

# Zali was seconded to pakistan law equity essay

Law



**KERAJAAN MALAYSIA V ONG KAR BEAU (2003) MSTC 4, 061**  
**The Facts** Having failed to pay up his taxes to the Government of Malaysia (Plaintiff) which was long due, penalties were imposed upon the taxpayer. A court order was then filed by the plaintiff to obtain back the sum of unpaid tax and imposed penalty. After also, the plaintiff sought to call upon summary judgement against the taxpayer. Following the course of event, the taxpayer's took his course of action by lodging an appeal to the Special Commissioners of Income Tax (Commissioner) saying that the plaintiff's assessments and imposed penalties were excessive and assessed incorrectly. In closing, the senior assistant registrar approved of the plaintiff's call for summary judgement and in the taxpayer's defence, he filed an appeal for his case. **The Arguments** The reasoning given by the defendant that the tax raised was excessive and incorrectly assessed wasn't a solid reason to the court that it could not enter summary judgment against the him. **Decision** The tax payable under the assessment becomes due and payable upon service of a notice of assessment on the person assessed, whether or not that person appeals against the assessment. Under sections 103(4) and 103(5A) of the Income Tax Act, 1967 provides the penalties upon failure to pay up taxes. The amount assessed and penalty imposed can be recovered by method of civil proceedings as a debt due to the government. The High Court sitting on appeal against the decision of the special commissioners by way of case stated is the proper forum to hear the taxpayer's challenge against the assessment. **Case Law 22**  
**KOPERASI SERBAGUNA KEBANGSAAN BERHAD v. PEMUNGUT DUTI SETEM (2004) MSTC 4, 091 (HIGH COURT OF MALAYA)**  
**The Facts** Koperasi Serbaguna Kebangsaan Berhad (the plaintiff) was a co-operative society incorporated under the Co-operative Society Act 1993. The <https://assignbuster.com/zali-was-seconded-to-pakistan-law-equity-essay/>

plaintiff bought a property and had a sale and purchase agreement dated on the 24th May 1995. The appropriate forms for the pronouncement of the stamp duty payable for the transfer under Section 35 of the Stamp Act 1949 (the Act) were submitted to the Collector of Stamp Duty (the defendant) and stamp duty worth RM30, 000 was paid on 10 October 1995. However on the 6 August 1997, the plaintiff was aware and conscious about the following Section 35 (General Exemptions) First Schedule Paragraph 5 of the Act, which states that co-operatives were excluded from the payment of stamp duty. As such, the plaintiff sought for a refund of the stamp duty which was paid two years ago. However, the defendant rejected the claim for refund on the stand that Section 57 of the Stamp Act 1949 was applicable. The Arguments On the basis that it was a co-operative society, the plaintiff argued that it was exempted from paying any stamp duty in the light of Section 35 (General Exemptions) First Schedule Paragraph 5 of the Act. As such, the defendant had wrongly imposed the stamp duty on the purchase of the property. The defendant reason that the period for the refund application had expired as the application was made more than 12 months after the date of execution of the transfer instrument as of Section 57 of the Act. Decision The defendant was wrong to rely on Section 57 of the Act for rejecting the plaintiff's claim for a refund as this section provided for " Allowance for spoiled stamp" and this was not the case. The stamp duty exemptions provided under Section 35 (General Exemption) First Schedule Paragraph 5 of the Act are not granted automatically on all instruments executed. The burden was on the plaintiff to work things out for the exemption by submitting the relevant document to prove that it was to be exempted under the relevant provisions of the Act when submitting the <https://assignbuster.com/zali-was-seconded-to-pakistan-law-equity-essay/>

appropriate form for the pronouncement of the proper stamp duty. As this was not done at the time the forms were submitted, the defendant could not be held responsible in imposing the stamp duty. Finally, the plaintiff was not entitled to the refund because the application for a refund had surpassed the time limit of 12 months in the light of Section 58 of the Act. Case Law 23

