JUDGMENT Express

TEBIN MOSTAPA

v.

HULBA-DANYAL BALIA & ANOR

Federal Court, Putrajaya
Tengku Maimun Tuan Mat CJ, Rohana Yusuf PCA, Azahar Mohamed CJM, Nallini Pathmanathan, Vernon Ong FCJJ
[Civil Appeal No: 02(f)-23-04-2018 (Q)]
3 July 2020

Land Law: *Caveats — Removal of — Whether administrator of deceased's estate had locus standi to apply for removal of caveat lodged against parcel of land under estate — Provisions of statute, interpretation of — Whether provisions should be read purposively and harmoniously — Sarawak Land Code (Cap 81), s 177*

Succession: *Administrators — Locus standi — Whether administrator of deceased's estate had locus standi to apply for removal of caveat lodged against parcel of land under estate — Provisions of statute, interpretation of — Whether provisions should be read purposively and harmoniously — Sarawak Land Code (Cap 81), s 177*

Statutory Interpretation: *Construction of statutes — Purposive interpretation — Whether administrator of deceased's estate had locus standi to apply for removal of caveat lodged against parcel of land under estate — Provisions of statute, interpretation of — Whether provisions should be read purposively and harmoniously — Sarawak Land Code (Cap 81), s 177*

In this appeal, the Federal Court was called upon to consider the following question for which leave was granted: whether an administrator of a deceased's estate had the *locus standi* to bring an action to remove a caveat lodged against a parcel of land under the estate pursuant to s 177 of the Sarawak Land Code (Cap 81) ("Sarawak Land Code") having regard to s 218 of the Sarawak Land Code, ss 15 and 17 of the Sarawak Administration of Estate Ordinance (Cap 80) ("Sarawak Estates Ordinance") and s 8(1) of the Civil Law Act 1956 ("CLA 1956"). The appellant was appointed as the administrator of his late father's estate pursuant to Letters of Administration granted to him in 2010. During his lifetime, the appellant's father, who was the registered owner of two parcels of land, entered into a sale and purchase agreement to sell the said lands to the respondents' late father. Pursuant to the sale, the respondents' father lodged a caveat on the two parcels of land. As the appellant's father passed away without applying for the consent to transfer, the sale agreement remained uncompleted. In 2016, the appellant *qua* administrator of his late father's estate, applied to the High Court under s 177 of the Sarawak Land Code to remove the caveat. The High Court dismissed the application on the ground that the appellant *qua* administrator did not have the *locus standi* to apply for the removal of the caveat under s 177 of the Sarawak Land Code. The Court of Appeal, by a majority decision, also dismissed the appellant's subsequent appeal.

Held (allowing the appeal with costs):

(1) In the particular circumstances of this case, the provisions in an enactment should be interpreted purposively and harmoniously and within the contextual background in which the provisions of statute presented themselves. Further, the statutory provisions should not be interpreted *in vacuo*; statutory provisions were interpreted to be applied to the established facts of a case. Accordingly, it was important to consider the factual matrix under which the question of law arose. In this case the registered proprietor of the land was deceased. As such, the only person who could act for the estate of the deceased person was the administrator, executor or an attorney under an irrevocable power of attorney given for valuable consideration. In that situation, could it be said that reading s 177 literally, an administrator had no *locus standi* and was thereby automatically prohibited from applying for the removal of the caveat? This court did not think that s 177 could be interpreted in such a narrow sense in the light of the particular facts of this case. As the appellant was making the application in the capacity as an administrator, it followed that it was incumbent upon the court to consider: (i) the true meaning of the words 'registered proprietor' in s 177 read together with ss 113, 115 and 218 of the Sarawak Land Code; (ii) the meaning of the word 'administrator' in ss 4, 15 and 17 of the Sarawak Estates Ordinance insofar as they related to the settled facts; (iii) the meaning of the word 'Representative' in s 2 of the Sarawak Land Code; (iv) s 8 CLA 1956 on the related issue of survival of subsisting or vested causes of action for the benefit of the estate; and (v) the context in which the words were used. (para 31)

(2) The deceased person was the registered proprietor of the land. Accordingly, it followed that the appellant *qua* administrator was deemed to be the proprietor pursuant to s 218 of the Sarawak Land Code and it must equally follow under the deeming provision in s 115 that the appellant *qua* administrator was deemed to be the registered proprietor. Therefore, for the purposes of s 177(1), the appellant was a registered proprietor in law. That was the effect of the administrator stepping into the shoes of the deceased registered proprietor. As an administrator, the appellant was under a statutory duty to collect and recover all the property, discharge debts and distribute the residue of the estate among the beneficiaries. The due performance of that duty to administer the estate included the duty to act in respect of any subsisting or vested causes of action for the benefit of the estate. The making of an application to court under s 177 for the removal of a caveat was a vested cause of action within the meaning of subsection 8(1) CLA 1956; for which the appellant *qua* administrator was entitled and authorised under law to act for the benefit of the estate. (paras 35, 40, 41 & 42)

(3) In holding that the appellant did not have a registered interest, the majority in the Court of Appeal also agreed with the view expressed in *Teng Hung Ping v. Hoan Siew Choo & Ors* that: (i) the appellant as the administrator of the estate held no registered interest or estate in the land; and (ii) the appellant

was not without remedy as the appellant could apply under s 178 of the Sarawak Land Code to be registered as the administrator of the estate so as to enable the appellant to have the *locus standi* to make the application. This was a misnomer for two reasons. First, the appellant's application to remove the caveat was made in his capacity as the administrator of the estate of the deceased registered proprietor; for emphasis, it must be noted that as the administrator, the appellant was standing in the shoes of the deceased registered proprietor. Second, both the High Court and the majority in the Court of Appeal appeared to have taken the view that the appellant did not have any registered interest, which view failed to take into account the obvious fact that the appellant was not acting in his own personal capacity but in the capacity as the administrator of the estate of the deceased registered proprietor. In that capacity, the law recognised that he was the representative of the estate of the deceased registered proprietor. Accordingly, the fact that the appellant did not have a registered interest had no bearing on the matter. Further, it was also stated in *Teng Hung Ping*'s case that the existence of the caveat prohibited the claimant from making an application for transmission under s 169 of the Sarawak Land Code. If so, then the administrator of an estate of a deceased registered proprietor of land was without recourse or remedy. Without being able to be entered on the register as the administrator of the estate, the administrator would not be able to discharge his statutory duties for the benefit of the estate. At any rate, it was clear that the specific provision on transmissions was s 169 of the Sarawak Land Code; s 178 could not be interpreted to override the clear and specific provision of s 169 on transmissions. As such, the fact that the appellant had no registered interest was immaterial and irrelevant to the issue in hand. (para 44)

(4) In the final analysis, the leave question fell to be determined on a proper construction to be accorded to s 177(1) of the Sarawak Land Code. For the reasons adverted to above, the literal approach was not appropriate in the circumstances of this particular case. Section 177(1) should be read purposively and in harmony with ss 2, 113, 115 and 218 of the Sarawak Land Code, ss 4, 15 and 17 of the Sarawak Estates Ordinance and s 8(1) CLA 1956. Taken together, the words 'registered proprietor' in s 177(1) should be interpreted to mean and include an executor or administrator of the estate of the deceased registered proprietor. In the light of the foregoing, the question must be answered in the positive. (para 45)

Case(s) referred to:

Asia Pacific Higher Learning Sdn Bhd v. Majlis Perubatan Malaysia & Anor [2020] 1 MLRA 683 (folld)

Boswell v. Francis [1974] 2 NZLR 488 (refd)

CIT v. Hindustan Bulk Carriers [2003] 3 SCC 57 (refd)

Citibank Bhd v. Mohamad Khalid Farzalur Rahaman & Ors [2000] 1 MLRA 471 (refd)

Chong Fook Sin v. Amanah Raya Bhd & Ors [2010] 2 MLRA 222 (refd)

Danaharta Urus Sdn Bhd v. Kekatong Sdn Bhd [2004] 1 MLRA 20 (refd)

David Gramong v. Rasit Tar [1991] 1 MLRH 644 (refd)

