

International Conference on Modern Legal Drafting

Modernising Construction Contracts in Malaysia

OBJECTIVES

- To introduce worldwide developments in modern approaches to drafting legal documents
- To explain the benefits of modern legal drafting
- To consider modernising construction contracts in Malaysia

CPD AND CCD POINTS

Approved

- CIDB Malaysia, 8 CCD points (Kuala Lumpur), 4 CCD points (Penang)
- The Board of Engineers Malaysia, 5 CPD (Kuala Lumpur), 2 CPD (Penang)
- The Board of Architects Malaysia, 1 CPD (Kuala Lumpur), 1 CPD (Penang)

Applied

- The Board of Quantity Surveyors Malaysia
- The Board of Valuers, Appraisers and Estate Agents Malaysia

22 July 2008 (Tuesday)
*Kuala Lumpur Convention Centre
Kuala Lumpur*

24 July 2008 (Thursday)
*Equatorial Hotel
Penang*

Supporting Organisations

Organizer



Construction Industry Development Board
Malaysia



Association of Consulting
Engineers Malaysia (ACEM)



International Islamic
University Malaysia (UIA)



The Institution Of Engineers,
Malaysia (IEM)



Malaysian Air Conditioning
& Refrigerator Association
(MACRA)



Malaysian Fire Protection
Association (MFPA)



Master Builders Association
Malaysia (MBAM)



Persatuan Kontraktor MNE
Melayu Malaysia (PERKEMM)



Persatuan Kontraktor India
Malaysia (PKIM)



Persatuan Kontraktor Melayu
Malaysia (PKMM)



The Chartered Institute of
Arbitrators



The Institution of
Surveyors, Malaysia (ISM)



Universiti Teknologi Mara
(UiTM)

International Conference on Modern Legal Drafting

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About The Conference.

Contracts including construction contracts and Acts of Parliament have traditionally been drafted in legalese – difficult and often archaic language. Those affected by these legal documents often do not understand them. It is particularly important for construction contracts to be drafted in language that the parties to the contract and the party who administers the contract truly understand. This is because those administering construction contracts are technically qualified in construction related areas but not usually also legally qualified. Judges have been highly critical of some construction contracts as being obscure and ambiguous – resulting in unwarranted disputes. Some have called for a complete redraft 'so that laymen – contractors and building owners alike – can understand what are their own duties and obligations and what are those of the architect.' Yet today, decades later, most construction contracts remain in traditional legal language.

"...since legalese has nothing of substance to recommend it, its dubious prestige value depends on ignorance. We cannot fool people forever. Our main goal should be to communicate, not to impress." Professor Joseph Kimble..."

There have been major developments over many years in more developed countries on modernising legal drafting – both legislative drafting and commercial contracts. The benefits of modern plain language drafting include saving cost, saving time, and avoiding ambiguity.

This international conference calls on experts, both local and international, to share their views about how modern legal drafting can benefit the government and society in general and the construction industry in particular. Case studies including Malaysian case studies on modernising construction contracts drafting (including 'before and after' examples) will be included as illustrations.

Here are several 'before and after' examples:

Before
Null and void

After
Void

Before
Give, devise and bequeath

After
Give

Before

This Contract shall be deemed to be a Malaysian Contract and shall accordingly be construed according to the laws for the time being in force in Malaysia and the Malaysian Courts shall have exclusive jurisdiction to hear and determine all actions and proceedings arising out of this Contract and the Contractor hereby submits to the jurisdiction of the Malaysian Courts for the purposes of any such actions and proceedings. [69 words in one sentence]

After

Malaysian law governs this contract and Malaysian courts have exclusive jurisdiction

'When judges and lawyers write in plain language, the people who are affected by the law can understand what is happening. The law is about people - shouldn't they be able to read it?' ~ Judge Mark Painter.

Target Participants

Senior officers from government in charge of legal and contract management, contractors including subcontractors, lawyers, people who manage contracts, construction project owners, ministries, statutory bodies, Government Linked Companies, financial institutions, universities, developers, construction professionals including architects, engineers, quantity surveyors and trade associations.

