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Shearn Delamore & co.

DISPUTE
RESOLUTION
DEPARTMENT
Newsletter



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Feature Article

2024 ECC-SAL INTERNATIONAL MOOTING COMPETITION

Contributors:
Jesryna Patel, Associate
Daud Sulaiman, Associate



Dispute resolution associates, **Wong Wen Sheng, Hiral Sanghvi, Jesryna Patel and Daud Sulaiman**, represented the firm at the 2024 ECC-SAL International Mooting Competition held in Singapore from 4 to 9 January 2024.

The competition was jointly organised by **Essex Court Chambers (UK) and the Singapore Academy of Law** and saw participation from junior advocates from Singapore, Brunei, India, and Malaysia. Participants had the unique opportunity to test their advocacy skills and ability to think on their feet in front of senior advocates and judges from both Singapore and the UK.

The experience was made even sweeter by **DR Associates Jesryna and Daud bagging the Championship**, thereby making them the first non-Singaporean team to have won the competition since the competition first opened its doors to international participants in 2015.



Overall, the experience was enriching for all four associates, offering valuable learning opportunities and fostering new connections with their peers from other countries.

Contributor:
Daud Sulaiman, Associate

PRODUCTIVITY AT ITS BEST - A HEARING, WORK LUNCH AND A CONCERT IN A SINGLE DAY!

In early March 2024, **DR Partner, Sathya Kumardas, and Associate, Daud Sulaiman**, faced a remarkable test of their time management and multitasking skills. Sathya juggled a Federal Court hearing alongside a commitment to take her daughter to the Taylor Swift concert in Singapore.

The case, a complex web of allegations involving fraud and conspiracy, embroiled 12 parties, including shareholders of the plaintiff-appellant company and our client, a receiver and manager.



Despite these demands, **Sathya and Daud successfully brought the prolonged legal battle (some 12 years!)** to a conclusion and seamlessly transitioned to a productive lunch meeting with our DNA network partners at Drew & Napier. Hours later, Sathya swiftie-ly arrived at the Singapore National Stadium to create lasting memories for her daughter.

With passion, organisation, a strong support system and perhaps, a touch of fixation, anything is possible!

APPLICATION FOR FURTHER AND BETTER LIST OF DOCUMENTS FOLLOWING THE NON-COMPLIANCE OF A DISCOVERY ORDER

In this case, the Defendants were required to serve a list of documents and affirm an affidavit stating whether the documents subject to discovery are or have at any time been in the Defendants' possession, custody, or power and if not, when the Defendants' parted with them and what has become of them. The Defendants' affidavit did not provide these details. The Defendants merely provided a blanket denial as to the possession of the documents. The Defendants subsequently provided some documents which the Defendants claimed they managed to secure but these documents existed before the Discovery Order was granted and before the Defendants affirmed the affidavit.



Contributors:

Lim Jun Rui, Senior Associate

Priyanka Menon, Associate

Siti Nursyafiqah, Associate

Pursuant thereto, the Plaintiffs filed an application under **Order 24 Rule 16 Rules of Court 2012 ("ROC 2012")**, seeking an order for the Defendants to provide a further and better list of documents. The Judicial Commissioner allowed the Plaintiffs' application based on the following grounds:

- The Defendants **failed to provide any explanation regarding the whereabouts of the documents in their affidavit**. There was no fair discovery made by the Defendants.
- **The Defendants are parties to, or closely connected to the documents subject to discovery**. Therefore, they are responsible for providing or giving access to the documents to the Plaintiffs. If the documents subject to discovery were not in their possession, the Defendants should have at least informed the Court as to what happened to the documents.

This recent decision emphasises the obligations on a party against which a discovery order is made, to comply with the order. A mere denial of non-possession is insufficient to tilt the balance towards producing the documents subject to discovery.

DR Partner Rabindra S. Nathan, Senior Associate Lim Jun Rui, Associates Priyanka Menon and Siti Nursyafiqah represented the Plaintiffs in the High Court.

The legal team was associated by the contributions of two pupil-in-chambers, Michelle Wong Jia Lin and Ling Ying Phoebe.

»»» NOTABLE COURTROOM VICTORIES

PRINCIPLES OF JAMEEL ABUSE / LIMITED PUBLICATION & MONETARY JURISDICTION IN A DEFAMATION SUIT

Contributors:
Justin Tong, Associate
Ally Ong, Associate



Limited publication, better known as the “doctrine of Jameel abuse”, is often raised as a ground to strike out a defamation action.

