Majlis Peguam
Bar Council

www.malaysianbar.org.my

Wisma Badan Peguam Malaysia
2 Leboh Pasar Besar
50050 Kuala Lumpur, Malaysia
Tel : +603-2050 2050
Fax : +603-2050 2019
Email : council@malaysianbar.org.my

Circular No 108/2025
Dated 28 Mar 2025

To Members of the Malaysian Bar

Highlights from the Appellate Courts (No 6/2025)

The Publications Committee is pleased to circulate the sixth edition in this case note series for the year.

The cases covered in this edition are as follows:

(1) Ketua Pengarah Hasil Dalam Negeri v Kind Action (M) Sdn Bhd (FC)
Revenue law – Income tax – Finality of tax assessments / Judicial review – Exhaustion rule – Availability of alternative domestic remedy under the Income Tax Act 1967
Written by Gregory Das

(2) Pendaftar Mualaf Negeri Perlis & Ors v Loh Siew Hong (FC)
Constitutional law – Conversion of children – Section 117(b) of the Perlis Administration of the Religion of Islam Enactment
Written by Iqbal Harith Liang b Danial Liang

(3) Kerajaan Malaysia & Anor v Dr Vijaendreh a/p Subramaniam & Anor (FC)
Medical law – Right of medical practitioner to dispense medicine under the Poisons Act 1952 – Professional judgment of medical practitioner
Written by Sandhya Saravanan

(4) Dato' Ting Ching Lee v Ting Siu Hua (FC)
Contract law – Sections 24 and 31 of the Contracts Act 1950 – Recovery of monies related to gambling or wagering – Application of Section 26 of the Civil Law Act 1956
Written by Voon Su Huei

The case notes may be accessed here (see page 2 onwards).

Sincerely,

Gregory Das
Chairperson
Publications Committee

Highlights from the Appellate Courts

Ketua Pengarah Hasil Dalam Negeri v. Kind Action (M) Sdn Bhd (FC)
Revenue law – Income tax – Finality of tax assessments / Judicial review – Exhaustion rule – Availability of alternative domestic remedy under the Income Tax Act 1967

The Federal Court in **Ketua Pengarah Dalam Negeri v. Kind Action (M) Sdn Bhd (Civil Appeal No.: 01(f)-18-05/2024(J))** addressed significant principles on the finality of tax assessments and estoppel in revenue law as well as the effect of the availability of domestic remedies in judicial review applications.

The decision arose from the dismissal of the Respondent taxpayer's judicial review challenge against the notices of additional assessment that it had been issued on behalf of the Appellant Director General of Inland Revenue.

The Respondent was in the plantation business. Following a change in management in the ultimate holding company of the Respondent and a change in part of the business direction of the group, the Respondent executed several sale and purchase agreements for the sale of its plantation lands to various parties. The Respondent paid real property gains tax under the Real Property Gains Tax Act 1976 ("**RPGTA**"). The RPGTA assessments and the real property gains tax certificates were issued by the Appellant's "*Cawangan Pembayar Cukai Besar" and "Cawangan Kluang*".

Subsequently, following the Appellant's tax investigations in Malacca, the Appellant took the position that the proceeds from the sale of the Respondent's plantation lands was subject to income tax under section 4(a) of the Income Tax Act 1967 ("**ITA**"). This was on the premise that the proceeds were derived from the Respondent's realisation of its investments in the plantation lands that were in the nature of a trade.

The Appellant then raised notices of additional assessment that imposed income tax and 60% penalties that totaled more than RM81 million upon the Respondent in respect of the proceeds from the sale of the plantation lands. The Appellant did not discharge or revoke the prior RPGTA certificates of clearance and RPGTA assessments that it had issued for the same transactions.

The Respondent filed an appeal against the notices of additional assessment at the Special Commissioner of Income Tax and also commenced judicial review proceedings to challenge the notices.

The High Court dismissed the judicial review application. The Court of Appeal reversed the High Court's decision. The Appellant then obtained leave to appeal to the Federal Court on 7 questions of law. The Federal Court dismissed the appeal and affirmed the Court of Appeal decision that quashed the notices of additional assessment issued to the Respondent.

The Federal Court first addressed the matter of the finality of the tax assessment conducted by the Appellant. It was held that the Appellant had accepted the RPGT returned filed by the Respondent and thereafter issued the RPGTA certificates of clearance and RPGTA assessments under section 14(1)(a) of the RPGTA. The said assessments were ruled to have become final and conclusive under section 20 of the RPGTA since there were no appeals filed by the Respondent.

