

CONTRACT LAW IN MALAYSIA

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PREFACE

Contract law regulates how contracts are entered into and enforced. A contract is analysed in terms of offer, acceptance, consideration, and the intention to create a legally binding agreement. When entered into freely and voluntarily, the duly concluded contract is held sacred and if breached, it will be enforced by the courts, subject to limitations that vitiate the contract such as undue influence, fraud, duress, misrepresentation, or contracts that violate criminal law, among others. The Contracts Act 1950 originated from the Indian Contract Act of 1872, introduced by the British to India, which substantially codified the principles of English common law relating to contracts. Apart from this Act, other laws regulate specific or customised contracts, such as the Sale of Goods Act 1957, the Partnership Act 1961, the Hire-Purchase Act 1967, the Employment Act 1955, the Insurance Act 1996, and the Companies Act 2016.

The book *Contract Law in Malaysia* which comprises 41 chapters, traces the development of contract law; the essential components of a valid contract; factors vitiating the validity of a contract; express and implied terms; restriction on trade, marriage, and legal proceedings; discharge of contracts by performance, by agreement, by impossibility of performance and by breach; and remedies for breach of contract namely, damages, specific performance, injunction and restitution; rectification of instruments, and other equitable remedies, i.e., rescission, cancellation and election, as well as equitable estoppel.

Also featured in this book are the limitation period to initiate a lawsuit for breach of contract and alternative modes of contractual dispute resolution. Additionally, contracts in public international law, the application of private international law in contractual disputes, and the fundamentals of treaties and international agreements are also included in this book. The book also covers specific or customized contracts, such as electronic contracts, smart contracts, employment contracts, construction contracts, insurance contracts, and sale of goods contracts. The fundamentals of contracts from an Islamic law perspective and the parol evidence rule at common law and the Evidence Act 1950 are additional features not commonly found in other books on this subject.

While there are many books in print on contract law in Malaysia, what sets this book apart is its wide coverage, from core concepts to modern issues like electronic and smart contracts. It offers fresh perspectives on employment, construction, sale of goods, and insurance contracts, along with discussions on contract interpretation, international law and Islamic law. Therefore, some of the content in this book may mirror previous works. It is a rich source of scholarly discussion on the aforementioned chapters, which were written and contributed by experts in their respective fields of research and interest.

With that said, on behalf of the contributors, we would like to express our sincere appreciation to Tun Tan Sri Datuk Seri Panglima Richard Malanjum, the former Chief Justice of Malaysia, for dedicating his invaluable time to preparing the foreword for this book. Our gratitude is further extended to the publisher, CLJ Malaysia Sdn Bhd for taking a great deal of interest in the publication and for their support in finally getting this book published. Finally, our heartfelt appreciation goes out to all the contributors for their hard work and efforts in making this book a success.

Whether you are an undergraduate law student mastering the essentials or a legal professional seeking deeper knowledge, *Contract Law in Malaysia* delivers the clarity and insight needed to navigate this complex field with confidence.

The applicable laws and the developments stated in this book stand as of 1st October 2024.

Professor Dato' Sri Dr Ashgar Ali Ali Mohamed
Dr Muhamad Hassan Ahmad
1 October 2024

FOREWORD

A contract, the backbone of countless transactions, is a legally enforceable agreement between the contracting parties by which legal rights and obligations are created. The essential elements of a contract consist of offer, acceptance, consideration and intention to create a legal obligation. A contract entered into freely and voluntarily is held sacred. It will be enforced by the court if it is broken, subject to limitations such as undue influence, fraud, duress, misrepresentation, or a contract designed to violate criminal law. If any dispute emanates from the agreed terms and conditions of the concluded contract, the duly executed contract will be examined. The surrounding circumstances existing at the contract's date will be of no effect when the contract terms are precise. However, when the contract terms are ambiguous, the surrounding circumstances, including advertisements, may be referred to in an attempt to construe the written words of the contract.

The primary source of law governing contractual matters in Malaysia is the Contracts Act 1950, where many of the provisions contained in this statute have their origins in English common law. Generally, the Act includes 10 Parts. Parts I to V and VII deal with the “general principles of contracts”; Part VI deals with “certain relations resembling those created by contracts”; Part VIII deals with “indemnity and guarantee”; Part IX deals with “bailment”; and Part X deals with “agency”. Apart from the Contracts Act 1950, there are also other laws relevant to contracts, such as the Civil Law Act 1956, the Specific Relief Act 1950, the Sale of Goods Act 1957, the Partnership Act 1961, the Hire-Purchase Act 1967, the Employment Act 1955; the Insurance Act 1996; and the Companies Act 2016, among others.

With the above backdrop, this book, *Contract Law in Malaysia*, consisting of 41 chapters, provides comprehensive coverage and authoritative insights into Malaysian contract law. This book, a “stand-alone” work, goes beyond the many excellent publications on the subject we are accustomed to seeing and using, both from local and international authors. It provides coverage on the development of contract law, the prerequisites of a legally enforceable contract, factors vitiating or undermining a contract, contracting parties' rights and responsibilities, discharge of

contract and remedies for breach of contract. There is also an excellent discussion on specific areas of contract, namely, electronic and smart contracts, employment contracts, construction contracts, sale of goods contracts and insurance contracts. The interpretation and construction of contracts, contracts from international law and contracts from an Islamic law perspective are the additional features of this book.

This book will be an invaluable tool for many people, but principally for undergraduate students in the local law schools. It will also provide an important reference point for lawyers searching for the latest updates on the subject and for the public wanting to deepen their knowledge and understanding of the essentials concepts of Malaysian contract law. With that said, I heartily congratulate the contributors experienced in teaching contract law and the editors for completing this tedious task of merit and successfully producing this useful legal material, which would undoubtedly contribute to the pool of legal knowledge for many years to come.

I wish you all great success with this publication.

Thank you.

Tun Tan Sri Datuk Seri Panglima Richard Malanjum
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