make personal enquiries in course of exercising prerogative powers — Powers exercisable by Sultan in his absolute discretion

LAW OF CONTRACT

Court of Appeal

1. Sen Media Sdn Bhd v Perunding Pakar Media Sdn Bhd & Ors [2015] 5 MLJ 759

ZAHARAH IBRAHIM, AZAHAR MOHAMED, ABDUL AZIZ AB RAHIM JJCA

For the appellant - Firoz Hussein bin Ahmad Jamaluddin (Mohd Hafarizam bin Harun, Cheng Mai and Muhammad Asmirul Asraf bin Fadil with him) (Hafarizam Wan & Aisha Mubarak).

For the first respondent - Ragumaren Gopal (G Ragumaren & Co).

For the second respondent - Nik Mohd Noor (Cynthia Noor Hazean with him) (Senior Federal Counsel, Attorney General's Chambers).

For the third respondent - Ahmad Shahrir bin Mohd Salleh (Ramli, Shahrir & Tajul).

Civil Procedure — Appeal — Appellate intervention — Lack of judicial appreciation by the judge resulting in defendant being prejudiced — Whether a serious error warranting appellate intervention

Civil Procedure — Pleadings — Issue not pleaded — Failure to plead invalidity of contract — Court not to decide on issue not pleaded

Public Authorities — Statutory body — Breach of contract — National Sports Council of Malaysia failing to pay for services obtained under contract — Whether payment made in breach of treasury instructions — Whether issue of treasury instructions an internal matter not affecting contractual obligation of parties — Whether no power to enter into any contract — Whether valid contract established

2. Genisys Intergrated Engineers Pte Ltd v Uem Genisys Sdn Bhd & Others (Dissenting Judgment is available at MLJU (08) 418) [2008] MLJU 419

ZAINUN BT ALI, GOPAL SRI RAM, HASAN BIN LAH, JJCA

For the appellant - Gideon Tan, (YC Chin with him) (Gideon Tan Razali Zaini)

For the 1st respondent - PY Chong (Liquidator) (Nordin Torji & Partners)

For the 2nd respondent - Dominic Puthuchearry (Firoz Hussien & Cheng Mai with him)

For the 3rd & 4th respondent - Malik Imtiaz Sarwar (Malik Imtiaz Sarwar)

For the 2nd respondent - Hafarizam Harun (Hafarizam & Wan & Aisha Mubarak)

Contract — Appeal — Sanctity of the bargain between shareholders, as embodied in the Articles and Agreements — Issue of pre-emption provisions; the balance between granting that right or remedy or allowing it to be an instrument of abuse; and how fairness can be attained in the event of its violation

CRIMINAL PROCEDURE

High Court

1. Hazraf Ali Bin Hassan v Public Prosecutor [2012] 7 MLJ 355

AKHTAR TAHIR J

For the appellant - Wan Azmir bin Wan Majid (Mohd Hafarizam bin Harun and Abu Bakar bin Isa Ramat with him) (Hafarizam Wan & Aisha Mubarak).

For the respondent - Mohd Baharuddin bin Ahmad Kassim (Deputy Public Prosecutor, Malaysian Anti-Corruption Commission).

Criminal Procedure — Charge — No offence disclosed — Accused charged with corruptly soliciting and receiving money — Failure to state for whom corrupt money was sought for — Whether accused prejudiced — Whether defect/error material under s 156 of the Criminal Procedure Code — Whether retrial appropriate — Anti-Corruption Act 1997 s 10(a)(aa)

ELECTION LAWS

Federal Court

1. Khairuddin Abu Hassan v Datuk Seri Hj Ahmad Hamzah & Ors And Another Appeal [2019] 9 CLJ 315

RICHARD MALANJUM CJ; DAVID WONG DAK WAH CJ (SABAH AND SARAWAK); ALIZATUL KHAIR OSMAN FCJ; ROHANA YUSUF FCJ; TENGKU MAIMUN TUAN MAT FCJ

For the appellant - Gopal Sri Ram, Muniandy Vestanathan, Shareen Thrivina Kamarul, How Li Nee & Fiona Aurelia Culas; M/s Andy & Co

For the 1st respondent - Hafarizam Mohd Harun, Rosfinah Rahmat, Mohd Adli Ithin, Wan Hamidah Wan Ismail, Amin Othman; M/s Rosfinah & Co

For the 2nd and 3rd respondents - Firoz Hussein & Choo Shi Jin; M/s Zaid Ibrahim & Co

Election — Petition — Appointment of advocate — Whether valid — Notice of appointment of advocates for respondents — Whether respondents failed to comply with rr. 9 & 34 of Election Petition Rules 1954 - Whether r. 9 of Election Petition Rules 1954 applied only to petitioner — Respondents filed written notices of their appointment at Registrar's office — Whether respondents' advocates complied with requirement of r. 34 of Election Petition Rules 1954

Election — Petition — Jurisdiction — Courts — Place of filing election petition — Whether election petition ought to be filed in High Court Melaka or Kuala Lumpur - Whether different High Courts in Malaya and in Sabah and Sarawak branches of respective High Courts — Whether High Court in Malaya encompasses territories of Melaka and Kuala Lumpur - Whether election petition filed in High Court Kuala Lumpur proper - Whether High Court Kuala Lumpur had jurisdiction to determine challenge of election — Federal Constitution, arts. 118 & 121(1)

Election — Petition — Insufficient particulars — Allegation of — Whether petitioner pleaded facts and grounds of any non-adherence or offences alleged to have been committed — Whether petition properly filed — Whether petition in accordance with rr. 4(1)(b) and 4(4) of Election Petition Rules 1954

2. Isnin Bin Hj Aliasnih v Lajim Bin Ukin (In The Matter Of Election Petition No Bk1-26ep-1/6-2013 In The High Court In Sabah And Sarawak At Kota Kinabalu Decided By The Election Judge On The 6th December 2013) [2014] 5 MLJ 297

ZULKEFLI CJ (MALAYA), SURIYADI, AHMAD MAAROP, APANDI ALI AND RAMLY ALI FCJJ

For the appellant - Mohd Hafarizam Harun (Japar Esteban, Muammar Julkarnain and Rizwandeem M Borhan with him) (Esteban Aliq & Co).

For the respondent - Chau Chin Tang (Lawrence Thien and Al Zarefee Mohd Shukor with him) (Chau & Thien).

Election — Petition — Allegation of corrupt practices — Bribery — Whether polling agent acted on frolic of her own in distributing money and coupons — Whether knowledge and consent of respondent in polling agents acts proven — Whether polling agent comes within definition of agent under Election Offences Act 1954 — Whether respondent liable for polling agents acts — Election Offences Act 1954 ss 10(a), 11(1)(b), 11(1)(c), 32(b) & 32(c)

Evidence — Presumptions — Adverse inference under s 114(g) of the Evidence Act 1950 — Failure of petitioner to call material witness — Whether adverse inference should be invoked against respondent for failing to call the same witness — Burden on petitioner to prove case

3. Ahmad Jamaluddin Bin Abd Majid v Rafidah Binti Aziz And Others [2009] 2 MLJ 646

ZULKEFLI BIN AHMAD MAKINUDDIN, FCJ, RICHARD MALANJUM, CJ, AUGUSTINE PAUL, FCJ

For the appellant - Mohamed Hanipa bin Maidin (Aminuddin bin Zukipli, Zulqarnain bin Lukman, Zulmi bin Sabri and Yusnita bt Yusof with him) (Zainur Rijal Talha & Amir).

For the first respondent - Mohd Hafarizam bin Harun (Badrul Hisham bin Abd Wahap, Shahir bin Ab Razak, Firoz Hussien bin Ahmad Jamaludin and Syed Faizal bin Syed Abdullah with him) (Ong, Hanim & Badrul).

For the second and third respondents - Amarjeet Singh a/l Serjit Singh (Senior Federal Counsel, Attorney General's Chamber).