'To write well, express yourself like common people, but think like the wise do.' ~ Modified from Aristotle.

'Make everything as simple as possible, but not simpler.' ~ Albert Einstein – about 100 years ago.

'The most important contribution to statutory drafting this century.' Professor Michael Zander QC, commenting on Martin Cutts' Lucid Law which included the 'Clearer Timeshare Act' redrafting the UK Timeshare Act 1992 in modern plain English.

Conference Program

Kuala Lumpur (22 July 2008)

- 08.00 am Registration
- 09.00 am Welcome address by Chairman of the Construction Industry Development Board Malaysia (CIDB)
- 09.15 am Opening speech by Minister of Works Malaysia followed by Soft Launch of the new Malaysian Design and Build Standard Terms of Construction Contract
- 09.30 am Refreshments and press conference
- 10.00 am Keynote address: Legal Reforms In Malaysia – A Few Thoughts by Dato' Syed Ahmad Idid Syed Abdullah Aidid
- 10.30 am Paper 1, **Modern Legal Drafting – Debunking the Myths and Revealing the Benefits: Experiences from Around the World** by Professor Peter Butt
- 11.15 am Paper 2, **Gains for business and government as well as consumers Definite findings from writing plainly** by Dr Robert Eagleson
- 12.00 pm Paper 3, **Applying Modern Drafting Guidelines in Construction Contracts Drafting Includes a Malaysian Case Study - 'The CICC Model Terms Of Construction Contract For Subcontract Work 2007'** by Sr Noushad Ali Naseem Ameer Ali
- 12.45 pm Lunch
- 02.00 pm Paper 4, **A Judge's Forty Rules for The Art Of Legal Writing - and Why Legalese is Banned in Some Courts** by Judge Mark Painter
- 02.45 pm Paper 5, **Drafting A Construction Contract – Transforming From Traditional To Modern Style: Case Study On The New Malaysian Design & Build Contract** by Ms Tan Swee Im
- 03.30 pm Forum and Dialogue Session with Panelist
- 04.30 pm Refreshments and networking
- 05.30 pm: End of conference

Penang (24 July 2008)

- 08.00 am Registration
- 09.00 am Welcome address by representative of CIDB
- 09.05 am Opening speech by Guest of Honour
- 09.25 am Keynote address: Legal Reforms In Malaysia – A Few Thoughts by Dato' Syed Ahmad Idid Syed Abdullah Aidid
- 09.45 am Paper 1, **Modern Legal Drafting – Debunking the Myths and Revealing the Benefits: Experiences from Around the World** by Professor Peter Butt
- 10.15 am Paper 2, **Gains for business and government as well as consumers Definite findings from writing plainly** by Dr Robert Eagleson
- 10.45 am Refreshments
- 11.15 am Paper 3, **Applying Modern Drafting Guidelines in Construction Contracts Drafting Includes a Malaysian Case Study - 'The CICC Model Terms Of Construction Contract For Subcontract Work 2007'** by Sr Noushad Ali Naseem Ameer Ali
- 11.45 am Paper 4, **A Judge's Forty Rules for The Art Of Legal Writing - and Why Legalese is Banned in Some Courts** by Judge Mark Painter
- 12.15 pm Paper 5, **Drafting A Construction Contract – Transforming From Traditional To Modern Style: Case Study On The New Malaysian Design & Build Contract** by Ms Tan Swee Im
- 12.45 pm Questions and Answers
- 01.00 pm End of Conference followed by Lunch

Conference Fee

Local participants (*subsidised fees*)

- Regular Fee: RM 600.00
- Group Discounted Fee: RM 500.00 per person for 2 or more participants booked and paid at the same time.