Eda Lee @ Lee Ada v. Lai Nam Fah & Anor [2014] MLRHU 1356 (refd)

Fairise Odyssey (M) Sdn Bhd v. Tenaga Nasional Berhad [2019] 4 MLRA 605 (refd)

Ho Giok Chay v. Nik Aishah [1960] 1 MLRH 225 (refd)

Hong Leong Bank Bhd v. Staghorn Sdn Bhd & Other Appeals [2007] 3 MLRA 150 (refd)

Ireka Engineering & Construction Sdn Bhd v. PWC Corporation Sdn Bhd & Other Appeals [2019] 6 MLRA 1 (refd)

Jack-In Pile (M) Sdn Bhd v. Bauer (Malaysia) Sdn Bhd & Another Appeal [2019] MLRAU 341 (refd)

Kesatuan Pekerja-Pekerja Bukan Eksekutif Maybank Berhad v. Kesatuan Kebangsaan Pekerja-Pekerja Bank & Anor [2017] 2 MELR 349; [2017] 4 MLRA 298 (folld)

Kijal Resort Sdn Bhd v. Pentadbir Tanah Kemaman & Anor [2015] 1 MLRA 255 (refd)

Krishnadas Achutan Nair & Ors v. Maniyam Samykano [1996] 2 MLRA 194 (refd)

Kumpulan Laudiri Sdn Bhd v. Tang Kah Ung & 2 Ors [2004] 6 MLRH 594 (refd)

Law Hock Key & Anor v. Yap Meng Kan & Ors [2008] 1 MLRA 160 (refd)

Loh Ing Kiong & Anor v. Chieng Yong Tiong (unreported, Sibu OM No 2 of 1982) (refd)

Manggai v. Government Of Sarawak & Anor [1970] 1 MLRA 344 (refd)

Mary Colete John v. South East Asia Insurance Bhd [2012] 6 MLRA 89 (refd)

Merck KGaA v. Leno Marketing (M) Sdn Bhd; Registrar Of Trade Marks (Interested Party) [2018] 3 MLRA 503 (folld)

Metramac Corporation Sdn Bhd v. Fawziah Holdings Sdn Bhd [2006] 1 MLRA 666 (refd)

Muhammed Hassan v. Public Prosecutor [1997] 2 MLRA 311 (refd)

Re Lord's Settlement [1948] LJR 207 (refd)

Sim Seoh Beng & Anor v. Koperasi Tunas Muda Sungai Ara Berhad [1995] 1 MLRA 41 (refd)

Teng Hung Ping v. Hoan Siew Choo & Ors [1993] 1 MLRH 611 (refd)

Timbalan Ketua Polis Kelantan & Anor v. Ishak Mansor [2012] 6 MLRA 151 (refd)

Tunku Yaacob Holdings Sdn Bhd v. Pentadbir Tanah Kedah & Ors [2015] 1 MLRA 355 (folld)

View Esteem Sdn Bhd v. Bina Puri Holdings Berhad [2018] 1 MLRA 460 (refd)

Wan Khairani Wan Mahmood v. Ismail Mohamad & Anor [2007] 2 MLRA 429 (refd)

Legislation referred to:

Administration of Estates Ordinance (Sarawak) (Cap 80), ss 2, 4(1), 15, 17

Civil Law Act 1956, s 8(1)

Courts of Judicature Act 1964, ss 3, 23, 50, 67, 68, 96(a)

Electricity Supply Act 1990, s 12
Interpretation Acts 1948 and 1967, s 17A
Land Acquisition Act 1960, ss 8, 10
Land Code (Sarawak) (Cap 81), ss 2, 113, 115, 169, 177(1), 178, 218
Land Transfer Act 1952 [NZ], s 143
National Land Code, ss 346, 347
Probate and Administration Act 1959, ss 2, 19, 59, 68
Rules of Court 2012, O53, O55A, O 87 rr 2, 3
Trade Marks Act 1976, ss 28(5), (6), (7), 45, 46, 56
Trade Unions Act 1959, ss 7, 12

Other(s) referred to:

Ananda Krishnan, *Words, Phrases and Maxims, Legally and Judicially Defined*, Lexis Nexis, 2008, pp 478-479
BC Bong, *Caveats under the Sarawak Land Code (Cap 81) - Law & Practise*, 1989, p 80
Black's Law Dictionary, p 1699

Counsel:

For the appellant: Albert Tang (Andy Tan Tung Sii with him); M/s Andy & Associates
For the respondents: Rajesh Jethi; M/s Jethi & Associates

[For the Court of Appeal judgment, please refer to Tebin Mostapa v. Hulba-Danyal Balia & Anor [2017] 6 MLRA 154]

JUDGMENT

Vernon Ong FCJ:

Introduction

[1] In this appeal, the Federal Court was called upon to consider the following question for which leave was granted pursuant to s 96 of the Courts of Judicature Act 1964:

> Whether an administrator of a deceased's estate has the *locus standi* to bring an action to remove a caveat lodged against a parcel of land under the estate pursuant to s 177 of the Sarawak Land Code (Cap 81) having regard to s 218 of the Sarawak Land Code (Cap 81), ss 15 and 17 of the Sarawak Administration of Estate Ordinance (Cap 80) and s 8(1) of the Civil Law Act 1956?

[2] This question of law relates to the legal right of an administrator of an estate to apply to remove a caveat on a parcel of land belonging to the estate under the Sarawak Land Code (Cap 81) ('the Sarawak Land Code'). It is sufficient for the purposes of this appeal to state the following salient facts.

Salient Facts

[3] The appellant was appointed as the administrator of his late father's estate pursuant to Letters of Administration granted to him on 27 September 2010. During his lifetime, the appellant's father who was the registered owner of two parcels of land entered into a sale and purchase agreement to sell the said lands to the respondents' late father. Pursuant to the sale, the respondents' father lodged a caveat on the two parcels of land. As the appellant's father passed away without applying for the consent to transfer, the sale agreement remained uncompleted.

[4] In 2016, the appellant *qua* administrator of his late father's estate, applied to the High Court under s 177 of the Sarawak Land Code to remove the caveat. The High Court dismissed the application on the ground that the appellant *qua* administrator did not have the *locus standi* to apply for the removal of the caveat under s 177 of the Sarawak Land Code. The Court of Appeal by a majority decision dismissed the appellant's appeal.

Decision Of The High Court

[5] The learned judge found that the appellant *qua* administrator did not have the *locus standi* to apply to remove the caveat as he did not have a registered interest under s 177 of the Sarawak Land Code (see *Teng Hung Ping v. Hoan Siew Choo & Ors* [1993] 1 MLRH 611; and *Eda Lee @ Lee Ada v. Lai Nam Fah & Anor* [2014] MLRHU 1356). The learned judge drew a distinction with holders of powers of attorney which she held to have registrable interest and thereby had locus to make such applications (see *David Gramong v. Rasit Tar* [1991] 1 MLRH 644; and *Kumpulan Laudiri Sdn Bhd v. Tang Kah Ung & 2 Ors* [2004] 6 MLRH 594).

[6] Whilst accepting that the appellant *qua* administrator was not acting in his personal capacity but acting on behalf of the estate, the learned judge also opined that beneficiaries under an intestacy has no interest in the estate until the administration of the estate is complete and distribution made according to the law of distribution (see *Law Hock Key & Anor v. Yap Meng Kan & Ors* [2008] 1 MLRA 160; *Hong Leong Bank Bhd v. Staghorn Sdn Bhd & Other Appeals* [2007] 3 MLRA 150; and *Chong Fook Sin v. Amanah Raya Bhd & Ors* [2010] 2 MLRA 222).

Decision Of The Court Of Appeal

[7] The Justices in the majority (David Wong and Umi Kalthum JJCA) affirmed the High Court's decision on the following grounds:

i. The policy and rationale of the Sarawak Land Code is that of registration;

ii. The paramount word in s 177 is the word "registered";

iii. Followed the interpretations given by Richard Malanjum J (later CJ) in *Teng Hung Ping*, *supra* and Chong Siew Fai J (later CJSS) in *David Gramong*, *supra*;

iv. Eschewing the purposive interpretation, the majority opined that unless one has a registered interest in the scope of the Sarawak Land Code, one has no *locus standi*;

v. The appellant is not without remedy as he can still avail s 178 of the Sarawak Land Code which provides that the appellant may himself register as the administrator of the estate and with such registration he will have clothed himself with the *locus standi* to mount an action to remove the caveat.

