

**SERVICE OF NOTICE FOR DETERMINATION IN CONSTRUCTION
CONTRACTS**

WAN MOHD IZZUDDIN BIN WAN IBRAHIM

UNIVERSITI TEKNOLOGI MALAYSIA

UNIVERSITI TEKNOLOGI MALAYSIA

DECLARATION OF THESIS / UNDERGRADUATE PROJECT PAPER AND COPYRIGHT

Author's full name : WAN MOHD IZZUDDIN WAN IBRAHIM

Date of birth : 10 OCTOBER 1963

Title : SERVICE OF NOTICE FOR DETERMINATION IN CONSTRUCTION
CONTRACTS

Academic Session: 2010/2011/4

I declare that this thesis is classified as:

- CONFIDENTIAL** (Contains confidential information under the Official Secret Act 1972)*
- RESTRICTED** (Contains restricted information as specified by the organisation where research was done)*
- OPEN ACCESS** I agree that my thesis to be published as online open access (full text)

I acknowledged that Universiti Teknologi Malaysia reserves the right as follows :

1. The thesis is the property of Universiti Teknologi Malaysia.
2. The Library of Universiti Teknologi Malaysia has the right to make copies for the purpose of research only.
3. The Library has the right to make copies of the thesis for academic exchange.

Certified by :

SIGNATURE

WAN MD IZZUDDIN WAN IBRAHIM

(631004-03-5085)
MB 091076

Date : 27 MAY 2010

SIGNATURE OF SUPERVISOR

EN. JAMALUDDIN YAAKOB

(NAME OF SUPERVISOR)

Date :

NOTES : * If the thesis is CONFIDENTIAL or RESTRICTED, please attach with the letter from the organisation with period and reasons for confidentiality or restriction.

“I/We* hereby declare that I/we* have read this project report and in my/our* opinion this project report is sufficient in terms of scope and quality for the award of the degree of Master of Construction Contract Management

Signature :
Name of Supervisor I : EN JAMALUDDIN YAAKOB.....
Date :

* Delete as necessary

.

**SERVICE OF NOTICE FOR DETERMINATION IN CONSTRUCTION
CONTRACTS**

WAN MOHD IZZUDDIN BIN WAN IBRAHIM

A project report submitted in partial fulfilment of the
requirement for the award of the degree of
Master of Science (Construction Contract Management)

Faculty of Built Environment

Universiti Teknologi Malaysia

MAY 2011

DECLARATION

I declare that this project report entitled “Service of Notice for Determination in Construction Contracts” is the result of my own research except as cited in the references. The project report has not been accepted for any degree and is not concurrently submitted in candidature of any other degree.

Signature :
Name : WAN MD IZZUDDIN WAN IBRAHIM
Date : 27th MAY 2011

DEDICATION

To my wife and children for giving me the strength to complete this study

and

most of all strength

to go through

every moment of life

Thanks for everything.

ACKNOWLEDGEMENT

I begin my acknowledgment by praising Allah S.W.T for giving me the strength and will to complete within the given time this thesis in fulfilment for the award of the degree of Master of Science (Construction Contract Management).

I am extending my deepest gratitude to my supervisor En Jamaluddin Yaakob for all the guidance and patience in assisting me to complete this dissertation throughout the semester. Appreciation also goes to Professor Dr. Maizon Hashim, Professor Madya Dr. Rosli Abdul Rashid and all other lecturers involved in the Master of Science (Construction Contract Management) course, for their patience and advice during the process of completing this master project.

Again to my dearest wife and children who have shown continuous supports, encouragement and patience to me to complete this thesis.

Finally, I extend my great appreciations to all my friends, classmates and working colleagues who have helped me throughout the process of preparation and production of this master project. I will always remember and appreciate their help and may Allah S.W.T bless them.

Thank you.