Participants from outside Malaysia

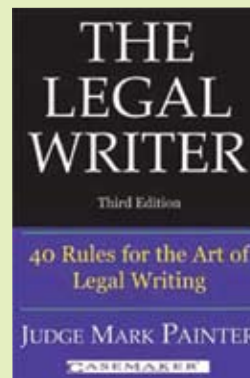
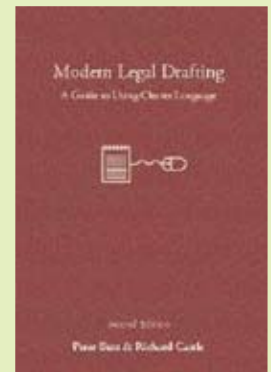
- Regular Fee: USD 350.00
- Group Discounted Fee: USD 300.00 per person for 2 or more participants booked and paid at the same time.

Please call for special registration schemes for groups of 10 or more.

All fees include refreshments at breaks and lunch, conference notes and handouts.

SUBJECT TO STOCK AVAILABILITY and on a first paid, first serve basis, the following **BOOKS** worth over RM 200.00 (over USD 60.00) will additionally be given **FREE OF CHARGE** to early registrants who have fully paid the conference fees.

1. **'Modern Legal Drafting: A Guide to Using Clearer Language'** by Peter Butt and Richard Castle, Cambridge University Press



2. **'The Legal Writer, 40 Rules for the Legal Writer'** by Judge Mark P Painter, Cincinnati Book Publishing

Accommodation

Participants may arrange accommodation direct to respective hotels

Mandarin Oriental Kuala Lumpur :

www.mandarinoriental.com/kualalumpur/

Hotel Equatorial Penang : www.equatorial.com/pen/

Other hotels, please visit www.tourismmalaysia.com

Speakers Biography



Dato' Syed Ahmad Idid Syed Abdullah Idid

Former High Court Judge of Malaya and Borneo
E-mail: justice@syed-ahmad-idid.com

70 years ago in the northern state of Kedah, Syed Abdullah Idid was blessed with a boy who is now known as Dato' Syed Ahmad Idid.

After service at the Royal Customs & Excise, he read for the bar at the Inner Temple London. After being called to the English Bar, Dato' Syed served as Circuit Magistrate for Kedah & Penang. He also served as Stipendiary Magistrate in Brunei and as High

Court Judge of (then) Borneo and Malaya.

He also served in the private sector with Kumpulan Guthrie and Dunlop and as Director for the Legal Division of Public Bank Group.

Dato' Syed Ahmad Idid is active in various professional organizations including the Commonwealth Magistrates' & Judges' Association, the Commonwealth Lawyers' Association, LAWASIA, and the International Bar Association. He is also a Fellow of the Malaysian Institute of Human Resource Management, the Malaysian Institute of Bankers, the British Institute of Management, and the British Institute of Directors.

After leaving the High Court, the Prime Minister of Malaysia later appointed him as Director of the Kuala Lumpur Regional Centre for Arbitration (KLCA). As Director, an initiative was formed with Institut Kelautan Malaysia to renew the efforts for maritime arbitration to be brought to Malaysia. Upon retiring as Director, he returned to industry as consultant, arbitrator, and negotiator. Among the negotiations were those relating to payments owed to banks and mediations in insurance and joint venture disputes.

Dato' Syed has addressed the judiciary, lawyers and others at various conferences including in the Kingdom of Cambodia on 'Code of Ethics for Judges & Prosecutors', and on arbitration and legal matters in the USA, Philippines, Hong Kong, Australia, Pakistan, Austria, Japan, Singapore, Thailand, and New Zealand. Among papers he has presented include 'On-line Court Proceedings' or 'E-Justice / E-Litigation', and 'Achieving Consistency in Sentencing'. He has also spoken on 'Enhancing Noble Values' and on 'Free Speech and the Constitution with special Reference to the Media'.

Dato' Syed has written several books including Native Court & Customary Law of Sabah, Magistrates' Court Handbook with (now) Dato' Justice Skinner, Judicial Decisions Affecting Bankers & Financiers with Mr Wang Kuo Shing, and the Borneo High Court Report. He has also written numerous articles on law, justice, banking, arbitration, and mediation in both Malaysian and international publication. Recently he also edited 'The Essentials in Arbitration' (2005) and 'Internet & E-Commerce' (with Ms Yee Yee Ling) in early 2007.