[8] The Justice in the minority (Hamid Sultan JCA) preferred the purposive approach or the harmonious construction of statutes approach enshrined under s 17A of the Interpretation Acts 1948 and 1967 (Interpretation Acts). The minority opined that in interpreting s 177 of the Sarawak Land Code the learned judge failed to consider: (i) s 218 of the Sarawak Land Code which provides that any person described as a proprietor shall be deemed to include the administrator of that person; (ii) ss 15 and 17 of the Sarawak Administration of Estates Ordinance (Sarawak Estates Ordinance); and (iii) s 8 of the Civil Law Act 1956 (CLA 1956) which recognises that the administrator of the estate will step into the shoes of the deceased registered proprietor to act within the parameters of the law. Accordingly, the appellant *qua* administrator is clothed with *locus standi* both under the Sarawak Land Code as well as the other statutes to file an application for the removal of the caveat.

Submissions Of Parties

[9] Learned counsel for the appellant argued that the words 'registered proprietor' in s 177 of the Sarawak Land Code include his administrator. In support of this proposition, counsel referred to s 218 of the Sarawak Land Code which provides that in any form under the Sarawak Land Code the description of any person as proprietor shall be deemed to include the administrator of that person. As such, even though s 177 did not mention the word 'administrator', it is presumed that the word 'administrator' has been inserted in s 177 although not expressly stated (*View Esteem Sdn Bhd v. Bina Puri Holdings Berhad* [2018] 1 MLRA 460). Notwithstanding the opening words in s 218 which refers to 'form', it was submitted that this is a reference to the whole of the Sarawak Land Code and is not limited to the 'Forms' set out in the First Schedule of the Sarawak Land Code.

[10] Learned counsel submitted that it is a rule of statutory interpretation that statues cannot be read in isolation and different statutes must be read together and construed harmoniously with one another (*Wan Khairani Wan Mahmood v. Ismail Mohamad & Anor* [2007] 2 MLRA 429 (CA); *Timbalan Ketua Polis Kelantan & Anor v. Ishak Mansor* [2012] 6 MLRA 151 (CA); *Mary Colete John v. South East Asia Insurance Bhd* [2012] 6 MLRA 89 (FC)). Therefore, he argued

that to construe s 177 to include the administrator of a deceased registered proprietor would be harmonious with the Sarawak Estates Ordinance which provide that (i) all the property, estate and effects of the deceased shall vest in the administrator (s 15 of the Sarawak Estates Ordinance) and that the administrator shall collect and recover all the property, assets and effects of the estate (s 17 of the Sarawak Estates Ordinance). Adopting such a construction would be harmonious with s 8(1) of the CLA 1956 which provides that on the death of any person all causes of action subsisting against or vested in him shall survive against or for the benefit of his estate.

[11] Further, learned counsel argued that *Teng Hung Ping*, *supra* was decided erroneously and *per incuriam* as that decision did not consider s 218 of the Sarawak Land Code. The New Zealand case of *Boswell v. Francis* [1974] 2 NZLR 488 which was relied upon by Richard Malanjum J (as he then was) is distinguishable as the applicant for the removal of caveat in that case was not an administrator of the deceased's estate but was the registered proprietor of a parcel of adjoining land. As an administrator the appellant steps into the shoes of the deceased unlike that of an attorney under a power of attorney who is conferred with power to do certain acts and things. Similarly, *Eda Lee, supra* which followed *Teng Hung Ping* was also decided erroneously and *per incuriam*.

[12] In reply, learned counsel for the respondents argued that the appellant is applying a strained construction on the word 'registered' in s 177. Section 177 is a specific provision dealing with persons who are entitled to remove a caveat. Section 281 which provides that a 'proprietor' is deemed to include an administrator does not override s 177. He argued that s 218 is consistent with s 177 because s 218 does not refer to the word 'registered'. It is insufficient for the purposes of s 177(1) because s 177(1) requires such a proprietor to be a 'registered proprietor'. Conversely, if the word 'administrator' is planted under s 177(1) in place of the word 'proprietor', the administrator would become a 'registered administrator'. Therefore, the requirement of registration stated under s 177 cannot be done away with by s 218 (judgment of Chong Siew Fai J (as he then was) in *Loh Ing Kiong & Anor v. Chieng Yong Tiong* (unreported, Sibu OM No 2 of 1982) followed in *Teng Hung Ping*, *supra*. Further, s 218 which is a general statutory provision cannot override s 177 which is a specific statutory provision.

[13] Learned counsel also argued that s 177 of the Sarawak Land Code is *in pari materia* with s 143 of the New Zealand Land Transfer Act 1952 on the removal of caveat. Section 143 was considered in *Boswell v. Francis*, *supra* where Cooke J held that a person who is not the registered proprietor at the time when the application is made is not 'Any such ... registered proprietor' within the meaning of s 143 and that accordingly the court cannot entertain the application.

[14] Learned counsel for the respondents also argued that the provisions of s 177 are clear and unambiguous and can only give rise to one interpretation (see *Tunku Yaacob Holdings Sdn Bhd v. Pentadbir Tanah Kedah & Ors* [2015] 1 MLRA

355 (FC); *Kesatuan Pekerja-Pekerja Bukan Eksekutif Maybank Berhad v. Kesatuan Kebangsaan Pekerja-Pekerja Bank & Anor* [2017] 2 MELR 349; [2017] 4 MLRA 298 (FC); *Krishnadas Achutan Nair & Ors v. Maniyam Samykano* [1996] 2 MLRA 194 (FC); *Metramac Corporation Sdn Bhd v. Fawziah Holdings Sdn Bhd* [2006] 1 MLRA 666 (FC); *Kijal Resort Sdn Bhd v. Pentadbir Tanah Kemaman & Anor* [2015] 1 MLRA 255 (FC); *Merck KGaA v. Leno Marketing (M) Sdn Bhd; Registrar Of Trade Marks (Interested Party)* [2018] 3 MLRA 503 (FC); *Muhammed Hassan v. Public Prosecutor* [1997] 2 MLRA 311 (FC)). It was further submitted that the majority in the Court of Appeal correctly held that any other interpretation accorded to the clear words of s 177 would be to enter into the realm of judicial activism or legislating which is never the duty of the courts of law.

[15] Even though an administrator may step into the shoes of the deceased under the other statutory provisions argued by the appellant such as ss 15 and 17 of the Sarawak Estates Ordinance and s 8(1) of the CLA 1956, the provisions of s 177 would still require him to register his estate or interest on the land on which a caveat is lodged before he can apply to remove it. In other words, the provisions of s 177 cannot be side stepped.

[16] At any rate, the appellant can resort to the alternative remedy under s 178 of the Sarawak Land Code by registering his interest prior to invoking s 177 ("*Caveats under the Sarawak Land Code (Cap 81)* - Law & Practise" by BC Bong (1989) at p 80; *Teng Hung Ping, supra*). In response to the appellant's argument that s 177 provides a more direct and simpler mechanism than s 178, it was submitted by learned counsel for the respondents that where there is a specific remedy or adequate remedy available, the court will not make a declaratory order (see *Manggai v. Government Of Sarawak & Anor* [1970] 1 MLRA 344 (FC)).

Administration Of Deceased Person's Estate

[17] The principal statute governing the administration of the estate of a deceased person is the Probate and Administration Act 1959 (Probate Act 1959). In Sarawak, however, the applicable law in respect of administration of estates is the Sarawak Estates Ordinance.

[18] An administrator is a person who is appointed under Letters of Administration which are issued by the court authorising the administrator to administer and distribute the deceased person's estate in accordance with law. In contrast, a Grant of Probate is issued by the court to a person or persons named as executors under a will of a deceased person (in law, a person who has made a will is referred to as a testator) to administer the testator's estate. An executor is required to ensure that any debts and creditors that the testator had are paid off, and that any remaining money or property is distributed according to the testator's wishes as stated in the will.

