

CONTRACT LAW REFORM ACROSS THE CAUSEWAY: A ROUNDTABLE DISCUSSION WORKSHOP ON REVISING MALAYSIA'S CONTRACTS ACT 1950

27 & 28 JUNE 2025 || LEE SHERIDAN CONFERENCE ROOM AND ZOOM

Earlier this year, the Legal Affairs Division (BHEUU) of the Malaysian Prime Minister's Department, in collaboration with Centre for Commercial Law and Regulatory Studies - Malaysia Hub, Monash University Malaysia and UKM Pakarunding, initiated an ambitious law reform exercise to undertake a comprehensive review of the Malaysian *Contracts Act 1950*. A Working Group comprising senior judges, academics and commercial law practitioners was set up to reform and modernise the Act so that it aligns with contemporary legal standards while meeting the needs of modern society.

Contract law developments of this magnitude in Malaysia, which is Singapore's closest neighbour and most important trading partner, are of particular significance to the ASEAN region's transnational commercial landscape. These law reform efforts will facilitate, at a systemic level, the regional convergence of the business laws of ASEAN member states, thereby furthering the single market aspirations of the ASEAN Economic Community.

The EW Barker Centre for Law & Business is pleased to host this Workshop to provide members of the Working Groups a platform to discuss their proposals for reforming this important piece of legislation with a broader audience. Participants will get a glimpse into the thought processes behind this law reform process, as well as the opportunity to learn how Malaysia's future contract law framework is likely to be codified when the Act is updated. This engagement also serves as an opportunity for the Working Groups to benchmark and explore comparative approaches to contract law reform in other jurisdictions. In addition, our guests are interested in getting feedback from Workshop participants about the proposed law reforms under consideration by the Working Groups.

Workshop Convenor and Host:

- Dr Burton Ong, NUS Faculty of Law
- Emeritus Professor Tan Lee Meng, NUS Faculty of Law

Keynote Address on the Application of English Law by the Singapore Courts ("Their Law in Our Hands")
by Mr Chan Sek Keong, former Chief Justice of Singapore and Distinguished Fellow of the NUS Faculty of Law

Members from the Committee for Review and Reform of Contract Law in Malaysia include:

- The Hon. Justice Datuk Vazeer Alam bin Mydin Meera (Federal Court, Committee Chairperson)
- Dato' Mary Lim Thiam Suan
- Dr Punitha Silivarajoo
- Mr Philip Koh Tong Ngee
- Mr Sathish Mavath Ramachandran
- Assoc Professor Dr Adnan Trakic
- Prof Zuhairah Ariff Abdul Ghadas
- Mr Oon Chee Kheng
- Mr GK Ganesan
- Dr Ridoan Karim
- Mr Wong Tat Chung
- Dr David Fung Yin Kee

