

RELEVAN



IN THIS ISSUE

> > > >

02

Article//
Court lacks
jurisdiction
to declare
company's
dissolution void
after 2 years

03

**Keeping Up
To Date//**
The Four
Corners

05

Report//
It's Okay To
Not Be Okay

07

Relax
Recharge
Reflect

09

Young
Lawyers'
Corner

10

Article//
7 Key Changes
to Malaysia's
Trademarks Act

.Content



pg
02

Article//
Court lacks jurisdiction to
declare company's dissolution
void after 2 years

pg
03

Keeping Up To Date//
The Four Corners

pg
05

Report//
It's Okay To
Not Be Okay

pg
07

Relax
Recharge
Reflect

pg
09

Young
Lawyers'
Corner

pg
10

Article//
7 Key Changes to Malaysia's
Trademarks Act



Message From The Chairperson, KLBC Publications Committee

Louis Liaw Vern Xien

Dear Members of the Kuala Lumpur Bar,

It gives me great pleasure to introduce you to the first issue of the renewed electronic newsletter of the Kuala Lumpur Bar RELEVAN.

RELEVAN was once a printed publication of the Kuala Lumpur Bar, and was very much loved for its informative yet easy-to-read nature. We want to bring that back to the members, and this time in electronic form!

RELEVAN not only aims to update members with the happenings of their beloved State Bar, but also to keep members abreast of the development of the law in general. Additionally, RELEVAN also seeks to provide a platform for members to showcase their writing talent; members can now write legal opinions or case analysis and have their views published here and be read by potentially more than 8000 members (and growing!) of the Kuala Lumpur Bar.

Furthermore, for the young lawyers, there will be a specific section on RELEVAN allocated for contribution by young lawyers, known as the Young Lawyers' Corner. This is an effort to empower young lawyers and to provide them a voice in this profession.

All in all, I hope that members will not only find this e-newsletter a good read, but also decide to seize the opportunity to write for it. We look forward to your contribution soon! Meanwhile, we value your comments and suggestions, so please do not hesitate in providing us your feedback.

I would like to record my deep appreciation to the editorial team led by Quiin Hng Huey Koon for taking up the challenge to produce this inaugural e-newsletter.



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COURT LACKS JURISDICTION TO DECLARE COMPANY'S DISSOLUTION VOID AFTER 2 YEARS

//By Chris Toh Pei Roo

Recently, the High Court in *Ketua Pengarah Hasil Dalam Negeri v Suruhanjaya Syarikat Malaysia* [2019] 1 LNS 341 delivered a landmark decision on the interpretation of Section 535(1) of the Companies Act 2016 ("CA 2016") (the current iteration of Section 307(1) of the Companies Act 1965 ("CA 1965")). The Court held that it has no jurisdiction to grant an order for the reinstatement of a company that has been wound up after the 2-year statutory time period.

Section 535(1) CA 2016 reads:

"Where a company has been dissolved, the Court may, at any time within two years after the date of the dissolution, on an application of the liquidator of the company or of any other person who appears to the Court to be interested, make an order upon such terms as the Court thinks fit declaring the dissolution to have been void, and such proceedings may be taken as might have been taken if the company had not been dissolved".

Facts

On 1 March 2016, the company commenced its voluntary winding up under Section 257 CA 1965. On 20 May 2016, it conducted its final meeting and lodged a return of the holding of this final meeting with the Registrar of Companies under Section 272(3) CA 1965. On 20 August 2016, three months after the lodging of the said return, the company completed its dissolution under Section 272(5) of the CA 1965.



On 17 May 2018, the Director-General of Inland Revenue filed an Originating Summons ("OS") under Section 535(1) of the CA 2016 to declare the dissolution void. On 8 August 2018, the court allowed the liquidator's application for the OS to be converted into a writ as there were serious disputes of fact and fixed the matter for trial commencing 11 February 2019. On 31 January 2019, the liquidator applied for a determination of the following question of law:

"Whether the Court has the jurisdiction under section 535(1) of the CA 2016 to grant an order declaring the dissolution of a company void after the expiration of the two-year period from the date of the company's dissolution as prescribed within section 535(1) itself?"