Zali was seconded to Pakistan. The Facts: System design expert for a US multinational company based in Malaysia since 1998. The resident company designs software worldwide through a number of its branches. Trained the staff at the IT Unit at the branch office in Pakistan. Assuming that RM2, 000 was paid. Duration working in Malaysia in 2008: 352 days. The Arguments: All decision making and instructions were issued by employer in Malaysia. Since Zali is a systems design expert who designs software, his job responsibilities would include training IT personnel to operate the system. As such, the duties he performed in Malaysia and overseas were connected or part and parcel of his duties with the company in Malaysia. Decision: Zali's duties in Pakistan are considered incidental to the exercise of his employment in Malaysia and his employment income is deemed derived from Malaysia. Although there is a tax treaty between Malaysia and Pakistan, this does not preclude Malaysia from taxing Zali's employment income for the duration he performed his services in Pakistan. For the year of assessment 2008, Zali will be taxed in Malaysia on the employment income derived from the exercise of his employment in Malaysia and Pakistan. The allowance paid by the branch in Pakistan is deemed derived from Malaysia since his duties in Pakistan is incidental to the employment in Malaysia and therefore it is taxable in Malaysia. Case Law 24: Sabah Berjaya Sdn Bhd v. Ketua Pengarah Jabatan Hasil Dalam Negeri. The Facts: This is a deductibility of expenses in <https://assignbuster.com/zali-was-seconded-to-pakistan-law-equity-essay/>

respect of a business. The taxpayer was a wholly owned subsidiary of the Sabah Foundation ("the Foundation"). The Foundation was an institution of public character under the Sabah Income Tax Ordinance 1956, meaning that gifts of money made to the Foundation were tax deductible in the hands of the donor. By a letter dated 28 December 1979, the State Ministry of Finance indicated that it was the wish of the Government that surplus funds of subsidiaries be donated to the Foundation. Consequently, the taxpayer began donating surplus funds to the Foundation for periods of eight years. The Respondent raised notices of assessments for the years 1980 to 1987, disallowing the sums donated to the Foundation. The Taxpayer's appeal to the Special Commissioners and the High Court were both dismissed. On appeal before the Court of Appeal, the taxpayer argued that the donations were gifts within the meaning of sec. 44(6) of the Income Tax Act 1967 ("the Act"), and that the payments did not amount to a means of tax avoidance under sec. 140 of the Act. The ArgumentsThe taxpayer argues that the gift of money to an approved institution was not deductible for tax purpose of tax avoidance Income Tax Act 1967, sec. 44(6), 140. DecisionThe High Court fell in error in ruling that the expression, "voluntarily" meant the absence of some external pressure upon the donor of a gift. The word "voluntary" or "voluntarily" is used to describe a transaction unsupported by valuable consideration. It is derived from the word, "volunteer" meaning a person who has given no valuable consideration for a trust or settlement. It has no relation whatsoever to do with gifts being made in consequence of illegitimate pressure being brought to bear upon the disposer. The Australian cases could not be relied upon as they did not refer to the situation of the making over of money or property by a person acting under pressure. Case <https://assignbuster.com/zali-was-seconded-to-pakistan-law-equity-essay/>

Law 25 Director General of Inland Revenue v Hypergrowth Sdn Bhd The Facts Taxpayer is a company incorporated under the Companies Act 1965 control by an individual he have 91% of share capital of the company. Taxpayer had acquired certain shares in Ngiu Kee Berhad which subsequently listed on second board of Kuala Lumpur Stock Exchange. The listing was promoted by the need to raise finance for the expansion of Ngiu Kee. Taxpayer enter into an agreement for sale the shares in Nguie Kee, which was triggered by sudden and unanticipated the deterioration in local and regional economy. The respondent of Hypergrowth Sdn Bhd (HSB) acquires shares in company on February 1997. While on June HSB was dispose the shares in Ngiu Kee Berhad, after the latter's listing on Kuala Lumpur Stock Exchange. Hypergrowth Sdn Bhd was liquidated in 1999 pursuant to members' voluntary liquidation exercise. Inland Revenue Board sought to tax Hypergrowth Sdn Bhd on gain arise from the sale of the Ngiu Kee Bhd shares in 1997. The receipt from the disposal of shares amounted to the capital gain is under the Special Commission ruled as following reasons; first is Hypergrowth Sdn Bhd not carry any trading in shares and the case involve an isolated transaction of acquire and dispose of investment shares; second is the intention of the respondent at the acquisition of shares was hold the shares as long term investment. The shares were sold due to the concern arise from unanticipated deterioration in local and regional economies. The Arguments Whether an income constitutes the " gain or profits from a business" within the meaning of Section 4 of the Income Tax Act 1967 has been often to the subject of judicial consideration. The difficulty arises from the absence of clear definition in the ITA. Whether the taxpayer's purchase of shares and disposal the constitute an " adventure in the nature <https://assignbuster.com/zali-was-seconded-to-pakistan-law-equity-essay/>

