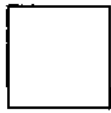


Judgments  
of  
HRH SULTAN  
AZLAN  
SHAH  
with  
commentary



# Contents

<i>Foreward</i> .. ... .. .	iii
<i>Preface</i> ... .. .	vii
<i>Acknowledgments</i> .. ... .. .	ix
<i>Commentators</i> . ... .. .	xi
<i>Table of Cases of judgments delivered by HRH Sultan Azlan Shah</i> ... .. .	xxxix
<i>Table of Cases of Federal Court decisions concurred with by HRH Sultan Azlan Shah</i> ... .. .	xxxvii
<b>1. HRH Sultan Azlan Shah: From Wig to Crown.</b>	<b>1</b>
<b>2. Administration of Criminal Justice</b> ... .. .	<b>9</b>
<b>INTRODUCTION</b> ... .. .	<b>10</b>
<b>DECISIONS AND COMMENTS</b>	
<b>SENTENCING</b>	
(a) Drug traffickers	
(i) <i>Loh Hock Seng &amp; Anor v Public Prosecutor FC</i> ... .. .	11
(ii) <i>DA Duncan v Public Prosecutor FC</i> .. ... .. .	14
(iii) <i>Chang Liang Sing &amp; Ors v Public Prosecutor FC</i> .. ... .. .	16
(iv) <i>Public Prosecutor v Tan Hock Hai FC</i> ... .. .	17
(b) Mitigating factors	
(i) <i>Lim Kit Siang v Public Prosecutor FC</i> ... .. .	19
(ii) <i>Kok Kee Kwong v Public Prosecutor FC</i> .. ... .. .	30
(c) Interference by appellate court	
(i) <i>Public Prosecutor v Lee Seng Seh</i> ... .. .	33
(ii) <i>Public Prosecutor v Tengku Mahmood Iskandar &amp; Anor</i>	35
(iii) <i>Bhandulananda Jayatilake v Public Prosecutor FC</i> ...	37
(d) "Shall be liable"	
<i>Public Prosecutor v Hew Yew</i> ... .. .	39
<b>BAIL</b>	
(a) Non-bailable offences	
<i>Public Prosecutor v Chew Siew Luan FC</i> . ... .. .	41
<b>CHARGES</b>	
(a) Joinder of offenders	
<i>Syed Ismail v Public Prosecutor</i> . ... .. .	44
(b) Particulars	
<i>Haji Abdul Ghani bin Ishak &amp; Anor v Public Prosecutor</i>	57
(c) Omission to frame a charge	
<i>Jaginder Singh &amp; Ors v Attorney General FC</i> ... .. .	69

JUDGMENTS OF HRH SULTAN AZLAN SHAH

<b>APPEALS AND REVISION</b>	
(a) Signatory to notice and petition of appeal	
<i>Jayasankaran v Public Prosecutor</i> FC ... ..	74
<b>TRIALS</b>	
(a) Examination of witnesses	
<i>Gan Kok Liong v Public Prosecutor</i> ... ..	77
(b) Burden on prosecution	
<i>Public Prosecutor v Foo Jua Eng</i> . ... ..	80
(c) Essential (Security Cases) (Amendment) Regulations, 1975	
<i>Public Prosecutor v Nordin bin Johan &amp; Anor</i> FC. ...	82
(d) Demeanour of witnesses	
<i>Tengku Mahmood v Public Prosecutor</i> ... ..	84
(e) Prima facie case	
<i>A Ragunathan v Pendakwa Raya</i> FC ... ..	89
<b>INITIATION OF PROCEEDINGS</b>	
(a) Notice of prosecution	
<i>Public Prosecutor v Chin Chee Thau</i> ... ..	95
<b>FORFEITURE</b>	
(a) Price Control Act 1946	
<i>Public Prosecutor v Chu Beow Hin</i> FC ... ..	97
<b>POLICE STATEMENTS</b>	
(a) Admissibility of	
(i) <i>Wong Swee Chin v Public Prosecutor</i> FC ... ..	100
(ii) <i>Public Prosecutor v Er Ah Kiat</i> ... ..	105
<b>FORCIBLE DISPOSSESSION — SECTION 99(iv)(a) CRIMINAL PROCEDURE CODE</b>	
<i>Chan Hoh v Tham Kum &amp; Anor</i> . ... ..	110
<b>CONTEMPT OF COURT</b>	
<i>Karam Singh v Public Prosecutor</i> ... ..	113
<b>CORROBORATION</b>	
<i>Yap Ee Kong &amp; Anor v Public Prosecutor</i> FC. ... ..	114
<b>3. Administrative Law</b> ... ..	119
<b>INTRODUCTION</b> ... ..	120
<b>DECISIONS AND COMMENTS</b>	
<b>DISCRETIONARY POWER OF THE ADMINISTRATION</b>	
<i>Pengarah Tanah dan Galian, Wilayah Persekutuan v Sri Lempah Enterprise Sdn Bhd</i> FC ... ..	125
<b>DELEGATED LEGISLATION</b>	
<i>Dr Paramsothy s/o Murugasu v University of Malaya</i> FC ... ..	130
<b>ESTOPPEL AGAINST ADMINISTRATIVE BODIES</b>	
<i>Public Textiles Berhad v Lembaga Letrik Negara</i> FC..	134
<b>PRIVILEGED DOCUMENTS</b>	
<i>BA Rao &amp; Ors v Sapuran Kaur &amp; Anor</i> FC ... ..	146