Essentially, this doctrine suggests that if a defamatory imputation is made to a small number of recipients, then the defamation action should be struck out because the damage to reputation is nominal and ‘the game is not worth the candle’.

In late February 2024, **DR Partner G.Rajasingam, Associates Justin Tong and Ally Ong appeared before the Court of Appeal** where the Court of Appeal agreed with the arguments that a genuine defamation claim filed to vindicate one’s reputation should not be struck out due to ‘limited publication’. The Court should not shut its door against a genuine claimant, particularly when the extent of publication is an issue to be tried at trial.

On top of that, the Court of Appeal also affirmed that damages are at large in defamation claims. A claimant is at liberty to file his claim before the appropriate Court based on the compensation he is seeking *vide* his claim.

In a recent Court of Appeal matter, **DR Partners Rabindra S. Nathan, Nad Segaram and Jimmy Liew and Associate Nakeeran Kumar Kanthavel** argued a practical issue concerning corporate insolvency - on whether the liquidators’ position and concerns need to be considered before granting an order to set aside a winding up order.

Save for a case in 2023 (**Le Apple Boutique Hotel Sdn Bhd v Keen Solution Sdn Bhd and another appeal [2023] 6 MLJ 454**), the Appellate Courts had not granted any orders concerning liquidators while setting aside a winding up order. In that case, there were no further orders made by the Court of Appeal on the handover of the company or the management of the company.

Hence, in light of the above trend, the COA agreed that it would only focus on the regularity of the winding up order and would not be concerned with the handover of the company as it is regulated under the Companies Act 2016 and Companies (Winding Up) Rules 1972. However, the parties then entered into a consent judgment on the handover of the company.

ARE APPELLATE COURTS REQUIRED TO MAKE SPECIFIC ORDERS CONCERNING THE LIQUIDATORS OF A COMPANY WHILE SETTING ASIDE A WINDING UP ORDER?

Contributor:
Nakeeran Kumar Kanthavel, Associate

»»» CLIENT SEMINARS & TALKS

A BRIDGE TO A MORE EFFECTIVE ARBITRATION PROCESS IN 2024 - AIAC ARBITRATION RULES



Contributor:
Serena Isabelle Azizuddin, Partner

On 4 January 2024, Shearn Delamore & Co collaborated with the Asian International Arbitration Centre to organise a seminar for clients to present and discuss the new **AIAC Arbitration Rules 2023** ("AIAC Rules").

DR Senior Associate Christal Wong emceed for the event.

The keynote address was given by Datuk Sundra Rajoo who regaled everyone with anecdotes on the AIAC as well as the hard work that went into drafting the new AIAC Rules. Up next was a talk by Ng Zhongde from the AIAC on the features of the AIAC Rules. This was followed up by a fireside chat vibrantly presented by our **DR Partner Lilien Wong** and Teoh Yuh Fen from the AIAC on the 2023 AIAC Fast Track Procedure, which was a great introduction to our clients to the AIAC Fast Track Arbitration Rules.

Next, our **DR Partner Shanti Mogan** and Teoh Yuh Fen from AIAC spoke on the key features of the AIAC Rules from the perspective of parties to an arbitration and from AIAC's perspective. This session was moderated by our **DR Partner Serena Isabelle Azizuddin** and the discussion between the speakers assisted in promoting and educating clients on the benefits of the AIAC Rules and how the AIAC Rules can be incorporated in future contracts. The AIAC conducted a tour around the AIAC, which is one of Malaysia's most iconic buildings. Many clients were in awe of its facilities.



THE DOCTOR WILL SEE YOU NOW: A MEDICO-LEGAL AFFAIR



Contributors:
Christal Wong, Senior Associate
Jesryna Patel, Associate

In February 2024, Shearn Delamore & Co's medico-legal team joined forces with a private hospital for a seminar.

The day kicked off with an exploration of topics such as **"Comprehensive Medical Records Can Defend You!"**, **"Why Hospitals Get Sued And The Impact"**, **"Social Media: Friend Or Foe?"** and **"Case Studies To Learn From"**. Attendees were left at the edge of their seats, not just from the legal drama unfolding before them, but also from the unexpected wit and humour that peppered the discussions.

The next session featured a panel discussion on medico-legal trends and challenges in Malaysia. The attendees listened with rapt attention as the speakers expertly addressed concerns and questions raised, revealing the reality behind the multi-million ringgit damages awarded in medical negligence cases as reported in the news.

As the seminar came to an end, participants shared not just legal insights but also a few unexpected chuckles. Turns out, navigating medical negligence has its lighter moments.