Election — Election court — Judge — Jurisdiction — Whether election judge empowered to strike out defective petition without trial

Election — Objections — Nomination papers — Candidate filing two unsigned copies of nomination papers — Whether returning officer obliged to reject candidate's nomination — Whether returning officer conferred discretion whether to accept or reject such nomination — Elections (Conduct of Elections) Regulations 1981 reg 4(6)

Election — Petition — Presentation of — Matters that petitioner must satisfy in order to sustain petition — Twin requirements of s 32(b), whether satisfied — Election Offences Act 1954 s 32(b) — Elections (Conduct of Elections) Regulations 1981 reg 7(1), (4), (5)

Words and Phrases — 'liable to be rejected' — Elections (Conduct of Elections) Regulations 1981 reg 4(6)

4. Mohd Nazri Hj Din v Dato' Seri Raja Ahmad Zainuddin Raja Hj Omar & Ors [2009] 3 CLJ 221

RICHARD MALANJUM, CJ (SABAH & SARAWAK); AUGUSTINE PAUL, FCJ; ZULKEFLI MAKINUDIN, FCJ

For the appellant - Mohamed Hanipa Maidin (Aminuddin Zulkipli, Zulqarnain Lukman, Zulmi Sabri, Yusnita Yusuf with him); M/s Zainul Rijal Talha & Amir

For the respondents - Datuk Mohd Hafarizam Harun (Badrul Hishah Abd Wahap & Shahhir Ab Razak with him); M/s Ong-Hanim & Badrul

Election — Petition — Allegation of corrupt practice — Bribery — Pleadings — Whether petition did not contain material facts as required by r. 4(1)(b) and (4)(3) Election Petition Rules 1954

5. Wan Sagar Wan Embong v Harun Taib (No 2) [2009] 1 CLJ 457

ALAUDDIN MOHD SHERIFF, CJ (MALAYA); ARIFFIN ZAKARIA, FCJ; ZULKEFLI MAKINUDIN, FCJ

For the appellant - Firuz Hussein Ahmad Jamaluddin (Mohd Hafarizam Harun, Shem Shawal Azraai, Mohd Rafaei Adnan, Julita Ilhari Abdul Jabbar, Cheng Mai & Nik Mohd Nasir Nik Hussin with him); M/s Ahmad Shahabuddin & Co

For the respondent - Dato' Wan Abd Muttalib Embong (Hj Mohamad Arif Md Yusof, Abd Haris Abd Malik, Saiffuddin Othman, Mohd Zabidi Yusof & Mohd Kamaruzaman Abd Wahab with him); M/s Wan Abdul Mutalib & Co

Election — Petition — Petition to set aside Election — Appeal against striking out of petition — Inclusion of evidence in petition — Allegations of corrupt practices — Whether there was failure to plead sufficient facts and grounds — Election Petition Rules 1954, r. 5.

Election — Petition — Petition to set aside Election — Appeal against striking out of petition — Principles of Election Law — Allegations of corrupt practices committed by agents of candidate - Agency — Pleadings — Election Offences Act 1954, s. 32(c).

Agency — Appointment requirements — Agents of Election candidate — Allegations of corrupt practices committed by agents — Principles of Election Law - Nexus or connection between alleged agents and candidate — Pleadings — Election Offences Act 1954, s. 32(c).

Election — Petition — Petition to set aside Election — Appeal against striking out of petition — Election Law — Burden of proof — Whether rested on both parties — Whether premature to raise issue before full trial — Election Petition Rules 1954, r. 4(1).

Evidence — Burden of proof — Election offences — Principles of Election Law — Whether burden of proof rested on both parties — Whether premature to raise issue before full trial — Election Petition Rules 1954, r. 4(1).

Election — Petition — Petition to set aside Election — Appeal against striking out of petition — Alleged misconducts — Requirements, whether different — Acts of general intimidation — Failure to plead material facts and grounds to support claim — Election Offences Act 1954, s. 32(a), (c).

6. Wan Sagar Bin Wan Embong v Harun Bin Taib [2008] 6 MLJ 473

ALAUDDIN CJ (Malaya), ARIFIN ZAKARIA AND ZULKEFLI FCJJ

For the appellant - Firuz Hussein Ahmad Jamaluddin (Mohd Hafarizam Harun, Shem Azraai, Mohd Rafaei Adnan, Julita Ilhari Andul Jabbar, Cheng Mai & Nik Mohd Nasir Nok Hussin with him) (Ahmad Shahabuddin & Co).

For the respondent - Wan Abd Muttalib bin Embong (Mohamad Ari bin Md Yusof, Abd Haris bin Abd Malik, Saifuddin bin Othman, Mohd Zabidi bin Yusof & Mohd Kamaruzaman bin Abd Wahab with him) (Wan Abdul Muttalib & Co).

Election — Petition — Application for declaration that elections were null and void — Struck off by election judge — Appeal against decision — Whether election judge had erred in law in requiring inclusion of evidence in petition — Whether judge had erred in his application of principles on agency in relation to contents of petition — Whether judge had failed to take into account different requirements to prove misconduct under s 32(a) and (c) of the Election Offences Act 1954 — Election Offences Act 1954 s 32(a), (b), (c) — Election Petition Rules 1954 rr 4, 5

Court of Appeal

7. Pegawai Pengurus Pilihanraya Dewan v Streram Sinnasamy & Ors [2019] 1 LNS 589

HAMID SULTAN ABU BACKER JCA; HANIPAH FARIKULLAH JCA; KAMALUDIN MD SAID JCA

For the appellant - G Rajasingam, Sathya Kumardass & Sharon Jessy; M/s Shearn Delamore & Co

For 1st, 2nd & 3rd respondents - Muhammad Rafique Rashid Ali, Sreekant Pillai, Satia Stella Sidhu, Akif Rusli, Abu Bakar Isa Ramat & Muhammad Amin Othman; M/s Sreekant Pillai

Election — Appeal against the committal and sentencing order dated 10-10-2018, for contempt of court on the grounds of interfering with the due administration of justice by coaching a witness, referred to as Daing through whatsapp messages — Order 52 rule 2A of Rules of Court 2012 — Article 5, 8 and 10 of Federal Constitution

8. Jamil Dzulkarnain v Mohamad Kamil Shafie [2015] 2 CLJ 1079

MOHAMAD ARIFF YUSOF JCA; MOHD ZAWAWI SALLEH JCA; IDRUS HARUN JCA

For the appellant - Chan Kok Keong (James Huntzen Ong with him); M/s Chan & Assocs

For the respondent - Mohd Hafarizam Harun (Choo Shi Jin with him); M/s Hafarizam Wan & Aisha Mubarak

Election — Disqualification — Member of State Legislative Assembly — Application for — Grounds — Respondent not resident of state — Whether respondent fulfilled constitutional requirement — Whether appellant discharged onus probandi of proving that respondent was not residing in or was absent from state with no intention of returning - Laws of the Constitution of Perak, art. XXX — Election

Offences Act 1954, s. 32(e) — Federal Constitution, art. 118

Constitutional Law — Election — Method of challenging — Allegation that member of State Legislative Assembly not resident of state — Application by way of originating summons — Whether action fell under art. 118 of Federal Constitution — Whether correct mode of commencement — Whether application had effect of vitiating election

High Court

9. Faizul Ismail v Mohd Azhar Bin Jamaluddin & Ors [2018] MLJU 1418

COLLIN SEQUERAH J

For the petitioner - Amir Khusyairi bin Mohamad Tanusi (Nasrul Hadi bin Mat Saad, Muhammad Farhan bin Ahmad Fadzi, Muhamad Syahrul Nizam bin Mohd Rabi, Mohamed Haniff bin Khatri Abdulla, Mior Nor Haidir bin Suhaimi, Muhammad Rafique bin Rashid and Saiful Ambar bin Abdullah Ambar with him) (Amir Khusyairi & Assoc),

For the first respondent - Mohd Hafarizam bin Harun (Mohd Hakimi bin Shaari, Mohd Aidil bin Arsad, Mohamed Alif Azfar bin Mohamed Nasir and Norhazira bt Abu Haiyan with him) (Hakimi, Lalitha, Mardhiyah & Assoc).

For the second and third respondents - Leong Wai Hong (Tan Wee Sean with him) (Skrine).

Election — Preliminary Objection — Non-compliance with Rule 15 of the Election Petition Rules 1954 (EPR) — Non-compliance with Rule 3(1) and Rule 3(2) EPR — Non-compliance with Section 34 EOA — Non-compliance with section 32 EOA — Non-compliance with Regulation 25(12)(b) of the Election (Conduct of Elections) Regulations 1981 — Failure to plead Regulation 30 ECER — S. 36 of the Election Offences Act 1954

10. G Manivannan A/L Gowindasamy v Khairuddin Bin Tarmizi & Ors [2018] MLJU 1425

COLLIN SEQUERAH J

For the petitioner - Mohd Faizal bin Abdul Rahman (Adi Zulkarnain bin Zulkafli) (Faizal Rahman & Co).

