



Mediation
in Malaysia:
The Law and
Practice

Mohammad Naqib Ishan Jan
Ashgar Ali Ali Mohamed



LexisNexis

DR PUTERI NEMIE BT JAHN KASSIM
Associate Professor
Ahmad Ibrahim Kuliyah Of Laws
International Islamic University
Malaysia

MEDIATION IN MALAYSIA: THE LAW AND PRACTICE

MOHAMMAD NAQIB ISHAN JAN

LLB (HONS) (IIUM), MCL (IIUM)

PHD (IIUM)

HEAD OF RESEARCH MANAGEMENT UNIT (AIKOL)

ASSOCIATE PROFESSOR,

AHMAD IBRAHIM KULLIYAH OF LAWS (AIKOL)

INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA (IIUM)

ASHGAR ALI ALI MOHAMED

LLB (HONS), MCL (IIUM)

LLM (HONS) (NZ), PHD (BUSINESS LAW)

ADVOCATE AND SOLICITOR (NON-PRACTISING)

ASSOCIATE PROFESSOR

AHMAD IBRAHIM KULLIYAH OF LAWS (AIKOL)

INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA (IIUM)



MEMBERS OF THE LEXISNEXIS GROUP WORLDWIDE

Malaysia	LexisNexis Malaysia Sdn Bhd† (formerly known as Malayan Law Journal Sdn Bhd) T1-6, Jaya 33, 3 Jalan Semangat Seksyen 13, 46100 Petaling Jaya Selangor Darul Ehsan, MALAYSIA
Australia	LexisNexis Butterworths, Chatswood, NEW SOUTH WALES
Austria	LexisNexis Verlag ARD Orac GmbH & Co KG, VIENNA
Benelux	LexisNexis Benelux, AMSTERDAM
Canada	LexisNexis Canada, Markham, ONTARIO
China	LexisNexis China, BEIJING
France	LexisNexis SA, PARIS
Germany	LexisNexis Deutschland GmbH, MUNSTER
Hong Kong	LexisNexis Hong Kong, HONG KONG
India	LexisNexis Butterworths Wadhwa Nagpur, Gurgaon, HARYANA
Italy	Giuffre Editore, MILAN
Japan	LexisNexis Japan, TOKYO
New Zealand	LexisNexis NZ Ltd, WELLINGTON
Poland	Wydawnictwo Prawnicze LexisNexis Sp, WARSAW
Singapore	LexisNexis Singapore, SINGAPORE
South Africa	LexisNexis Butterworths, DURBAN
United Kingdom	LexisNexis Butterworths Tolley, LONDON and EDINBURGH
USA	LexisNexis Dayton, OHIO

©LexisNexis, a division of Reed Elsevier (Singapore) 2008 Pte Ltd
2010

All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, including photocopying and recording, without the written permission of the copyright holder, application for which should be addressed to the publisher. Such written permission must also be obtained before any part of this publication is stored in a retrieval system of any nature.

The Publisher, authors, contributors and endorsers of this publication each excludes liability for loss suffered by any person resulting in any way from the use of, or reliance on this publication.

†Company No 76125-H
ISBN 978-967-5371-84-4



Printed in Malaysia by Percetakan Anda Sdn Bhd

COMMITTAL PROCEEDINGS FOR BREACHES OF CONSENT ORDER	475
Conclusion	476
Chapter 27	
Functus Officio	
INTRODUCTION	479
<i>FUNCTUS OFFICIO</i>	480
CIRCUMSTANCES WHERE FINAL ORDER MAY BE SET ASIDE, AMENDED OR VARIED	485
INHERENT POWERS OF THE HIGH COURT	486
Conclusion	488
Chapter 28	
Practice Direction on Mediation	
PRACTICE DIRECTIONS	493
PRACTICE DIRECTION ON MEDIATION	496
Conclusion	501
PART XVIII	
Mediators: Accreditation and Qualities	
CHAPTER 29	
Accreditation of Mediators in Malaysia	
INTRODUCTION	505
MEDIATION: ACCREDITATION	509
Licensing	509
Accreditation or certification	510
Accreditation of mediators	510
ACCREDITATION OF MEDIATORS IN SELECTED JURISDICTIONS	515
Australia	515
United States	522
Canada	522
Singapore	523
United Kingdom	524

CHAPTER 29

ACCREDITATION OF MEDIATORS IN MALAYSIA

by

DATUK WILLIAM KH LAU
&
ASHGAR ALI ALI MOHAMED

INTRODUCTION

Mediation has been in use for thousands of years from all parts of the world, covering disputes with simple property rights to the more compounded international commercial matters. Mediation is said to exist even before written history. Each culture has its own record of using mediation at some point in its development. Even in some religions. For example, in Islam, disputes or quarrels between the parties should be settled peacefully in accordance with perfect justice and fairness.¹

Mediation is not alien to Malaysia. Like many Asian cultures, Malaysia has practised mediation in one form or another in their communities, involving respected elders as mediators. Many guild associations have used more elderly businessmen to help resolve common irritants in their relationship. In some ways, such traditional use of mediation has been eroded by urbanisation and industrialisation. There has been an inevitable shift to a focus on legal rights with the consequent emphasis on litigation and dwindling of mediation and other informal dispute resolution mechanisms.