



The partners of the firm recently had a rare group photo call opportunity. Above are the General Partners (Executive Committee) of the firm. The partners take this opportunity to extend to our readers wishes for a happy and splendid new year ahead.

Front (left to right):

Dato' Cyrus Das (Deputy Chief Executive Partner), Too Hing Yeap (Chief Executive Partner), Porres Royan.

Rear (left to right):

Lai Wing Yong, Michael Soo, Romesh Abraham, Jal Othman, Nagarajah Muttiah, Patricia David.

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Front (left to right):

Patricia David, Lai Wing Yong, Dato' Cyrus Das (Deputy Chief Executive Partner), Too Hing Yeap, (Chief Executive Partner), Porres Royan, Romesh Abraham, Mohan Kanagasabai.

Rear (left to right):

Chay Ai Lin, Khong Mei Lin, Yoong Sin Min, Yuen Kit Lee, Jal Othman, Michael Soo, Steven Thiru, Dahlia Lee, Chan Kok Keong, Ivan Ho, Lam Ko Luen, Nagarajah Muttiah, Adrian Hii, Hoh Kiat Ching, Goh Siu Lin, Tharmy Ramalingam.

Absent: Sudharsanan Thillainathan



The above are all the general and limited partners of the firm.



## Case Updates

### Banking

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#### Islamic facilities

The country has seen the advent of Islamic financing facilities based on Syariah principles which in recent years have been on a growth trajectory.

The occasion has been rare when cases arising from disputes on Islamic facilities have been reported. *Arab Malaysian Merchant Bank Bhd v. Silver Concept Sdn. Bhd.* [2005] 5 MLJ was a case on Islamic facilities before the High Court.

The case concerned a facility to finance the purchase of a piece of land. The facility included an Al-Bai Bitaman Ajil facility, which is structured as a credit sale, whereby the customer sold the land it purchased to the bank for a cash sum paid by the bank to the customer, and the bank immediately resold it back to the customer at a higher price which incorporates the bank's profit, payable by the customer to the bank by monthly instalments over a fixed period of time.

The cash flow mirrors that of a conventional banking loan with interest charged, and in that manner affords financing to the customer for its purchase.

The charging of interest for a loan, or usury, is prohibited in Islam.

The customer charged the land to the bank by way of security for the purchase price payable by it to the bank.

The customer defaulted in payment and the bank commenced proceedings for a judicial sale of the land. The customer opposed the application for sale on grounds which include that the facility was a loan with interest, in the guise of a credit sale and was therefore void and unenforceable. The contention was rejected by the Judge, who held that the manner of contract was not prohibited by Islam and is accepted and entrenched in Malaysia and in the world.

In the course of the judgment, the Judge made comments that had an Islamic facility had any un-Islamic elements, that would vitiate the facility and rendered it unenforceable for those who have contracted on Islamic principles.

That issue should be considered on another occasion. It may be contended that in such a situation, the facility should be recoverable on restitutionary grounds at least.

#### Overdraft facility for bridging financing: *Mae Perkayuan* distinguished

In *Bank Bumiputra Malaysia Bhd v. Sal Enterprise Sdn. Bhd.* [2005] 4 CLJ 277, by a letter of offer, the bank granted an overdraft facility of RM1.4 million to the borrower. It was stated that RM400,000 of the facility (the first tranche) was to finance the purchase of a piece of land, and the balance of RM1 million (the second tranche) was to finance the proposed development of a housing project on the land.

As regards repayment of the facility, the facility was "to be reduced progressively against the release of titles, the redemption sum of which will be determined later", i.e. repayment was to be from the proceeds of sale of houses in the housing project.

The letter of offer also provided for various conditions precedent to be satisfied before the facility may be released. The duration of the facility was stated to be for two years or upon completion of the project which ever is earlier. Yet the facility was expressed to be subject to periodic review and repayable on demand.

The facility is what is called bridging financing, that is to finance a developer's construction of houses, to bridge the period between the commencement of construction and the receipt of proceeds of sale to purchasers, with the intention being that repayment shall primarily be from the proceeds of sale.

By a subsequent letter from the bank, by which the bank agreed to the borrower's request to vary or waive some of the conditions precedent for the release of the first tranche of the facility of RM400,000 it was provided that interest was to be charged at a stipulated rate and was to be serviced monthly i.e. paid monthly.