[19] In most situations, Letters of Administration are issued in respect of a person who dies intestate, ie not having made a will before one dies. Where, however, there are assets remaining in an estate after the death or removal of the administrator or executors, or where either administrators or executors

are unable to complete and wind-up the estate, the court may appoint another person as the second administrator (administrator *de bonis non*) to pick up where the former administrator left off; such a person is appointed as an administrator under a Letter of Administration *De Bonis Non*. Accordingly, an administrator *de bonis non* is the proper course to pursue when it is discovered that the assets of the estate remain unadministered and the former executor or administrator has been discharged for one reason or another. Lastly, Letters of Administration are also issued in respect of a person who had made a will during his lifetime but died intestate as to some beneficial interest in his other assets was not provided under his will; in this case, Letters of Administration *De Bonis Non* with Will Annexed is issued in relation to the administration and distribution of the portion of the deceased person's estate which is not covered by the will.

[20] Apart from the abovementioned, during the pendency of a suit pertaining to the validity of a will, the court may issue Letters of Administration *pendente lite* particularly where the executor is unable to act, or there is no executor or administrator at all, and the validity of the will or the estate is very much in question. In such circumstances it is absolutely necessary that the administrator be appointed to essentially preserve the assets of the estate, "pending the litigation", or in Latin, *pendente lite*. The parties typically agree on a neutral person to be appointed as administrator *pendente lite* and a court application is made for such an order. Such administrator has all the rights and powers of a general administrator, other than the right to distribute the estate assets. He is very much subject to the control of the court, and acts under its direction, and the authority of s 19 of the Probate and Administration Act 1959 (Probate Act 1959). The purpose of this appointment is to provide interim administration of the estate until the action has being concluded, and basically nothing else. Once the action has been concluded, this grant will cease, either upon the will been proved and probate granted, or upon the will being set aside and letters of administration granted in its place.

[21] A person who is appointed as an administrator or an executor is the personal representative of the estate of the deceased person (s 2 Probate Act 1959). As a personal representative he has the same powers to sue in respect of all causes of action that survive the deceased (s 59 Probate Act 1959). An administrator is required to hold the immovable property of the estate upon trust, subject to sanction of the court, to sell the same. He also holds the movable property on trust to call in, sell and convert into money (s 68 Probate Act 1959).

[22] In Sarawak, the grant of Letters of Administration vests in the administrator for the purpose of administration, all the property, estate and effects of the deceased (s 15 of the Sarawak Estates Ordinance). The administrator is charged with: (i) collecting and recovering all the property, asset and effects, (ii) discharging out of them all the debts due by the deceased which are legally recoverable, and (iii) distributing the residue of the estate

among the beneficiaries or heirs of the deceased in accordance to law (s 17 of the Sarawak Estates Ordinance). Instead of being referred to as the personal representative, an administrator is referred to as the 'Representative' of the estate of the deceased (s 2 of the Sarawak Estates Ordinance).

Transmission On Death

[23] Accordingly, it is clear that an administrator is clothed with the legal right or power to deal with the property, estate and effects of the deceased person. In this case, the appellant *qua* administrator is clothed with the same rights subject to the law of administration and distribution. However, insofar as land is concerned, there is also a procedural requirement under which the land must first be transmitted to the administrator before the administrator can deal with the land; this process is known as transmission. Under the National Land Code (NLC), the administrator may apply to the Registrar to be registered, and upon such application, the Registrar shall endorse on the register document of title to the land a note of the date of the death of the deceased proprietor and a memorial to the effect that the land is vested in the administrator 'as representative' (ss 346 and 347 of the NLC).

[24] There is also an express provision under the Sarawak Land Code on transmissions. Section 169 of the Sarawak Land Code on transmissions provides that an administrator may apply to the Registrar to be registered as proprietor of the land. Upon registration being made, the administrator shall hold the land and shall be deemed to be the absolute proprietor thereof.

The Court Of Appeal's Divergent Approach To Statutory Interpretation (The Majority View)

[25] The majority judgment written by David Wong JCA (later CJSS) took the view that applying the golden rule of interpretation it is necessary to ascertain the true intention of the legislature. And in so doing, the courts are bound to adopt an approach that promotes the purpose or object underlying that particular statute. As such, the whole statute must be looked at and not merely at the clause itself. Where the language of the words employed are clear and succinct giving rise to no ambiguity, the courts must interpret them as they are. Only when there is some doubt from the words employed in the legislation can the courts adopt a purposive approach to the interpretation of legislation.

The Minority View

[26] On the other hand, the minority view expressed by Hamid Sultan JCA started on the footing that the literal interpretation of statute *per se* is becoming the ghost of the past, especially where the application will lead to ambiguity or absurdity (see *Citibank Bhd v. Mohamad Khalid Farzalur Rahaman & Ors* [2000] 1 MLRA 471; *Danaharta Urus Sdn Bhd v. Kekatong Sdn Bhd* [2004] 1 MLRA 20 (FC); and *Sim Seoh Beng & Anor v. Koperasi Tunas Muda Sungai Ara Berhad* [1995] 1 MLRA 41 (CA)). The traditional literal, golden and mischief rules of statutory interpretation have been superseded by the modern approach

to statutory interpretation within the context of the legislative purpose. The purposive interpretation is partly codified under s 17A of the Interpretation Acts. In addition, a new doctrine has evolved and is now known as the harmonious construction of statutes in relation to: (i) the various provisions of the statute itself, and (ii) in relation to other statutes. This doctrine is invoked when there is a conflict between the parts or provisions of the statute or between two or more statutes. *CIT v. Hindustan Bulk Carriers* [2003] 3 SCC 57, "*Principles of Statutory Interpretation*" 5th edn by GP Singh and *Tunku Yaacob Holdings Sdn Bhd v. Pentadbir Tanah Kedah & Ors* [2015] 1 MLRA 355 (FC) were cited in support of this proposition.

Decision

[27] At first blush the opinions expressed by the majority and the minority in the Court of Appeal on the rules of statutory interpretation appear to be diametrically at odds. In our considered view, the opinions expressed by the majority and the minority are but different sides of a coin; ie to say, that taken together, the principles alluded by the majority and the minority may be taken as the settled principles of statutory interpretation. It is in the application of those rules of statutory interpretation to the provisions of the Sarawak Land Code in the particular circumstances of this case that is the issue. However, given the dichotomy of the majority and minority, we think it is appropriate to re-state below the rules of statutory interpretation.

Statutory Interpretation

[28] At common law, there are three judicial rules of statutory interpretation. They are: (i) the Literal rule, (ii) the Golden Rule, and (iii) the Mischief Rule. According to the Literal Rule, the statute is read by its natural and ordinary, meaning of the words, the assumption being that Parliament has said what it means. However, this can lead to absurd outcomes or in other instances the literal interpretation may appear to be contrary to Parliament's intentions. If the Literal Rule yields an absurd outcome, the court will apply the Golden Rule. When the usual meaning of a word causes unjust outcomes, the courts interpret the offending word to reduce the absurdity. The Golden Rule is applied narrowly where there is more than one meaning of a word, the court may chose the meaning that avoids an absurdity. Where there is only one meaning but the Literal Rule would lead to an absurd or repugnant situation, the court will modify the meaning of the words or phrases to avoid the absurd result. If the Literal and Golden Rules have failed to achieve a just result, the court will apply the Mischief Rule to ascertain the wrong (or mischief) that Parliament was trying to remedy and interpret the statute in accordance with Parliament's intention; in essence the purposive approach to statutory interpretation. This approach requires the court to examine the object of the statute in question and to construe the doubtful phrases or words in accordance with that purpose.