»» CONTINUING PROFESSIONAL DEVELOPMENT

2024 PHILIP C JESSUP INTERNATIONAL MOOT COURT COMPETITION MALAYSIAN NATIONAL ROUNDS

Contributor:

Nik Azila Shuhada, Partner

The 2024 Philip C Jessup International Law Moot Court Competition (Malaysian National Rounds) was hosted by Universiti Teknologi Mara (UiTM) Shah Alam from 2 to 3 March 2024.

Shearn Delamore & Co has been a firm supporter of the Malaysian National Rounds of the Philip C Jessup International Law Moot Court Competition since 2005. This year marks our 19th year sponsoring this prestigious international law moot completion amongst law students in Malaysian universities.



Amongst the 3 "Justices" who presided over the Final Round were our **IR Partner Ms Suganthi Singam**.

Our partners **Michelle Loi (IP)**, **Koo Yin Soon (DR)**, **Hee Hui Ting (DR)** and **Serena Azizuddin (DR)** also presided over the general rounds.

The Trophies and Awards were presented to the teams by **IP Partner Indran Shanmuganathan**.

- The **Shearn Delamore & Co Challenge Trophy** was awarded to the National Champion.
- The **Adrian W. Delamore Award** was awarded to the Best Written Memorial.
- The **Errol D. Shearn Award** was awarded for the Best Oralist.



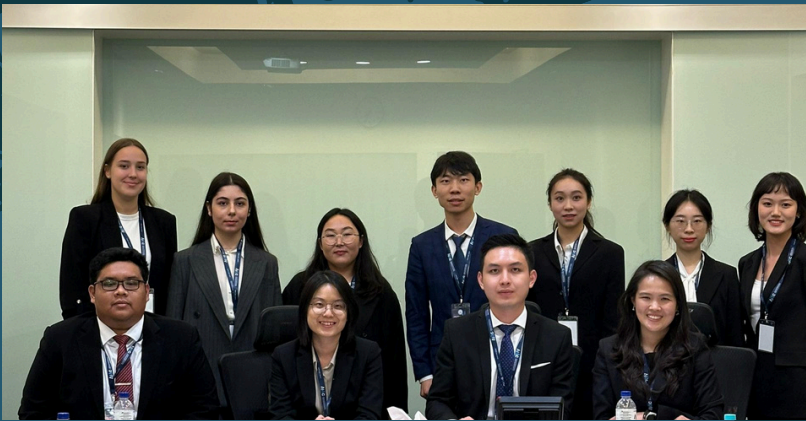
CONTINUING PROFESSIONAL DEVELOPMENT



AIAC APAC PRE MOOT 2024

Contributor:
Hee Hui Ting, Partner

Shearn Delamore & Co. sponsored the **AIAC APAC Pre-Moot**, an international moot court competition jointly organised by the Asian International Arbitration Centre (AIAC) and the Asia Pacific Vis Pre Moot (APVPM). It is one of the largest and most prestigious international moot court competitions, with worldwide participation for both mooters and arbitrators.



The general rounds and the elimination rounds were held from 1 to 4 February 2024 and 6 to 8 March 2024, respectively.

DR Partners Lilien Wong, Jimmy Liew and Hee Hui Ting presided as Arbitrators in all rounds, leading up to the finals, of the AIAC APAC Pre-Moot 2024.



DR Partner Lilien Wong also spoke in a hybrid conference on 5 March 2024, titled "**Vivid Verdicts - Painting the Future of Dispute Resolution**", organised by the AIAC Young Practitioners' Group (AIACYPG). Her topic was "**Show me the money: Best Practices on Costs Allocation in Arbitration**", focusing on the financial aspects of arbitration and its relevant considerations.



DR Partner Shanti Mogan, our **Head of Arbitration & Mediation Practice**, presented the awards to the Best Oralist of the final rounds during the closing ceremony at the AIAC APAC Pre-Moot 2024.

CONTINUING PROFESSIONAL DEVELOPMENT


DR EVENING TALK SERIES

Contributor:
Hee Hui Ting, Partner

The **Dispute Resolution (DR) Evening Talk Series** is an ongoing series spearheaded by the senior DR Partners of Shearn Delamore & Co, where topics are specially curated for young lawyers. In the first quarter of 2024, the DR Practice Group hosted 3 talks, attended by the Partners, lawyers and pupils of Shearn Delamore & Co.