REGISTER

IN-PERSON

1.5 Days : \$392.40

1 Day : \$294.30

ZOOM

1.5 Days : \$327

1 Day : \$245.25

Visit nus.edu/3FfUrLz to register or scan the QR code

Closing Date: 23 June 2025

Contact: ewbclb@nus.edu.sg



DAY 1

| TIME | PROGRAMME |
|-------------------|--|
| 8:15AM | <i>Pickup from JEN Singapore Tanglin</i> |
| 8:45AM – 9:00AM | <i>Registration and Refreshments</i> |
| 9:00AM – 9:20AM | Opening of Workshop Welcome Address: Emeritus Professor Tan Lee Meng (NUS Law) |
| 9:20AM – 9:30AM | Opening Remarks: Dr Burton Ong (NUS Law) |
| 9:30AM – 9:45AM | Overview of Project Timeline and Objectives: The Hon. Justice Datuk Vazeer Alam bin Mydin Meera (Federal Court, Malaysian Contract Law Reform Committee Chairperson) |
| 9:45AM – 10:00AM | Progress Report: Dr Adnan Trakic (Monash University Malaysia) |
| 10:00AM – 11:00AM | Working Group 8 (Third Party Rights) Law Reform Proposals: Dr David Fung Yin Kee (Messrs Alex Pang & Co.) |
| 11:00AM – 12:30PM | KEYNOTE ADDRESS by Mr Chan Sek Keong “Their Law in our Hands” – the Application of English Law by the Singapore Courts Followed by discussion chaired by Emeritus Prof Tan Lee Meng |
| 12:30PM – 1:30PM | <i>LUNCH BREAK</i> |
| 1:30PM – 2:30PM | Working Group 1 (Definitions, Formation and Voidable Contracts) Law Reform Proposals: Mr Philip Koh Tong Ngee (Adjunct Professor, Monash University Malaysia, University of Malaya, Senior Partner, Mah-Kamariyah & Philip Koh) Mr Sathish Ramachandran (Partner, Deol & Gill) |
| 2:30PM – 3:30PM | Working Group 2 (Void Agreements and Contingent Contracts) Law Reform Proposals: Assoc. Prof. Dr. Adnan Trakic (Monash University Malaysia) |
| 3:30PM – 3:45PM | <i>Coffee, Tea, Refreshments available (No break in schedule)</i> |
| 3:30PM – 4:30PM | Working Group 3 (Performance of Contracts) Law Reform Proposals: Dr. Mohd Shahril Nizam Md Radzi (UKM, Faculty of Law) |
| 4:30PM – 5:30PM | Working Group 4 (Variation, Breach and Remedies) Law Reform Proposals: Mr. Oon Chee Kheng (Partner, CK Oon & Co.) Dato' Mary Lim Thiam Suan (Director, Asian International Arbitration Centre) |
| 5:45PM – 6:45PM | <i>Visit to National Orchid Gardens</i> |
| 6:45PM – 8:45PM | <i>Workshop Dinner</i> |
| 9:00PM* | <i>Return to JEN Singapore Tanglin</i> |

DAY 2

| TIME | PROGRAMME |
|-------------------|---|
| 8:30AM | <i>Pickup from JEN Singapore Tanglin</i> |
| 8:45AM – 9:00AM | <i>Registration and Refreshments</i> |
| 9:00AM – 10:00AM | Working Group 5 (Indemnity and Guarantee) Law Reform Proposals: Mr. GK Ganesan (Founder, GK Ganesan) |
| 10:00AM – 11:00AM | Working Group 6 (Bailment) Law Reform Proposals: Dr. Chithra Latha Ramalingam (Monash University Malaysia) |
| 11:00AM – 12:00PM | Working Group 7 (Agency) Law Reform Proposals: Mr. Wong Tat Chung (Partner, Wong Beh & Toh) |
| 1:00PM | <i>End of Workshop</i> |
| 1:30PM | <i>Return to JEN Singapore Tanglin</i> |

ABSTRACT (DAY 1)