[29] The recent pronouncements of the Federal Court should provide further judicial insight on the application of these settled common law rules of statutory interpretation:

- In *Tunku Yaacob Holdings Sdn Bhd, supra*, the question of law was whether the leave application for judicial review must be filed within 40 days under O 53 of the Rules of Court 2012 (ROC 2012) from: (a) the date of the publication of Form D under s 8 of the Land Acquisition Act 1960 (LAA 1960) in the Gazette or (b) the service of the notice of enquiry in Form E of the LAA 1960 on the registered proprietor of the land pursuant to s 10 of the LAA 1960. This question pertained to whether the application by the applicant was out of time *vis-a-vis* the impugned decision to acquire the applicant's land was first communicated to the applicant. The Federal Court held that time would only start to run against an applicant for judicial review when the applicant had actual knowledge of the relevant decision or that the applicant had been served with the relevant notices under the LAA 1960. In that case, the decision was first communicated to the applicant when the Form E notice was issued and served on the applicant. In construing ss 8 and 10 of the LAA 1960 and O 53 of the ROC 2012, the Federal Court at paras [30] to [34] started on the footing that the Legislature does nothing in vain and the court must endeavor to give significance to every word of the law legislated and it is presumed that if a word or phrase appears in a legislation, it was put there for a purpose and must not be disregarded. Where the language of a legislation is clear and explicit, the court must give effect to it, whatever may be the consequences. If the precise words used are plain and unambiguous, the court is bound to construe them in their ordinary sense, and not to limit those plain words by other considerations. Where, however, the words used are ambiguous, the meaning to be preferred must be one which is more in accord with justice and convenience but in general the words used read in their context must prevail. O 53 of the ROC 2012 must be read together or in the context with the relevant provisions of the LAA 1960 on land acquisition proceedings. All those relevant provisions must be interpreted based on a purposive and literal construction which is one which follows the literal meaning of the enactment where that meaning is in accordance with the legislative purpose and applies where the literal meaning is clear and reflects the purposes of the enactment; and that this is clearly in line with s 17A of the Interpretation Acts.

- In *Kesatuan Pekerja-pekerja Bukan Eksekutif Maybank Berhad, supra* the question of law arose from a decision of the Director General of Trade Unions (DGTU) to register an in-house union to represent non-executive employees of a bank. The National

Union of Bank Employees' (NUBE) appealed to the DGTU under s 7 of the Trade Unions Act 1959 (TUA 1959) to cancel the registration elicited no response from the DGTU. NUBE filed an application for judicial review to challenge and quash the DGTU's decision on two grounds: (i) the DGTU failed to give NUBE an opportunity to be heard before making the decision, and (ii) the DGTU failed to take into account the scope of the in-house union's membership which overlapped with the scope of membership of NUBE. The question of law posed was whether in considering an application for registration of a trade union in respect of a particular establishment, the DGTU was required under s 12 of the TUA 1959 to consult with any existing trade unions representing workman in that establishment, trade, occupation or industry. On the established facts, no consultation was made by the DGTU in coming to his decision. The Federal Court said that the function of a court when construing an Act of Parliament is primarily to interpret the statute in order to ascertain what the legislative intent is. This is primarily done by reference to the words used in the provision. Adopting the purposive and literal construction, the literal meaning of a statute will be followed where that meaning is in accord with the legislative purpose. The court should not place an interpretation upon any statute which has the effect of producing a result opposite to that intended by the collective will of the Legislature as gathered from the words of the legislation. An interpretation which would advance the object and purpose of the statute must be the prime consideration of the court, so as to give full meaning and effect to it in the achievement to the declared objective. In short, the courts now adopt a purposive approach which seeks to give effect to the true purpose of legislation and are prepared to look at much extraneous material that bears on the background against which the legislation was enacted. In interpreting s 12 of the TUA 1959, an interpretation which meets the purport and design of that provision ought to be considered. The provisions must be read as a whole. The courts will imply into the statutory provisions a rule that the principles of natural justice should be applied. As such, the courts will imply into the statutory provision a rule that the principle of natural justice should be applied. The Federal Court went on to hold that s 12 of the TUA 1959 was not complied with as NUBE was not consulted by the DGTU before coming to his decision (see paras [51] to [59] of the judgment).

- In *Merck KGaA, supra* the preliminary issue before the Federal Court was whether the High Court, in exercising its powers under s 28 of the Trade Marks Act 1976 (TMA 1976), was acting in its original jurisdiction or appellate jurisdiction. In that case, the appellant who was the registered owner of certain trademarks

filed a notice of opposition to the respondent's application to register a trade mark in the same class before the Registrar. The Registrar dismissed the appellant's opposition and registered the respondent's trade mark. The appellant appealed to the High Court against the Registrar's decision under ss 28(5), (6) and (7) of the TMA 1976. The High Court agreed with the Registrar and dismissed the appeal. The appellant's appeal to the Court of Appeal failed. At the hearing in the Federal Court, the respondent raised a preliminary objection that the appeal was not competent as s 96 of the Courts of Judicature Act 1964 (CJA 1964) limits the appellate jurisdiction of the Federal Court to matters decided by the High Court in the exercise of its original jurisdiction; that the TMA 1976 confers appellate jurisdiction on the High Court with an appeal procedure as provided under O 55A of the ROC 2012. As the appeal did not emanate from a decision of the High Court in its original jurisdiction, the appeal lay outside the scope of s 96 of the CJA 1964 and must be dismissed *in limine*. In deciding the preliminary issue, the Federal Court not only interpreted the discrete conditions for a judgment or order to be appealable under s 96 of the CJA 1964. Careful consideration was also given to the meaning of 'original jurisdiction' and 'appellate jurisdiction' under ss 23 and 67 of the CJA 1964 respectively. The Federal Court referred to the well-established rule that the words used in a statute best declare the intention of Parliament and where the words are unambiguous, the court is bound to give effect to them. In addition, the Federal Court also found that the plain meaning of the word 'appeal' is consistent with the substantive nature of the appellate jurisdiction exercised by the High Court under s 28. Particular emphasis was made on the significance of the word 'appeal' in s 28 as opposed to the word 'application' in s 45 (on rectification of the register), s 46 (provisions as to non-use of trade mark) and s 56 (on certification of trade marks). The distinction is also reflected in O 87 of the ROC 2012 which makes specific provisions in respect of the TMA 1976, in particular r 2 on 'application' and r 3 on 'appeal'. The Federal Court rejected the argument that the word 'appeal' should be read to mean an appeal not in the natural sense, but in fact an exercise of the court's original jurisdiction; saying at para [93] that such a strained construction may be warranted in certain circumstances, as where a literal meaning would be in conflict with the legislative purpose or would bring about unjust, absurd, or anomalous results. In the result, the Federal Court found that the High Court was exercising its appellate jurisdiction in hearing an appeal from the decision of the Registrar under s 28 of the TMA 1976. Since the matter was not decided by the High Court in the exercise of its original jurisdiction, the appeal did not meet the statutory

condition for an appeal to the Federal Court under s 96(a) of the CJA 1964.

- In *Fairise Odyssey (M) Sdn Bhd v. Tenaga Nasional Berhad* [2019] 4 MLRA 605 (FC), the interpretation of s 12 of the Electricity Supply Act 1990 (ESA 1990) came about in an action for continuing trespass and damages for trespass. The trespass was said to have been committed by Tenaga Nasional Bhd's (TNB) transmission lines which were erected over the claimant's land. The transmission lines were originally constructed on the State land. The land was subsequently alienated to a third party and later acquired by the claimant. The main issue of contention was whether TNB obtained the approval of the State Authority for the construction of the transmission lines on the State land. The question of law posed was whether the approval of the State Authority under s 12 of the ESA 1990 must be expressed and not merely implied. The Federal Court accepted the trite principle that in interpreting a statute, words are to be construed in their plain and ordinary meaning. The words used in s 12 are clear and they mean what they say, ie that there has to be an approval by the State Authority for TNB to construct the transmission lines on the State Land. The word 'approval' is in general use and is well understood. There is an absence of the words 'approval in writing'. Applying the first and most elementary rule of construction, it is to be assumed that the words and phrases are used in their ordinary meaning. Parliament had deemed it fit not to provide for words 'approval in writing'. The intention of Parliament is made clearer if s 12 is contrasted with other provisions in the ESA 1990 which specifically stipulate for certain acts to be done in writing. The duty of the court is limited to interpreting the words used by the Legislature and it has no power to fill the gaps disclosed. To do so would be to usurp the function of the Legislature. It is not for the court to fill the gaps by inserting or adding the words 'in writing' to the words 'approval of the State Authority' in s 12. Given the word 'approval' its plain and ordinary meaning, the approval envisaged in s 12 can be in the form of an implied approval or express approval; implied as can be gathered from the facts and circumstances, or express as in writing.

