

SETTING ASIDE AN AWARD: ARBITRATOR'S MISCONDUCT

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“I/We* hereby declare that I/we* have read this thesis and in my/our* opinion this thesis is sufficient in terms of scope and quality for the award of the degree of Master of Science (Construction Contract Management)”

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Signature : _____
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Date : 19th January 2012

DEDICATION

To my beloved wife, Joyce,
daughters, Florence and Jessica
and son Brian.

Thank You!

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ABSTRACT

Arbitration award is final and binding on the parties and is enforceable against the losing party. However, the High Court may set aside an award on grounds such as corruption or misconduct of the arbitrator. However, the Arbitration Acts 1952 and 2005 gives jurisdiction to the High Court to set aside arbitrators award. section 24 of the 1952 Act uses the word “misconduct” but section 37 of the 2005 Act sets out eight grounds for setting aside the award. An issue that arises is relating to the meaning of “misconduct” or the circumstances that may be inferred as “misconduct” on the part of arbitrators. The objective of this research is to determine the differences between the scope of “misconduct” under section 24 of the 1952 Act as interpreted by the judges and the scope of section 37 of the 2005 Act relating to grounds for setting aside of arbitrators’ award. The approach adopted in this research is based on case law reported in the Malayan Law Journal/ Malayan Law Unreported Journal, Singapore law/cases reported in Malayan Law Journal and English law/cases as reported in England/United Kingdom Law Journal. This is a descriptive research using case law analysis. The analysis involved detail examination of cases the judicial interpretations of the term “misconduct” found in thirty two cases. The research finds that there are twenty two circumstances of misconduct under section 24 of the Arbitration Act 1952. Whereas section 37 of the 2005 Act contains only three circumstances of misconduct.

ABSTRAK

Keputusan timbang tara adalah muktamad, terikat serta sah untuk pelaksanaannya atas pihak yang mengalah. Walaubagaimanapun, ia boleh diketepikan oleh Mahkamah Tinggi jika terdapat unsur "misconduct" pada juru timbang tara. Isu yang bangkit adalah berkenaan dengan maksud "misconduct" atau situasi yang mungkin dianggap sebagai "misconduct" oleh juru timbang tara. Objektif pengajian ini untuk menentukan perbezaan antara skop "misconduct" dibawah seksyen 24 Akta Timbang tara 1952 sebagaimana yang ditaksir oleh hakim dengan skop dibawah seksyen 37 Akta Timbang tara 2005 mengenai situasi untuk mengetepikan keputusan juru timbang tara. Pendekatan pengajian ini berdasarkan analisis kes-kes undang berkaitan dan ia meliputi kes-kes di Malaysia dan Singapura seperti yang dilaporkan oleh 'Malayan Law Journal/ Malayan Law Unreported Journal' dan kes-kes di England seperti yang dilaporkan di bulletin England. Ini adalah 'descriptive research' berdasarkan analisis kes-kes undang. Sumber utama adalah kes-kes mahkamah seperti yang dilaporkan di Malayan Law Journal, Malayan Law Unreported Journal dan England Law Journal melalui akses Lexis Nexis yang terdapat di 'online database' universiti. Pengajian ini menganalisis kes-kes undang dan memeriksa dengan lanjut taksiran mahkamah berkenaan istilah "misconduct" oleh juru timbang tara dan situasi berhubung pengetepian keputusan timbang tara berdasarkan "misconduct". Pemeriksaan tiga puluh dua kes telah mengenal pasti maksud "misconduct" dibawah seksyen 24 Akta Timbang tara 1952 dan dua puluh dua situasi mengakibatkan "misconduct" telah dikenal pasti. Ia sangat penting dan berfaedah untuk membolehkan semua pihak yang akan melibatkan diri dalam industri pembinaan.