For the first respondent - Mohd Hafarizam bin Harun (Mohd Hakimi bin Shaari, Mohd Aidil bin Arsad, Mohamed Alif Azfar bin Mohamed Nasir and Norhazira bt Abu Haiyan with him) (Hakimi, Lalitha, Mardhiyah & Assoc).

For the second and third respondents - Leong Wai Hong (Tan Wee Sean with him) (Skrine).

Election — Preliminary Objection — Petitioner filed the Election Petition (EP) pursuant to S. 34(c) of the Election Offences Act 1954 — Non-compliance with Rule 15 of the Election Petition Rules 1954 (EPR) — Non-compliance with Section 34 EOA — Non-compliance with section 32 EOA — Non-compliance with Section 42(1) EOA read with Rule 4 (1)(b) (ECER) and the form prescribed at rule (4)(4) read with paragraph 3 — Failure to plead Regulation 30 ECER — Failure to comply with the

second limb of section 32 — Non-compliance with Article 118 of the Federal Constitution — S. 36 of the Election Offences Act 1954

11. Manogaran Marimuthu v Sivaraj A/L Chandran [2018] MLJU 1973

AZIZAH NAWAWI J

For the applicant - Manokaran a/l Veraya (M Rajenthirakumar a/l R Malaiapan, Shanmuga a/l A Kanesalingam, Yohendra a/l Nadarajan and David Yii Hee Kiet with him) (Kumar Assoc).

For the respondent - Mohd Hafarizam bin Harun (Norhariza bt Abu Haiyan and Nik Nuraisha Alia Hanafi with him) (Hafarizam Wan & Aisha Mubarak).

Election - Challenging the return of the Respondent as the Member of Parliament for P. 078 - Whether any person, directly or indirectly, by himself or by any person on his behalf gives any money to any elector or voter - Whether the monies were given to the voter to induce the voter to vote or refrain from voting, procure the election of the Respondent or such money or any part thereof shall be expended in bribery

12. Zulkarnine Hashim v Dr Jurij Bin Jalaludin & Ors [2018] MLJU 1421

COLLIN SEQUERAH J

For the petitioner - Amir Khusyairi bin Mohamad Tanusi (Nasrul Hadi bin Mat Saad, Muhammad Farhan bin Ahmad Fadzi, Muhamad Syahrul Nizam bin Mohd Rabi, Mohamed Haniff bin Khatri Abdulla, Mior Nor Haidir bin Suhaimi, Muhammad Rafique bin Rashid and Saiful Ambar bin Abdullah Ambar with him) (Amir Khusyairi & Assoc).

For the first respondent - Mohd Hafarizam bin Harun (Mohd Hakimi bin Shaari, Mohd Aidil bin Arsad, Mohamed Alif Azfar bin Mohamed Nasir and Norhazira bt Abu Haiyan with him) (Hakimi, Lalitha, Mardhiyah & Assoc).

For the second and third respondents - Leong Wai Hong (Tan Wee Sean with him) (Skrine).

Election — Preliminary Objection — Petitioner filed the Election Petition (EP) pursuant to S. 34(c) of the Election Offences Act 1954 — Non-compliance with Rule 3(1) and Rule 3(2) of the Election Petition Rules 1954 (EPR) — Non-compliance with Section 34 EOA — Non-compliance with section 32 EOA — The 1st Respondent was not holding an ‘office of profit’ — S. 36 of the Election Offences Act 1954

13. Mahdi Hasan v Ahmad Zahid Hamidi [2014] 1 LNS 183

HASNAH DATO' MOHAMMED HASHIM J

For the petitioner - Edmund Bon Tai Soon (Chan Yen Hui; New Sin Yew with him); M/s Asri Musa & Co

For the respondent - Firoz Hussein Ahmad Jamaludin (Mohd Hafarizam Harun; Syed Faisal Syed Abdullah; Abu Bakar As-Sidek Mohd Sidek; Badrul Hishah Abd Wahap; Mohd Hasnal Abdul Aziz with him) M/s Ong-Hanim & Badrul

Election — Petition — Filing of — Alleged failure to comply with s. 38 of the Election Offences Act 1954 (EOA) as the Petition was not presented within 28 days period of limitation — Interpretation of s. 38(1)(a) EOA — Whether words "aforesaid

date" referred to the "...date of publication of the result in the Gazette" — Whether said section only applied to an act of corruption that took place after the publication of the result of the election in the Gazette — Whether the proviso and the 28 days after the date of payment or act only applied if the act of corrupt practice was completed after publication of the election results — Whether the Election Petition was presented within the time prescribed

Election — Petition — Filing of — Failure to plead — Allegation of corrupt practice carried out indirectly by one Supramaniam Ramalingam on behalf of respondent — Non-compliance of mandatory provisions of r. 4(1)(b) and 4(4) of the Election Petition Rules requiring petitioner to state the facts and grounds to sustain the prayers sought — Failure to show nexus between R. Supramaniam and respondent as a candidate — Failure to state whether alleged corrupt practice was with respondent's consent or knowledge — Whether failure to state essential ingredients in s. 32(c) EOA with clarity, was a fundamental flaw in the Petition — Whether facts pleaded sufficient to sustain prayer that non-compliance affected the result of the election — Whether petition defective and invalid

Election — Petition — Filing of — Allegation of corrupt practice — S. 32(c) EOA providing that the election could be rendered void if proved illegal practice was committed in connection with the election by the candidate or with his knowledge or consent or by any agent of the candidate — Absence of an express definition of 'candidate' in the EOA — Whether definition of word 'candidate' in the Elections Act 1958 applicable to the EOA — Alleged 'corrupt practice' occurred on 19.4.2013 whereas nomination day was on 20.4.2013 — Whether respondent was a candidate when purported act done — Whether s. 32(c) EOA applicable

14. Mohd Ridzuan Asit Lwn. Dato' Siti Salmah Mat Jusak & Satu Lagi [2014] 3 CLJ 394

ABDUL RAHMAN SEBLI H

Bagi pihak pempetisyen - Chan Kok Keong (Fitri Asmuri & Leong Cheok Kong bersamanya); T/n Chan & Assocs

Bagi pihak responden pertama - Firoz Hussein Ahmad Jamaluddin (Cheng Mai, Syed Faisal Syed Abdullah, Abu Bakar As Sidek Mohd Sidik, Mohd Hasnal Abdul Aziz, Badrul Hishah Abd Wahap & Mohd Hafarizam Harun bersamanya); T/n Ong-Hanim & Badrul

Bagi pihak responden kedua - Alice Loke Yee Ching (Norazmi Mohd Narawi, Khairul Nizam Abu Bakar bersamanya); Peguam Kanan Persekutuan

Pilihanraya — Petisyen — Pemfailan — Bantahan awal — Sama ada dakwaan amalan rasuah bermerit - Sama ada mencatatkan petisyen — Sama ada serahan teratur — Sama ada petisyen mematuhi k. 9 dan 34 Kaedah-Kaedah Petisyen Pilihan Raya 1954 — Akta Kesalahan Pilihan Raya 1954, ss. 35A, 38

15. Ahmad Zamani Yusof Lwn. Dato Hj Tengku Putera Tengku Awang & Yang Lain [2013] 1 LNS 933

MARIANA HJ YAHYA H

Bagi pihak pempetisyen - Mohd Kamaruzaman A Wahab (Saiffuddin Othman, Faris Irwan Mustafa & Mohd Azwan Mohd Roslee bersamanya); T/n Fariz Halim & Co

Bagi pihak responden pertama - Mohd Hafarizam Harun (Mohammad Rafaei Adnan, Shamshawal Azraai Ahmad, Muhammad Syahri Adnan Mohd Hazwan Hamidun & Mohd Auliat Ngah bersamanya); T/n Rafaei & Co

Bagi pihak responden kedua dan ketiga - Mohammad Al-Saifi Haji Hashim (Allauddin Mohd Tahir, Andi Razalijaya A Dadi, Nurashikin Ismail & Maisarah Juhari bersamanya); Peguam Kanan Persekutuan

Bagi pihak Peguam Persekutuan - Sharizad Hanim Amir (Nabila Abdul Malik & Shahrul Shafiq Zamri; Jabatan Peguam Negara

Pilihanraya — Petisyen — Pemfailan — Bantahan awal — Sama ada Responden Pertama telah salah dilaporpilih atau dilaporpilih secara tidak sah atas alasan-alasan seperti diperenggan 4.1, 4.2 dan 4.3 Petisyen — Kegagalan Pempetisyen untuk menyerahkan Notis Pengemukaan Petisyen selaras dengan Kaedah 15(1)(a) Kaedah-Kaedah Petisyen Pilihan Raya 1954 — Bahawa Petisyen Pilihan Raya yang difailkan di dalam prosiding ini dibatalkan atas kegagalan Pempetisyen untuk mematuhi Kaedah 4(1)(b) dan Kaedah 4(4)(3) KKPR 1954 — Bahawa Petisyen Pilihan Raya yang difailkan di dalam prosiding ini dibatalkan kerana perkara-perkara yang diplidkan gagal mematuhi keperluan memplidkan seksyen 11(1)(b) bersama dengan seksyen 10(a) dan 32(c) AKPR 1954 — Bahawa Petisyen Pilihan Raya yang difailkan di dalam prosiding ini dibatalkan kerana ianya tidak mendedahkan kausa tindakan yang munasabah.