| TITLE | TOPICS |
|---|--|
| Working Group 8 (Third Party Rights) Law Reform Proposals: Dr David Fung Yin Kee (Messrs Alex Pang & Co.) | <p>Malaysia wishes to have its own statute to grant a direct remedy to third party beneficiaries by adopting Singapore's Contracts (Rights of Third Parties) Act 2001 with some modifications. Discussion on the following questions would assist Malaysia's quest:</p> <ul style="list-style-type: none">• Have any provisions in CRTPA presented problems in Singapore?• Has the industry (ie. legal profession, construction sector, consumer, etc) been willing to use CRTPA to provide for third party's rights in contract?• How has section 9 of CRTPA work in arbitration?• In disputes that had come before the court or arbitration that involved all three parties, were the disputes able to be tried in one court or arbitration, or has it to be dealt with in multiple separate proceedings? |
| Working Group 1 (Definitions, Formation and Voidable Contracts) Law Reform Proposals: Mr Philip Koh Tong Ngee (Adjunct Professor, Monash University Malaysia, University of Malaya, Senior Partner, Mah-Kamariyah & Philip Koh) Mr Sathish Ramachandran (Partner, Deol & Gill) | <ul style="list-style-type: none">• Should Malaysia's contract statute define and introduce words and phrases such as: "electronic"; "electronic agent"; "written"; "document"; "computer"; "computer program"; "artificial intelligence"; "AI systems"? Should the statute elaborate upon the meaning of "consent", "free consent", "coercion", "undue influence", "fraud", "misrepresentation", "mistake"?• Should Malaysia's contract statute clearly state that electronic and technology enabled transactions are covered by the Act?• Should Section 14 (Free Consent) be amended to add factors of "unconscionable dealing" and "duress"? (The present section provides for coercion, undue influence, fraud, misrepresentation, mistake) Should Section 15 (Coercion) be amended, to replace coercion with "duress"?• Should the Malaysian contract law statute introduce a new Section 16A on "unconscionable dealing" - for the court to consider respective bargaining strength; unreasonable conditions for compliance; understanding of documents; undue influence or unfair tactics towards fair price; serious misconduct; unfairness ?• Should Section 20 to be expanded to give courts the power to set aside contracts induced by undue influence, unconscionable dealing, duress?• Would it be useful for the Malaysian contract statute to provide any illustrations accompanying the above provisions? |
| Working Group 2 (Void Agreements and Contingent Contracts) Law Reform Proposals: Assoc. Prof. Dr. Adnan Trakic (Monash University Malaysia) | <ul style="list-style-type: none">• Where the intention to create legal relations is already present and documented in writing, what are the broader legal and practical implications of exempting such agreements from the requirement of consideration?• Courts in several common law jurisdictions have encountered challenges with the application of consideration in the context of variation agreements. Some have responded with exceptions or doctrinal workarounds, such as the use of estoppel or the "practical benefit" test. What are the potential benefits and risks of adopting a general rule that variation agreements do not require fresh consideration? How might such a shift affect contractual certainty, fairness, and the risk of duress?• The approach in Patel v Mirza has been influential in reframing how courts assess claims involving illegal contracts, particularly by emphasizing a flexible range of factors. How has this approach been received in broader common law discourse, and what are the theoretical and practical tensions in aligning restitutionary relief with the doctrine of unjust enrichment in cases involving illegality? |

ABSTRACT (DAY 1)

| TITLE | TOPICS |
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| Working Group 3 (Performance of Contracts) Law Reform Proposals: Dr. Mohd Shahril Nizam Md Radzi (UKM, Faculty of Law) | <ul style="list-style-type: none">• It has been noted that the full performance principle has become inappropriate in current contexts involving e-commerce, digitised contracts, or international commerce, whereby strict performance cannot yet take place, and commercial considerations require a more flexible, judicial stance. What is the position of the Singapore courts/law on the principle of full performance in relation to e-commerce, digitised contracts, or international contracts?• The Malaysian Courts recognised substantial performance, but damages are still recoverable against the promisor, whereas under English law, if essential obligations have been substantially performed, full recoverable amounts can be claimed. How do Singapore courts approach substantial performance?• The Contracts Act 1950 does not provide statutory definitions of contractual terms. In practice, the void has been filled by the Malaysian courts resorting to English common law jurisprudence. How does Singapore approach modern contracts such as clickwrap contracts, browsewrap contracts, and artificial intelligence contracts?• Section 57 of Contracts Act 1950 deals with impossibility of performance. What is the position in Singapore with respect to the frustration doctrine versus contractual force majeure clauses, and its treatment of commercial hardship?• Malaysia does not have specific legislation to regulate terms and unfair contract terms. What would be the best approach for Malaysia to deal with unfair contract terms, particularly in e-commerce? |
| Working Group 4 (Variation, Breach and Remedies) Law Reform Proposals: Mr. Oon Chee Kheng (Partner, CK Oon & Co.) Dato' Mary Lim Thiam Suan (Director, Asian International Arbitration Centre) | <ul style="list-style-type: none">• “Contracts which need not be Performed”:<ul style="list-style-type: none">◦ Is consideration required for variation and novation of contract? Are compromise agreements and mediation settlement agreements void for want of consideration?◦ Where both contracting parties were unaware of any illegality during contract formation stage that could render agreement void ab initio, and the illegality is subsequently “discovered”, what can be the consequences and remedies available if one party subsequently rescinds the agreement on the ground of illegality?• “Of Certain Relations Resembling those Created by Contract”<ul style="list-style-type: none">◦ Why has Singapore not attempt to legislate the law of restitution/unjust enrichment?◦ The Contracts Act 1950 has under Part VI provisions that arguably has as its legal basis an independent unjust enrichment. For instance, sections 71 and 73. Since unjust enrichment is now recognised in the UK as an independent and autonomous basis of claim, how has the common law in Singapore developed in this area of law?• “Of the Consequences of Breach of Contract”<ul style="list-style-type: none">◦ Damages upon breach of contract To what extent is the mitigation expected of the innocent party on the breach of contract by the other party?◦ The continuing use of Hadley v Baxendale in determining damages or compensation after breach of contract? Does the foreseeability requirement in Hadley v Baxendale in accord with the both expectation and reliance damages or only with expectation damages? For the application of Hadley v Baxendale, must there be express communication of special circumstances to overcome foreseeability, or it can be implied or deemed constructively known? Are the awards of exemplary damages, damages for inconvenience, distress, anxiety, and loss of reputation within the realm of Hadley v Baxendale? |