The sum of RM400,000 was released but only RM291,000 was required for the balance of purchase price of the land. The borrower sought the bank's

permission to use the balance of the release to meet the other expenses such as fees for lawyers, architects and valuers, travelling expenses for travelling to the land by the directors, and other related expenses.

The request was rejected by the bank. Upon further request, the bank asked the borrower to confirm whether the conditions precedent for the balance of the facility had been met. The bank also required the borrower to settle the interest on the facility which it had failed to pay, before the bank considered the borrower's request. Upon the failure of the borrower to respond, the bank issued a letter stating that the facility was recalled. In the bank's suit for recovery of the debt, the borrower contended that the facility was a bridging loan repayable only when the houses were sold, and by not releasing the balance of the facility, and recalling it before repayment was due, the bank was in breach of the agreement, and sought damages to be set off against the claim.

The High Court judge found in favour of the borrower, but his decision was overruled on appeal to the Court of Appeal. The Court of Appeal held that the bank was under no obligation to accede to the borrower's request to utilize the balance of the first tranche for some other purpose. The borrower had not complied with the conditions precedent.

The borrower had failed to service the monthly interest and was in breach of its obligations. The bank was not in breach of the agreement.

The borrower had sought to rely on the case of *Bank Bumiputra Malaysia Bhd v. Mae Perakayan Sdn. Bhd.* [1993] 2 MLJ 76. In that case, there was similarly an overdraft facility (for a fixed term, but also expressed to be repayable on demand) for bridging financing. The borrower failed to pay interest monthly. The letter of offer did not state that interest was to be paid monthly, but stated that any non-payment of interest shall cause it to be capitalized and added to principal, and interest shall be chargeable thereon. The Court of Appeal there held that the facility was not repayable on demand, and there was no obligation to pay interest during the bridging period.

In *Sal Enterprise*, the Court of Appeal distinguished *Mae Perakayan* on its facts, where there was no obligation to service

interest in the interim period. In *Sal Enterprise*, there was an obligation to service interest.

In *Mae Perakayan*, it was also held that where a facility is expressed to be for a fixed term and yet expressed to be repayable on demand, the provision for a fixed term takes precedence, and it is not repayable on demand, and not repayable unless there is default.

This issue was not raised for consideration in *Sal Enterprise*.

## Contract

### Frustration and liquidated damages

In *Maxisegar Sdn Bhd v Silver Concept Sdn Bhd* [2005] 5 MLJ 1, the respondent had entered into an agreement to sell a piece of land to the appellant. After paying the deposit and part of the purchase price, the appellant informed the respondent that it had failed to obtain a loan for the balance of the purchase price, due to the financial crisis in 1997 and Bank Negara's directive to banks to reduce lending for property development other than for inter alia, lower cost housing, and claimed to be discharged from the agreement on the ground of frustration of the contract. The appellant filed an action seeking a declaration that the contract had been frustrated and that therefore it was discharged from its obligation to perform the contract, and also sought refund of all monies paid under the contract. The respondent counterclaimed for an order of specific performance of the contract or alternatively damages.

The High Court dismissed the appellant's claim, stating that there was no provision in the agreement that the agreement was to be conditional on the appellant obtaining a loan. Further, the doctrine of frustration was not brought into play merely because a purchaser finds for whatever reason that he has not got the money to complete the contract. The changed circumstances do not create a fundamental or radical change in the obligation originally undertaken, to make the performance of the contract something radically different from that originally undertaken. The judge awarded liquidated damages for breach

of contract in favour of the respondent in accordance with Clause 10.1 of the agreement, which provided for forfeiture of the first instalment and payment of a sum equivalent to 11% per annum on the third instalment or portion thereof remaining outstanding, as liquidated damages.

In dismissing the appellant's appeal, the Court of Appeal agreed with the High Court that the contract was not frustrated. Even if the contract was frustrated, the frustration was self induced by the appellant. The appellant had itself refused to comply with Bank Negara's directive that lending to the property sector for development be targeted for lower cost housing, resulting in the banks being unable to grant the loan to the appellant.