## CONTENTS

<b>ATTORNEY-GENERAL'S DISCRETION UNDER THE ESSENTIAL (SECURITY CASES) REGULATIONS, 1975</b>	
<i>Mohamed Nordin bin Johan v Attorney-General, Malaysia FC</i> ... ..	152
<b>PUBLIC NUISANCE — POWERS OF LOCAL AUTHORITY</b>	
<i>Majlis Perbandaran Pulau Pinang v Boey Siew Than &amp; Ors FC</i> ... ..	156
<b>REVIEW BY HIGH COURT</b>	
<i>Hotel Malaya Sdn Berhad &amp; Anor v National Union of Hotel, Bar and Restaurant Workers &amp; Anor FC</i> ... ..	164
<b>RETIREMENT — THE USE OF RECORD BIRTH DATE</b>	
<i>Doraisamy v Government of Malaysia FC</i> ... ..	168
<b>NATURAL JUSTICE</b>	
(a) Right to counsel — of a person with a statutory right of appeal	
<i>Doresamy v Public Services Commission.</i> ... ..	169
(b) University service — dismissal of a lecturer	
<i>Fadzil bin Mohamed Noor v Universiti Teknologi Malaysia FC</i> ... ..	174
(c) Quasi-judicial function of the administration.	
<i>Ketua Pengarah Kastam v Ho Kwan Seng FC</i> ... ..	180
<b>CERTIORARI</b>	
(a) Error of law on the face of the record in a tribunal's decision	
<i>Lijah binte Mahmud v Commissioner of Lands and Mines, Trengganu &amp; Anor...</i> ... ..	186
(b) Delay	
<i>Gnanasundram v Public Services Commission</i> ... ..	192
(c) Quasi-judicial body — natural justice and bias	
<i>In Re R Sambasivam</i> ... ..	195
<b>DECLARATION</b>	
(a) The power to grant a declaration	
<i>Dato Menteri Othman bin Baginda &amp; Anor v Dato Ombi Syed Alwi bin Syed Idrus FC</i> ... ..	200
(b) Societies	
<i>Datuk Pasamanickam &amp; Anor v Agnes Joseph FC</i> ... ..	204
<i>R Narayanan Samy v Agnes Joseph FC...</i> ... ..	204
(c) Declaration in lieu of an appeal to the High Court under section 418 of the Land Code	
<i>Land Executive Committee of Federal Territory v Syarikat Harper Gilfillan Berhad FC..</i> ... ..	208
<b>PROHIBITION</b>	
(a) Error of law going to its jurisdiction	
<i>Fung Keong Rubber Manufacturing (M) Sdn Bhd v Lee Eng Kiat &amp; Ors FC</i> ... ..	215
<b>HABEAS CORPUS — EXTRADITION</b>	
<i>Chua Han Mow v Superintendent of Pudu Prison FC</i> ... ..	220

<b>4. Commercial Law</b> ... ..	227
<b>INTRODUCTION</b> .. .. .	228
<b>DECISIONS AND COMMENTS</b>	
<b>HIRE PURCHASE</b>	
(a) Surety's right to indemnity <i>Anglo American Corporation Ltd v Chin Pak Soon</i> ...	235
(b) Consequences of breach by hirer <i>Dorothy Kwong Chen v Ampang Motors Ltd &amp; Anor.</i>	239
<b>AGENCY</b>	
(a) Right of estate agent to remuneration <i>Chew Teng Cheong &amp; Anor v Pang Choon Kong FC</i> ...	246
(b) Election agent <i>Ali Amberan v Tunku Abdullah.</i> ... ..	252
(c) Agency created by master-servant relationship <i>Negara Traders Ltd v Pesuruh Jaya Ibu Kota, Kuala Lumpur</i> ... ..	262
(d) Representation by principal as to agent's authority <i>Cheng Keng Hong v Government of Federation of Malaya</i> ... ..	268
<b>GUARANTEE</b>	
(a) Variation without surety's consent <i>Citibank NA v Ooi Boon Leong &amp; Ors FC</i> ... ..	268
(b) Surety's right to indemnity <i>Anglo American Corporation Ltd v Chin Pak Soon &amp; Anor</i> ... ..	274
(c) Liability of surety upon bankruptcy of debtor <i>Lee Wah Bank Limited v Joseph Eu FC</i> ... ..	275
<b>INSURANCE</b>	
(a) Principles of interpretation of policy of insurance. <i>Malaysia National Insurance Sdn Bhd v Abdul Aziz bin Mohamed Daud FC</i> ... ..	277
<b>BILLS OF EXCHANGE</b>	
(a) Cheques given for illegal consideration <i>Ratna Ammal v Tan Chow Soo.</i> ... ..	281
(b) Effect of a wrongful dishonour of a cheque <i>The Chartered Bank v Yong Chan FC</i> ... ..	293
<b>MONEYLENDERS</b>	
(a) Non-compliance with section 16(3) of Moneylenders Ordinance <i>Overseas Union Finance Ltd v Lim Joo Chong</i> ... ..	293
(b) Admissibility of evidence to show moneylending business <i>Chellappah v Official Assignee.</i> ... ..	294
(c) Compliance with section 21 of Moneylenders Ordinance. <i>Gulwant Singh v Amar Kaur</i> ... ..	295
<b>EQUITABLE ASSIGNMENT AND EQUITABLE RIGHT TO LIENS</b>	
(a) Equitable assignment <i>Malayawata Steel Berhad v Government of Malaysia</i> ...	297