ABSTRACT (DAY 2)

| TITLE | TOPICS |
|---|--|
| Working Group 5 (Indemnity and Guarantee) Law Reform Proposals: Mr. GK Ganesan (Founder, GK Ganesan) | <p>[A]. Section 77: Definition and Scope of Indemnity</p> <ul style="list-style-type: none">Should the statutory definition of indemnity be expanded to include losses caused by non-human factors? <p>(The current definition in section 77 of the Malaysian Contracts Act restricts indemnities to losses caused by “the conduct of the promisor himself, or by the conduct of any other person.” This narrow formulation excludes losses arising from natural events, regulatory changes, or other non-human causes that are commonly indemnified against in modern commercial practice.)</p> <ul style="list-style-type: none">Should implied indemnities be explicitly recognized in the statutory framework? <p>(The current wording suggests indemnities must be expressly created, yet commercial practice and case law recognize implied indemnities arising from the nature of transactions or parties' conduct.)</p> <p>[B]. Section 81: Surety's Liability</p> <ul style="list-style-type: none">Must creditors exhaust remedies against principal debtors before pursuing sureties? <p>(Section 81 establishes co-extensive liability but does not clarify whether creditors must first pursue principal debtors before claiming from sureties, creating uncertainty for financial institutions.)</p> <p>[C]. Section 83: Revocation of Continuing Guarantees</p> <ul style="list-style-type: none">Should contractual non-revocation clauses override statutory revocation rights? <p>(Section 83 allows sureties to revoke continuing guarantees, but creditors often include non-revocation clauses that courts have upheld, effectively nullifying the statutory protection.)</p> <p>[D]. Section 86: Discharge of Surety by Contract Variance</p> <ul style="list-style-type: none">What constitutes a “material variance” sufficient to discharge a surety? <p>(Section 86 discharges sureties for any variance made without consent, but fails to distinguish between material and immaterial changes, leading to disputes over whether minor modifications should discharge sureties.)</p> <ul style="list-style-type: none">How should courts approach “omnibus consent” clauses for future variations? <p>(Modern guarantee contracts often include broad clauses giving advance consent to any future variations, potentially undermining the protective purpose of section 86.)</p> <p>[E]. Section 93: Rights of Surety on Payment or Performance</p> <ul style="list-style-type: none">Should partial payment trigger proportional subrogation rights? <p>(Section 93 is unclear whether a surety who makes partial payment is entitled to proportional subrogation rights, or must wait until full payment before acquiring any rights.)</p> <ul style="list-style-type: none">What remedies should sureties have when creditors impair securities? <p>(The Act does not explicitly address the consequences when creditors impair securities held against the principal debtor without the surety's consent.)</p> <p>[F]. Additional Issues ['GIS' means 'Guarantees, Indemnities and Sureties']</p> <ul style="list-style-type: none">Guarantors have a financial interest in the outcome of the dispute: In disputes between creditors and principal-debtors should guarantors have residual rights?Conditional and unconditional guarantees: should the law codify the distinction between them and if so, to what extent?Unauthorized actions by company directors: How can statute protect companies against them (e.g. codifying requirements for a board resolution for a company to act as a guarantor)?Scope of vitiating factors: Should the current statute be expanded to address issues like undue influence, fraud, unconscionability and inequality of bargaining power? [see secs. 95 to 96]Apparent conflict between secs. 88 [discharge of sureties by contracts not to sue] and 90 [forbearance to sue which does not discharge sureties]: Can clear guidance clarify when a creditor's actions or omissions concerning the principal debtor will discharge the surety?Electronic communication and consent: should there be specific statutory provisions addressing their validity and requirements in GIS contracts [e.g., the form, method, and timing of revocation notices to align with modern commercial practices]?Social Guarantors: what statutory protections, beyond those in the Insolvency Act 1967, ought to be introduced in CA 1950 to limit the liability and ensure their fair treatment by creditors? |

