

Circular No 294/2020
Dated: 14 Sept 2020

CPD code: T2/22092020/BC/BC204180/1



CPD **Live**

Tue, 22 Sept, 11:00 AM to 12:30 PM

Liquidated Damages, Penalties and Deposits



Members of the Bar | RM20
Pupils-in-Chambers & Law Students | Free
Non-Members | RM60

1 CPD Point

Registration will close at **3:00 pm, on 21 Sept 2020 (Monday)**.

A confirmation email containing a link to the CPD Live Session will be sent once proof of payment is received.

No additional registration will be accepted once the closing date has passed, or if the CPD Live Session is full.

The CPD Department may not permit future registration if you fail to attend a CPD Live Session after registering unless you provide an acceptable and valid reason(s).

[Register online here](#)

In *Robophone Facilities Ltd v Blank* [1966] 3 All ER 128, Diplock LJ said of liquidated damages clauses: “I see no reason in public policy why the parties should not enter into so sensible an arrangement under which each knew where they stand in the event of a breach by the defendant and can avoid the heavy costs of proving the actual damage if litigation ensues.” However, Malaysian courts chose to travel a different path — one trodden by Indian courts — by not recognising such clauses and equating them with penalties under which damages have to be proved in the usual way, except that the stipulated sum operates as a ceiling on recoverable damages.

Then along came the recent case of *Cubic Electronics Sdn Bhd (in Liquidation) v Mars Telecommunications Sdn Bhd* [2019] 6 MLJ 15, which sought a formula applicable to both liquidated damages and deposits that reconciles with the latest English position. That formula is perceived to be more precise, easier to apply, makes better commercial sense, of more universal application, and cuts down on the uncertainties of the exercise of the court's discretion. Has the Federal Court succeeded in achieving the desired objectives?

At the heart of this matter is the construction of section 75 of the Contracts Act 1950 which has perplexed many a judicial mind. Does this section also prevail over the liquidated damages clauses for late delivery of vacant possession by the developer and late payment interest imposed on the purchaser in the statutory sale and purchase agreements under the housing legislation?

These issues will be discussed in this CPD Live webinar.

Learning outcomes

- Understand the nature of liquidated damages, penalties and deposits;
- Gain better perspective and awareness of the evolution of the law on these issues in Malaysia as well as in the relevant jurisdictions of England and India;
- Know the current law on these issues in Malaysia;
- Comprehend these issues pertaining to contracts under housing legislation;
- Know the prevailing uncertainties and controversies; and
- Able to identify the best course to adopt when faced with these issues.

Speaker

Dr Teng Kam Wah holds a PhD in construction law from the University of Malaya. He obtained both his LLB (Honours) and LLM degrees from the University of London. He first graduated with a science degree from the University of Malaya, where he was awarded the University of Malaya Book Prize. He is a Fellow of the Chartered Institute of Arbitrators and was, for a brief period, the Group Legal Manager of one of the largest construction, infrastructure and property development companies in Malaysia where he gained industry experience. He was the 1st-prize winner of the Vincent Powell-Smith Competition in construction law. He has more than 20 law articles published in journals and is the author of the book *Construction Defect Claims in Malaysia* (Sweet & Maxwell, 2019). He has taught law part-time at the University of Malaya, and now practises in construction dispute resolution under his own law firm as counsel, adjudicator, and arbitrator.

CPD **Live**

A Step-By-Step Guide to Join CPD Live via Zoom

CPD Live is an initiative by the Bar Council during the Movement Control Order.

Continue learning even while at home. We're here to inspire you, connect with you and learn with you. This guide will show you how to join the CPD Live smoothly.

01

For seamless streaming, download the Zoom app.



You will be given a webinar ID and a password to join CPD Live once your registration has been confirmed.

02

Log in to Zoom, and provide your username.

For Members of the Bar or pupils in chambers, use the format below for identification purposes when prompted: **Full name (as per NRIC) | Bar Council membership number or petition number.**

For non-Members, provide your full name only.

03

Set up your space.



Find a spot which is comfortable and free from background noises. You may use an earpiece with microphone for clarity. Having a strong internet connection is equally important.

04

Please raise your questions only during the Question-and-Answer session.

Please take note that no speaking is allowed when CPD Live is taking place.

If you wish to raise a question, please type in the Q&A box and the speaker will respond accordingly.

05

Please do not do these



Sharing screen recording and webinar ID and password links, and reproducing the content of the CPD Live session on any platform.

Any unregistered person may be removed without prior notice and no CPD point will be awarded. Failure to adhere to this may result in disciplinary action by the Bar Council.

CPD **Live**

If you have any enquiries, please email us at: cpd@malaysianbar.org.my.



Issued by:
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