Decision

The Court agreed with the liquidator that it has no jurisdiction to grant an order for the dissolution to be declared void as, amongst others:

- (a) Section 535(1) of the CA 2016 must be given its plain, natural and ordinary meaning and cannot be extended to meet a case for which provision has not been made.
- (b) There is no provision within Section 535 or anywhere else within CA 2016 that the 2-year period may be extended by the Court.
- (c) Other jurisdictions like the United Kingdom, Hong Kong and Australia have amended their respective legislations to remove and/or extend the time period for making such an order. The lack of such amendments by Parliament in enacting CA 2016 is a "clear indication" that Parliament did not intend to extend this period.

KEEPING UP TO DATE: THE FOUR CORNERS

//Credit to Sharifah Alliana Idid

→ The Civil Corner

JRI RESOURCES SDN BHD v. KUWAIT FINANCE HOUSE (MALAYSIA) BERHAD; PRESIDENT OF ASSOCIATION OF ISLAMIC BANKING INSTITUTIONS MALAYSIA & ANOR (INTERVENER) [2019] 1 LNS 438

Background:

The respondent sued the application for the alleged failure to make payment of the amount outstanding to the respondent under the financing facilities granted. The above matter went before the Federal Court by way of a constitutional reference by the High Court pursuant to s.84, Courts of Judicature Act 1964.

Issue:

Whether the ruling by Bank Negara Malaysia's Shariah Advisory Council (SAC) pursuant to ss.56 and 57, Central Bank of Malaysia Act 2009 ("CBMA") is constitutional and binding on Civil Courts even though the Council is not a judicial body.

Decision:

An unprecedented nine-man Federal Court Bench delivered a landmark majority judgment (a narrow 5:4 decision) that any decision by the SAC on Islamic finance is constitutional and binding on Civil Courts. However, those in the minority found s.57, CBMA to be in contravention of Art. 121, Federal Constitution and thus, must be struck down as unconstitutional and void.

→ The Criminal Corner

ALMA NUDO ATENZA v. PP & ANOTHER CASE [2019] 1 LNS 437

Background:

The appellants in these appeals were convicted by two different trial Judges for drug trafficking under s.39B of the Dangerous Drugs Act 1952 ("DDA"). The focus of the appeals was on the constitutionality of s.37A DDA which appears to allow the use of double presumptions to find possession as well as trafficking for a charge under s.39B of the DDA.

Issue:

Whether section 37A of the DDA, with reference to Articles 5, 8, and 121 of the Federal Constitution ("FC"), is constitutional.

Decision:

The nine-man bench chaired by Chief Justice Richard Malanjum struck out s.37A, DDA as unconstitutional for violating Arts. 5(1) and 8(1), FC. However, finding that there was no reasonable doubt on the guilt of the appellants for possession of drugs based on the evidence adduced, the appellants' charges were reduced to possession of drugs under section 12 (1) and punishable under section 39A(2) of the DDA.

→ The Matrimonial Corner

CAS v. MPPL & ANOR [2019] 2 CLJ 454

Background:

The plaintiff and the 1st Respondent had an affair before and after the 1st Respondent married the 2nd Respondent. The plaintiff claimed that the child born to the respondents was his and commenced an action in the High Court against the respondents for, inter alia, a DNA test to be carried out in order to determine whether the plaintiff was the child's biological father and if the result is in the affirmative, the plaintiff sought, inter alia, to be declared the same, joint guardianship of the child and reasonable access to the child.

Issue:

Whether the presumption of legitimacy pursuant to s.112, Evidence Act 1950 ("EA") may be rebutted by the use of DNA tests.