Tengku Maimun CJ, who wrote the lead judgment of the Federal Court, then rejected the Appellant's contention that it was open to the Appellant to tax the Respondent for income under the ITA following the tax investigations it had conducted and notwithstanding the finality of the prior assessment under the RPGTA. It was observed that "*to accept the submission of learned counsel for the appellant would cause gross violation of the principle of double taxation and would run counter to the finality provision in section 20(1)…*".

The Federal Court proceeded not to accept the position that the Appellant was at liberty to "*keep open the various alternatives"* in respect of the tax assessments on the Respondent. It was held that *"nowhere in the RGPTA is it provided that the appellant can take the RPGT return "on the surface" first and think about it later. In our view, it would be consistent with good governance that the appellant undertakes an investigation or audit first, before issuing the assessment. This would be consistent with the overall scheme of section 14(1) of the RPGTA which gives the discretion to the Director General to either accept the return and make an assessment accordingly or make an assessment after making such adjustments as he considers necessary*".

On the principle of estoppel, the Federal Court rejected the Appellant's position that it should not be estopped from performing its statutory functions and be permitted to conduct and implement assessments under the RPGTA and the ITA. It was ruled that to permit the Appellant to adopt such a course would be "*contrary to law as it is trite that in Malaysia, a taxpayer can only be taxed either under the RPGTA or the ITA and that there can be no overlap between the RPGTA and the ITA*". Additionally, the Federal Court held that "*The issue that the appellant could not be estopped from performing its statutory functions did not arise here as the appellant is only expected to perform its functions as required by law and not otherwise*".

Abu Bakar Jais FCJ, who wrote a supporting judgment, noted on the matter of estoppel and legitimate expectation that "*…estoppel in pais (estoppel by words or conduct) would apply here…Once the RGPT is imposed and the certificate of clearance is issued, the appellant would be estopped from imposing further tax under the ITA. There would also be legitimate expectation that the respondent would not be required to pay further tax under the ITA as the RPGT had been paid and the certificate of clearance had been issued for this payment…*".

The issue of the availability of domestic remedies and its effect on the judicial review challenge was then considered. Tengku Maimun CJ upheld the approach of the Court of Appeal that accepted the ground of illegality of the decision-maker to be a recognised premise for the judicial review application to be filed without first exhausting the appeal procedure under the ITA. On this matter, Abu Bakar Jais FCJ held that "*judicial review would still be applicable following the above decision when there is excess or abuse of power. In the present case before us, there is indeed an excess or abuse of power as the appellant should not have further imposed tax on the respondent under the ITA, having done so under the RPGTA…*".

Written by
Gregory Das
Chairperson, Publications Committee

Pendaftar Mualaf Negeri Perlis & 3 Ors v Loh Siew Hong (FC)
Constitutional law – Conversion of children – Section 117(b) of the Perlis Administration of the Religion of Islam Enactment

FACTS

In ***Pendaftar Mualaf Negeri Perlis & Ors v. Loh Siew Hong* (CIVIL APPEAL NO.: 08(F)-35-02/2024(W))**, Loh Siew Hong, a Hindu-Buddhist, married Nagahswaran, a Hindu, in 2008 under the Law Reform (Marriage and Divorce) Act 1976. They had three children.

In 2019, Loh was separated from her children by Nagahswaran. They were later divorced in December of said year. In January 2020, Loh obtained sole custody of the three children via a 2020 High Court Order, but Nagahswaran refused to return the children.

In July 2020, Nagahswaran converted to Islam and unilaterally converted the three children to Islam without Loh's consent, relying on Section 117(b) of the Perlis Administration of the Religion of Islam Enactment ("**PARIE**").

Loh filed a judicial review challenging the validity of the children's conversion, arguing it violated Article 12(4) of the Federal Constitution, which requires both parents' consent for a minor's religious conversion.

The High Court dismissed Loh's judicial review, upholding the unilateral conversion under PARIE. The Court of Appeal then reversed the High Court's decision.