ABSTRACT

Determination is a remedy provided under contract for a party to discharge his obligations upon breach by the other party. When the party to contract intends to determine a contract, he must let the other party know his intention to do so. He is required to follow several procedures before he is said to determine the contract validly. Standard forms and bespoke construction contracts usually provide procedures for parties to contract to do so. Failure to adhere to the procedures may cause the termination invalid and the repercussions of such failure is severe and of serious consequences to the determining party. When one party exercises his intention to determine a contract, the other party often seeks to destroy his intention by claiming non-compliance to procedural requirement for valid exercise of determination under the contract. One party argues that he has followed the required procedures for service of notice and the other party claims otherwise. This has led to numerous arguments and disputes between the parties often end with arbitrations or litigations. The arbitrators and courts are not helping either as decisions have not been consistent depending on how one construes the ambiguous words. The underlying matter is the interpretation adopted by arbitrators and courts in construing the ambiguous words. There are two commonest methods of interpretations used by arbitrators and courts in construing commercial contracts; by literal method or commonsense business method. Different interpretation method conveys different decisions. The question is which one would be the appropriate interpretation method for service of notice for determination in construction contract. Hence, this research intends to identify the appropriateness between the two methods. This research was carried out mainly through documentary analysis of law journals and law reports. Eleven law reports from various jurisdictions were used in this research. Result appears to indicate that commonsense business approach would be the appropriate interpretation method for service of notice for determination in construction contract. A concrete answer may not be found as the literal and commonsense business methods for interpretation are built on different nature and most of all how one interprets contracts depends on one's conception of contracts. Absolutely, there is no easy answer to this. One thing is absolute is that employer or contractor considering to determine a contract in construction contracts must follow the procedures strictly.

ABSTRAK

Penamatan kontrak adalah satu penyelesaian di bawah kontrak yang diberikan kepada pihak kontrak atas kemungkiran perjanjian di pihak lain. Bila satu pihak kontrak ingin menamatkan kontrak yang dimeterai, pihak tersebut hendaklah memaklumkan hasrat tersebut kepada pihak yang lagi satu. Pihak terbabit dikehendaki mematuhi prosedur-prosedur yang tertera dan dipersetujui di dalam kontrak tersebut. Borang-borang kontrak setara dan tidak setara biasanya menyediakan klausa dimana prosedur-prosedur untuk penamatan kontak yang perlu dilakukan oleh pihak-pihak yang berkontrak. Kegagalan dan kesilapan mematuhi prosedur-prosedur tersebut boleh menyebabkan penamatan kontrak yang tidak sah yang mana boleh mengakibatkan kesan-kesan yang buruk kepada pihak yang memulakan penamatan kontrak. Kebiasaannya, pihak yang ingin menamatkan sesebuah kontrak lazimnya mengakui mematuhi prosedur penyerahan notis penamatan kontrak dan di pihak yang lain, ingin memusnahkan usaha tersebut dengan menuduh prosedur tersebut tidak dipatuhi sepenuhnya. Perbalahan-perbalahan tersebut mengakibatkan banyak penyelesaian terpaksa di buat melalui kaedah timbangtara dan mahkamah. Keputusan-keputusan penyelesaian melalui timbangtara dan mahkamah pula tidak konsisten kerana penyelesaian adalah bergantung kepada penafsiran sesuatu ayat yang diragui dalam klausa terbabit. Perkara utama dalam penyelesaian adalah kaedah-kaedah penafsiran yang dipilih oleh penimbangtara dan hakim. Kaedah penafsiran yang biasa dalam kontrak komersial ialah penafsiran harfiah dan pendekatan perniagaan. Kedua-dua kaedah penafsiran tersebut boleh mengakibatkan keputusan-keputusan yang berlainan. Soalannya penafsiran yang manakah sesuai untuk penyerahan notis penamatan kontrak klausa di dalam kontek kontrak pembinaan. Maka, penyelidikan ini dijalankan untuk mengenalpasti perkara tersebut. Sebanyak sebelas kes mahkamah di dalam dan diluar negara dianalisis dalam penyelidikan ini. Hasil penyelidikan mendapati kaedah pendekatan perniagaan adalah kaedah interpretasi yang sesuai untuk penyerahan notis penamatan kontrak pembinaan. Ini adalah kerana kaedah tersebut berasaskan atas prinsip interpretasi yang mengambilkira latarbelakang sesuatu kontrak yang dipersetujui semasa berkontrak. Interpretasi sesuatu klausa sebenarnya banyak bergantung kepada konsep pemahaman penimbangtara dan hakim mengenai kontrak tersebut. Keputusan sebenar mungkin tidak diperolehi tetapi yang pastinya adalah pihak kontrak yang ingin menamatkan kontrak mesti mengikut prosedur-prosedur penyerahan notis yang tertera dalam kontrak dengan teliti dan tepat.