- In *Ireka Engineering & Construction Sdn Bhd v. PWC Corporation Sdn Bhd & Other Appeals* [2019] 6 MLRA 1 (FC) the subcontractor obtained adjudication decisions in its favour against the main contractor for unpaid balance for works done under different subcontracts pursuant to the Construction Industry Payment and Adjudication Act 2012 (CIPAA). The subcontractor applied to the High Court to enforce the adjudication decision while the main contractor applied to set aside the adjudication decision. The

High Court allowed the subcontractor's application and dismissed the main contractor's application. The main contractor's appeals to the Court of Appeal were dismissed. Of significance in the appeals was the fact that the subcontracts in question were entered into before the CIPAA was enacted. The question of law was whether the CIPAA is to be applied retrospectively. In holding that CIPAA did not have retrospective effect, the Federal Court adverted to the Interpretation Acts which embodied the common law position, and that the Interpretation Acts applies to all Acts of Parliament enacted after 18 May 1967. The trite principle is that an Act of Parliament is not intended to have a retrospective operation unless a contrary intention is evinced in express and unmistakable terms or in a language which is such that it plainly requires such a construction. Another principle of statutory interpretation which applies with equal force is that legislation to regulate human conduct ought to deal with future acts and ought not to change the character of past transactions carried on upon the faith of the existing law. There is at common law a *prima facie* rule of construction that a statute should not be interpreted retrospectively so as to impair an existing right or obligation unless that result is unavoidable on the language used, or unless a contrary intention appears. Where the underlying purpose of the Act in question is plain, unambiguous and not disputed in the appeal, the duty of the court is to expound the language of the Act in accordance with the settled rules of construction. The duty of the court is limited to the words used by the Legislature and to give effect to the words used by it. Regard to the purpose of an Act of Parliament under s 17A of the Interpretation Acts shall only be had when the meaning of a statutory provision is not plain. More significantly, the Federal Court applied a holistic interpretation and construction, and since there are various provisions in the CIPAA that impact parties' substantial rights, the CIPAA read in its entirety should have prospective application only. It could not be that some parts of the CIPAA have retrospective application while the other parts are held to have prospective application (see also *Jack-In Pile (M) Sdn Bhd v. Bauer (Malaysia) Sdn Bhd & Another Appeal* [2019] MLRAU 341).

- In *Asia Pacific Higher Learning Sdn Bhd v. Majlis Perubatan Malaysia & Anor* [2020] 1 MLRA 68, the Federal Court considered the question of whether a High Court's decision to allow an amendment application made in the course of a trial is appealable to the Court of Appeal. In determining that the High Court's decision is not appealable, the Federal Court said that it was necessary to consider other relevant provisions which are directly related to or are found in immediate connection with the definition of the word 'decision' in s 3, s 50 (on jurisdiction to hear and determine

criminal appeals), s 67 (on jurisdiction to hear and determine civil appeals), and s 68 (on non-appealable matters) of the CJA 1964. The function of the court when construing an Act of Parliament is to interpret the statute in order to ascertain its legislative intent. In doing so, the court should not disregard the statutory words used in the statute. The Federal Court also reiterated on the necessity to consider every word in each section of an Act of Parliament and give its widest significance. The court recognises that Parliament actually does nothing in vain. The court being an interpreter is therefore not entitled to disregard or ignore words used in a statute or to treat them as superfluous or insignificant. *Prima facie*, every word appearing in a statute must bear some meaning. A statute has to be read in the correct context and the interpretation of the meaning of the statutory words used should coincide with what Parliament means to say. It is a settled rule of statutory interpretation that the court is permitted to read additional words into a statutory provision where clear reasons for doing so are to be found within the statute itself. This approach would accord with the settled rule of statutory interpretation that provisions of a statute must be read harmoniously and conjunctively.

[30] In our opinion, the rules governing statutory interpretation may be summarised as follows. First, in construing a statute effect must be given to the object and intent of the Legislature in enacting the statute. Accordingly, the duty of the court is limited to interpreting the words used by the Legislature and to give effect to the words used by it. The court will not read words into a statute unless clear reason for it is to be found in the statute itself. Therefore, in construing any statute, the court will look at the words in the statute and apply the plain and ordinary meaning of the words in the statute. Second, if, however the words employed are not clear, then the court may adopt the purposive approach in construing the meaning of the words used. Section 17A of the Interpretation Acts provides for a purposive approach in the interpretation of statutes. Therefore, where the words of a statute are unambiguous, plain and clear, they must be given their natural and ordinary meaning. The statute should be construed as a whole and the words used in a section must be given their plain grammatical meaning. It is not the province of the Court to add or subtract any word; the duty of the court is limited to interpreting the words used by the legislature and it has no power to fill in the gaps disclosed. Even if the words in a statute may be ambiguous, the power and duty of the court "to travel outside them on a voyage of discovery are strictly limited". Third, the relevant provisions of an enactment must be read in accordance with the legislative purpose and applied especially where the literal meaning is clear and reflects the purposes of the enactment. This is done by reference to the words used in the provision; where it becomes necessary to consider every word in each section and give its widest significance. An interpretation which would advance the object and purpose of the enactment must be the prime consideration of the court, so as to give full meaning and effect to it in the

achievement to the declared objective. As such, in taking a purposive approach, the court is prepared to look at much extraneous materials that bears on the background against which the legislation was enacted. It follows that a statute has to be read in the correct context and that as such the court is permitted to read additional words into a statutory provision where clear reasons for doing so are to be found in the statute itself.

[31] In the particular circumstances of this case, we are of the considered view that the provisions in an enactment should be interpreted purposively and harmoniously and within the contextual background in which the provisions of statute present themselves. Further, we do not think that statutory provisions should be interpreted *in vacuo*; statutory provisions are interpreted to be applied to the established facts of a case. Accordingly, it is important to consider the factual matrix under which the question of law arose. In this case the registered proprietor of the land is deceased. As such, the only person who can act for the estate of the deceased person is the administrator, executor or an attorney under an irrevocable power of attorney given for valuable consideration. In that situation, can it be said that reading s 177 literally, an administrator has no *locus standi* and is thereby automatically prohibited from applying for the removal of the caveat? We do not think that s 177 can be interpreted in such a narrow sense in the light of the particular facts of this case. As the appellant is making the application in the capacity as an administrator, it follows that it is incumbent upon the court to consider: (i) the true meaning of the words 'registered proprietor' in s 177 read together with ss 113, 115 and 218 of the Sarawak Land Code (ii) the meaning of the word 'administrator' in ss 4, 15 and 17 of the Sarawak Estates Ordinance in so far as they relate to the settled facts (iii) the meaning of the word 'Representative' in s 2 of the Sarawak Land Code, (iv) s 8 of the CLA 1956 on the related issue of survival of subsisting or vested causes of action for the benefit of the estate, and (v) the context in which the words are used.

[32] We will begin with s 177(1) which reads as follows:

> **Section 177(1) - Procedure for removal**
>
> **Any registered proprietor** or any other person having a registered estate or interest in the estate or interest against which a caveat has been lodged, may at any time, if he thinks fit, apply to the High Court for an order that the caveat be removed.
>
> [Emphasis Added]

[33] It is quite clear that under s 177(1) only a registered proprietor or any other person having a registered estate or interest in the estate or interest may make such an application. As the appellant is neither a registered proprietor nor a person having a registered estate or interest, does it necessarily follow that he is thereby precluded from making an application. In this connection, we think it is necessary to consider ss 113 and 115 of the Sarawak Land Code which are as follows:

> Section 113 - When instruments deemed to be registered Every grant and lease of State land and every instrument or other dealing affecting land under this Code shall be deemed to be registered under the provisions and for the purposes of this Code as soon as particulars regarding the same, together with the name of the person entitled to the interest therein, have been entered on the Register and the entry signed by the Registrar:
>
> > Provided that any grant, lease or provisional lease of State land shall also be deemed to be registered as soon as one part of such grant or lease, duly completed, is permanently annexed to, or forms part of, the Register.
>
> Section 115 - Registered proprietor
>
> The person named in any grant, lease or other instrument registered in accordance with s 113 as entitled to or taking any estate or interest shall be deemed to be the registered proprietor.