THE FEDERAL COURT'S DECISION

The grounds of appeal raised by the Appellants were essentially the following:-

(i) The Bahasa Malaysia version of the Federal Constitution is the authoritative text of the Federal Constitution;

(ii) *Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak [2018] 1 MLJ 545* did not address the interpretation of the term 'parent' and 'parents' in the Federal Constitution;

(iii) *Indira Gandhi's ratio* was only applicable in the Federal Territories and does not apply to Perlis; instead, the facts and principles in this case were akin to *Dahlia Dhaima bt Abdullah v Majlis Agama Islam Selangor [2024] 5 CLJ 855* and hence it should apply such that the 3 children have been validly converted.

Authoritative Text of the Federal Constitution

It was ruled that the English version of the Federal Constitution was the authoritative text of the Federal Constitution, as previously held in *Indira Gandhi*. The YDPA had not prescribed the Bahasa Malaysia translation as authoritative as required by Article 160B of the Federal Constitution.

The Correctness of *Indira Gandhi* as Precedent

Nallini Pathmanathan FCJ, who wrote the lead judgment of the Federal Court, distilled the key points of *Indira Gandhi* as follows:-

(i) Matters of constitutional and statutory interpretation as well as review of public authorities' actions lie within the jurisdiction of the Civil Courts;

(ii) Where a statutory provision states that a certificate of conversion into Islam constitutes conclusive proof of the facts therein, this certificate can only certify the facts therein that the relevant names have been registered with the Registrar of Mualafs – it cannot be proof that the conversion process was legal;

(iii) Consent of both parents is constitutionally required in order for a minor to convert into Islam – the term 'parent' is to be read as being plural;

(iv) The Syariah Courts have full power to decide matters within their jurisdiction. Where the Syariah Courts have acted outside their jurisdiction, the Civil Courts may rectify this error due to its supervisory power; and

(v) Jurisdiction of the Syariah Court cannot be conferred by consent or agreement.

It was held that given that *Indira Gandhi* has been reaffirmed and developed upon at length, its logic and precedential weight is unassailable.

The Federal Court further dismissed the Appellant's contention that *Indira Gandhi* applies only to the Federal Territories – all Federal Court judgments are binding throughout the nation.

The argument that *Dahlia Dhaima* was applicable to the present case was also rejected. The Federal Court emphasised that the illegality caused by failing to obtain a parent's consent is a constitutional requirement which cannot be detracted by other factors. Abu Bakar Jais FCJ, who wrote a supporting judgment, noted that "*Dahlia must be taken or understood according to the peculiar facts of that case*".

CONCLUSION

The Federal Court dismissed the application for leave to appeal as there is no *prima facie* case of success in the appeal.

Written by
Iqbal Harith Liang
Member, Publications Committee

Kerajaan Malaysia & Anor v. Dr Vijaendreh a/p Subramaniam & Anor (FC)
Medical law – Right of medical practitioner to dispense medicine under the Poisons Act 1952 – Professional judgment of medical practitioner

The issues in the appeal of **Kerajaan Malaysia & Anor v. Dr Vijaendreh a/p Subramaniam & Anor (Civil Appeal No.01(f)-16-04/2024(W))** were:

a) Whether the principles enunciated in ***Datuk Syed Kechik v Government of Malaysia and Anor [1979] 2 MLJ 101*** **("Syed Kechik")** and ***YAB Dato' Dr. Zambry bin Abd Kadir & Ors v YB Sivakumar a/l Varatharaju Naidu [2009] 4 MLJ 24*** **("Zambry")** apply to the situations where there are substantial issues pending criminal investigation and the exercise of the prosecutorial discretion of the Public Prosecutor;

b) Whether a registered medical practitioner could sell and/or dispense Ivermectin for purposes of consumption/administration by their patients, which was not a 'registered product' and without the benefit of a licence for that purpose under Poisons Act 1952("Act 366") and Sales of Drugs Act 1952 ("Act 368") and their respective Poisons Regulations 1952 ("1952 Regulations") and Cosmetics Regulations 1984 ("1984 Regulations"); and

c) Whether the declarations, if granted, would tantamount to judicial interference with the executive and legislative policy by effectively accepting Ivermectin as a suitable treatment option for Covid 19.