Decision:

The Court of Appeal found the High Court Judge to have fallen into error when Her Ladyship "linked paternity with legitimacy. The concepts of 'paternity' and 'legitimacy' should necessarily be separated. 'Paternity' concerns a question of fact while 'legitimacy' a question of law". The Court of Appeal went on further to elaborate that s.112, EA while conclusively presuming legitimacy, does not bar enquiries into paternity and that enquiries per se into paternity do not rebut the presumption that a child is a legitimate child.

→ The Industrial Corner

SUHAIMI HJ AZIZ v. MALAYSIAN AIRLINES [2019] 1 ILR 505

Background:

Claimant was employed by the company as a clerk. Upon a spot check being conducted on the staff lockers, items belonging to the company were found in his locker. The claimant contends his dismissal was carried out without just cause and excuse.

Issue:

Whether the claimant had been in possession of the items belonging to the company without authorisation and whether failure to conduct a Domestic Inquiry ("DI") resulted in his unlawful dismissal.

Decision:

The unauthorised possession of company property is a serious misconduct irrespective of the value or the condition of the item. It was established through evidence that the items in his locker belonged to the company and it was in his possession without authorisation. The failure to hold a DI does not necessarily result in unlawful dismissal as it is not in every case that a DI needs to be conducted. It was found that the claimant's misconduct "had demonstrated a betrayal of the trust and confidence that had been reposed in him by the company and the punishment of dismissal had been proportionate to his misconduct".

“IT IS OKAY TO NOT BE OKAY”

Mental Health Awareness

//By Quiin Hng Huey Koon

Mental health has been one of the most underrated health issues until very recently where more awareness and education have highlighted its importance and effects, especially in the workplace. It is no secret that lawyers are especially prone to experiencing high levels of stress and are thus more vulnerable to potential mental health issues. In emphasising the importance of good mental health, the KLBC Gender Equality & Diversity Committee in collaboration with Lean in Malaysia and supported by the Australian High Commission organised a workshop to focus on the mental well-being of those in the legal profession.

On a bright Saturday morning, attendees of the workshop were warmly welcomed by Co-President of Lean in Malaysia, **Becky Nguyen**. Lean in Malaysia is powered by Asia Women Circle (AWC). One of the mandates of AWC, as highlighted by Becky, is to challenge stereotypes or preconceived notions and encourage critical thinking. To achieve that, they carry out insightful monthly Circle Dialogues, which bring together leaders who share their stories and experiences with aspiring young professionals or women looking to get back into the workforce after a break.

“Mental health is not a sign of weakness, nor a sign of inadequacy. Mental health is just a biological phenomenon. We need to move away from associating stress, anxiety and depression as weaknesses.”



Sharmila Ravindran, who is the Chairperson of the KLBC Gender Equality & Diversity Committee as well as a Founding Member of Lean in Malaysia, then brought everyone's concern to the sad reality of some legal practitioners' life. She highlighted the true fact that in most circumstances, there is no middle ground for lawyers, in litigation it is either win or lose.

‘Lawyers have to deal with long continuous working hours, high requirements, large case notes, alienating cultures, competitions with colleagues, bullying, sexual harassments and burn out. I am sure all these things are very familiar to a lot of us in the room. How many of you have files thrown at you by your bosses, or even judges, or have you had your bosses shout at you in front of your colleagues. How many of you have been told ‘Get on with it!’ or ‘Toughen up!’ or ‘If you can’t deal with the pressure, just leave practice!’ said Ravindran.

Ravindran's opening speech was followed by an address by The Australian High Commissioner, His Excellency, **Mr. Andrew Goledzinowski**. His Excellency shared a real life story of his good friend, whom he described as a tough guy, a boxer as well as a sportsman in university. Based on all these external personalities, His Excellency said that his friend was the last person one could possibly think of to be diagnosed with traumatic stress syndrome due to his emotional and relationship break downs.