16. Dato' Dr Awang Adek Hussin v Ahmad Marzuk Shaary & Ors [2013] 1 LNS 1195

ZAMANI A RAHIM J

For the petitioner - Mohd Illias Mohd Nor (Mohd Hafarizam Harun, Norazli Ahmad, Raihanah Ashriqin Ariffin with him)

For the 1st respondent - Aminuddin Zulkifli (Hisham Fauzi, Alawi Mohd Rashid, Firdaus Mohd Yusoff, Ahmad Mustaqim Zaki, Mohd Firdaus Shamsudin, Naspul Mohamed with him)

For the 2nd and 3rd respondents - Azizan Md Arshad, Najib Zakaria, Al-Muhammed Mukmin Abd Ghani, Khairul Fazli Kamaruddin, Nor Amalina Ismail, Allan Suman Pillai with him)

Election — Petition — Appointment of advocate — Failure by the Petitioner's advocates to comply with r. 9 and in particular r. 34 of the Election Petition Rules 1954 — Delay in filing the notice of acceptance of the appointment by advocate by the Petitioner — Whether delays were inconsistent with the word "immediately" in r. 34 — Whether a clear non-compliance of r. 34 — Petitioner did not authorise Cik Raihanah Ashriqin to be his advocate, though the notice of acceptance of the appointment purportedly made under Rule 34 was filed in court — Whether she had authority to act for the Petitioner under r. 9 — Whether rules 9 and 34 of the Election Petition Rules 1954 were mandatory — Whether their non-observance was fatal to petitioner's petition

Election — Petition — Service — Notice of the presentation of a petition, accompanied by a copy of the petition — Failure to state "the day of the week" the documents were served, "where they were served" and "how they were served" — Whether these were mandatory requirements of r. 15(4) of the Election Petition Rules 1954 - Whether Affidavits of service defective for non compliance — Whether there was proper service of the petition

Election — Petition — Filing of — Capacity of petitioner to file the petition based on s. 34(b) read together with s. 35(d) of the Election Offences Act 1954 — Whether a relief of scrutiny under s. 35(d) should be prayed — Whether petitioner, being an unsuccessful candidate had an option, to claim "all or any" of the reliefs listed in s. 35 - Whether petitioner had violated Rule 4(1)(b) and Rule 4(4) of the Election Petition Rules 1954

Election — Petition — Allegation of corrupt practice — Allegation of undue influence and bribery under s. 9(1), s. 10(a) and s. 32(c) of the Election Offences Act 1954 — Failure to plead s. 11(1)(b) to constitute a complete cause of action on the grounds of corrupt practice — Whether election petition fundamentally defective

Civil Procedure — Res judicata — Issues, similarity of — Whether four issues canvassed by 1st respondent were res judicata — Whether issues raised in current objection had been specifically raised, adjudicated and decided in the earlier preliminary objection — Petitioners argument that 1st respondent should not raise the present objection but proceed by way of an appeal — Whether previous order a complete disposal of election petition or merely an interlocutory order — Whether any impediments preventing 1st respondent from bringing or reopening the issues

17. Mohd Zaid Bin Ibrahim v P. Kamalanathan A/1 P. Panchanathan And Others [2010] 6 MLJ 363; [2010] 8 CLJ 608; [2010] 5 AMR 556

AZHAR MOHAMED J

For the petitioner - Malik Imtiaz (Azhar Azizan Harun, Ang Hean Leng & Leong Sher How with him); M/s Thomas Philip

For the 1st respondent - Firoz Hussein (Dato' Mohd Hafarizam, Cheng Mai, Syed Faizal, Abu Bakar Sidiq & Nadhrah with him); M/s Hafarizam Wan & Aisha Mubarak

For the 2nd & 3rd respondents - Suzana Atan (Azizan, Mohd Azhar Mohd Yusoff & Noor Hisham Ismail with her) SFC

Election — Election court — Judge — Jurisdiction — Whether election judge has jurisdiction to strike out election petition without trial — Whether election judge has jurisdiction to determine returned candidate after dealing with petition on preliminary objection — Whether defective petition ought to be allowed to go on trial — Election Offences Act 1954 s 36

Election — Petition — Allegation of corrupt practice — Corrupt practice consisting of bribery — Bribery, elements of — Whether close and direct nexus between bribery

act and receiver to do or refrain from doing certain act necessary — Failure to show how general bribery affected outcome of elections — Whether bribery established — Whether identity of receiver or persons said to be induced or influenced by bribery material fact to be pleaded in election petition — Election Offences Act 1954 ss 10(a), (c), (e) & 32(a) — Election Petition Rules 1954 rr 4(1)(b), 4(4)(3) & 5

Election — Petition — Defective petition — Failure to plead material facts — Reasons for strict requirement to plead material facts — Whether failure to plead material facts could be cured by evidence led at trial — Whether such defect in petition matter of substance rather than form — Election Offences Act 1954 s 32(a) & (c) — Election Petition Rules 1954 r 4(1)(b) & 4(4)(3)

Election — Petition — Service — Modes of — Whether petitioner entitled to use one or more modes of service to serve petition on respondent — Election Petition Rules 1954 r 15(1)

18. Ahmad Ramzi Bin Mohamad Zubir v Hj Abdul Hadi Bin Awang & Ors [2009] 4 MLJ 867

KANG HWEE GEE J

For the petitioner - Firoz Hussien bin Ahmad Jamaluddin (Nik Mohd Nasir bin Nik Hussin, Mohd Hafarizam bin Harun, Muhammad Rafaei bin Adnan and Shamshawal Azraai bin Ahmad with him) (Ahmad Shahabuddin & Co).

For the first respondent - Wan Abdul Muttalib Embong (Mohd Zabidi Yusof, Abdul Haris bin Abdul Malek, Saiffuddin Othman and Kamaruzaman Abdul Wahab with him) (Wan Abd Muttalib & Co).

Election — Petition — Allegation of corrupt and illegal practices — Bribery, treating or intimidation — Whether corrupt practice committed in connection with election — Whether committed by candidate or with his knowledge or by his agent — Election Petition Rules 1954 r 4(1)

Election — Petition — Presentation of — Whether material facts to show cause to complain under one of five provisions of s 32 of the Election Offences Act 1954 must be pleaded — Whether petition could be supplemented by affidavit — Whether petition to be struck out if material facts not pleaded

19. Muhammad Sanusi bin Md Nor v Mohd Tajudin bin Abdullah & 2 Lagi [2009] 7 AMR 312; [2009] 8 MLJ 131

BALIA YUSOF H

Bagi pihak pempetisyen - Darshan Singh (bersama-sama Ahmad Taufiq & Sharif bin Mat).

Bagi pihak responden pertama - Mohd Hafarizam (bersama-sama Syed Faisal & Badrul Hasham).

Bagi pihak responden-responden kedua dan ketiga - Mahiran bt Md Isa (bersama-sama Zaleha bt Mohd Janis) (Peguam Kanan Persekutuan, Jabatan Peguam Negara).