## CONTENTS

(b) Equitable right to liens <i>Mercantile Bank Ltd v The Official Assignee of the Property of How Han Teh...</i> ... ..	302
<b>BANKRUPTCY</b>	
(a) Personal liability of executor of estate for debts of his testator's business <i>Re Wong Tee Lian</i> ... ..	306
<b>SALE OF SHARES</b>	
<i>Central Securities (Holdings) Bhd v Haron bin Moh- amed Zaid</i> ... ..	307
<b>PARTNERSHIP</b>	
<i>Keow Seng &amp; Company v Trustees of Leong San Tong Khoo Kongsi (Penang) Registered FC</i> ... ..	307
<b>5. Company Law...</b> ... ..	311
<b>INTRODUCTION</b> ... ..	311
<b>DECISIONS AND COMMENTS</b>	
<b>DIRECTORS</b>	
(a) Disclosure of rival interest <i>Shanghai Hall Ltd v Chong Mun Foo &amp; Ors..</i> ... ..	313
(b) Criminal liability of directors <i>Raja Nong Chik v Public Prosecutor.</i> ... ..	316
(c) Authority and powers of directors to borrow money <i>Sin Chai v Pahang Lin Siong Motor Co Ltd...</i> ... ..	317
(d) Election of directors <i>Solaiappan &amp; Ors v Lim Yoke Fan &amp; Ors</i> ... ..	320
<b>SHARES</b>	
(a) Transmission <i>Re LY Swee &amp; Co Ltd</i> ... ..	325
(b) Rectification of share register	
(i) <i>Re Len Chee Omnibus Co Ltd</i> ... ..	332
(ii) <i>Central Securities (Holdings) Bhd v Haron bin Mohd Zaid FC</i> ... ..	335
(c) Whether directors are trustees of the company <i>PJTVDenson (M) Sdn Bhd &amp; Ors v Roxy (Malaysia) Sdn Bhd FC</i> ... ..	349
<b>CREATION OF CHARGE</b>	
<i>Zeno Ltd v Prefabricated Construction Co (Malaya) Ltd &amp; Anor</i> ... ..	350
<b>WINDING UP</b>	
<i>In Re Fair Insurance Co Ltd</i> ... ..	359

<b>6. Constitutional Law..</b> ... ..	363
INTRODUCTION	363
DECISION AND COMMENTS	
RIGHT TO COUNSEL	
<i>Hashim bin Saud v Yahya bin Hashim &amp; Anor FC</i> ...	367
SUCCESSION OF RULERS	
<i>Dato Menteri Othman bin Baginda &amp; Anor v Dato Ombi Syed Alwi bin Syed Idrus FC...</i> ... ..	370
FEDERAL TERRITORY	
<i>Hen Chean Seng &amp; Anor v Public Prosecutor FC...</i> ...	371
APPEAL TO THE YANG DI PERTUAN AGONG	
<i>Phang Chin Hock v Public Prosecutor (No 2) FC..</i> ...	373
OFFICIAL SECRETS AND PARLIAMENTARY PRIVILEGE	
<i>Lim Kit Siang v Public Prosecutor FC</i> ... ..	376
FREEDOM OF MOVEMENT AND RESIDENCE	
<i>Assa Singh v Menteri Besar, Johore FC...</i> ... ..	376
AMENDMENT OF THE CONSTITUTION	
<i>Loh Kooi Choon v Government of Malaysia FC</i> ... ..	382
EMERGENCY: SECURITY REGULATIONS	
<i>Johnson Tan Han Seng v Public Prosecutor FC</i>	
<i>Soon Seng Sia Heng v Public Prosecutor FC</i>	
<i>Teh Cheng Poh v Public Prosecutor FC</i> ... ..	389
WHETHER MANDATORY DEATH SENTENCE UNDER INTERNAL SECURITY ACT 1960 IS CONSTITUTIONAL	
<i>Lau Kee Hoo v Public Prosecutor FC.</i> ... ..	400
WHETHER LIFE IMPRISONMENT FOR DURATION OF NATURAL LIFE IS CONSTITUTIONAL	
<i>Che Ani bin Itam v Public Prosecutor FC</i> ... ..	401
<b>7. Law of Contract</b> ... ..	405
INTRODUCTION	405
DECISIONS AND COMMENTS	
ACCEPTANCE OF TENDER	
<i>Cheng Keng Hong v Government of Federation of Malaya.</i> ... ..	410
ORAL CONTRACTS	
(a) Oral Evidence to vary written contract	
<i>Leong Gan &amp; Ors v Tan Chong Motors Co Ltd...</i> ...	418
(b) Collateral contracts	
<i>Tan Swee Hoe Co Ltd v Ali Hussain Bros FC.</i> ... ..	420
ESTOPPEL	
<i>Sim Siok Eng v Government of Malaysia FC..</i> ... ..	427
EXEMPTION CLAUSES	
<i>Malayan Thread Co Sdn Bhd v Oyama Shipping Line Ltd &amp; Anor.</i> ... ..	430