'Nobody could have imagined that...And yet, that is the fact...It can happen to anybody. It is happening to a number of people in this room right now and we may not recognise who those people are. Some cannot recognise even themselves that they have got mental health issues.' said His Excellency, in a serious yet caring tone.

After three wonderful opening remarks, the workshop continued with a panel of three different personalities, namely **Azran Osman Rani**, CEO of Naluri, **Andre Gan**, Managing Partner of Wong & Partners and **Eulis Rachmatiah Iskandar**, Head of Ethics of Celcom Axiata Berhad. They talked about their experiences and insights into the topic of mental health and wellness at the workplace. The flow of the panel's discussion was smoothly and expertly moderated by **Daisy Ng**, Co-President of Lean in Malaysia. It was truly refreshing to hear topics that are generally considered as 'taboo' being discussed on such an open platform.



Notably in the beginning, **Eulis Rachmatiah Iskandar** took everyone on an emotional roller coaster ride. She shared her personal past experience of having been forced by her ex-employer to stay up late in the office. As a result of the continuous late hours, she broke down in the end and was hospitalised. Having heard this emotional story shared personally by a victim, the atmosphere in the room became somber. Within a few seconds however, everyone laughed hysterically as Eulis ended her story by saying '...but he flew me with his private jet the next day to compensate. So I was alright.'

In the course of sharing his experiences, **Azran Osman Rani** equally made an extremely impactful statement:

'We are humans, we do feel sad, we do feel angry, we do feel afraid, but the issue is when that prolongs and it worsens into a condition, it isn't just a feeling but a biological condition...It is not a matter of choice...'

Azran further went on to note that society is very comfortable to accept diabetes as disease but not yet as comfortable in accepting pressuring anxiety. 'Mental health is not a sign of weakness, nor a sign of inadequacy. Mental health is just a biological phenomenon. We need to move away from associating stress, anxiety and depression as weaknesses.'

As a Managing Partner of one of the biggest law firms in the Klang Valley, **Andre Gan** shared his experiences from an employer's practical point of view. He observed that norms are changing, with expectations in the workplace getting higher, but he emphasised that throwing files at workers is no longer acceptable now and it is, without a doubt, a form of bullying.

The workshop ended with several interactive activities between speakers and attendees. Creative slides played with meaningful motivational quotes. Interesting survey questions were answered. There was also a relaxing, mind-soothing session led by a professional psychologist from Naluri to connect emotionally with everyone in the Auditorium. Naluri also offered all the attendees to use the Naluri app for free for a week to assess and gauge their own mental health.

In the fast-paced world of legal practice, where much emphasis is placed on churning out as much work as possible, as quick as possible, it was indeed extremely eye-opening to gather insights and experiences on the importance of mental health and the increasing awareness it is now being given. It is definitely a step in the right direction towards a more holistic sense of wellness.



1 RELAX

“Opposing Counsel: Why is our discovery conference set at the aquarium?

Me: Well, your entire case is a fishing expedition so...”

- Source: *Lawyer Thoughts* - <https://twitter.com/lawyerthoughts>

A doctor and a lawyer were talking at a party. Their conversation was constantly interrupted by people describing their ailments and asking the doctor for free medical advice.

After an hour of this, the exasperated doctor asked the lawyer:

“What do you do to stop people from asking you for legal advice when you’re out of the office?”

“I give it to them,” replied the lawyer, “and then I send them a bill.”

The doctor was shocked, but agreed to give it a try.

The next day, still feeling slightly guilty, the doctor prepared the bills.

When he went to place them in his mailbox, he found a bill from the lawyer.

so that nobody reading our judgment with our name deleted could with confidence identify our race or religion, and so that the various communities, especially minority communities, are assured that we will not allow their rights to be trampled underfoot.”