The appellant had also contended that the liquidated damages were a penalty. The Court of Appeal held that the appellant had not shown that the agreed liquidated damages under Clause 10.1 were extravagant, exorbitant or unconscionable, in relation to the loss likely to be suffered, and were therefore a penalty.

## Defamation

### Whether there was a fair and accurate report of judicial proceedings attracting absolute privilege

In *Joceline Tan Poh Choo and Others v V.Muthusamy* [2005] 3 MLJ 165, the respondent, a lawyer, sued the appellants, who were a staff reporter, editor and publisher of the New Straits Times newspaper (NST) for libel, for publication of a report in the NST titled "Lawyer and trader conspired to cheat me, claims driver". The report contained extracts from the statement of claim in a legal suit filed against the respondent by a third party, containing as yet unproved allegations of fraud, misrepresentation, conspiracy and breach of professional ethics against the respondent. The report did not contain any reply or averments made by the respondent to the allegations. Further, the statement of claim or its contents had not been read out in the course of court proceedings. The appellants claimed the defence of absolute privilege under section 11(1)

of the Defamation Act 1957 which provides–

"11(1) A fair and accurate contemporaneous report of proceedings publicly heard before any court lawfully exercising judicial authority within Malaysia and of the judgment, sentence or finding of any such court shall be absolutely privileged..."

The High Court judge allowed the respondent's claim. On the appellants' appeal to the Court of Appeal, the Court of Appeal dismissed the appeal on liability, but reduced the quantum of damages from RM350,000 to RM100,000. The Court of Appeal held that the publication of part of the statement of the claim, which had not been read out in open court, was not within the scope of protection of section 11(1) of the Act.

The appellants subsequently obtained leave to appeal to the Federal Court on questions of principle of law, namely whether a fair and accurate report of the proceedings publicly heard before the High Court may include an extract of the pleadings, and if so, whether the pleadings should first be read out in the course of the proceedings before publication of the pleadings.

The Federal Court stated that it would be slow to interfere with the finding of fact that the report was not a fair and accurate report of proceedings. It was obvious that those who read the appellants' report would have questioned the respondent's honesty because there was no mention in the report about the averments made by the respondent, despite serious allegations of dishonesty being plucked from the statement of claim and published. However, on the principles of law stated by the Court of Appeal, it was the view of the Federal Court that although the report of a portion only of legal proceedings may in many cases detract from its fairness and accuracy, it is not necessary as a matter of law that the report should be a report of the whole of the proceedings. A report of a part thereof will be privileged if it is fair and accurate. Further, it is not necessary that the pleadings should first be read out in court before publication can be made. The Federal Court allowed the appeal.

## Employment

### Whether fixed term contract or permanent contract

In *M Vasagam Muthusamy v Kesatuan Pekerja-pekerja Resorts World, Pahang and Anor* [2005] 4 CLJ 93, the Court of Appeal had occasion to consider the issue of a fixed term employment contract.

The appellant was employed by the first respondent, the Resorts World Employees Union. Under the contract of employment dated 1993, the employment was stated to be for a period of one year and subject to renewal by the first respondent at its discretion. The appellant's contract of employment was renewed every year until by a letter dated 14th April 1996, the first respondent informed the appellant that its Executive Council had decided not to renew the appellant's contract. The appellant's claim against the respondent for wrongful termination or dismissal without just cause or excuse was adjudicated by the second respondent, the Industrial Court, and decided against the appellant.

The Chairman of the Industrial Court found that on the evidence before him, the contract was a genuine fixed term contract of employment which automatically came to an end by itself, upon the expiry of the term. The contract was not a contract of a permanent nature disguised as a fixed term contract, as was so found in the case of *Han Chiang High School v National Union of Teachers in Independent Schools, West Malaysia* [1990] 1 ILR 473. The notice not to renew was not a letter of termination, it was simply a letter of non-renewal. The issues raised about irregularities in the deliberations of the Executive Council leading to the said decision were irrelevant in the light of the finding that it was a fixed term contract. There was no unlawful termination or dismissal without just cause or excuse.