Pilihan Raya — Petisyen — Notis petisyen — Kesahan — Sama ada wujud dua notis petisyen pilihan raya — Sama ada notis yang diserahkan sah — Sama ada terdapat kepatuhan peruntukan mandatori undang-undang pilihan raya

20. *Mustafa Bin Musa v Mohd Apandi Bin Mohamad & Ors* (No. 2) [2000] MLJU 488

MOHD GHAZALI J

Bagi pihak pempetisyen – Tan Sri Zaki Azmi bin Tun Azmi, Mohd Adhan bin Kechik, Zahari bin Kechik, Mohd Hafarizam bin Harun & Mohd Apandi Ali (M/s Adhan & Co.), Bagi pihak responden-responden – Sulaiman Abdullah, Zamani Ibrahim & Aimy Mohd Azhar (M/s Zamani Ibrahim Tarmizan & Co.)

Pilihan Raya — Petisyen — Notis petisyen — Perintah untuk satu perisytiharan bahawa pilihanraya kawasan Parlimen itu adalah tidak sah — satu perisytiharan bahawa responden pertama tidak dipilih atau dilaporpilih dengan sempurna — Sama ada perbuatan penyogokan oleh pihak responden pertama telah berlaku dengan sebegitu leluasa dan boleh dijangkakan dengan munasabahnya telah menyentuh keputusan pilihanraya — Sama ada terdapat kesalahan mempengaruhi dengan tak berpatutan oleh pihak responden pertama

21. *Mustafa Bin Musa v Mohd Apandi Bin Mohamad & Ors* (No. 1) [2000] MLJU 487

MOHD GHAZALI J

Bagi pihak pempetisyen – Tan Sri Zaki Azmi bin Tun Azmi, Mohd Adhan bin Kechik, Zahari bin Kechik, Mohd Hafarizam bin Harun & Mohd Apandi Ali (M/s Adhan & Co.) Bagi pihak responden-responden – Sulaiman Abdullah, Zamani Ibrahim & Aimy Mohd Azhar (M/s Zamani Ibrahim Tarmizan & Co.)

Pilihan Raya — Petisyen — Notis petisyen — Perintah untuk satu perisytiharan bahawa pilihanraya kawasan Parlimen itu adalah tidak sah — satu perisytiharan bahawa responden pertama tidak dipilih atau dilaporpilih dengan sempurna — Pengesahan dan arahan-arahan di bawah seksyen 36 Akta itu — Sama ada perbuatan penyogokan oleh pihak responden pertama telah berlaku dengan sebegitu leluasa dan boleh dijangkakan dengan munasabahnya telah menyentuh keputusan pilihanraya — Sama ada terdapat kesalahan mempengaruhi dengan tak berpatutan oleh pihak responden pertama — sama ada wajar responden kedua dan ketiga dijadikan pihak-pihak kepada petisyen pilihanraya ini

22. *Azmi Sulaiman v Ahmad Zahid Hamidi* [2014] 1 LNS 182

HASNAH MOHAMMED HASHIM J

For the petitioner - Chong Kok Yew (Athina Sim (PIC) with him); M/s HL Lee & Co
For the respondent - Firoz Hussein Ahmad Jamaludin (Mohd Hafarizam Harun; Syed Faisal Syed Abdullah; Abu Bakar As-Sidek Mohd Sidek; Badrul Hishah Abd Wahap; Mohd Hasnal Abdul Aziz with him); M/s Ong-Hanim & Badrul
Watching Brief for Barisan Nasional - Sashi Menon, B Murali Dharan, V Premshangar, Khairul Nizam Abd Bakar (SFC) watching for SPRM

Election — Petition — Filing of — Alleged failure to comply with s. 38 of the Election Offences Act 1954 (EOA) as Petition not presented within 28 days period of limitation — Interpretation of s. 38(1) EOA — Allegation of illegal practice and purported payment of money — Whether phrase "...since the said date..." in s. 38(1) referred to the date the alleged payment of money was made — Whether Petition should have been presented within 28 days after the alleged illegal practice on 19.4.2013 ie, by 17.5.2013 — Whether the Petition presented on 11.6.2013 was outside the limitation period

Election — Petition — Filing of — Failure to plead — Whether any illegal practice — Non-compliance of mandatory provisions of r. 4(1)(b) and 4(4) of the Election Petition Rules — Failure to plead the facts and grounds to support an allegation under ss. 21(1) and 21(2) EOA — Failure to state the identity of a single person purportedly employed or engaged by respondent — Failure to show that the purported 24,000 persons were employed by respondent for purpose of procuring the election of respondent — Failure to plead facts and grounds to support an allegation under ss. 19(1)(a) and 19(2) EOA — Whether facts pleaded sufficient to sustain allegation that non-compliance had affected the result of the election — Whether petition defective and invalid

Election — Petition — Filing of — Whether any illegal practice — S. 32(c) EOA providing that election could be rendered void if proved that illegal practice was committed in connection with the election by the candidate or with his knowledge or consent or by any agent of the candidate — Absence of an express definition of 'candidate' in the EOA — Whether definition of word 'candidate' in the Elections Act 1958 would be applicable to the EOA — Alleged 'corrupt practice' occurred on 19.4.2013 whereas nomination day was on 20.4.2013 — Whether respondent was a candidate when purported act done - Whether s. 32(c) EOA applicable

ADMINISTRATIVE LAW (JUDICIAL REVIEW)

Federal Court

1. Dato' Dr Abd Isa Bin Ismail v Dato' Abu Hasan Bin Sarif & Anor [2013] 3 MLJ 449; [2013] 2 AMR 185; [2013] 2 CLJ 857

ZULKEFLI MAKINUDIN CJ (MALAYA); HASHIM YUSOFF FCJ; AHMAD MAAROP FCJ; ZALEHA ZAHARI FCJ; ZAINUN ALI FCJ

For the 1st respondent - Mohd Hafarizam Harun (Abu Bakar Isa Ramat & Nor Emelia Mohd Iszeham with him); M/s Hafarizam Wan & Aishah Mubarak

For the 2nd respondent - Amarjeet Singh Serjit Singh SFC

Watching brief for the Government of the State of Kedah - Anas Ahmad Zakie

Administrative Law — Remedies — Certiorari and mandamus — Judicial review — Whether State Seat vacant — Whether absence constituted breach of art 51 of the Laws of the Constitution of Kedah — Whether royal proclamation an interruption in

succession of the two meetings — Laws of the Constitution of Kedah arts 51 & 53

Statutory Interpretation — Construction of statutes — Rules of construction — Whether trial judge erred in according plain and ordinary meaning to phrase 'two consecutive meetings' in art 51 of the Laws of the Constitution of Kedah — Obligation of Sultan of Kedah to prorogue or dissolve assembly

2. Dato' Abu Hasan Bin Sarif v Dato' Dr Abd Isa Bin Ismail [2012] 2 MLJ 429

ZULKEFLI CJ (MALAYA), HASHIM YUSOFF AND AHMAD MAAROP FCJJ

For the applicant - Firoz Hussein bin Ahmad Jamaluddin (Mohd Hafarizam Harun and Chieng Mai with him) (Hafarizam Wan & Aisha Mubarak).

*For the respondent - Edmund Bon Tai Soon (Zulqarnain bin Lukman with him) (Chooi & Co).
Watching brief for the Government of State of Kedah - Ruzaimah bt Mohd Ridzuan (Legal Advisor for the State of Kedah).*

Civil Procedure — Jurisdiction — Federal Court — Inherent power to review any decision of itself or of Court of Appeal — Power to prevent injustice and abuse of process of court and uphold fair administration of justice — High Court declared applicant no longer State Assemblyman and state seat vacant — Order set aside by Court of Appeal — Different coram of appeal court granted stay of decision — Whether stay order unjust and prejudicial — Applicant deprived of right to be Assemblyman — Constituents of state seat deprived of representation in State Legislative Assembly — Whether special circumstances existed to warrant stay order

High Court

3. Asia Pacific Higher Learning Sdn Bhd (Pemilik Berdaftar Dan Pemegang Lesen Institusi Pengajian Tinggi Swasta Atas Nama Lincoln University College) v Majlis Perubatan Malaysia [2017] MLJU 1711

ASMABI MOHAMAD J

For the applicant - Gerald Samuel (Peter Jayasuria with him) (Gerard Samuel & Assoc).

For the respondent - Mohd Hafarizam Harun (Nor Emelia Iszham with him) (Hafarizam Wan & Aisha Mubarak).