of trade", thus bring such gain from the sales of share within the charge to income tax; or dispose is realization of capital assets, and the proceeds are not be taxable. DecisionHigh court decision may assist to shed of some light on this aspect of revenue law. The Inland Revenue Board appeal to the High Court against the decision of Special Commissioners who held the gain arise from the disposal of shares in the question was capital in nature and that are not taxable. High Court dismiss the Inland Revenue Board appeal, which found the Inland Revenue Board had not demonstrate the decision of the Special Commission based on misconception of the law or conclusion was not supported by the primary facts. Conclude that the Special Commission are right to draw the inferences lead to their conclusion. The Special Commission Income tax's decision and held on primary facts admitted or prove, the Special Commission Income Tax were right in drawing inference lead to the conclusion and find by the Special Commission Income Tax are not able to disturbed on appeal. Taxpayer at all material times an investment company, where the dominant purpose for the purchase of the shares, which isolate act and investment. Case Law 26LFC Sdn Bhd v Ketua Pengarah Hasil Dalam NegeriTHE FACTThe principal activity of the appellant was the provision of public transport service via sea route for passengers, vehicles and vehicles with cargo between the Labuan jetty and Menumbuk jetty in Sabah. The appellant leased three vessels belonging to the Sabah State Government to provide its service. The vessels were not registered as ships under the Merchant Shipping Ordinance 1952(" the Ordinance"). The appellant also owned a vessel, which was registered as a ship under the Ordinance and used in the business. The appellant sought exemption from income tax under s 54A of the Income Tax Act 1967 (" ITA") on the basis that <https://assignbuster.com/zali-was-seconded-to-pakistan-law-equity-essay/>

the vessels used by the appellant were Malaysian ships and not ferries. The appellant also contended that the vessels need not be registered under the Ordinance as they belonged to the Sabah State Government. The ArgumentsHe respondent rejected the income tax exemption sought by the appellant on the basis that the vessels were not registered under the Ordinance. Further, the respondent argues that even if the vessels were Malaysian ships, they did not qualify for exemption under s 54 A of the ITA as the vessels were ferries and not ships. DecisionThe court held that appeal was allowed. The vessels need not be registered under the Ordinance as they belonged to the Sabah State Government. The respondent's argument that only vessels belonging to the Agong, State Rulers and State Governors were exempted from registration under Ordinance was rejected. Although the vessels were not registered under the Ordinance, they were still Malaysian ships as they belonged to the Sabah State Government. Based on their size and usage, the vessels were " Malaysian ships" as envisaged under s 54 A of the ITA. The respondent's contention that the vessels were " ferries" was without any basis. Case Law 27Ketua Pengarah Hasil Dalam Negeri v Malaysian BarThe FactsTaxpayer is an institution functioning within the provision of Legal Profession Act 1976, its members are Advocates and Solicitors admit and enrol under LPA or precedent Act. The income was receiving on year assessment 1979 to 1991 by taxpayer, which were respect of subscriptions, contributions and donations from members. Director of Inland Revenue Board had raised the assessment on these incomes. Minister of Finance by powers are under section 127(3)(b) of Income Tax Act, that had granted the taxpayer tax exemption in relation to its income other than income derives from Compensation Fund, dividend income and development

<https://assignbuster.com/zali-was-seconded-to-pakistan-law-equity-essay/>



income. Director treats taxpayer as trade association within the ambit of section 53 of ITA and taxed interest income derived from the Compensation Fund for year assessment 1979 to 1991. Raising the assessment to tax, appellant has treated the respondent as trade association within the ambit of section 53 of ITA 1967. The object to this treatment on the basis of section 53 of ITA is inapplicable and should section 53 of ITA, 1967 is applicable, the judiciary recognised that the principle of mutuality would apply. The Arguments Appellant argue that the SCIT had erred in law by fail to consider that section in statue constitute the principle or enact the part of statute. The Appellant's counsel argue that the duty bound of Malaysian Bar to bring forward to Parliament for any amendment to made and include the amendment to any error found in LPA. Malaysian Bar has failed to make the effect to such amendment; it cannot invoke section 142(2) of LPA to its benefit. Decision The Special Commissioners were correct to have gone through the historical basis. There clearly is a draft error due to the oversight of drafter of legal profession bill and ambiguity in the bill, it must be construed in favour of taxpayer and provision approach should taken in interpretation of ITA and LPA instead of literal approach to ensure there was no surplus age and absurdity. For organization the term of " trade association" in the context of income tax legislation, must satisfy all the condition which include it formed by two or more persons for common cause; member are voluntarily got together to form the association; object of the association is produce income, profits or gains. Those condition was not satisfied, the organisation could not be recognised as an " association of persons" for tax purpose. Section 80(13) of LPA that are clearly stipulated that the taxpayer be exempted from the tax on Compensation Fund and that <https://assignbuster.com/zali-was-seconded-to-pakistan-law-equity-essay/>