For promoting arbitration in Asia and for working on the Maritime initiative, the Asian Institute of Management awarded him the Triple A Alumni Achievement Award in 2006.

Dato' Syed Ahmad Idid has a reputation for probity and integrity – qualities which he believes are being gradually eroded in the judiciary and society at large today.



Sr Noushad Ali Naseem Ameer Ali

Registered Quantity Surveyor (Msia), Chartered Quantity Surveyor (UK),
Chartered Builder (UK), Accredited Mediator (Msia)
E-mail: naseem6864@yahoo.com, Website: www.cicqs.com

Surveyor Naseem has over 22 years experience in quantity surveying, project management, construction contracts consultancy and dispute resolution. He has worked in Malaysia and the UK, including over the last decade as director of the Malaysian operations associated with two international project management and construction contracts consultancies of British origin – the Beard Dove and the High-Point Rendel Groups. He is now director of CIC-QS Services Sdn Bhd. He has acted as expert witness in arbitrations and the court and is trained in adjudication in New Zealand and the United Kingdom.

He was the President of the Institution of Surveyors Malaysia for the session 2006/07. He used to serve as Vice-Chairman of the Chartered Institute of Arbitrators, UK, Malaysia Branch and Vice-President of the Chartered Institute of Building, UK, Malaysia Branch. Naseem has also served on the Master Builders Association Malaysia's Contracts & Practice committee and the Advocates and Solicitors' disciplinary committee in Malaysia.

He has also been appointed as Adjunct Associate Professor to the MSc programme in Construction Contract Management at University Technology Malaysia where he delivers the occasional lecture. In 1992, he initiated and developed the MSc programme in Construction Law and Arbitration at Leeds Metropolitan University, UK. He has presented at over 100 seminars and conferences in the UK, Malaysia, Indonesia, Japan, and New Zealand. Naseem is now doing research on adjudication at the University of Auckland, New Zealand.

Naseem is a critic of construction contracts that are drafted in legalese. He is the primary drafter of the 'CICC Model Terms of Construction Contracts For Sub-Contract Works'. It is drafted in modern plain language. Naseem hopes, in time, all construction contracts around the world will be in modern plain language, which are logically structured, plainly worded, and easily understood and administered.

As Chair of the Construction Industry Working Group on Payment (WG 10) in Malaysia, he recommended the introduction of the proposed 'Construction Industry Payment and Adjudication Act' for Malaysia. He hopes the Act becomes a reality in Malaysia, as it will improve efficiency in construction dispute resolution. And he hopes the current industry draft remains in plain language when parliamentary drafters take over, as plain language legislation is more effective and efficient.

Naseem married Nazimah on 8.8.98 and they have four young children - all boys except three.



Ms Tan Swee Im

Partner, Lawyer
E-mail: swee@tsi.net.my

Tan Swee Im, PY Hoh & Tai, Advocates & Solicitors is a result of a merger of two established law practices, Tan Swee Im & Co and PY Hoh & Tai.

The practice focuses on construction and commercial practice and acts for developers and contractors in dispute resolutions including arbitrations. The practice also acts as construction industry consultants and advises on project procurement strategies, drafting contracts, advising on contract administration and on contractual claims.

Clients include international companies and public listed groups as well as private companies. International clients include Bauer, Zublin International, Shinryo and Obayashi. Malaysian clients include the Sunway Group and Encorp Group and LFE Engineering.

Among the projects involved include various developments in the Middle East, the privatisation of 10,000 units of teachers quarters, various core and privatised facilities at the Kuala Lumpur International Airport (KLIA), KLCC, the Westport slag terminal, a large water project in Johor, the Sungai Prai bridge project, various petrochemical and cogeneration plants, and numerous commercial and residential projects.

Swee Im chairs the drafting committee and leads the drafting of the new Standard Terms of Design and Build Construction Contract initiated by the Construction Industry Development Board Malaysia. She is also a member of the Contracts and Arbitration Committee of the Master Builders Association of Malaysia.

Swee Im lives in Kuala Lumpur and is a keen sailor seeking to escape the landlocked urban built environment that she lives in.