Civil Procedure — Whether there was in fact a decision within the meaning of Order 53 rule 2 (4) of the RoC 2012 which is amenable to judicial review — Whether the Applicant is required to exhaust the right of appeal under Act 555 and Act 679 — Whether there was duplicity of proceedings

4. Mkini Dotcom Sdn Bhd & Ors v Chief Judge Of Malaya & Ors [2016] 8 MLJ 357

ASMABI MOHAMAD J

For the applicants – Ashok Kandiah (Eugene Jayaraj with him) (Kandiah Partnership)

For the respondents – Amarjeet Singh a/l Serjit Singh (Senior Federal Counsel, Attorney General s Chambers)

For the putative respondents – Mohd Hafarizam Harun (Norhazira Abu Hayan and Nik Nuraisha Alia with him) (Hafarizam Wan & Aisha Mubarak)

Civil Procedure — Judge — Chief Judge of Malaya — Whether Chief Judge's decision to assign hearing of suit to particular High Court judge amenable to judicial review — Courts of Judicature Act 1964 (CJA) s 20 — Chief Judge directed judge who had been transferred out of Kuala Lumpur to hear suit filed at Kuala Lumpur High Court — Whether Chief Judge had absolute discretion and power to direct distribution of work among High Court judges — Whether exercise of power under s 20 of the CJA lacked necessary public law element to make decision taken amenable to judicial review

5. Dato Dr Abd Isa Bin Ismail v Dato Abu Hasan Bin Sarif & Anor [2010] MLJU 2072

DATO' ALIZATUL KHAIR BT OSMAN KHAIRUDDIN JC

For the applicants – Tn Haji Sulaiman Abdullah (Edmund Bon Tai Soon Zulqarnain bin Lukman and Joanne Leong with him)(M/s Chooi & Company)

For the respondents – Datuk Mohd Hafarizam bin Harun (Shahir bin Ab Razak with him)(M/s Hafarizam Wan & Aisha Mubarak)

Judicial review — The 1st Respondent was also absent from this meeting without leave of the Applicant — What is the correct interpretation of Article 51 of the Kedah State Constitution ("Article 51") — Who establishes whether there is a vacancy under Article 51

LAND LAW

Federal Court

1. Ungku Sulaiman Abd Majid & Anor v Pengarah Tanah Dan Galian Johor & Anor [2012] 2 CLJ 273

ZULKEFLI MAKINUDIN FCJ; RAUS SHARIF FCJ; ABDULL HAMID EMBONG FCJ

For the appellants – Bastian Vendargon (PK Nathan & Anne Vendargon with him); M/s Bastian Vendargon

For the respondents – Datuk Mohd Hafarizam Harun (Firoz Hussein Ahmad Jamaluddin, Cheng Mai & Syed Faisal Syed Abdullah with him); State Legal Advisor

Land Law — Acquisition of land — Validity — State Government redeeming land from chettiar to whom land charged — Redemption executed upon order of Sultan — Whether redemption and acquisition valid and lawful — Whether beneficiaries entitled to apply for return of land or compensation from State Government — Redemption effected in 1895 — Law of limitation — Whether had set in - Land Enactment of the State of Johore 1950 (Johore Enactment No. 1), s. 54 — Applicability

LIMITATION — Accrual of cause of action — Acquisition of land — State Government redeeming land from chettiar to whom land charged — Redemption executed 115 years ago in 1895 — Law of limitation — Whether had set in — Whether beneficiaries barred from making any claim on property

TORT

Federal Court

1. Tony Pua Kiam Wee v Government Of Malaysia & Another Appeal [2020] 1 CLJ 337

TENGGU MAIMUN TUAN MAT CJ; AHMAD MAAROP PCA; AZAHAR MOHAMED CJ (MALAYA); ALIZATUL KHAIR OSMAN FCJ; ROHANA YUSUF FCJ; MOHD ZAWAWI SALLEH FCJ; NALLINI PATHMANATHAN FCJ

(Civil Appeal No: 02(i)-111-11-2018(W))

For the appellant – Malik Imtiaz Sarwar, Tan Ch'eng Leong, Surendra Ananth & Yvonne Lim; M/s KP Lu & Tan

For the respondent – Mohd Hafarizam Harun, Norhazira Abu Haiyan & Muhammad Amin Othman; M/s Hafarizam Wan & Aisha Mubarak

Tort — Misfeasance in public office - Cause of action — Claim against former Prime Minister ('PM') — Whether PM 'public officer' — Whether definition of 'public officer' excludes members of administration - Whether common law tort of misfeasance in public office applicable in Malaysia — Whether limited by definition of 'public officer' in s. 3 of Interpretation Acts 1948 and 1967 ('IA') read together with arts. 132 and 160 of Federal Constitution ('FC') — Whether there is express legislative intent in FC or IA to abrogate common law definition of 'public officer' — Whether application of definition under s. 3 of IA contrary to s. 2 of Government Proceedings Act 1956 ('GPA') — Whether renders Government immune from suit — Whether GPA provides for vicarious liability

Tort — Misfeasance in public office — Cause of action — Claim against former Prime Minister ('PM') — Allegation that PM abused public office for personal benefit — Claim by taxpayer — Whether elements of tort established — Whether 'antecedent legal right or interest' and 'proximity' established — Whether funds claimed to be dishonestly abused or dissipated were public funds — Whether taxpayer had requisite locus standi to commence proceedings — Whether losses pleaded sufficient to constitute valid cause of action

Words & Phrases — 'public officer' — Definition of — Whether excludes members of administration — Whether common law tort of misfeasance in public office applicable in Malaysia — Whether limited by definition of 'public officer' in s. 3 of Interpretation Acts 1948 and 1967 ('IA') read together with arts. 132 and 160 of Federal Constitution ('FC') - Whether there is express legislative intent in FC or IA to abrogate common law definition of 'public officer' — Whether application of definition under s. 3 of IA contrary to s. 2 of Government Proceedings Act 1956

('GPA') — Whether renders Government immune from suit — Whether GPA provides for vicarious liability

Court of Appeal

2. Mukhriz Mahathir v Datuk Seri Mohd Najib Bin Tun Haji Abdul Razak (suggested contemnor) & Anor [2018] 3 MLJ 715

TENGGU MAIMUN, ABDUL RAHMAN SEBLI AND HASNAH HASHIM JJCA

For the appellant – Mohamed Haniff Khatri Abdulla (Mohd Irzan Iswatt bin Mohd Noor with him) (Haniff Khatiri)

For the first respondent – Mohd Hafarizam Harun (Yazid Mustaqim Roslan and JR Teh with him) (Hafarizam Wan & Aisha Mubarak)

Civil Procedure — Contempt of court — Application for — Allegation of contempt for publishing statements pending defamation suit — High Court heard matter as opposed ex parte — Whether High Court erred in hearing matter as opposed ex parte — Whether there was prima facie case of contempt — Rules of Court 2012 O 52 r 3

3. Tony Pua Kiam Wee v Dato' Sri Mohd Najib Bin Tun Hj Abdul Razak [2018] 4 MLJ 192

ABANG ISKANDAR, ZALEHA YUSOF AND YAACOB MD SAM JJCA

For the appellant – Gobind Singh Deo (Tan Ch'ng Leong, Joanne Chua and Michelle Ng with him) (Gobind Singh Deo & Co)

For the respondent – Hafarizam Harun (Norhazira Abu Hayyan, Yazid Mustaqim Roslan and Jr Tey with him) (Hafarizam Wan & Aisha Mubarak)

Tort — Defamation — Libel — Video recording published in Facebook account — Application for interim injunction allowed by High Court — Whether defences of justification, fair comment and absolute privilege applicable — Whether High Court judge erred in allowing interim injunction — Whether plaintiff bore burden to prove that defendant's defences would not succeed — Whether High Court judge erred in shifting burden on defendant — Whether judicial notice ought to be taken — Whether further formal proof required

4. Tun Dr Mahathir Bin Mohamad & Ors V Datuk Seri Mohd Najib Bin Tun Haji Abdul Razak [2018] 3 MLJ 466

IDRUS HARUN, VERNON ONG AND ABDUL RAHMAN SEBLI JJCA

For the appellants – Haniff Khatri (Ilyani Noor Khuszairy with him) (Haniff Khatri)

For the respondent – Cecil Abraham (Rishwant Singh, Mohd Hafarizam Harun and Norhazira Abu Haiyan with him) (Hafarizam Wan & Aisha Mubarak)