Jerome P Facher, Washington Lee Law School Commencement Speech, May 14 2000

“Loss of reputation is the greatest loss you can suffer. If you lose it, you will never recover it. Whether other lawyers or judges or clerks ... trust you and take your word, whether you are straight with your clients ... whether principles and people matter to you, whether your adversaries respect you as honest, fair and civil, whether you have the guts to stand up for what you believe – these are some of the hallmarks of integrity. Personal integrity is at the heart of every law career. You can’t get it out of a computer – or from a law book – or from a commencement speaker. You have to live it and practice it every day with every client, with every other lawyer, with every judge and with every public and private body. And if your reputation for integrity is alive and well so will your career and so will your well being.

- Source : <https://www.wilmerhale.com/en/insights/news/commencement-speech-washington-and-lee-law-school-may-14-2000>

2 RECHARGE

Tun Mohamed Suffian Mohamed Hashim (former Lord President of Malaysia in his Braddel Memorial Lecture in 1982), reproduced by Zulkefli Ahmad Makinudin PCA in his concurring judgment of the Court in the landmark Federal Court decision of *Indira Gandhi Mutho V. Pengarah Jabatan Agama Islam Perak & Ors And Other Appeals* [2018] 3 CLJ 145

“In a multi-racial and multi religious society like yours and mine, while we judges cannot help being Malay or Chinese or Indian; or being Muslim or Buddhist or Hindu or whatever, we strive not to be too identified with any particular race or religion –

3 REFLECT

Women Empowerment in Malaysia



**Malaysia's First Woman Chief Justice:
YAA Dato' Seri Utama Tengku Maimun
binti Tuan Mat**

"They should deal with cases with independence,
impartiality and efficiency"

**"Latheefa Koya was
appointed by the Prime
Minister as the Chief
Commissioner for
Malaysian Anti-Corruption
Commission on 4 June 2019
(effective 1 June 2019)**

Malaysian Cabinet now has 9 women, 5 ministers and 4 deputy ministers >>>

**> Deputy Prime Minister and Minister of Women
& Family Development**

YB Datuk Seri Dr Wan Azizah Wan Ismail

> Minister of Housing & Local Government

YB Zuraida Kamaruddin

> Minister of Rural Development

YB Rina Harun

> Minister of Primary Industry

YB Teresa Kok

> Minister of Science, Technology & Innovation

YB Yeo Bee Yin

**> Deputy Minister of Women & Family
Development**

YB Hannah Yeoh Tseow Suan

> Deputy Minister of Prime Minister's Department

YB Fuziah Salleh

> Deputy Minister of Education

YB Teoh Nie Ching

**> Deputy Minister of Science, Technology &
Innovation**

YB Isnaraissah Munirah Majjlis

• YLC RETREAT 2019 •

//By Kee Hui Yee

Creative, Competitive, Camaraderie

Above are some of the words that can be used to describe the KLBC Young Lawyers Committee (KLYLC) Retreat 2019 held on the 1st & 2nd June in MU Hotel, Ipoh. All 45 participants seized the opportunity to unwind and recharge. We kick started the weekend with the first session titled “Styling your KLYLC” as an ice-breaking activity. Participants were required to showcase their creativity in designing merchandises for the KLYLC. This session brought out the wittiness and creativity in the participants where they were required to pitch their proposed products.

The participants then engaged in a discussion on personal branding and innovative ways to building a futuristic law firm. Through this session, it was clear that work-life balance was something all participants were looking to achieve in their career. During the brainstorming session on the struggles faced by young lawyers, issues such as workplace sexual harassment, pros and cons of having a union for the lawyers and the importance of commercial awareness in the legal practice were some of the topics highlighted and debated on. The Chair of the Perak Bar Young Lawyers Committee, Kenny Lai Choe Ken weighed in on some of our discussions where he shared from a more seasoned perspective.

We had dinner with several members from the Perak Bar Young Lawyers Committee at Miker Food. We ended the night on a high note with Liverpool’s win at the Champions League.