## CONTENTS

### ILLEGAL CONTRACTS

- (a) Contravention of a statute  
*Tan Bing Hock v Abu Samah*. ... .. 435
- (b) Recovery under section 66 of the Contracts Act  
*Singma Sawmill Co Sdn Bhd v Asian Holdings (Industrialized Buildings) Sdn Bhd FC* .. ... 439

### PERFORMANCE

- (a) Time  
*Wong Kup Sing v Jeram Rubber Estates Ltd.* ... .. 445
- (b) Distinction between entire and divisible contracts  
*Yong Mok Hin v United Malay States Sugar Industries Ltd.* ... .. 450

### REMEDIES

- (a) Distinction between liquidated damages and penalties  
*Government of Malaysia v Thelma Fernandez & Anor.* 460
- (b) Quantum meruit claims  
*Lau Kee Ko & Anor v Paw Ngi Siu FC* ... .. 465

## 8. Criminal Law ... .. 473

### INTRODUCTION ... .. 474

#### DECISIONS AND COMMENTS

#### BRIBERY AND CORRUPTION

- (a) Burden of Proof  
*Syed Ismail v Public Prosecutor*. ... .. 478
- (b) Prevention of Corruption Act: Evidence of co-accused: corroboration  
*Chandrasekaran & Ors v Public Prosecutor*... .. 479
- (c) Whether gratification was solicited corruptly  
*Public Prosecutor v Datuk Haji Harun bin Haji Idris (No 2)* ... .. 496

#### PENAL CODE

- (a) Extortion: meaning of 'injury' in sections 44 and 385.  
*Public Prosecutor v Kang Siew Chong* ... .. 530
- (b) Possession of stolen property: section 414  
*Abdul Manaf v Public Prosecutor* ... .. 532
- (c) Robbery: section 392 — identification of accused  
*Chan Koo Fong v Public Prosecutor*.. ... .. 535
- (d) Causing death by negligent act — section 304A — particulars of alleged negligence  
*Loh Thye Choon v Public Prosecutor* ... .. 536
- (e) Scope of section 218  
*Lim Boon San v Public Prosecutor* ... .. 538
- (f) Armed robbery: sentence — sections 392 and 394.  
*Public Prosecutor v Abdul Majid* ... .. 541
- (g) Obscene publication: strict liability — section 292 (a)  
*KS Roberts v Public Prosecutor*.. ... .. 542

JUDGMENTS OF HRH SULTAN AZLAN SHAH

(h) House breaking and theft: section 454 <i>San Soo Ha v Public Prosecutor.</i> ... ..	543
(i) Criminal breach of trust: section 408 <i>Sathiadas v Public Prosecutor</i> ... ..	546
(j) Theft: section 379 <i>Tan Foo Su v Public Prosecutor..</i> ... ..	552
(k) Murder and culpable homicide: sections 299 and 300 <i>Tham Kai Yau &amp; Ors v Public Prosecutor</i> FC. ... ..	554
(l) Obstructing public servant 'voluntary': sections 186 and 39 <i>Tan Teck Yam v Public Prosecutor</i> ... ..	560
(m) Dishonestly using a forged identity card <i>Cheong Khean Sheng v Public Prosecutor</i> ... ..	562
<b>SEDITION</b>	
(a) Whether of seditious tendency <i>Public Prosecutor v Ooi Kee Saik &amp; Ors..</i> ... ..	563
<b>CORROSIVE AND EXPLOSIVE SUBSTANCES AND OFFENSIVE WEAPONS ORDINANCE</b>	
(a) Whether kitchen knife an offensive weapon <i>Public Prosecutor v Sundaravelu</i> ... ..	576
<b>CRIMINAL PROCEDURE</b>	
(a) Effect of plea of guilty <i>Chen Chong &amp; Ors v Public Prosecutor...</i> ... ..	578
<b>EVIDENCE</b>	
(a) False evidence <i>Shangara Singh v Public Prosecutor.</i> ... ..	581
<b>9. Family Law.</b> ... ..	583
<b>INTRODUCTION</b> . ... ..	
<b>DECISIONS AND COMMENTS</b>	
<b>DIVORCE: CRUELTY</b>	
<i>Yan Kian Sin v Lim Guat Seong.</i> ... ..	586
<b>CUSTOMARY LAW</b>	
(a) <i>Harta Sepencarian</i> — division of matrimonial property on divorce of Muslims: <i>Robert alias Kamarulzaman v Ummi Kalthom</i> ... ..	591
(b) Chinese custom — meaning of descendants <i>Ang Siew Hock &amp; Ors v Ang Choon Koay</i> ... ..	598
(c) Claim to matrimonial property by wife — proof of Hindu customary marriage <i>Nagapushani v Nesaratnam &amp; Anor</i> ... ..	601
<b>CUSTODY OF INFANTS</b>	
(i) <i>Re Balasingam and Parvathy, Infants Kannamah v Palani.</i> ... ..	608
(ii) <i>Teh Eng Kim v Yew Peng Siong</i> FC ... ..	612
(iii) <i>Mahabir Prasad v Mahabir Prasad (No 1)</i> FC ... ..	621
(iv) <i>Mahabir Prasad v Mahabir Prasad (No 2)</i> ... ..	624