Constitutional Law — Government — Prime Minister — Whether Prime Minister of Malaysia a 'public officer' who could be sued for 'misfeasance in public office' and 'breach of fiduciaries in public office' — Whether mere fact Prime Minister

occupied public office did not mean he was ‘public officer’ — Whether s 3 of the Interpretation Acts 1948 and 1967 read together with arts 132(1), 132(3) and 160(2) of the Federal Constitution showed that Prime Minister was ‘member of the administration’ appointed by King whereas ‘public officer’ was one who held and exercised functions of office in any of ‘public services’ and was appointed by Public Services Commission — Whether ‘public services’ excluded office of any ‘member of the administration’ — Whether meaning given to phrase ‘public officer’ by Interpretation Acts and Federal Constitution must be preferred over the common popular meaning given to it under English common law — Whether suit against Prime Minister plainly unsustainable and had to be struck out under O 18 r 19 of the Rules of Court 2012

English Law — Tort — Misfeasance in public office — Whether English common law failed to precisely define who a ‘public officer’ for purposes of tort of misfeasance in public office — Whether no authority existed to state whether or not the Prime Minister of England was a public officer — Whether Malaysian law had to be resorted to decide whether the Prime Minister of Malaysia was a ‘public officer’ — Whether Malaysian Interpretation Acts 1948 and 1967 read together with arts 132(1), (3) and 160(2) of the Federal Constitution showed that the Prime Minister of Malaysia was not a ‘public officer’ but only a ‘member of the administration’ — Whether ‘public officer’ was one who held office in any of the ‘public services’ which term excluded the office of any ‘member of the administration’ — Whether proviso to s 3(1) of the Civil Law Act 1956 could not be used to assign popular dictionary meaning of ‘public officer’ under English common law to Prime Minister of Malaysia

Tort — Misfeasance in public office — Breach of fiduciaries in public office — Whether appellants failed to prove primary ingredient common to both torts that Prime Minister of Malaysia was ‘public officer’ — Whether appellants failed to show existence of fiduciary relationship based on mutual trust and confidence between themselves and Prime Minister of Malaysia — Whether appellants’ pleadings failed to particularise facts on which two torts were based and did not show how they suffered damages because of respondent’s acts or omissions

5. Karip Mohd Salleh & Ors v Lembaga Kemajuan Tanah Persekutuan (Felda) & Anor [2017] MLJU 481

ABANG ISKANDAR ABANG HASHIM, ZAMANI A RAHIM AND ZALEHA YUSOF JJCA
For the appellants – Sivarasa Rasiah (T Kumar and Shahid Adli bin Kamarudin with him) (Daim & Gamany)

For the respondents – Mohd Hafarizam Harun (Cheng Mai, Nor Hazira bt Abu Haiyan, Ahmad Al Hady, Nurshafiqah Balqish bt Jaffri with him) (Hafarizam Wan & Aisha Mubarak)

Civil Procedure — Appeal — Appeal against judgment of High Court — Whether trial judge committed no appealable error that warranted appellate intervention

6. Datuk Raja Ahmad Zainuddin Raja Omar v Perbadanan Kemajuan Iktisad Negeri Kelantan [2016] 6 MLJEvi 66

LOW HOP BING, ABDUL WAHAB PATAIL AND LIM YEE LAN JJCA

For the appellant – Mohd Hafarizam bin Harun (Badrul Hishah bin Abd Wahap and Mohd Hasnal bin Abdul Aziz with him) (Ong-Hanim & Badrul)

For the respondents – Mohamed Hanipa Maidin (Hisham Fauzi and Rusilawati bt Zakaria with him) (Hisham Fauzi & Assoc)

Documentary evidence — Extrinsic evidence — Prohibition against extrinsic evidence to contradict written document — Whether s 94 of the Evidence Act 1950 to be read with s 97 of the same — Evidence Act 1950 ss 94 & 97

Standard of proof — Civil cases — Balance of probabilities — Whether evidence must be to satisfaction of defendant — Whether plaintiff deemed to have satisfied burden of proof where defendant does not place any evidence to contradict plaintiff

Witness — Credibility — Co-defendant to suit testifying without filing appearance or defence — Whether evidence credible

7. A Santamil Selvi A/P Alau Malay @ Anna Malay & Ors v Dato' Seri Mohd Najib Bin Tun Abdul Razak & Ors [2015] 4 MLJ 583

ZAWAWI SALLEH, ABDUL RAHMAN SEBLI AND ZAMANI A RAHIM JJCA

For the first and second applicants – Mohd Hafarizam Harun (Hafarizam Wan & Aisha Mubarak)

For the third applicant, Dhinesh Bhaskaran (Denise Tan Kae Ji with him) (Shearn Delamore & Co)

For the fourth applicant – Archana Rajagopal (Thangaraj & Assoc)

For the fifth and sixth applicants - Darryl SC Goon (Zul Rafique & Partners)

For the seventh applicant – Satharuban Sivasubramaniam (Satha & Co)

For the ninth applicant – Chong Ian Shin (Arupalam & Co)

For the respondents – Americk Sidhu (Americk Sidhu)

Civil Procedure — Appeal — Notice of appeal — One single notice of appeal filed against eight separate decisions to strike out appellants' claim — Whether notice of appeal bad in law — Whether there was sufficient compliance with statutory requirement — Whether notice of appeal improper for being ambiguous and uncertain — Whether defect in notice could be cure

High Court

8. Asia Pacific Higher Learning Sdn Bhd v Majlis Perubatan Malaysia & Anor [2020] 7 MLJ 549

AZIZUL AZMI J

For the plaintiff – Gerard Lourdesamy & (A Devi with him) (Gerard Samuel & Assoc)

For the defendant – Mohd Hafarizam (Nor Emelia Mohd Iszham & Cik Nuraisa Alia with him) (Hafarizam Wan & Aisha Mubarak)

Tort — Breach of statutory duty, Misfeasance in Public Office and Negligence — Whether plaintiff had proven all three causes of action against defendants — Plaintiff had applied to Malaysian Medical Council (‘MMC’) for accreditation of its medical degree courses — Whether MMC failed to follow its own accreditation guidelines in evaluating and determining the applications — Whether MMC had thereby breached its statutory duty under the Malaysian Qualifications Agency Act 2007 — Whether MMC was also vicariously liable for acts of negligence and misfeasance in public office committed by its Joint Technical Committee panel chairman (‘JTC chairman’) tasked with evaluating the applications for the purpose of accreditation — Whether JTC chairman by his actions had clearly shown targeted malice towards plaintiff — Whether MMC and JTC chairman had directly caused significant foreseeable loss and damages to the plaintiff by their tortious acts and were liable to make good the same

9. Pembinaan Blt Sdn Bhd v Sharikat Galian Razak Sdn Bhd [2018] MLJU 1111

KHADIJAH IDRIS JC

For the plaintiff – Sarah Maalini Abishegam (Noor Farhah Mustaffa and Vinod Sharma (Pupil in Chambers) with her) (Shafee & Co)

For the defendant – Wira Mohd Hafarizam Harun (Norhazira Abu Haiyan and Iqhmar Syafiq Mohd Azmi (Pupil in Chambers) with him) (Hafarizam Wan & Aisha Mubarak)

Civil Procedure — Injunction — To injunct the Defendant from filing a winding up petition against the Plaintiff until a judgement or an award is obtained in another two suits — To obtain an order that in the event a winding up petition has been filed, the Defendant is prevented from advertising, publishing or making a proclamation of the said winding up petition in any local daily newspaper or government gazettes — Whether a letter is issued with prejudice or otherwise the court

10. Arah Muara Sdn Bhd & Ors v Dato’ Sri Haji Solah Bin Mat Hassan & Ors [2016] 11 MLJ 424

YEOH WEE SIAM J

For the plaintiffs – Alex Tan Chie Sian (Dennis Goh Teik Chuan with him) (Wong Kian Kheong)

For the first, fourth and fifth defendants – Normastura bt Ayub (Nurul Ainy Yahaya with her) (Federal Counsels, Attorney General’s Chambers)

For the second defendant – Hafarizam Harun (Nor Emelia Iszham with him) (Hafarizam Wan & Aishah Mubarak)

For the third defendant – Lim Kon Keen (Zulaikha bt Fardi with him) (Salehuddin Saidin & Assoc)

Tort — Conspiracy — Conspiracy to injure plaintiff — Implementation of motorcycle programme — Campaign for public — Licence obtained at cost lower than agreed — Whether defendants committed tort of conspiracy against plaintiffs — Whether there was breach of statutory duty — Whether there was unfair discrimination — Road Transport Act 1987 ss 2 & 3(2)