The appellant then filed an application at the High Court for certiorari to quash the decision. The High Court found that there was no error of law committed by the Industrial Court and dismissed the application. The Judge observed that in the case of *Han Chiang*, the Industrial Court made a finding that the sys-

tem of fixed term contracts there employed by the school was employed not out of genuine necessity but as a means of control of the teachers. The intention of the school was to rid itself of the union, and it relied on the fixed term contracts to flush out teachers who were members of the union. The *Han Chiang* case was distinguished from the present case, as the Industrial Court had found upon the evidence that the fixed term contract was genuine. Upon appeal, the Court of Appeal agreed that the contract was a genuine fixed term contract, and there was no ulterior motive behind the contract, and dismissed the appeal.

### Termination of employment contract is not dismissal

In *Zakiah Ishak v Majlis Daerah Hulu Selangor* [2005] 4 CLJ 77, the Court of Appeal held that where an employment contract contains provisions for termination of employment, the employment may be terminated, and the fact that there were allegations of misconduct against an employee, did not necessitate due process procedures or proceedings for dismissal of the employee, the employer may simply terminate the employment.

The appellant was employed as the respondent's treasurer on a one year contract. A term of the contract provided that the contract may be terminated by the respondent on 3 months' notice or in lieu thereof on payment of 1 month's salary. There was evidence that a short while into the contract, there was some indiscipline or insubordination on the appellant's part. The respondent issued a letter to the appellant giving the latter 3 months' notice of termination of employment. However, a short time later, following a meeting of the respondent's Disciplinary Board, the respondent gave a further letter giving 24 hours' notice of termination with one month's salary. The appellant's action for declaration that the termination of her services was null and void was dismissed by the High Court. On appeal, the appellant contended before the Court of Appeal that the appellant was in fact dismissed on grounds of discipline, and the dismissal was cloaked under the guise of termination, in disregard of natural justice without giving the appellant an opportunity to be heard.

The Court of Appeal, dismissing the appeal, held that the respondent had the right to terminate the employment. It was not open to the appellant to question the respondent's motive. The appellant's



service was terminated, she was not dismissed, and therefore need not be given a right of hearing. Further, the appellant's claim that the termination was in breach of her legitimate expectation that she could continue in her employment for the said period, was unsustainable as there was no evidence of a promise or undertaking made by the respondent to that effect.

## Intellectual Property

### Trade marks

In *PH Products Sdn. Bhd. v. Suenyun Sdn. Bhd.*, PH Products filed an action in the High Court against Suenyun for infringing and passing off a PH Products trademark. It applied for an interlocutory injunction to restrain Suenyun from using the mark TWO AXE and consequential relief pending trial, among others.

PH Products claimed that, pursuant to two deeds of assignment, it was the proprietor of the mark KAPAK with a device of two axes. 'Kapak' means axe in the Malaysian language. PH Products claimed that it had acquired goodwill and reputation in the KAPAK mark because of the substantial use, promotion and sale of liquor bearing the mark since 1986.

Suenyun is a manufacturer, bottler, distributor and seller of liquor and spirits, and in 1998 began using the mark GOLDEN X with a device of two axes for liquor. In mid-1999 it discontinued using the GOLDEN X mark and started to use the TWO AXE mark with the device of two axes for liquor.

PH Products alleged that Suenyun's TWO AXE mark was confusingly similar to its KAPAK mark, which had caused or was likely to cause confusion or deception among members of the trade and public. PH Products also alleged that Suenyun had misrepresented its goods as those of PH Products, which would injure its business and goodwill.

Suenyun contended that PH Products had failed to show that there was a serious question to be tried and the claim was frivolous, in that it had not proved that the word 'axe' or 'kapak' and a device of two axes in gold colour were distinctive of PH Products. Suenyun also contended that PH Products had failed

to provide evidence of actual confusion despite the fact that PH Products and Suenyun had been selling liquor side by side for several years. PH Products did not provide evidence to rebut Suenyun's contention that PH Products would be unable to compensate it in damages should the plaintiff fail to establish that it was entitled to a permanent injunction. Suenyun also contended that it would suffer irreparable damage to its business and goodwill if an interlocutory injunction were granted. It argued that the balance of convenience was against granting the interlocutory injunction since PH Products was guilty of unreasonable or inordinate delay in taking several years before seeking interlocutory injunction relief.

The court dismissed PH Products' application for an interlocutory injunction, as it found that Suenyun would suffer greater hardship if the interlocutory injunction were granted.