Background Facts

The material facts were as follows:

a) On 14.6.2021, an investigating officer from the Selangor Pharmaceutical Services Division entered the Second Respondent's clinic and purchased a box of Ivermectin Verpin-12 tablets;

b) As soon the sale was completed, officers from the same department entered and confiscated from the Second Respondent's clinic tablets and capsules which upon testing, were indeed Ivermectin medicines;

c) The First Respondent was a qualified and registered medical practitioner and was at all material times, a special consultant doctor Mahkota Medical Centre and, at that time, the President of the Malaysian Association for the Advancement of Functional and Interdisciplinary Medicine;

d) The Second Respondent was also a qualified and registered medical practitioner;

e) The Respondents commenced an Originating Summons (OS) proceedings seeking amongst others, pronouncements on:

   i. whether a registered medical practitioner is entitled to dispence Ivermectin as an ingredient to the patient under Act 366 read together with the 1952 Regulations; and

   ii. whether a registered medical practitioner is entitled to dispence Ivermectin as an ingredient to the patient for the purposes of medical treatment only and in compliance with section 19 of Act 366 and the 1952 Regulations.

f) After the OS was filed, a criminal charge was preferred against the Second Respondent; and

g) The Court of Appeal reversed the findings of the High Court and granted the two declaratory orders.

Decision

The legal tenability of the Declaratory Relief sought

The Appellants maintained that the declarations sought exceeded the powers of the civil courts. It was their submission that the judgments of ***Government of Malaysia v Lim Kit Siang [1988] 2 MLJ 12, Lai Soon Onn v Chew Fei Meng and other appeals [2019] 2 MLJ 96, Tengku Jaffar bin Tengku Ahmad v Karpal Singh [1993] 3 MLJ 156*** and ***Empayar Canggih Sdn Bhd v Ketua Pengarah Bahagian Penguatkuasa Kementerian Perdagangan Dalam Negeri dan Hal Ehwal Pengguna Malaysia & Anor [2018] Supp MLJ 16*** support the proposition that a declaration cannot be granted if the effect of the declaration is such that it enforces a matter which is rightly within the jurisdiction of the criminal courts.

The Federal Court ruled that the Appellants were correct on the law and the following reasons were provided as to why declarations cannot impede upon the criminal courts:

a) The power to institute, conduct and discontinue criminal proceedings is within the exclusive province of the Public Prosecutor by virtue of Article 145(1) of the Federal Constitution. In other words, no private party may attempt to sue another private person for a declaration that seeks to condemn that other party for having committed an offence; and

b) Criminal proceedings are governed by entirely different considerations including a much higher standard of proof while civil proceedings are decided on a balance of probabilities and to allow them to be used as a basis to find criminal liability would be in total violation of all principles known to criminal law including the right of fair trial and the presumption of innocence.

The Respondents' submission also rested on the judgment in ***Syed Kechik***. The Federal Court observed that the decision in ***Syed Kechik*** was that the purpose of declaratory orders is to inform parties "*exactly where they stand*" and that the affected party "*need not have to wait for something to happen before seeking the court's protection*". These pronouncements were consistent with the court's *locus classicus* on declarations and declaratory reliefs in ***Tan Sri Haji Othman Saat v Mohamed bin Ismail [1982] 2 MLJ 177*** wherein the case reaffirmed the point that declarations may generate rights.

On this, the Federal Court further explained the application of the authorities with an analogy.

X rides into a public park on his bicycle where there is a sign that says "it is an offence to bring or ride any vehicle into this park" and there is no definition of "vehicle" in any law. The following are five hypothetical scenarios to be considered:

a) X has been threatened with an action or absent such threat, X just wants clarity on whether he was in violation of the rule and initiates an action for a declaration that his bicycle is not a vehicle within the meaning of the words in the sign, to ascertain his legal rights and to know "exactly where he stands". This is permissible;

b) Not X but another private person who frequents the park opines that vehicles should include bicycles and seeks a declaration for the same, to seek clarity or because he wants to know what the law is. This is permissible;

c) The same private person, offended by X's actions, files a suit against X to declare that X has committed an offence by riding his bicycle in the park. This is impermissible;

d) Public Prosecutor decides to charge X for violation of the rule and whether or not 'vehicle' includes bicycles can and will be decided as a question of law in that trial as that would be the first judicial determination that must be made first before determining if X had committed the offence; and

e) X is prosecuted for the offence. While the prosecution may take the position that 'vehicle' includes bicycle in the criminal proceedings, that question of interpretation of law can be decided by the civil courts at any stage and X is entitled to have the question decided as a means to gauge "exactly where he stands". This is permissible.

As such, while ***Syed Kechik*** and ***Zambry*** do not concern the grant of declarations pending criminal charges or investigations, the Federal Court viewed that their collective decisions applied *mutatis mutandis* to the facts. The facts of the appeal are, therefore, akin to the fifth hypothetical scenario above.