Shearn Delamore & Co

DR Evening Talk Series



Presented by
MR. RODNEY GOMEZ

Topic
30 YEARS AT SHEARN DELAMORE


DATE 19 January 2024 (Friday)
TIME 4.00 p.m.
VENUE Boardroom, Shearn Delamore & Co.

Shearn Delamore & Co

DR Evening Talk Series

Topic **EXPERT EVIDENCE - THE ROLE AND OBLIGATIONS OF THE SOLICITOR WHEN INSTRUCTING A PARTY EXPERT**

16 FEBRUARY 2024
4.00 PM
BOARDROOM,
SHEARN DELAMORE & CO.



Presented by
MR. RABINDRA S. NATHAN

Shearn Delamore & Co

DR Evening Talk Series

BUSINESS DEVELOPMENT WORKSHOP FOR YOUNG LAWYERS



Presented by
MR. JIMMY LIEW

Boardroom, 7 Floor
Shearn Delamore & Co. 8 March 2024
4.00pm



The **first DR Evening Talk Series** was conducted on 19 January 2024, featuring our **Managing Partner, Rodney Gomez**, who is also the Head of Infrastructure & Projects, as well as the Head of Engineering & Construction.

He shared valuable perspectives with the dispute resolution lawyers and pupils whilst highlighting the importance of professional pride.



CONTINUING PROFESSIONAL DEVELOPMENT

DR EVENING TALK SERIES

The second DR Evening Talk Series of the year was held on 16 February 2024, where **Rabindra S. Nathan**, our DR Head of Department shared his insights on expert appointment in his talk, entitled **"Expert Evidence - the role and obligations of the Solicitor when instructing a party expert."**



The session was well attended by associates not only from the DR department but across various departments from within the firm who are involved in contentious work.



The third DR Evening Talk Series of the year was held on 8 March 2024 with an interactive workshop conducted by **DR Partner Jimmy Liew** entitled **"Business Development Workshop for Young Lawyers."**

The aim of the workshop was to empower the young lawyers of the firm to participate in business development, to enhance client-engagement and relationship building in light of the competitiveness of the legal services industry.





CONTINUING PROFESSIONAL DEVELOPMENT

TRAINING SESSION FOR TEAM UKM FOR THE JESSUP MOOT INTERNATIONAL ROUNDS

Contributor:
Serena Isabelle Azizuddin,
Partner



On 18 March 2024 the **National Champions from Universiti Kebangsaan Malaysia (UKM)** visited our office to practice their oral submissions in order to obtain valuable insight and comments in preparation for the International Rounds. **DR Partners Koo Yin Soon, Nik Azila Shuhada, Hee Hui Ting, Serena Isabelle Azizuddin and Senior Associate Lim Jun Rui and Associate Jesryna Patel** judged their impressive performance.



EVENTS

25TH ANNUAL IBA ARBITRATION DAY

Contributor:
Lilien Wong, Partner



7 of our DR Partners attended the **25th Annual International Bar Association (IBA) Arbitration Day** at the Shangri-La Hotel in Singapore, as well as the **IBA Asia Pacific Arbitration Group (APAG) event** from 22 to 23 February 2024 at Maxwell Chambers, Singapore.

These events provided insightful sessions on the IBA Rules and Guidelines and its application in Asia, the relevance of artificial intelligence in international arbitration, arbitrability and validity of arbitration proceedings, and more.

During these events, our **DR Partners, Rodney Gomez, Dhinesh Bhaskaran, Rabindra S. Nathan, Nad Segaram, Shanti Mogan, Jimmy Liew, and Lilien Wong**, had the opportunity to foster connections with other international lawyers and professionals within the arbitration community.

EVENTS

PROSPERITY TOSS FOR A PROSPEROUS YEAR OF THE DRAGON - DR DEPARTMENT CNY LUNCH AND LOUSANG SESSION

Contributors:
Caitlin Tan, Senior Associate
Mattheus Goon, Senior Associate



On 16 February 2024, the DR staff and lawyers came together in the spirit of unity and joy to celebrate the **Chinese New Year 2024**.

The event started off with "Lou Sang", where our lawyers and staff gathered around the platters and tossed the colourful ingredients high in the air, following the recitation of 10 phrases of auspicious greetings.



Every phrase ended with the teams shouting "**Shao Dou**", meaning "**Dapat!**", and that collective cheer had definitely added festive and energetic touch to our Lou Sang celebration! Hopefully, the voices were heard and we "dapat" all the good health, fortune and prosperity in the year of Dragon!

It was no doubt that it was a fun-filled celebration filled with laughter.

May our fortunes soar as high as our tosses, to a better and higher year of Dragon! Huat ah!



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