## Land

### Immediate or deferred indefeasibility

Under the Malaysian Torrens system of land law, the National Land Code (the Code) confers deferred indefeasibility and not immediate defeasibility. This was held by a majority decision of the Court of Appeal in *Subramaniam a/l NS Dhurai v. Sandrakasan a/l Retnasamy* [2005] 6 MLJ 120.

Section 340 of the National Land Code provides as follows.

- "340(1) The title or interest of any person or body for the time being registered as proprietor of any land, or in whose name any lease, charge or easement is for the time being registered, shall, subject to the following provisions of this section, be indefeasible.
- (2) The title or interest of any such person or body shall not be indefeasible:
- (a) in any case of fraud or misrepresentation to which the person or body, or any agent of the person or body, was a party or privy; or
- (b) where registration was

obtained by forgery, of by means of an insufficient or void instrument; or

- (c) where the title or interest was unlawfully acquired by the person or body in the purported exercise of any power or authority conferred by any written law.
- (3) Where the title or interest of any person or body is defeasible by reason of any of the circumstances specified in subsection (2):
  - (a) it shall be liable to be set aside in the hands of any person or body to whom it may subsequently be transferred; and
  - (b) any interest subsequently granted thereout shall be liable to be set aside in the hands of any person or body in whom it is for the time being vested.

Provided that nothing in this subsection shall affect any title or interest acquired by any purchaser.”

The cornerstone of the Torrens system of registration of titles is certainty of title. The fact of registration of a proprietor on the land register is assumed, with limited exceptions, to be conclusive of the validity of the title, obviating any necessity of going behind the register to investigate the history of the title. At common law, a person’s title is vulnerable to any defect such as forgery of transfer, in the chain of title leading up to the person, a principle encapsulated in the latin maxim *nemo dat quod non habet* (no one can give better title than they have). The Torrens system is a statutorily mandated exclusion of the principle, and confers indefeasibility on the title of the person registered for the time being as the proprietor, despite any earlier defect in the chain of title. However, on a literal construction of section 340, it appears that indefeasibility is delayed by one step.

Section 340(2) seems to make defeasible, the title of a registered proprietor who takes directly under a forged or defective transfer, or one vitiated by one of the vitiating elements set out therein.

However a defeasible title under

section 340(2) can be the root of an indefeasible title. If the proprietor subsequently transfers the title to a subsequent purchaser, the proviso to section 340(3) operates to confer indefeasibility of title on the subsequent purchaser, if he is a bona fide purchaser.

In that sense therefore, it appears that the Malaysian Torrens system, confers deferred, but not immediate, indefeasibility.

That was the position affirmed by the Supreme Court in *M & J Frozen Food Sdn. Bhd. v. Siland Sdn. Bhd.* [1994] 1 MLJ 294. However, later, in *Adorna Properties Sdn. Bhd. v. Boonsom Boonyanit* [2001] 1 MLJ 241, the Federal Court (successor to the Supreme Court) had taken a contrary position, and held that section 340 admitted of immediate indefeasibility.

In *Subramaniam v. Sandrakasan*, the majority in the Court of Appeal held that the decision in *Boonsom Boonyanit* was given *per incuriam*, i.e. in oversight of the earlier decision in *M & J Frozen Food*, and declined to follow it.

The dissenting judge was of the view that the Court of Appeal was not at liberty to depart from *Boonsom Boonyanit*, on account of the principle of judicial precedent or *stare decisis*. The Court of Appeal is lower in the judicial hierarchy than the Federal Court, and is bound to accept decisions by the later, and was not at liberty to depart from them on the ground that they were given *per incuriam*. Only the Federal Court was at liberty to depart from its own decisions in such a situation.

In view of the principle of *stare decisis*, the status of *Subramaniam v. Sandrakasan* is in doubt, and the issue may have to be deferred to another day for a reconsideration by the Federal Court.

**Compliance with Order 83 of rules of court in application for sale**

After a divergence of judicial opinion, the Court of Appeal in *Perwira Habib Bank Malaysia Bhd. v. Lum Choon Realty Sdn. Bhd.* [2005] 4 CLJ 345 by a majority decision, has held that in an application by a chargee of land for an order for sale, the affidavit must comply with Order 83 Rule (3) of the Rules of the High Court, and failure to do so invalidates the

order for sale.