The Amazing Race on Sunday was the highlight of the YLC Retreat 2019. Ten teams went on a three-hour adventurous food hunting and puzzle solving journey. Prizes were sponsored by Thomson Reuters. Young lawyers and pupils from different firms, backgrounds and fields demonstrated tremendous team effort and camaraderie throughout the Amazing Race.

The organising committee would like to extend our gratitude to our sponsors, Thomson Reuters and Oxwhite for supporting our event.

See you next year!



**Work-life balance
was something all
participants were
looking to achieve
in their career**





7 KEY CHANGES TO MALAYSIA'S TRADEMARKS ACT

// By Amanda Pang

In a seminar held at the Intellectual Property Corporation of Malaysia's (MyIPO) IP Academy on 12 June 2019, MyIPO announced that the new Trademark Act 2019 is expected to come into force as early as October 2019. This is to prepare Malaysia for the Madrid Protocol which it shall be acceding to in January 2020.

What's new:-

→ Trade Marks Act 1976

First things first, trademarks in Malaysia will now be known as 'trademarks' not 'trade marks'. Any existing registered trademark shall continue to be a registered trademark under the new Act. However, existing associated marks will cease to have effect upon commencement of the new Act, as the concept of associated marks is no longer recognised.

→ Recognition of non-traditional marks and collective marks (s.3)

The definition of trademarks has been amended to allow for the registration/protection of non-traditional marks such as 3D marks, audio marks and scent marks. Registrable trademarks are now referred to as "signs" as opposed to "marks", mirroring that of the UK and Singapore Trade Marks Act. Collective marks are also recognised under section 72 of the Trademarks Act 2019.

→ Security interest in trademarks (s.62 & 64)

As part of a movement to monetise intangible assets, the new Act explicitly treats trademarks as objects of property. There can now be security interest and charge over trademarks in the same way as other personal or movable property.

In this regard, MyIPO announced that a new system of online forms will be used as the primary instrument of assignment. Such online forms must be signed by both the assignor and the assignee in order to be effective. This means that there is a possibility that deeds of assignment may no longer be a mandatory requirement of an effective assignment, although we will have to wait and see how this will develop in practice.

→ New licensing regime (s.68 – 71)

It is no longer compulsory for licenses to be registered in order to have legal effect. Further, licensees can now sue in their own name if the trademark proprietor fails to take infringement proceedings when required. There will also be special rights for exclusive licensees which are different from those of non-exclusive licensees.

→ Single filing procedure

For a single fee, trademark proprietors can file a single application at its office of origin (MyIPO for Malaysia) for its mark to be nationally registered in more than one country. This is subject to the limitation that the overseas trademark cannot cover a range of goods and services wider than that covered by its home country trademark. Previously, no such international registration existed in Malaysia.

→ Merger and division of registration application (s.37 – 38)

With a fee, applicants/proprietors can merge two or more separate registration applications into one application. They can also divide a single application into two or more separate applications according to their business needs.

Similarly, the new Act allows for selective renewal of registrations whereby proprietors have the flexibility not to renew its trademark for those classes of goods or services he no longer requires trademark.

→ Option to convert pending applications (s.173)

Within two months of commencement of the new Act, existing applicants may opt for their applications to be governed under the new Act. This applies to applications pending registration which have not been examined under the repealed Act. The conversion will be irrevocable. Therefore, applicants should be well informed of the changes before undertaking such conversion.

BE PART OF OUR STORY

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KLBC Publications Committee 2019/2020

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KLBC YLC

PRESENTS

THE 15TH CHARITY NIGHT



IN AID OF
**INDEPENDENT LIVING
& TRAINING CENTRE**



WHIMSICAL WONDERLAND

4 OCTOBER 2019 | 7PM - 11PM

GLASSHOUSE SEPUTEY, KL

DRESS CODE

ALICE IN WONDERLAND / THE GREATEST SHOWMAN



FREE FLOW OF FOOD & DRINKS UNTIL WE RUN OUT



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