ABSTRACT (DAY 2)

| TITLE | TOPICS |
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| Working Group 6 (Bailment) Law Reform Proposals: Dr. Chithra Latha Ramalingam (Monash University Malaysia) | <ul style="list-style-type: none">• With the rise of data centres, cloud storage, and blockchain custody services, traditional conceptions of possession and delivery in bailment are increasingly strained. How might Singaporean common law evolve to address these developments without the aid of statutory reform?• Singapore courts have upheld limitation or exclusion clauses in bailment contracts, provided they satisfy the test of reasonableness and are incorporated properly. How does this approach navigate the balance between party autonomy and the protection of weaker parties, particularly in standard-form or consumer-facing bailments?• Jurisdictions such as Malaysia and India retain statutory frameworks based on colonial-era codes (e.g., Contracts Act 1950), while Singapore has moved toward a common law-driven system in areas like bailment. What are the comparative strengths and challenges of such minimal statutory interventions in today's commercial context? Could the lack of codification lead to interpretive gaps, or does it allow courts to evolve the doctrine more nimbly? |
| Working Group 7 (Agency) Law Reform Proposals: Mr. Wong Tat Chung (Partner, Wong Beh & Toh) | <ul style="list-style-type: none">• Are there modern developments in the theory and law of agency that may be appropriate for incorporation into legislation in Malaysia?• How can/should the law of agency accommodate developments in artificial intelligence and in technology?• How can/should any legislation on the law of agency accommodate matters of foreign law and private international law?• To what extent should agency law be the subject of legislation while allowing some degree of flexibility for judicial developments? |

SPEAKERS

| NAME | BIO |
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| Mr. Sathish Mavath Ramachandran | Mr. Sathish Mavath Ramachandran is an Advocate & Solicitor and a member of the Malaysian Bar. He has 31 years of experience doing mainly corporate, commercial, and technology law and corporate governance, due diligence, compliance, and advisory work. |
| Mr. Philip Koh Tong Ngee | Mr. Philip Koh Tong Ngee is a Senior Partner at Messrs Mah-Kamariyah & Philip Koh and an Adjunct Professor at the Faculty of Law, University of Malaya and the School of Business, Monash Malaysia University. A counsel in public law, corporate, and commercial cases, he has also co-authored key legal texts and co-edited the first edition of The Law of Contract in Malaysia & Singapore: Cases and Commentary. |
| Dr. Adnan Trakic | Dr. Adnan Trakic is an Associate Professor and Director of the Centre for Commercial Law and Regulatory Studies – Malaysia Hub at the School of Business, Monash University Malaysia. His teaching and research focus on contract law, comparative law, and dispute resolution. |
| Dr. David Fung Yin Kee | Dr. David Fung Yin Kee is an advocate practising civil litigation in Sabah, Malaysia. His practice and academic interests are contract, unjust enrichment, torts, property, constitutional rights and remedies. |
| Mr. Oon Chee Kheng | Mr. Oon Chee Kheng is a practising advocate and solicitor having been admitted to High Court in Malaya in 1995. His practice focusses on commercial litigation with slant towards construction litigation/arbitration. He is the former Deputy Chairman of the Construction Law Committee of the Malaysian Bar and is the co-author of a practitioner text, Adjudication of Construction Payment Disputes in Malaysia (LexisNexis, 2014). |
| Dr. Chithra Latha Ramalingam | Dr. Chithra Latha Ramalingam is a Senior Lecturer at Monash University Malaysia, specialising in corporate governance, ethics, and ESG. A Certified Integrity Officer (MACC), her research focuses on anti-corruption, AI governance, and sustainable business practices. She previously consulted for MACC and trained MACA officers and corporate leaders for the CeIO certification program. With 30 years in academia and extensive governance expertise, she advances ethical leadership through research and advisory work. |
| The Hon. Justice Datuk Vazeer Alam bin Mydin Meera | Justice Datuk Vazeer Alam Mydin Meera is currently a Federal Court Judge in Malaysia, having recently been appointed to the nation's highest court in March 2024. His extensive legal career includes approximately 20 years of private practice, followed by appointments to the High Court of Malaya and the Court of Appeal, and he holds academic qualifications from the National University of Singapore, the University of Wales Aberystwyth, and the International Islamic University Malaysia, while also contributing to legal education as an advocacy trainer and adjunct professor. |
| Dato' Mary Lim Thiam Suan | Dato' Mary Lim Thiam Suan, a former Federal Court Judge, holds an LLB (Hons) from the University of Leeds and an LLM from the University of Western Australia. 1 Her distinguished career in the Malaysian judiciary included serving as the inaugural Construction Court judge, and she is currently the Director of the Asian International Arbitration Centre (AIAC). |