was constituted under the Article 96 of the Federal Constitution. The general rules of the tax law is liable to tax, the subject matter must fall clearly within the words of charge impose tax. Appellant submit section 53 of ITA is to establishment of an association as well as activities, in order to ascertain whether an association falls under category of trade association within the ambit section 53 of ITA. Appellant submit the SCIT in case stated that had erred in law by having the considered certain objectives as provided by section 42 of LPA and conclude the respondent is not a trade association. Under section 42 of LPA, it clearly show the establishment and objectives of respondent are accordance with the main object stipulated for " trade association" under section 53(3) of ITA those is " safeguard and promote the business of members". Under section 57(e) of LPA, the respondent is mandated to represent members of Malaysian Bar in any matter which may be necessary or expedient. Submission of Appellant that the Malaysian Bar is trade association, the income is deemed to be gross income from business by virtue of section 53(1)(a) of ITA. Malaysian Bar is not an " association of persons" because it lack the essential ingredients of an " association of person" which contain it not formed by members but by stature; the advocate and solicitors do not voluntarily become its member, and there is not volition on their part to be members; the object of Malaysian Bar is not to produce income, profit or gain; taxpayer is a creature of statute and primary object to uphold the cause of justice without fear. Case Law 28Kerajaan Malaysia v Kumpulan Pinang Hartanah Sdn BhdThe FactsThe plaintiff made a claim for unpaid real property gains tax. The defendant argued that it did not meet the definition of " chargeable person" in relation to the disposal of a chargeable asset, and there were no chargeable gains on the said disposal.

<https://assignbuster.com/zali-was-seconded-to-pakistan-law-equity-essay/>

Instead, the defendant argued it had an allowable loss under sec 7(1)(b) of the Real Property Gain Tax Act 1967 ("RPGT Act"). The ArgumentsThe court held the application is allowed because that similar to income tax cases, the principle that tax is to be paid although the assessment is in dispute applies to real property gain tax. The court cannot entertain any plea that the amount of tax sought to be recovered is excessive, incorrectly assessed, under appeal or incorrectly increased. Section 21 (1) and 23(3) of the RPGT Act apply as the notice of assessment had been duly served on the defendant. Tax payable under the assessment becomes due and payable regardless of whether the defendant appeals against the assessment, and would be recovered by the Government by civil proceedings as a debt due to the Government. The question of whether the assessment itself was proper is not for the court to determine. The proper avenue was for the defendant to appeal to the Special Commissioners of Income Tax. DecisionIt is to be noted that section 20(1) of the Real Property Gains Tax Act 1976 provides that an assessment shall become final and conclusive as regards the amount of the tax assessed on the expiry of the time for appeal against the assessment. The contention by the Defendant is considered a plea which the court could not entertain. Case Law 29SE&TM Sdn Bhd v Ketua Pengarah Hasil Dalam NegeriThe FactsTaxpayer is a manufacture of electronic and electrical product which located in Subang Jaya, Selangor. In 1996, taxpayer was expand his business and move to a factory in Sungai Buloh. In between year assessment of 1996 and 1998, taxpayers try to claim and obtain reinvestment allowances on capital expenditure which incurred on Factory B. In 2001, taxpayer decide to build another factory which nearby to Factory B. The new factory are start to operation in July 2002, so that the taxpayer