[34] Pursuant to ss 113 and 115, a person whose name is entered on the register is deemed to be the registered proprietor. It is therefore clear that the fact of a proprietor being a 'registered proprietor' is deemed in law; in other words, the proprietor is treated as if he is the registered proprietor. At this juncture, it is also necessary to advert to s 218. It will be seen that s 218 is relevant and material as it provides that the description of any proprietor under the Sarawak Land Code shall be deemed to include the executors and administrators of that person.

> **Section 218 - Legal representatives**
>
> In any form under this Code, **the description of any person as proprietor**, transferor, transferee, chargor, chargee, lessor, lessee or sub-lessee, or as trustee, or as having or taking any estate or interest in any land, **shall be deemed to include the heirs, executors and administrators** and assigns of that person.
>
> [Emphasis Added]

[35] In this case, the deceased person was the registered proprietor of the land. Accordingly, it follows that the appellant qua administrator is deemed to be the proprietor pursuant to s 218 and it must equally follow under the deeming provision in s 115 that the appellant *qua* administrator is deemed to be the registered proprietor. Therefore, for the purposes of s 177(1), the appellant is a registered proprietor in law. That is the effect of the administrator stepping into the shoes of the deceased registered proprietor. As can be seen from the above, it is only in reading the different statutory provisions together on the same subject that the court can give effect to the legislative intent and object of the enactment.

[36] To fortify our opinion that such an interpretation reflects the true legislative intent and object of the Sarawak Land Code in general and s 177(1) in particular, we think it is also relevant to consider s 4(1) of the Sarawak Estates Ordinance relating to the necessity of obtaining letters of administration in order to deal with the land.

"**Section 4(1) - Dealings with assets prior to official representation**

No person (other than a Probate Officer) **shall assume possession of, dispose of, or deal with the assets of a deceased person** (other than heirlooms, household and personal effects, including jewellery, such jewellery not being of a greater value than five hundred ringgit) **unless he has obtained a grant of probate or letters of administration** or the authentication under s 14 of a grant issued by a British authority referred to in that section."

[Emphasis Added]

[37] In this connection as the land in question is part of the appellant's late father's estate the land is deemed to be vested in the appellant *qua* administrator pursuant to s 15 of the Sarawak Estates Ordinance which provides that:

"**Section 15 - Effect of grant of probate, etc.**

The issue by a Probate Officer **of probate or letters of administration shall vest in the executor or administrator** named therein, and if more than one, jointly, **for the purposes of administration, all property, estate and effects of the deceased** set out in the list annexed to the grant and all property exempted under s 4(1)."

[Emphasis Added]

[38] Interpreting s 15 in the context of administration of estate of a deceased person, the word 'vest' as stipulated under s 15 is a deeming provision, such that once an administrator is appointed under letters of administration, the property, estate and effects of the deceased are vested in the administrator. The vesting is automatic in the sense that it is presumed in law as a matter of course.

[39] The word 'vest' is not defined under the Sarawak Estates Ordinance. However, Black's Law Dictionary at p 1699 defines 'vest' to mean: (i) to confer ownership (of property) upon a person, (ii) to invest (a person) with the full title to property, (iii) to give (a person) an immediate, fixed right of present or future enjoyment, or (iv) to put (a person) into possession of land by the ceremony of investiture. The word is also defined in Ananda Krishnan, *Words, Phrases and Maxims, Legally and Judicially Defined, Lexis Nexis*, 2008 at pp 478-479 as "to place in possession to take possession of; to take an interest in property when a named period or event occurs; it may mean full ownership or only possession for a particular purpose or clothing the authority with power to deal with the property as agent of another person or authority. Oxford's Advanced Learner's Dictionary defined it plainly as: (i) to give somebody the legal right or power to do something, or (ii) to make somebody the legal owner of land or property. In *Ho Giok Chay v. Nik Aishah* [1960] 1 MLRH 225, Hepworth J citing *Re Lord's Settlement* [1948] LJR 207 said that 'Vest', in the absence of a context, is usually taken to mean vest in interest rather than vest in possession". Put in simpler terms, once the land is vested in the appellant *qua* administrator, the appellant can legally deal with the land in the performance of his duties as an administrator. What then are his duties under law?

[40] As an administrator, the appellant is under a statutory duty to collect and recover all the property, discharge debts and distribute the residue of the estate among the beneficiaries. This duty is imposed under s 17 of the Sarawak Estates Ordinance.

> "Section 17 - Duties of executors and administrators On obtaining probate or letters of administration, the executor or administrator, as the case may be, shall immediately:
>
> (a) collect and recover all the property, assets and effects covered by the grant;
>
> (b) discharge out of them all the debts due by the deceased which are legally recoverable; and
>
> (c) distribute the residue of the estate among the beneficiaries or heirs of the deceased, according to the will of the deceased or, as the case may be, in the shares to which they are entitled by recognized law or custom:
>
> Provided that before distributing the residue of the estate the executor or administrator may reimburse himself out of the assets of the estate in respect of any moneys paid by him on account of funeral expenses, estate duty, other probate expenses, and any other necessary expenses incurred by him on behalf of the estate."

[41] The due performance of that duty to administer the estate includes the duty to act in respect of any subsisting or vested causes of action for the benefit of the estate. In our view, the application to remove the caveat on the land is a cause of action which is vested in the appellant. Support for this is found in subsection 8(1) of the CLA 1956 which preserves any subsisting or vested causes of action for the benefit of the estate.

> "Section 8(1) - Effect of death on certain causes of action Subject to this section, on death of any person all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of the estate."

[42] In our view, the making of an application to court under s 177 for the removal of a caveat is a vested cause of action within the meaning of subsection 8(1) of the CLA 1956; for which the appellant *qua* administrator is entitled and authorised under law to act for the benefit of the estate.

[43] In the present case, there is no evidence to show that the appellant has made any application for transmission under s 169 of the Sarawak Land Code. In this situation, the issue is whether the vesting of the land in the appellant qua administrator is sufficient in law to constitute the appellant as the registered proprietor for the purposes of s 177 of the Sarawak Land Code?

[44] In holding that the appellant did not have a registered interest, the majority in the Court of Appeal also agreed with the view expressed in *Teng Hung Ping*'s case that: (i) the appellant as the administrator of the estate holds

no registered interest or estate in the land, and (ii) the appellant is not without remedy as the appellant can apply under s 178 of the Sarawak Land Code to be registered as the administrator of the estate so as to enable the appellant to have the *locus standi* to make the application. We think that this is a misnomer. We say this for two reasons. First, the appellant's application to remove the caveat was made in his capacity as the administrator of the estate of the deceased registered proprietor; for emphasis, it must be noted that as the administrator the appellant is standing in the shoes of the deceased registered proprietor. Second, both the High Court and the majority in the Court of Appeal appeared to have taken the view that the appellant did not have any registered interest, which view failed to take into account the obvious fact that the appellant was not acting in his own personal capacity but in the capacity as the administrator of the estate of the deceased registered proprietor. In that capacity, the law recognises that he is the representative of the estate of the deceased registered proprietor (s 2 of the Sarawak Land Code). Accordingly, we do not see how the fact that the appellant does not have a registered interest has any bearing on the matter. Further, it was also stated in *Teng Hung Ping*'s case that the existence of the caveat prohibited the claimant from making an application for transmission under s 169 of the Sarawak Land Code. If so, then the administrator of an estate of a deceased registered proprietor of land is without recourse or remedy. Without being able to be entered on the register as the administrator of the estate, the administrator would not be able to discharge his statutory duties for the benefit of the estate. At any rate, it is clear that the specific provision on transmissions is s 169 of the Sarawak Land Code; we do not think that s 178 may be interpreted to override the clear and specific provision of s 169 on transmissions. As such, the fact that the appellant has no registered interest is immaterial and irrelevant to the issue in hand.

