

RESCISSION, VARIATION AND WAIVER OF CONTRACT

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**A master's project report submitted in partial fulfillment of the
requirements for the award of the degree of
Master of Science in Construction Contract Management.**

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June 2009

ABSTRACT

It is a fact that what has been made by an agreement may be ended by an agreement. The common intention of the parties is generally to bring to an end the existing contract and replace it with a new one. However, where the terms in the extinguishing agreement are not appropriately drafted, it may give rise to legal issues such as: the effectiveness of the new contract in repealing the existing contract; or it may merely vary the duties and liabilities of the parties; or it operates as a waiver of the existing duties; or it constitutes a new contract replacing the original one. There were cases where, despite the new agreement, one of the parties continued to regard the original agreement as still binding on them and relied on its terms to regulate their contractual relationship. Hence, the objective of this research is to determine the various degree of extinguishing duties in contract. The analysis of the various cases is conducted to review the decision of the courts on the matters of discharge of duties in contract; namely rescission, variation and waiver of contract. From the analysis, it is found that the courts has define and deliberate in which the situation of the contract may be discharge by parties in contract. In addition, such cases could give some ideas on the effect of rescission, variation and waiver towards the contract.

ABSTRAK

Secara asasnya sesuatu kontrak yang buat melalui dokumen perjanjian boleh ditamatkan melalui dokumen perjanjian jua. Adalah menjadi suatu perkara yang biasa kepada pihak-pihak berkontrak untuk menamatkan kontrak dengan suatu kontrak yang baru. Walaubagaimanapun, penggunaan istilah di dalam dokumen perjanjian yang tidak dikarang dengan tepat, memungkinkan wujudnya permasalahan undang-undang seperti keberkesanan suatu kontrak baru untuk menggantikan kontrak asal; atau ia hanya mengubah tanggungjawab dan liabiliti pihak-pihak berkontrak; atau ia sekadar pelepasan suatu tanggungjawab; atau sebagai satu kontrak yang baru untuk menggantikan kontrak sedia ada. Terdapat juga kes di mana, di sebalik kewujudan satu kontrak baru, salah satu pihak menganggap kontrak terdahulu masih mengikat mereka dan bergantung kepada terma kontrak asal dalam hubungan kontraktual mereka. Oleh sebab itu, objektif penyelidikan ini adalah untuk mengenalpasti kepelbagaian tahap dalam pelepasan tanggungjawab di dalam kontrak. Analisis ke atas pelbagai kes telah dijalankan untuk menyemak keputusan-keputusan mahkamah berkaitan dengan pelepasan tanggungjawab terhadap kontrak melalui penggantian, perubahan dan juga pelepasan di dalam kontrak. Hasil daripada analisis, di dapati bahawa mahkamah telah mendefinisikan serta mengulas keadaan-keadaan di mana sesuatu kontrak boleh dilepaskan. Selain itu, kes-kes tersebut juga dapat memberikan gambaran terhadap kesan langsung daripada penggantian, perubahan dan juga pelepasan terhadap sesuatu kontrak.