## CONTENTS

### MAINTENANCE

- (a) 'Living in adultery' within the meaning of section 5(2) of the Married Women and Children (Maintenance) Act, 1950  
*Rajalachmi v Sinniah* ... .. 625

### 10. Land Law.. .. 631

### INTRODUCTION ... .. 632

#### DECISIONS AND COMMENTS

#### DEALINGS

- (a) Charges — form 16D<sup>1</sup> or form 16E  
*Overseas Union Finance Ltd v Lim Joo Chong* ... .. 634
- (b) Leases — effect of non-registration  
 (i) *Ho Ying Chye v Teh Cheong Huat* ... .. 641  
 (ii) *Woo Yew Chee v Yong Yong Hoo FC* ... .. 645
- (c) Lien — a right to it in equity  
 (i) *Zeno Ltd v Prefabricated Construction Co (Malaya) Ltd & Anor* ... .. 653  
 (ii) *Mercantile Bank Ltd v The Official Assignee of the Property of How Han Teh*... .. 653

#### CAVEATS

- (a) Renewal/Revival  
*Lim Kiat Moy v Hamzah* ... .. 654
- (b) Right under a contract of sale caveatabale  
*Macon Engineers Sdn Bhd v Goh Hooi Yin FC* ... .. 657
- (c) Removal  
*Nanyang Development (1966) Sdn Bhd v How Swee Poh* ... .. 659

#### INDEFEASIBILITY OF TITLE

- PJTV Denson (M) Sdn Bhd & Ors v Roxy (Malaysia) Sdn Bhd FC* ... .. 662

#### LAND USE AND PLANNING

- (a) Imposition of conditions on conversion  
*Pengarah Tanah dan Galian, Wilayah Persekutuan v Sri Lempah Enterprise Sdn Bhd FC*.. .. 667
- (b) Need for imposition of category of land use  
*Land Executive Committee of Federal Territory v Syarikat Harper Gilfillan Bhd FC* ... .. 667
- (c) Breach of condition  
*Collector of Land Revenue, Johor Bahru v South Malaysia Industries Bhd FC* ... .. 668

#### MALAY RESERVATION LAND

- (a) Revocation  
*Mohamed Isa & Ors v Abdul Karim & Ors* ... .. 677

JUDGMENTS OF HRH SULTAN AZLAN SHAH

<b>LAND ACQUISITION</b>	
(a) Potential development value	
<i>Bukit Rajah Rubber Co Ltd v Collector of Land Revenue, Klang.</i> ... ..	686
(b) Extension of time to submit claim for compensation	
<i>Highlands Malaya Plantations Ltd v Collector of Land Revenue, Klang</i> ... ..	694
<b>SALE OF LAND</b>	
(a) Equitable right to a legal title	
(i) <i>Kersah La'usin v Sikin Menan</i> ... ..	696
(ii) <i>Munah v Fatimah</i> .. .. .	702
(iii) <i>Chik binti Abdullah v Itam binti Saad FC</i> ... ..	704
(b) Squatter rights under the National Land Code	
<i>Sidek bin Haji Muhamad &amp; 461 Ors v The Government of the State of Perak &amp; Ors.</i> ... ..	705
<b>11. Landlord and Tenant</b> ... ..	709
<b>INTRODUCTION</b> ... ..	709
<b>DECISIONS AND COMMENTS</b>	
<b>GENERAL LAW</b>	
(a) Identity of landlord and tenant's implied obligation	
<i>Nachiappin v Lakshmi Ammal</i> ... ..	711
(b) Lease and licence	
<i>Woo Yew Chee v Yong Yong Hoo FC</i> ... ..	715
(c) Notice to quit and transmission of tenancy	
<i>Pang Soo Ha v Lim Kon Seng</i> ... ..	716
(d) Waiver of notice to quit	
<i>Ho Wee Cheong v Ho Poi Yuen.</i> ... ..	717
<b>LEASES GOVERNED BY THE NATIONAL LAND CODE</b>	
(a) Construction	
<i>Yap Phooi Yin &amp; Anor v CM Boyd FC</i> ... ..	722
(b) Effect of Unregistered leases	
<i>Ho Ying Chye v Teh Cheong Huat</i> ... ..	724
<b>CONTROLLED TENANCIES</b>	
(a) Premises	
<i>Krishna Sreedhara Panicka v Chiam Soh Yong Realty Co Ltd FC</i> ... ..	725
(b) Rent	
(i) <i>Pritam Kaur v Rajaratnam &amp; Anor</i> ... ..	730
(ii) <i>Natesan v Goh Gok Hoon FC</i> ... ..	734
(c) Immoral user of premises	
<i>Ho Kean v Kong Lai Soo FC</i> ... ..	735