Professor Peter Butt

Professor of Law, University of Sydney
e-mail: p.butt@usyd.edu.au, website: www.plainlanguage.org

Peter Butt is professor of law at the University of Sydney with almost 30 years' experience of teaching and legal practice. Peter holds a Bachelor of Arts, Bachelor of Laws, Master of Laws (First Class Honours) and Doctor of Laws from the University of Sydney. He is admitted as a legal practitioner (Australia) and is an honorary member of the Inner Temple (UK).

Peter was a founding director of the Centre for Plain Legal Language at the University of Sydney and a former President of Clarity (an international plain legal language organisation).

He lectures to lawyers and students in land law and plain language legal drafting. He has spoken at conferences in the techniques of plain language in the United States, Canada, Hong Kong, the United Kingdom, Ireland, and Australia. His clients include many leading law firms and government bodies. He has drafted plain language land registration statutes for Dubai, Uganda and Mongolia. And he has been consultant to the Australian Government on land law aspects of native title legislation, consultant to New South Wales Law Reform Commission on property law reforms and consultant to Mallesons Stephen Jaques, solicitors, in property law and legal drafting.

"Plain legal language brings substantial benefits. It would bring those benefits to the construction industry. Carefully used, plain language is legally safe; it saves time and money; lawyers and non-lawyers alike have a better chance of understanding it; and most judges prefer it. There seems no substantial reason to resist it!"
Professor Peter Butt.

Peter's books include Modern Legal Drafting (published by Cambridge University Press), The Elements of Drafting (10th edition), Land Law (now in its 5th edition), Contract for Sale of Land (now in its 2nd edition), and a loose-leaf commentary on the Torrens System of land registration. Peter is also co-editor of Butterworth's Australian Legal Dictionary. He is a regular contributor to the Australian Law Journal, editor of the 'Property and Conveyancing' column, Australian Law Journal and was editor of 'Sale of Land' volumes, Australian Encyclopaedia of Forms and Precedents and the Law Book Co Practical Forms and Precedents.

He has in the past been appointed Visiting Professor at Cambridge University and University of Bristol (UK), and Vanderbilt University (USA). And he has been appointed Inns of Court Fellow in London and Visiting Fellow at Nottingham University.

Peter is very happily married to Lin and they live in a home with a view in the North Shore, Sydney. His hobbies include bushwalking, tennis and pipe-organ playing.



Judge Mark Philip Painter

Judge, Professor - University of Cincinnati College of Law
E-mail: JugPainter@aol.com, Website: www.judgepainter.org

Judge Mark P Painter was elected to the Court of Appeals in 1994 and has been serving since then. Previously, he served on the Hamilton County Municipal Court for 13 years. At 34, he was one of the youngest judges ever in Hamilton County.

Judge Painter attended the University of Cincinnati, where he was elected Student Body President in 1969. He received a BA in 1970, and a Juris Doctor degree in 1973. He practiced law for nine years before becoming a judge.

Judge Painter is recognized as an outstanding legal scholar. To date, more than 375 of Judge Painter's decisions have been published nationally, making him one of the most-published judges in Ohio history. His opinions have been cited as precedent more than 2,500 times in legal encyclopaedias, treatises, law reviews, and other cases. One opinion was named one of the six best in the USA for 2006.

Judge Painter is the co-author of Ohio Appellate Practice. He has written law review articles, 126 articles for other legal journals, and several Internet biographies. His book on plain legal writing, The Legal Writer: 40 Rules for the Art of Legal Writing had the third edition released in 2005. His latest book, Write Well, came out in 2007. He writes a monthly column on legal writing for Lawyers USA.

"Cases are about people. Shouldn't they be able to read what is happening to them?" Judge Painter asks in his seminars. In The Legal Writer, he expands on that theme, and offers 40 rules for lawyers to follow in improving their writing style.

As an Adjunct Professor of Law at the U.C. College of Law since 1990, Judge Painter taught agency and partnership for 12 years and now teaches advanced legal writing. He was named the Chesley Distinguished Visiting Professor for 2008. He also teaches legal writing, appellate practice, and legal ethics to judges and lawyers throughout the USA. He has lectured at more than 200 seminars for, among others, the Ohio Judicial College, dozens of bar associations, and law firms.