<https://assignbuster.com/zali-was-seconded-to-pakistan-law-equity-essay/>

claimed the reinvestment allowances in year assessment 2002 on sum of RM12, 271, 088. 61 which incurred of RM11, 458, 177. 11 on the factory building and RM812, 911. 50 on plant and machinery. The reason for the Inland Revenue Board restrict the reinvestment allowances claim on new factory is because the Factory B was used as warehouse, and the area for the overhead crane, office spaces and meeting rooms were not part of the production area. IRB disallow the reinvestment allowances claimed on capital expenditure incur by taxpayer for the plant and machinery located in aforementioned areas. The ArgumentsThe taxpayer appealed to the Special Commissioners of Income Tax. The taxpayer argued that Schedule 7A of the Income Tax Act 1967 does not provide for such restriction and that the words in paragraphs 1 and 8(a) of Schedule 7A must be given their ordinary meaning. The IRB contended that paragraph 8(a) restricted the meaning of "factory" in paragraph 1 to "manufacturing and processing only". The IRB stated the words "manufacturing and processing" in paragraph 8(a) allow for the restrictive meaning of "factory". The Special Commissioners allowed the taxpayer's appeal and set aside the notice of additional assessment. DecisionThe Special Commissioners held that since the word "factory" was not defined for the purposes of reinvestment allowance, the ordinary and usual meaning of the word was to be applied. A factory is a building that is used to manufacture goods may contain areas for production and non-production. The restriction imposed by the IRB, which was based on its internal ruling, was without any legal authority and had no force of law. The "void" area for the overhead crane, office spaces, meeting rooms and the warehouse in Factory B were an integral part of the factory since the areas described above were part of the factory, reinvestment allowance was

<https://assignbuster.com/zali-was-seconded-to-pakistan-law-equity-essay/>

available on the capital expenditure incurred on the plant and machinery placed in those areas and the installation of air-conditioning, electrical fittings, partition rooms and lighting. Reinvestment allowances are available on capitalised interest expenses incur on the loan that raise to construct new factory, that are not penalty should been imposed as taxpayer that act in good faith, and made full disclosure and obtained professional advice.

Taxpayer's appeals are allow and Inland Revenue Board appeal to the High Court. Case Law 30SPM Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri

**Facts**This is the deductibility of expenses in respect of a business. The appellant, SPM Sdn Bhd, a company incorporated in Malaysia, entered into a franchise agreement with S Corporation (" SC"), a company incorporated in the United States of America on 6 August 1996. The agreement was for a duration of three years with an automatic option to renew, and could be terminated at any time by providing three months' notice. Under the franchise agreement, the appellant was obligated to pay SC franchise fees equal to 8% of its gross turnover on a monthly basis; in return for which, the appellant received the exclusive right to trade within Malaysia using SC's multi-level marketing system, together with its continued support and assistance during the term of the franchise agreement. The appellant paid franchise fees to SC during the years of assessment 2000 (preceding year basis), 2000 (current year basis), 2001 and 2002; also paying withholding tax thereon under sec 109B of the Income Tax Act 1967 (" ITA"). The Inland Revenue Board (" IRB") issued notices of assessment for the years of assessment 2001 and 2002, disallowing deductions claimed for franchise fees paid to SC under sec 33(1) of the ITA, and imposing penalties.

**ARGUMENT**The appellant argues that the franchise fees qualified for a

<https://assignbuster.com/zali-was-seconded-to-pakistan-law-equity-essay/>

deduction under sec 33(1). The fees were a necessary part of the appellant's earning process, paid to obtain continuing services in order to meet the continuing needs of the business. The fees were also directly connected to the appellant's business and must be incurred to generate sales income. The terms of payment characterised the franchise fees as a recurring expenditure, not a lump sum payment. The fees paid did not give rise to the acquisition of any identifiable asset. DecisionThe franchise fees were revenue expenditure, incurred for the sole purpose of producing the appellant's gross income, and thus, allowable deductions under sec 33(1) of the ITA. The franchise fees were a necessary part of the appellant's earning process and directly connected to its business. The fees had to be incurred to obtain continuing services to meet the continuing needs of its business in order to generate sales income. The Commissioners noted that the Privy Council, in BP Australia Ltd v FC of T [1965] 112 CLR 386, commented that the words " every year" must not be taken literally but be construed to mean expenditure which is incurred to meet a " continuous demand". The franchise fees were a recurring payment, not a lump sum payment made, and the fees were not paid " once and for all". Given the conditions of the agreement, the payment of franchise fees neither gave rise to an advantage of " enduring benefit", nor to the acquisition of any identifiable asset. The IRB was not justified in imposing penalties as there was no evidence that the appellant intended to evade tax or attempted to conceal the deductions claimed; and the appellant was fully cooperative during the IRB's tax audit.