Statutory Construction

Act 366 and 1952 Regulations

The preamble to Act 366 clarifies its purpose as "*An Act to regulate the importation, possession, manufacture, compounding, storage, transport, sale and use of poisons*". The pillar of Act 366 is, therefore, the Poisons List which is contained in the First Schedule, which is split into Part I and Part II.

Upon perusing the statute, the Federal Court was of the view that under section 19(1)(a) of Act 366, registered medical practitioners may issue Group B poisons to any person either by sale or supply (involving financial transaction) or administer (involving direct administration and personal supervision), all on the condition that such a person was a registered medical practitioner's patient and that such "sale, supply or administration" is for the treatment of that person as a patient. This was because section 21(2) (dealing with Group B poisons) contains an entire procedure on prescriptions and how such poison is sold or supplied to the patient for treatment.

As such, since Ivermectin is classified as Group B poison in the First Schedule, it would follow that any registered medical practitioner may sell, supply or administer Ivermectin to his patient for the treatment of his patient by reason that the person is a registered medical practitioner. The 1952 Regulations had little bearing on the interpretation as it dealt more with technical matters mainly such as storing labelling, packaging and import of poisons.

Act 368 and 1984 Regulations

It was the Appellants' case that Ivermectin was not registered for human use. The Appellants contended that the main issue was that while the Second Respondent was exempted from the licence requirement in Regulation 7(1)(b) of the 1984 Regulations by virtue of Regulation 15(2)(c), the Second Respondent remained bound by the requirement of Regulation 7(1)(a) in that there was no statutory exemption against requirement that the product must first be a registered product.

The Respondents in turn argued that Act 368 does not apply, not only in relation to the Second Respondent but to all registered medical practitioners, who are only subject to Act 366 in their dispensation of Ivermectin to their patients and for the use of the treatment of those patients only.

Upon analysis of Act 366, the Federal Court found that it was a complete code on all matters related to poisons and it was passed with the intention of regulating and overseeing all manner of dealings with poisons including their sale and supply. By virtue of sections 19 and 21 of Act 366, there was an express exemption in favour of registered medical practitioner.

It was further observed that there was no reference of "registered medical practitioners" in Act 368 as it was in Act 366. The lack of such reference in Act 368 impressed that Parliament had, in passing both laws in the same year, intended that insofar as registered medical practitioners are concerned, Act 366 should apply. As such, the 1894 Regulations would not apply since its parent act, Act 368 had no nexus to the Respondents.

Interference with Executive policy

The Appellants argued that the Respondents were inviting judicial interference in executive policy by effectively legitimizing the use of Ivermectin for the treatment of Covid-19. However, the Federal Court held that the appeal was not concerned with the efficacy of Ivermectin in relation to Covid-19, but rather with the right of the Respondents and other registered medical practitioners to dispense it to their patients for treatment, in accordance with Act 366.

If at all the Government was cautious of the fact that Ivermectin was not suitable for use against Covid-19, the Minister ought to have exercised his discretion under section 6 of Act 366, in consultation with the Poisons Board, to vary the Poisons List. The appeal was dismissed with no order as to costs.

Written by
Sandhya Saravanan
Member, Publications Committee

Dato' Ting Ching Lee v Ting Siu Hua [2025] CLJU 361 (FC)
Contract law – Sections 24 and 31 of the Contracts Act 1950 – Recovery of monies related to gambling or wagering – Application of Section 26 of the Civil Law Act 1956

In the present appeal, the Federal Court answered the following sole leave question in the affirmative:

"*In construing whether any claim for monies given in the form of credit amounts to a gambling debt or otherwise, should the approach be the approach adopted by the Singapore Court of Appeal in* ***Star City Pty Ltd (formerly known as Sydney Harbour Casino Pty Ltd) v Tan Hong Woon [2002] 1 SLR (R) 306****, i.e. to ascertain the overall purpose of the same by considering it in its entirety as a composite contract?*"

Background to the Appeal

The Appellant, Dato'Ting Ching Lee, had been granted two lines of credit totalling USD 1.5 million and a rolling rebate of USD 193,800 by Huang Group through the Respondent, Ting Siu Hua, for gambling at Naga Casino, Cambodia. The Respondent was appointed as a promoter or junket by Huang Yu Kiung under the name of Huang Group to bring players to gamble at casinos.