SPEAKERS

| NAME | BIO |
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| Mr. Wong Tat Chung | Mr. Wong Tat Chung is a Senior Partner at Wong Beh & Toh in Kuala Lumpur, specializing in corporate finance, mergers and acquisitions, capital markets, and securities law, with LL.B and LL.M degrees from King's College London. Admitted to the English and Malaysian Bars, he actively contributes to law reform and serves on committees related to corporate and financial sector development. |
| Mr. GK Ganesan | Mr. GK Ganesan is a senior legal practitioner, author of Bankruptcy Law in Malaysia and Singapore (2001), who also wrote over 300 articles on diverse legal and social topics. His extensive contributions to the legal field include appointments to the Advocates and Solicitors Disciplinary Board and involvement in various Malaysian Bar committees, reflecting his expertise as an Advocate & Solicitor and International Commercial Arbitrator with multiple legal qualifications. |
| Dr. Mohd Shahril Nizam Bin Md Radzi | Dr. Mohd Shahril Nizam Bin Md Radzi is a Senior Lecturer at the Faculty of Law, Universiti Kebangsaan Malaysia, specialising in contract, employment, and company law. He earned his LLB and PhD from Universiti Sultan Zainal Abidin, along with an LLM from the University of Kent, and has published in notable academic journals. |
| Dr. Punitha Silivarajoo | Dr. Punitha Silivarajoo, who holds a PhD in Policy & Law from Imperial College London, is the Deputy Director General at the Legal Affairs Division (BHEUU) under the Prime Minister's Department, where she leads policy development, law reform, and the coordination of domestic human rights issues. Her impactful work includes spearheading policy teams for significant legislative changes and constitutional amendments, and she also maintains academic affiliations with Universiti Malaya and Sunway University. |
| Dr. Suharmi bin Ismail | Dr. Suharmi bin Ismail is a Malaysian Administrative and Diplomatic Officer (PTD) who has served in various ministries and government agencies in Malaysia. His career includes roles in the Ministry of Higher Education, Ministry of Energy, Green Technology and Water, Ministry of Environment and Water, Ministry of Human Resources, Ministry of Health and the Public Service Department. His professional journey is marked by a strong commitment to public service, reform, and the development of effective institutional policies. |
| Ms. Wan Nazzatu Nur Hazzin binti Wan Azaham | Ms. Wan Nazzatu Nur Hazzin binti Wan Azaham served as the Principal Assistant Director at the Legal Affairs Division under the Prime Minister's Department. In this capacity, she has been involved in legal reform initiatives, including comprehensive reviews of legislation such as the Contracts Act 1950. |
| Ms. Anisah binti Norman Ismadi Omar | Ms. Anisah binti Norman Ismadi Omar is a full-time Research Assistant at CLARS-MH, School of Business, Monash University Malaysia, assisting the Review and Reform of Contract Law in Malaysia. She earned her Master in Criminal Justice (2024) and Bachelor in Law (2023) from the University of Malaya, with extensive experience in legal research including but not limited to, contract law and policy development. |