Order 83 Rule 3 states that it applies to an action claiming delivery of possession or payment of moneys secured by charge, or both. The Rule requires the affidavit to show the state of the account between the chargor and chargee with particulars of the amounts of the advance, repayments, interest or instalments in arrears and amount remaining due.

Although the Rule appears on its terms to apply only to an action for possession or payment, but not to an action for sale, the majority decision took the view that such distinction was not intended, and the Rule applies to an action for sale.

In the dissenting judgment, the judge reached the opposite conclusion that it did not apply to an action for sale but even if it did, the order for sale would not be invalidated.

The effect of the majority decision seems to be harsh, even though in such circumstances, a fresh application for sale if not statute barred, can be filed. Undoubtedly, a chargor should be entitled to know the state of his account, and may require the chargee to disclose the particulars. The chargee is already required by the National Land Code to state the amount of the debt due as at the date of the order for sale. However, the decision places a stringent requirement for all the particulars to be disclosed, under pain of invalidation of the order, even if the chargor does not challenge the amount of the debt. The provisions of Order 83 are merely procedural rules, and it is established principle that the primary consideration should be justice, and procedural non-compliance may be forgiven if no prejudice is occasioned, a principle reaffirmed in recent amendments to the rules of court.

If the effect of the decision is that an

order for sale will be invalidated for non compliance with the procedural rules, where there is no prejudice to the chargee, this would appear to contrary to the spirit of the principle.

## Intellectual Property News

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### Trade Marks

It is important that a statutory declaration in support of a trade mark application and a priority claim document in support of a priority claim under the Paris Convention (if any) be filed with the Registry of Trade Marks as soon as possible after filing of the application as the Registrar of Trade Marks would not allow the application to proceed to search and examination stage until these formalities have been complied with. In any event, the statutory declaration and priority claim document must be filed within one year from date of the application. Otherwise, the Registrar will treat the application as abandoned.

The Malaysian Intellectual Property Office (MyIPO) has launched an online trade marks search facility at its newly improved website at [www.mipc.gov.my](http://www.mipc.gov.my). Users are required to sign up either as individuals, corporations or trade mark agents. Different charges apply to the different categories of users. MyIPO welcomes feedback on the search facility so that the service may continue to be improved.





At University Technology Mara's Annual Law Dinner 2005  
Left to right: Adjunct Professor R. Rajeswaran, Lini Hazlinda Khalid, Dato' Cyrus Das, Ily Farhana Ahmad Illahi, Edward Paul

### Shook Lin & Bok establishes RM10,000 Prize Award for 1st Class Honours Law Graduates of University Technology Mara

Shook Lin & Bok was given the privilege of sponsoring a prize for 1st Class Honours graduates of the Law Faculty of University Technology Mara, Malaysia. The prize which was being established for the first time, carries a cash award of RM10,000 to be shared among the winners.

Professor R. Rajeswaran, a popular lecturer with the University Technology Mara Law Faculty and a former partner of the firm, was of the view that the winners would appreciate a cash award more than a book gift or vouchers. The prizes were awarded by our Deputy Chief Executive Partner, Dato' Cyrus Das to the winners at the recent Annual Gala Dinner of the Law Faculty of the University at Holiday Villa, Subang Jaya. The guest of honour was the President of the Court of Appeal, Tan Sri Dato' Abdul Malek bin Ahmad.

The prize winners for 2005 were Edward Paul, Ily Farhana Ahmad Illahi and Lini Hazlinda Khalid, all of whom graduated with first class honours in law.

Edward hails from Penampang, Sabah and completed his secondary schooling at La Salle Secondary School, Kota Kinabalu. He has joined the Attorney General's Chambers as a Deputy Public Prosecutor in the Anti Corruption Agency. Ily was a Bank Negara scholar and is now in its employment as a Senior Executive. Lini grew up in Kuala Lumpur and went to St. Mary's Secondary School, Kuala Lumpur, and Kolej Damansara Utama. She was admitted to the bar in 2005 and is now a practising lawyer. The three recipients express their personal messages as follows:-

"I would like to take this opportunity to thank Messrs. Shook Lin & Bok for presenting the prize money to University Technology Mara graduates as it would motivate future graduates to do well in their studies. The prize money that I have received would be put to good use as it is a recognition for my achievement as a law student at University Technology Mara." *Edward Paul*