Huang Yu Kiung, as STG Operator, and Naga World Limited had signed an STG Operator Incentive Program Agreement ("STG Agreement") to conduct STG business, whereby the STG operator's pool of players is brought to the physical premise of Naga Casino for wagering for benefits.

The Respondent subsequently published notices in the Sin Chew Daily News newspaper and on WeChat, stating that the Appellant owed outstanding debts to the Respondent. In response, the Appellant filed a defamation suit. The Respondent counterclaimed for the recovery of monies based on the lines of credit and rolling rebate granted to the Appellant.

High Court Decision

The High Court dismissed both the defamation claim and the counterclaim for recovery of monies.

The High Court found that the Appellant had failed to prove that the Respondent was responsible for publishing the alleged defamatory statements.

Importantly, on the counterclaim, the court held that the counterclaim was an attempt to recover gambling debts which are null, illegal and void under Sections 24 & 31 of the Contracts Act 1950 and Section 26 of the Civil Law Act 1956.

Court of Appeal Decision

The Court of Appeal unanimously upheld the dismissal of the defamation claim but allowed the Respondent's counterclaim.

In this regard, the Court of Appeal held that the lines of credit and rolling rebate granted to the Appellant were not gambling debts. The two lines of credit and the rolling rebate given were in the nature of a loan or credit given to the Appellant to enable him to cash them into gambling chips. The gambling debts, if any, would only be between the Appellant and the casino.

Findings of the Federal Court

The Federal Court unanimously overturned the Court of Appeal's decision. The issues that required the Federal Court's determination were:

a) Whether there was a gaming or wagering contract when the Appellant was granted the credit lines and the rolling rebate by Huang Group to the Appellant;
b) Whether the granting of the credit lines and rolling rebate was independent of the gaming activities by the Appellant at the casino and to be considered a pure loan which is enforceable under Malaysian law; and
c) Whether the recovery of money based on credit lines and rolling rebate is the recovery of gambling debt that is unenforceable under Malaysian law.

The Federal Court ultimately allowed the present appeal and restored the High Court decision. The Federal Court stated as follows:

a) It is undisputed that that the credit lines and the rolling rebate were for the Appellant to purchase the Naga Casino's gambling chips so he could gamble at the casino.;

b) The granting of credit lines and the rolling rebate formed a composite contract with the gaming activities of the Appellant at the Naga Casino. It was not a genuine loan distinct from the Appellant's activities given that the credit facilities were for the sole purpose of gambling;

c) The reality of the transactions must be examined objectively and in totality. Otherwise, parties would be able to get around the relevant statutory provisions. In this case, the agreement between Huang Group and Naga Casino meant that any gambling activities at Naga Casino must use Naga Casino's chips as the legal tender in the said casino. Since Huang Group granted the credit facilities to the Appellant and Huang Group signed the STG Agreement with Naga Casino for players to use the casino chips in gambling activities at the casino, the granting of the credit facilities was in fact a gaming transaction;

d) The Court adopted the rationale in the Singapore Court of Appeal decision of ***Star City Pty Ltd (formerly known as Sydney Harbour Casino Pty Ltd) v Tan Hong Woon [2002] 1 SLR (R) 306*** which, among others, applied the principle of a transaction's reality in determining a claim's enforceability under the Civil Law Act;

e) The Court found that the Respondent's reliance on the case of ***Wynn Resorts (Macau) S.A. v Poh Yang Hong [2019] MLJU 2003*** was untenable and that the said case was no longer good law. The Federal Court found that the trial judge in that case did not consider the reality of the transaction in granting the credit facility to the defendant which was to obtain casino chips for gambling and no other. Though the defendant therein had signed a credit

agreement, the Federal Court found that it was a composite gambling contract whereby a mere signing of a credit agreement does not make the transaction lawful and enforceable. The credit facility granted was an essential component of the gambling activities using only the casino chips. To hold otherwise would mean that signing a credit agreement would allow parties to circumvent the effect of sections 24 and 31(1) of the Contracts Act 1950 and sections 26(1) and 26(2) of the Civil Law Act 1956; and

f) In the circumstances, the Respondent in the present case had no recourse against the Appellant as the counterclaim was, when viewed in its totality, for the recovery of a gambling debt which was null and void ab initio as well as unenforceable under statute.

Written by
Voon Su Huei
Member, Publications Committee