LEGAL UPDATE 3/2026

Contract Liability:

Is the Exclusion or Limitation of Liability Clause in Your Agreement Void under Malaysian Law?

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Imagine you enter into a construction agreement to construct a property for a client. Three months into the project, after you have invested over RM50,000.00 in materials and mobilisation, the client abruptly terminates the agreement.

Feeling aggrieved, you initiate a claim to recover your RM50,000.00 outlay. In response, the client points confidently to Clause 3 of the construction agreement, which states that they are absolutely excluded from all liabilities under the agreement, barring you from claiming any losses or damages whatsoever.

What now? What are the Malaysian laws that govern such terms?

THE EFFECT OF AN ABSOLUTE EXCLUSION CLAUSE

CIMB Bank Bhd v Anthony Lawrence Bourke **[2019] 2 MLJ 1 (Federal Court)**

The property purchasers sued CIMB Bank for breach of contract after the bank failed to make a progressive loan payment, causing their sale and purchase agreement to be terminated. The bank relied on Clause 12 of its loan agreement, which **absolutely exempts** it from any liability for loss or damage.

The Federal Court's Ruling:

- A provision that **absolutely absolves** a party from all liability **strips the injured party of their legal rights** to enforce the contract through ordinary judicial proceedings
- Such a provision effectively leaves the injured party without any remedy, which is "*patently unfair*," contrary to public policy and **void under section 29 of the Contracts Act 1950**
- Similarly, a provisions that **restricts or shortens the time** for a party to commence an action in court is **void**

To determine the legality of Clause 3 of your construction agreement, the Court will likely consider three definitive questions:

1. If you were precluded from claiming the remedies under the relevant clause, are you left with zero alternative to recover your RM50,000.00?

2. Are you totally restricted from enforcing your rights under the agreement?

3. Does Clause 3 of the construction agreement effectively reduce a binding contract to a mere declaration of intent, without real legal recourse?

If the answer to these questions is **yes**, the court would likely declare Clause 3 of the construction agreement **void under section 29 of the Contracts Act 1950** — and you may now proceed to initiate a claim against the client.

RECENT DEVELOPMENTS

Recent cases have shed some light on the difference between a clause that absolutely restricts an injured party from enforcing their rights and one that merely limits specific heads of damages. They also explained the requirements for relying on such clauses. One such case is ***Kerajaan Malaysia v PDS Training Camp Sdn Bhd* [2024] 6 MLJ 196 (Court of Appeal)**.

Enforceability of a Limitation Clause

PDS Training Camp Sdn Bhd (“**PDS**”) was appointed by the Government of Malaysia (“**GOM**”) via a public tender to construct and run a PLKN training camp. Following unexpected policy shifts, the GOM relied on Clause 36 of the contract to terminate it prematurely, insisting that PDS was not entitled to any losses or damages arising from the termination. PDS responded with a claim seeking a declaration that Clause 36 was void, and the recovery of its construction costs and loss of future profits.

The Court of Appeal's Decision:

- Clause 36 of the contract did not absolutely restrict all of PDS's rights and remedies. It therefore did not violate the Contracts Act 1950 and was not unlawful.

Key Distinction from *CIMB Bank v Bourke* (*supra*):

- PDS was **only disallowed from claiming consequential losses** — that is, loss of profit flowing from the termination.
- PDS **still had legal recourse** to claim the contract consideration that had already accrued up to the date of termination.

TO AVOID	TO CONSIDER
Clauses that exclude **total** liability	Instead of total exclusion, introduce a cap on the liabilities that may accrue, or exclude only specific or indirect damages such as loss of future profits or business interruption (i.e., limitation of liabilities instead of total exclusion of liabilities).
Introducing limitation clauses through secondary documents	Include the limitation clause in the original contract upon execution.

Have a contract clause you would like reviewed? Get in touch with our team to discuss how these principles apply to your agreements.

Written by:

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30 June 2026

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