[45] In the final analysis, the leave question falls to be determined on a proper construction to be accorded to s 177(1) of the Sarawak Land Code. For the reasons adverted to above, we do not think that the literal approach is appropriate in the circumstances of this particular case. We take the view that s 177(1) should be read purposively and in harmony with ss 2, 113, 115 and 218 of the Sarawak Land Code, ss 4, 15 and 17 of the Sarawak Estates Ordinance and s 8(1) of the CLA 1956. Taken together, the words 'registered proprietor' in s 177(1) should be interpreted to mean and include an executor or administrator of the estate of the deceased registered proprietor. In the light of the foregoing, we are driven to the conclusion that the question must be answered in positive.

[46] In consequence, we would allow the appeal with costs here and below. The orders of the Court of Appeal and High Court are set aside. The appellant's Originating Summons is allowed in prayers 1 and 2.

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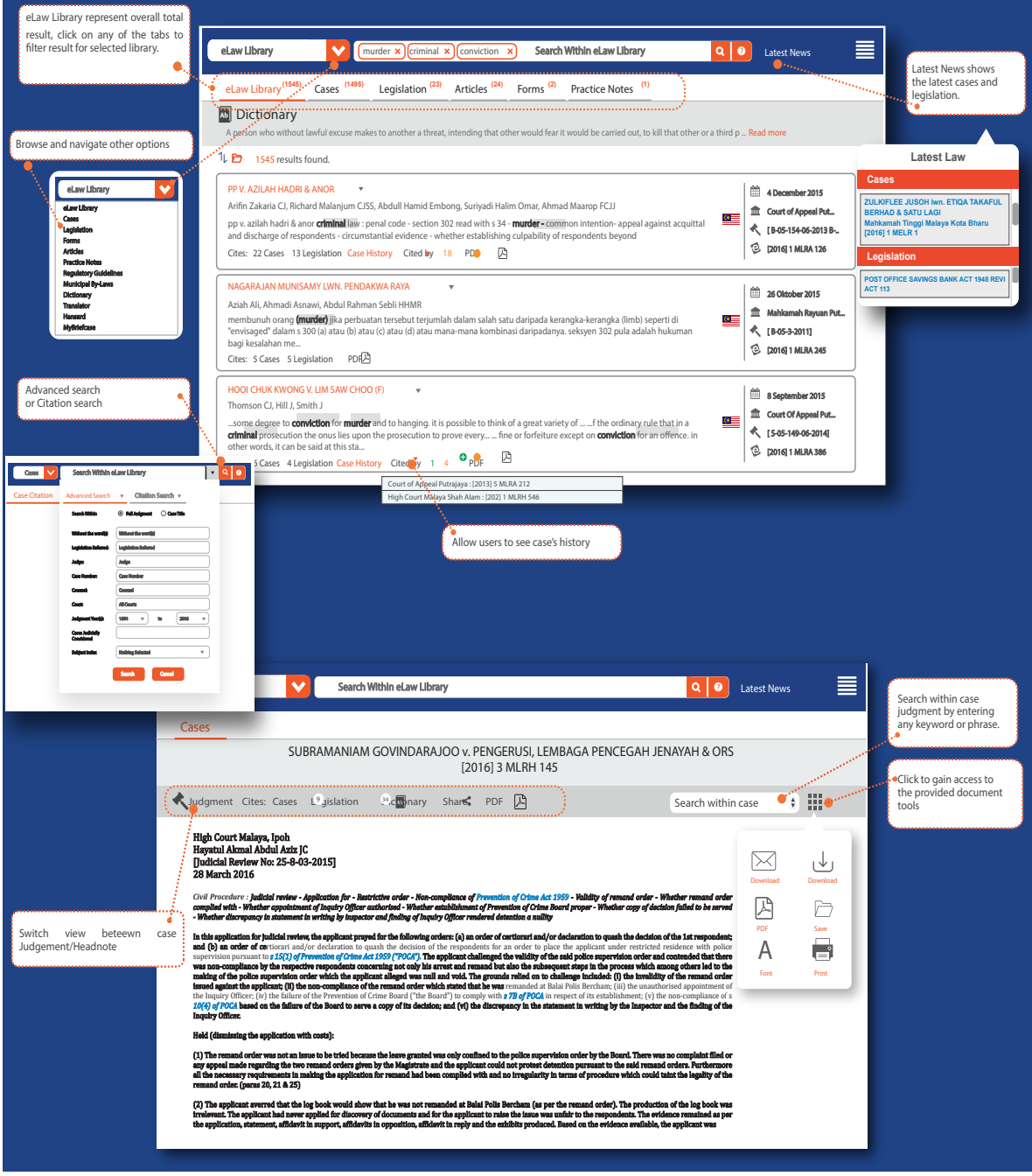

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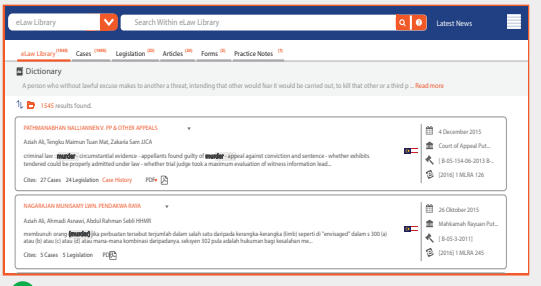

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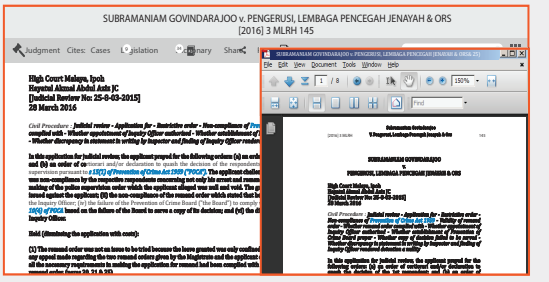

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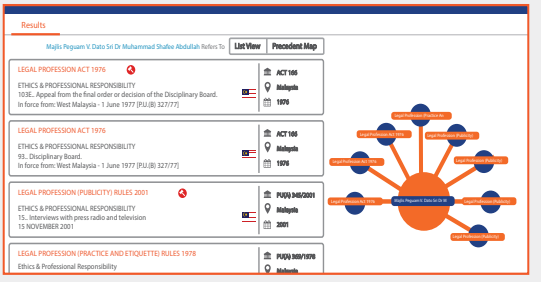

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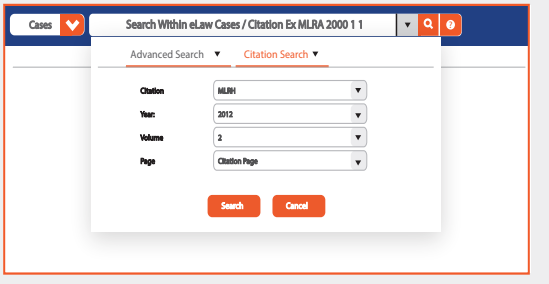

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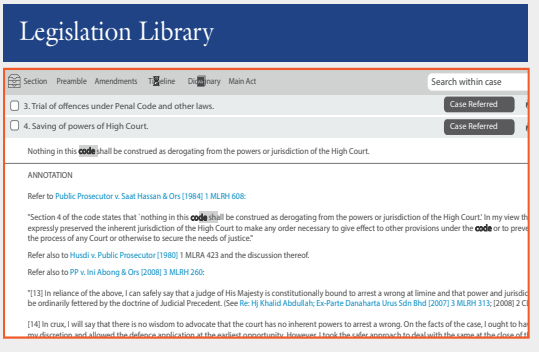

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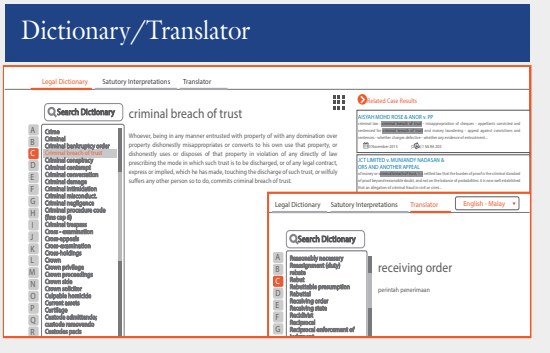

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