CONTENTS

<b>12. Labour Law</b> ... ..	737
<b>INTRODUCTION</b> ... ..	738
<b>DECISION AND COMMENTS</b>	
<b>CONTRACT OF EMPLOYMENT</b>	
(a) Conditions of employment contained in circular and newspaper advertisement. <i>GB Parker &amp; Ors v Central Electricity Board, Kuala Lumpur</i> ... ..	742
(b) Dismissal — disobeying lawful and reasonable orders <i>Menon v The Brooklands (Selangor) Rubber Co Ltd...</i>	750
(c) Liability of master — acts of forgery by servant. <i>Negara Traders Ltd v Pesuruhjaya Ibu Kota, Kuala Lumpur</i> ... ..	754
(d) Provident Fund Scheme — employees right of withdrawal <i>Reddy v Employees Provident Fund Board</i> ... ..	754
(e) Termination — probationary period <i>KC Mathews v Kumpulan Guthrie Sdn Bhd FC</i> ... ..	755
<b>EMPLOYEES OF STATUTORY BODIES</b>	
(i) <i>Fadzil bin Mohamed Noor v Universiti Teknologi Malaysia FC</i> ... ..	757
(ii) <i>Dr Paramsothi s/o Murugasu v University of Malaya FC</i> ... ..	757
<b>GOVERNMENT EMPLOYEES</b>	
<i>Rajion bin Haji Sulaiman v Government of Kelantan FC</i>	758
<b>TRADE UNION</b>	
(a) Dispute between member and his trade union — election of office bearers. <i>Muthuraku v Kuala Lumpur Municipality Workers Trade Union</i> ... ..	758
(b) Meaning of 'statutory authority' in section 29(3) of the Trade Union Ordinance, 1959 <i>Kuala Lumpur, Klang &amp; Port Swettenham Omnibus Co Berhad v Transport Workers' Union</i> ... ..	760
(c) Recognition of a union: meaning of 'trade dispute' and the right to represent members. <i>Re Application of Lower Perak Motor Service Co Ltd.</i>	763
(d) The right to strike <i>Non-Metallic Mineral Products Manufacturing Employees Union v South East Asia Firebricks Sdn Bhd FC</i> ...	770
<b>INDUSTRIAL RELATIONS</b>	
(a) Reference of dispute by Minister of Labour to Industrial Court — when reviewable by High Court <i>National Union of Hotel, Bar &amp; Restaurant Workers v Minister of Labour &amp; Manpower FC</i> ... ..	776
(b) Termination of Employment and dismissal — whether distinction exists under section 20 of Industrial Relations Act, 1967 <i>Goon Kwee Phoy v J &amp; P Coats (M) Bhd FC</i> ... ..	779

(c) Time-limit for lodgement of complaint of unfair dismissal under section 20(1) of the Industrial Relation Act, 1967—whether mandatory <i>Fung Keong Rubber Manufacturing (M) Sdn Bhd v Lee Eng Kiat &amp; Ors</i> FC ... ..	782
(d) Industrial Court acting under section 33A of the Industrial Relations Act, 1967 on an application to appeal to High Court composition. <i>Hotel Malaya Sdn Bhd v National Union of Hotel, Bar &amp; Restaurant Workers</i> FC	783
<b>13. Practice and Procedure...</b> ... ..	785
INTRODUCTION . ... ..	787
DECISIONS AND COMMENTS	
LIMITATION	
(a) Is a claim barred by limitation revived by a subsequent amendment of a law? <i>Kenderaan Bas Mara v Yew Boon Tew &amp; Anor</i> FC ...	790
(b) Limitation against a plaintiff who is in possession of land as an equitable owner. <i>Munah v Fatimah</i> .. ... ..	795
(c) Acknowledgment under section 26(2) of the Limitation Act, 1953 pleading an acknowledgment. (i) <i>KEP Mohamed Ali v KEP Mohamed Ismail</i> FC ... ..	796
(ii) <i>Mat bin Lim &amp; Anor v Ho Yut Kam &amp; Anor</i> .. ... ..	800
MODES OF ORIGINATING PROCESS	
(a) Application for a perpetual injunction <i>Re Court Hill Canteen: Government of Malaysia v Wan Esah</i> FC ... ..	803
(b) Application under written law <i>Nanyang Development (1966) Sendirian Berhad v How Swee Poh</i> . ... ..	804
(c) Whether writ or originating summons is the appropriate mode <i>Pesuruhjaya Ibu Kota Kuala Lumpur v Public Trustee &amp; Ors</i> ... ..	804
SETTING ASIDE A REGULAR JUDGMENT IN DEFAULT OF APPEARANCE <i>Bank Bumiputra Malaysia Bhd v Majlis Amanah Ra'ayat</i> FC ... ..	807
PARTIES	
(a) Relator action <i>Attorney-General at and by the relation of Pesuruhjaya Ibu Kota, Kuala Lumpur v Wan Kam Fong &amp; Ors</i> ...	809
(b) Suits by local authorities to abate a public nuisance <i>Majlis Perbandaran Pulau Pinang v Boey Siew Than &amp; Ors</i> FC ... ..	812