"I am grateful for the award and will make good use of the prize to fulfil my penchant for reading." *Ily Farhana Ahmad Illahi*

"I am very honoured to have received the award given by Messrs. Shook Lin & Bok. I hope to spend the prize award to pursue my studies in the legal field." *Lini Hazlinda Khalid*

### Former Partner Dato' Param Cumaraswamy receives Justice Prize



Dato' Param Cumaraswamy with United Nations Secretary General Kofi Annan at the United Nations Headquarters, New York

The firm congratulates Dato' Param Cumaraswamy on being selected as the recipient of the Peter Gruber Foundation's Justice Prize for 2005. The award which carries a gold medal and US\$200,000 cash prize, was presented at an award ceremony at Columbia University Law School in New York City on 19th September 2005.

Dato' Param was the firm's Chief Executive Partner from 1992 to 1997. He was a member of the firm for 30 years since 1967, before leaving the firm in 1997 for private practice.

Dato' Param has held positions including President of the Malaysian Bar Council, Vice President of the International Commission of Jurists and President of the Law Association for Asia and the Pacific. In 1994, the United Nations Commission on Human Rights appointed him the first UN Special Rapporteur on the Independence of Judges and Lawyers. In that role which he held until 2003, he undertook missions to many countries to report to the United Nations Commission, and has intervened in reported instances of violations in more than 100 countries.

A distinguished Advisory Board selected Dato' Param as the Justice Prize recipient from a worldwide nomination of candidates. The official citation honouring Dato' Param reads:

*The 2005 Justice Prize of the Peter Gruber Foundation is hereby proudly presented to Param Cumaraswamy whose voice has been heard around the world for the independence of judges who are the ultimate custodians of the just rule of law that is the foundation for human rights. In a life dedicated to the defense and affirmation of justice, his fearless advocacy for judicial independence has often been at great personal risk and cost. His record serves as a call and as an inspiration to all.*

"Justice prevents the exercise of arbitrary power," said Peter Gruber, chairman of the Peter Gruber Foundation. "We are extremely pleased to honour Param Cumaraswamy for standing for justice in his own country and around the world". The Peter Gruber Foundation was founded in 1993 and established a record of philanthropy. The Foundation has since 2000 expanded its focus to a series of international awards recognizing discoveries and achievements that produce fundamental shifts in human knowledge and culture.

The firm's Deputy Chief Executive Partner Dato' Cyrus Das was recently conferred the Darjah Sultan Ahmad Shah Pahang (DSAP) by His Royal Highness the Sultan of Pahang state which carries the title `Dato' on the occasion of His Majesty's 75th Birthday on 24th October 2005. He was one of 14 persons to be awarded the DSAP. The firm extends its congratulations to Dato' Das on this second title.



## DIARY

### Papers presented by Shook Lin & Bok at recent conferences

13-14 September 2005	World Intellectual Property Organisation Asia Pacific Regional Symposium on the Protection and Enforcement of Intellectual Property Rights  Sheraton Imperial Kuala Lumpur	<b>Michael Soo</b> Challenges and Progress in Intellectual Property Enforcement in Asia and the Pacific Region
16-18 November 2005	13th Malaysian Law Conference  Putra World Trade Centre Kuala Lumpur	<b>Dato' Cyrus Das</b> Integrating the Indigenous and the International in Human Rights Jurisprudence
22 November 2005	Lexis Nexis seminar on Legal Issues in Lienholder's Caveat  JW Marriot Kuala Lumpur	<b>Lai Wing Yong</b> Methods of raising finance from landed property  <b>Yoong Sin Min</b> Effect of <i>Hong Leong Finance Bhd. v. Staghorn Sdn Bhd</i>
28-29 November 2005	The Asia Business Forum Seminar on Corporate Finance and Investment in Malaysia  JW Marriot Kuala Lumpur	<b>Kelvin Loh</b> Guidelines by the Securities Commission to Facilitate the Introduction of Exchange Traded Funds
29-30 November 2005	Inaugural University of Malaya Law Conference  University of Malaya	<b>Dato' Cyrus Das</b> Recent Developments in Administrative Law



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