11. Lembaga Kemajuan Tanah Persekutuan v Mazlan Aliman & Ors [2015] 1 LNS 1328
SU GEOK YIAM J

For the plaintiff - Mohd Hafarizam Harun, Firoz Hussin Ahmad Jamaluddin, Nor Emelia Mohd Iszeham, Nor Hazira Abu Haiyan & Nurshafiqah Balqish Jaffri; M/s Hafarizam Wan & Aisha Mubarak

For the defendants - Mohamed Hanipa Maidin, Azhana Mohd Khairudin & Nasar Khan Mirbas Khan; M/s Mohamed Hanipa & Associates

Evidence — Adverse inference — Refusal to participate in trial — Failure to give evidence — Defendants' failure to give evidence in ongoing trial — Defences of justification, fair comment and qualified privilege raised in defamation suit — Whether defendant's refusal to participate in trial rendered evidence given by plaintiff unchallenged and unrebutted — Whether words complained of by plaintiff became true in substance and fact — Evidence Act 1950, s. 114(g)

Tort — Defamation — Libel — Defamatory statement contained in title and contents of a book — Claim against author and printer — Serious allegations against a statutory body — Name of plaintiff specifically stated in title and contents of a book — Defendants' failure to give any evidence during trial — Whether words complained of were defamatory in nature — Whether words complained of bore defamatory imputations which referred to plaintiff — Whether book had been published to a third person — Whether title of book and words complained of in their natural and ordinary meaning imputed to plaintiff discreditable conduct or lack of integrity

Tort — Defamation — Damages - Claim for general and aggravated damages for libel — Serious injury to reputation, credibility and integrity of a statutory body — Allegation of corrupt and dishonest institution — Allegation that institution acting as an illegal money lender — Defendants' refusal to apologise — Whether award of general damages was in order to vindicate plaintiff's reputation — Whether plaintiff's reputation was aggravated when defendant refused to apologise to plaintiff

Tort — Defamation — Defences — Justification, fair comment and qualified privilege — Defendants failed to call witnesses to give evidence — Whether defendant waived their defences

12. Datuk Wira Wan Ahmad Wan Omar v Haji Mohamad Sabu & Ors [2014] 1 LNS 1154

LEE HENG CHEONG J

For the plaintiff - Mohd Hafarizam Harun (Norhazira Abu Haiyan with him); M/s Hafarizam Wan & Aisha Mubarak

For the defendants - Azhana Mohd Khairuddin; M/s Mohamed Hanipa & Associates

Tort — Defamation — Libel — Defamatory statement contained in title and contents of an article — Claim against author, publisher and printer — Serious allegations against the Plaintiff involving issues on Identity Card Project and Royal Commission of Enquiry — Name of plaintiff specifically stated in title and contents of the article — Defendants' failure to give any evidence during trial — Whether the statements made by the Defendants refers to the Plaintiff — Whether the Statement had been published — Whether the statement made by the Defendants is a defamatory statement — Whether the Plaintiff has proved his case against the 1st and 2nd Defendants — whether plaintiff has proved that the 3rd defendant was the printer of harakah; that the 4th defendant was the editor in chief (ketua pengarang) harakah and that the 5th defendant was the author of the said article published by harakah?

Tort — Defamation — Damages — Claim for compensatory damages for libel — Serious injury to reputation, credibility and integrity of an individual — Allegation of incompetency and poor skilled — Whether award of compensatory damages was in order to vindicate plaintiff's reputation

Tort — Defamation — Defences — Defences of qualified privilege and reportage

13. Datuk Seri Anwar bin Ibrahim v Utusan Melayu (Malaysia) Bhd & Anor [2013] 2 AMR 678; [2013] 3 MLJ 534

VT SINGHAM J

For the plaintiff – N Surendran (Latheefa Koya and Afiq Mohd Noor with him) (Daim & Gamany)

For the defendants – Firoz Hussein Ahmad Jamaluddin (Mohd Hafarizam Harun, Wan Azmir bin Wan Majid and Atasha Syakina bt Juhaidi Yean with him) (Hafarizam Wan & Aisha Mubarak)

Tort — Defamation — Libel in newspaper — Articles published or caused to be published by local newspaper — Article based on statement given by plaintiff during interview conducted by the British Broadcasting Corporation ('BBC') — Plaintiff a political and opposition leader — Whether articles and words published damaged plaintiff's reputation — Damages — Statutory defences by defendant — Defences of fair comment, justification and qualified privilege and reportage

TRADE MARKS

Federal Court

1. Ho Tack Sien & Ors v Rotta Research Laboratorium Spa & Anor (Registrar Of Trade Marks, Intervener) [2015] 4 MLJ 166

ZULKEFLI CJ (MALAYA), RICHARD MALANJUM CJ (SABAH AND SARAWAK), ABDULL HAMID EMBONG, HASAN LAH, AND MOHAMED APANDI FCJJ

For the first to fourth appellants – Gopal Sri Ram (Harpal Singh Grewal, CK Lim, Hoo Lin Coln and Reny Rao with him) (Lin Coln & Co) in Civil Appeal No 02–7–03/2013(W)

For the first and second appellants – Suaran Singh (Irene Kam with him) in Civil Appeal No 02–13–03/2013(W)

For the intervener – Mohd Hafrizam bin Harun (Wan Azmir Wan Majid, Aisha Mubarak, Choo Shi Jin and Nor Hazira Binti Abu Haiyan with him) (Hafarizam Wan & Aisha Mubarak) in Civil Appeal No 02–7–03/2013(W)

For the first and second respondents – Cyrus Das (Suaran Singh, Irene Kam with him) (Suaran & Sankey) in Civil Appeal No 02–7–03/2013(W)

For the first to fourth respondents – Gopal Sri Ram (Harpal Singh Grewal, CK Lim, Hoo Lin Coln and Reny Rao with him) (Lin Coln & Co) in Civil Appeal No 02–13–04/2013(W)

For the fifth respondent – Annou Xavier (Azri, Lee Swee Seng & Co) in Civil Appeal No 02–13–04/2013(W)

For the intervener – Mohd Hafrizam bin Harun (Wan Azmir Wan Majid, Choo Shi Jin and Nor Hazira bt Abu Haiyan with him) (Hafarizam Wan & Aisha Mubarak) in Civil Appeal No 02–13–04/2013(W)

Trade Marks — Registered trademark — Expungement — Order to expunge mark from register — Whether order wrongly made — High Court ordered expungement of offending mark from register after finding plaintiff's claims of infringement and passing-off were made out — Whether court should have heard evidence of Registrar of Trademarks before ordering expungement — Whether registrar should have been made a party to the suit — Whether fact that registrar had allowed offending mark to be registered after commencement of plaintiff's suit meant defendant's mark was not deceptively similar or likely to cause confusion — Whether registration prima facie evidence of validity of defendants' mark — Trade Marks Act 1976 ss 35(1), 40(1)(f) & 62

UNINCORPORATED ASSOCIATION

Court of Appeal

1. JG Bernatt v Setiausaha Kehormat, Seremban International Golf Club & Anor And Another Appeal [2003] 2 MLJ 289; [2003] 2 CLJ 233; [2003] 3 AMR 1

DENIS ONG, PS GILL AND MOHD GHAZALI JJCA

For the appellant – Munjeet Singh (Bernatt Pereira & Co)

For the respondents – Mohd Hafarizam Harun (Celine Chelladurai with him) (Rashid & Lee)

Unincorporated Associations — Unincorporated associations — Club — Removal as committee member — Appellant disqualified from holding office for being listed as defaulter — Whether removal of committee member was arbitrary unconstitutional and an abuse of process of law — Whether committee's decision in line with constitution of club

Unincorporated Associations — Unincorporated associations — Member — Application for declaration that suspension of appellant's membership was not valid — Appellant disqualified from holding office as Committee member — Whether appellant' club membership was also suspended — Whether appellant's application flawed

COMPETITION LAW

Court of Appeal

1. MY E.G. Services Berhad & Anor v Competition Commission (Civil Appeal No: W-01 (A)-43-01/2019

MOHD ZABIDIN BIN MOHD DIAH, NANTHA BALAN AND LEE SWEE SENG, JJCA

For the appellant – Datuk Wira Mohd Hafarizam Harun (Norhazira Abu Haiyan with him) (Hafarizam Wan & Aisha Mubarak)

For the Respondent – Dato Lim Chee Wee (Lim Chee Wee and Partners)