## CONTENTS

(c) Suits by beneficiaries on behalf of an estate of a deceased person	<i>Eh Riyid v Eh Tek</i> ... .. 813
(d) Power to add new parties	<i>Federal Flour Mills Ltd v Owners of the Vessel 'Ta Tiong' &amp; Anor.</i> ... .. 815
<b>SUMMARY JUDGMENT</b>	
(a) Delay in applying for summary judgment application after defence has been served	<i>Comptroller-General of Inland Revenue v Weng Lok Mining Co Ltd FC.</i> ... .. 818
(b) Unconditional leave to defend if there is a triable issue	<i>United Malayan Banking Corporation Berhad v Palm and Vegetable Oils (M) Sdn Bhd &amp; Ors FC.</i> ... .. 821
(c) Cases involving a short matter of construction	<i>Esso Standard Malaya Bhd v Southern Cross Airways (Malaysia) Bhd</i> ... .. 825
(d) Cases involving the interpretation of a statute	<i>Fadzil bin Mohamed Noor v Universiti Teknologi Malaysia FC</i> ... .. 832
(e) Summary judgment against a third party in third party proceedings	<i>Central Securities (Holdings) Bhd v Haron bin Mohamed Zaid</i> ... .. 832
(f) Power to enlarge time for filing of appeal against an Order 14 judgment. Distinction between Order 14 judgment and a judgment in default	<i>Eu Hoong Chwee v Chua Say Tiong.</i> ... .. 832
<b>PLEADINGS</b>	
(a) Trial judge should not decide on an issue not raised in the pleadings	<i>The Chartered Bank v Yong Chan FC</i> ... .. 835
(b) Defective indorsement cured by a proper statement of claim	<i>Khoo Kay Hock v Ej Ketting &amp; Ors.</i> ... .. 841
(c) Amendment of pleadings	<i>Grant Advertising International Inc &amp; Anor v Glaze</i> .. 846
<b>STRIKING OUT PLEADINGS</b>	
(a) Application to strike out should be prompt. Position where pleading is defective only in not containing particulars	<i>Malayan Banking Berhad v Gan Kong Yam.</i> ... .. 848
(b) Striking out only in plain and obvious cases	(i) <i>Mooney &amp; Ors v Peat, Marwick, Mitchell &amp; Co &amp; Anor.</i> 851 (ii) <i>Shanghai Hall Ltd v Chong Mun Foo &amp; Ors.</i> ... .. 854
<b>DISCONTINUANCE OF AN ORIGINATING SUMMONS</b>	
	<i>Overseas Union Finance Ltd v Lim Joo Chong</i> ... .. 855

**INJUNCTIONS**

- (a) Jurisdiction of the High Court to grant a *mareva* injunction  
*Zainal Abidin bin Haji Abdul Rahman v Century Hotel Sdn Bhd* ... .. 855
- (b) Application for an interlocutory injunction  
*Caltex Oil Malaysia Ltd v Tee Than Song* ... .. 863
- (c) Application to dissolve an *ex parte* injunction  
*Gan Realty Sdn Bhd & Ors v Nicholas & Ors.* ... .. 866
- (d) Jurisdiction to grant a temporary injunction is a matter of discretion  
*Vethanayagam v Karuppiah & Ors..* ... .. 868

**STAY OF PROCEEDINGS**

- Board of Governors of Sekolah Menengah St Gabriel v Ranjit Singh* ... .. 870

**CONTEMPT OF COURT**

- Loot Ting Yee v Tan Sri Sheikh Hussain bin Sheikh Mohamed & Ors FC* ... .. 873

**CERTIORARI**

- Application for leave to apply for an order of certiorari  
*Mohamed Nordin bin Johan v Attorney-General, Malaysia FC* ... .. 877

**CONSENT ORDERS**

- (a) Application to set aside a consent order not drawn up and perfected  
*Chew Kong Kah v Cheu Kuan Cheng* ... .. 877
- (b) Application to vary a consent order drawn up and perfected  
*Ganapathy Chettiar v Lum Kum Chum & Ors: Menachi v Lum Kum Chum & Ors FC* ... .. 881

**TRIAL**

- (a) Absence of a party when a trial is called on  
*Buga Singh v Koh Bon Keo..* ... .. 883
- (b) Power of the court to restrain abuse of the issue of the *subpoena ad testificandum*  
*Ismail v Hasnul; Abdul Ghafar v Hasnul FC* ... .. 884
- (c) Cross-examination of a person other than a deponent to an affidavit  
*Gomez v Gomez* ... .. 890

**APPEALS**

- (a) Interference with a trial judge's findings of fact  
*Samar binte Mansor v Mustafa Kamarul Ariffin.* ... .. 894
- (b) Relying on a ground not pleaded in the court below  
*Ho Kean v Kong Lai Soo FC* ... .. 896
- (c) Failure by trial judge to specify grounds of judgment  
*Tan Kim Leng & Anor v Chong Boon Eng & Anor FC..* 900
- (d) Mode of service of notice of appeal on respondent. Application for extension of time to serve notice of appeal  
*Hoe Joo Sawmills v Sigma (Air Conditioning) Sdn Bhd FC* ... .. 901

## CONTENTS

### EXECUTION

- (a) Exercise of the discretion to grant a stay of execution  
*Leong Poh Shee v Ng Kat Chong* ... .. 904
- (b) Appeal against an order for an unconditional stay of execution  
*Menon v Abdullah Kutty FC* ... .. 906