Judge Painter has served as a Trustee of the Cincinnati Bar Association. He is a Master of the Bench Emeritus of the Potter Stewart Inn of Court, and served for three years on the Ohio Supreme Court Board of Commissioners on Grievances and Discipline. He is a member of the Cincinnati, American, and Ohio State Bar Association, the American Society of Writers on Legal Subjects (Scribes), the Plain Language International Network (Plain), the Legal Writing Institute, Clarity, and the American Judicature Society.

Judge Painter has lived in the Clifton Heights-Fairview neighborhood of Cincinnati for the last 43 years. Judge Painter and his wife, Sue Ann Painter, were married in 1986. Sue always walks on the Judge's left. Ask the Judge why at the conference.



Dr Robert Eagleson

Former Associate Professor of Modern English Language
Former Commissioner-in-Charge of the Victorian Law Reform Commission
E-mail: rdeagleson@primusonline.com.au

Dr Robert Eagleson is a former Associate Professor of Modern English Language at the University of Sydney. He is a recognised world authority on plain English and has published widely on modern English language and particularly plain English.

Robert has directed numerous projects for private and government organisations in rewriting documents in plain English in Australia and overseas. Chief assignments include the first plain language insurance policy in Australia (1976), special adviser to the Australian Government, establishing plain language programs within government departments (mid 80s), Commissioner-in-Charge of the Victorian Law Reform Commission reference Plain English and Legislation (1986), member of the Task Force directing the redrafting of the Corporations Law into plain language for the Australian Government (mid 90s) and a consultant to Mallesons, 1 of the top 5 law practices in Australia for 15 years.

Robert is happily married to Muriel and they live on the North Shore, Sydney – a cricket ball's throw from the home of Peter Butt, his co-conspirator against legalese.

REGISTRATION FORM

(please fax to : +603 4042 2880)

INTERNATIONAL CONFERENCE ON MODERN LEGAL DRAFTING Modernising Construction Contracts in Malaysia

Enquiries Secretariat
CIDB Holdings Sdn Bhd
Level 10, Grand Seasons Avenue
No 72 Jalan Pahang
53000 Kuala Lumpur, Malaysia
Tel: **+603 4042 8880** Fax: **+603 4042 2880**

Please fill in capital letters and mark (X) at the appropriate column. Completed form must be faxed to +603 4042 2880.

Date	Location	Venue
<input type="checkbox"/> 22 July 2008 (Tuesday – full day)	Kuala Lumpur	Kuala Lumpur Convention Centre
<input type="checkbox"/> 24 July 2008 (Thursday – half day)	Penang	Hotel Equatorial Penang

*** Registration Deadline: 5 working days before the event date**

CONFERENCE FEE (please tick the appropriate [])

- Regular Fee: RM 600.00
 Group Discounted Fee: RM 500.00 per person for 2 or more participants booked and paid at the same time.

Participants from outside Malaysia

- Regular Fee: USD 350.00
 Group Discounted Fee: USD 300.00 per person for 2 or more participants booked and paid at the same time..

Please register the following participants (attach additional sheets if necessary):

No	Participant's Name	Identity Card / Passport Number	Position	Email
1				
2				
3				
4				
5				

Nature of Business:

- Government Consultant - legal, QS,
Engineering, Architect Contractor, Grade G _____
 Developer Academic Others, please state _____

Contact Person :	Position :	
Organisation :	Address :	
Tel :	Fax :	Email :
Mobile :		

Enclosed is Postal Order / Bankers cheque No. _____ for RM / USD _____ made payable to **'CIDB MALAYSIA'**.

Payment must be sent to the Secretariat at the above address and must be received not later than 5 working days before the conference. Registration will only be confirmed after receiving full payment and the cheque is cleared. No refund will be made for cancellations but replacement of participants is allowed.

Signature & Company Stamp:

Date

For administration use:

Receipt no.: _____
Date of payment received: _____
Total payment: _____
Cheque/Postal order no.: _____