### **14. Personal Injuries and Fatal Accidents.** ... .. 909

### INTRODUCTION . . . . . 909

#### DECISIONS AND COMMENTS

#### DAMAGES

- (a) General damages: pleading: heads of damages  
*Raja Zam Zam v Vaithyanathan* ... .. 911
- (b) Interest on Damages: pleading contributory negligence  
*Yee Boon Heng v Tan Chwee* ... .. 914
- (c) Pension in quantum of damages: application of Commonwealth cases  
*Raja Mokhtar bin Raja Yaakob v Public Trustee, Malaysia...* ... .. 920
- (d) Itemisation of damages under separate heads: interest on future loss of earning
  - (i) *Murtadza bin Muhamad Hassan v Chong Swee Pian FC* 924
  - (ii) *Yang Salbiah & Anor v Jamil bin Harun FC* .. .. 925
  - (iii) *Lim Kar Bee v Abdul Latif bin Ismail FC* ... .. 931

#### CONTRIBUTORY NEGLIGENCE; APPORTIONMENT OF DAMAGES, PLEA OF GUILTY

- (i) *Chock Kek Ling v Patt Hup Transport Co Ltd Ors* ... 942
- (ii) *Govinda Raju & Anor v Laws* ... .. 946

#### RES IPSA LOQUITUR: CORROBORATION: VICARIOUS LIABILITY.

- Karthyayani & Anor v Lee Leong Sin & Anor FC* ... 949

### **15. Statutory Interpretation** ... .. 957

### INTRODUCTION . . . . . 958

#### DECISIONS AND COMMENTS

#### GENERAL RULES OF INTERPRETATION OF STATUTES

- (a) Whether reference may be made to the repealed provision
  - (i) *Thanimalai & The Government of Malaysia v Lee Ngo Yew FC* ... .. 959
  - (ii) *Non-Metallic Mineral Products Manufacturing Employees Union & Ors v South East Asia Firebricks Sdn Bhd FC* ... .. 960

JUDGMENTS OF HRH SULTAN AZLAN SHAH

(b) Retroactive effect of legislation	
<i>Kenderaan Bas Mara v Yew Bon Tew &amp; Anor</i> FC ...	960
(c) Effect of retrospective operation of regulations	
<i>Pesuruhjaya Ibu Kota, Kuala Lumpur v Public Trustee &amp; Ors.</i> ... ..	961
(d) Retrospective effect of amendment to Civil Procedure Code	
<i>Public Prosecutor v Datuk Haji Harun bin Haji Idris.</i>	961
ROAD TRAFFIC ORDINANCE — MEANING OF ‘MAY’ IN SECTION 92(4).	
<i>Sing Hoe Motor Co Ltd v Public Prosecutor</i> ... ..	963
PUBLIC ORDER (PRESERVATION) ORDINANCE, 1958 — MEANING OF ‘WITHIN DOORS’	
<i>Public Prosecutor v Masran bin Abu &amp; Ors</i> ... ..	965
EMERGENCY (ESSENTIAL POWERS) ORDINANCE, 1970 — MEANING OF ‘OTHER ADVANTAGE’	
<i>Nunis v Public Prosecutor</i> FC ... ..	967
ELECTION OFFENCES ACT, 1954 (ACT 5)	
(a) Purpose and scope of the Act	
<i>Ali Amberan v Tunku Abdullah.</i> ... ..	969
(b) Scope of section 38(1) of the act	
(i) <i>Tengku Korish v Mohamed bin Jusoh &amp; Anor</i>	
(ii) <i>Abdul Raouf v Ibrahim bin Arshad &amp; Anor</i>	
(iii) <i>Mokhtar bin Abdullah v Mokhtar bin Haji Daud &amp; Anor</i>	970
ADVOCATES AND SOLICITORS ORDINANCE, 1947 — MEANING OF ‘PREVIOUSLY’ IN SECTION 5(3)(a).	
<i>Leaw Mei Lee v Attorney-General &amp; Ors</i> FC ... ..	973
MEANING OF ‘MALAYA’ ON FORMATION OF ‘MALAYSIA’	
<i>Reddy v Employees Provident Fund Board</i> ... ..	975
<b>16. Torts</b> ... ..	979
INTRODUCTION ... ..	979
DECISIONS AND COMMENTS	
BREACH OF STATUTORY DUTY	
(i) <i>Chan Kwon Fong &amp; Anor v Chan Wah</i> FC ... ..	983
(ii) <i>Wong Soon San v Malayan United Industrial Co Ltd.</i>	987
FALSE ARREST	
<i>Chong Fook Kam &amp; Anor v Shaaban bin Hussein &amp; Ors</i>	992
NEGLIGENCE	
(i) <i>Elizabeth Choo v Government of Malaysia &amp; Anor</i> ...	1002
(ii) <i>Lim Ah Toh v Ang Yau Chee &amp; Anor</i> ... ..	1007
(iii) <i>Periasamy v Suppiah</i> ... ..	1010
(iv) <i>Government of Malaysia &amp; Ors v Jumat bin Mahmud &amp; Anor</i> FC ... ..	1015

CONTENTS

OCCUPIER'S LIABILITY

- (i) *Lembaga Letrik Negara, Malaysia v Ramakrishnan* FC 1019
- (ii) *Wong See Kui v Hong Hin Tin Mining Co* ... .. 1027

NUISANCE OR NEGLIGENCE ON HIGHWAYS

- Len Omnibus Co Bhd v North South Transport Sdn Bhd  
& Anor and Another Appeal* FC ... .. 1033

*Index* ... .. 1039