



**UNIVERSITI PUTRA MALAYSIA**

**LEGAL AND CONTRACT MANAGEMENT ANALYSIS  
OF THE MOST FREQUENTLY NEGOTIATED CONTRACT TERMS  
AMONG MALAYSIAN BUSINESSES**



**AZURA BINTI SHAMSUDDIN**

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**Thesis Submitted to the Graduate School of Management, Universiti Putra  
Malaysia, in Fulfillment of the Requirement for the Degree of  
Doctor of Philosophy**

**2010**

## DEDICATION

Throughout my childhood, my father Hj. Shamsuddin Bin Maamor has always instilled in his children the importance of education as the key to success. I still remember the mixed feelings that my siblings and I had every time that we had to present our school report cards for my dad's signature as he would always ask us whether what our teachers have written in our report cards including the exam results were a fair reflection of the effort that we had put in. The answer was more often grey than a straight forward yes or no. However, it drove home the message that my father wanted us to understand very early in life that we should always give and do things to the best of our abilities and that at the end of the day we could look at ourselves and be proud of our achievements by our own measure, no one else's. Even when I would have rebelled against my dad's philosophy in my teenage years, I truly don't remember facing such a dilemma as my mom Hj. Teh Suri Bt Mohamed would always be there for me to wipe away my tears when I felt that I had in some way or other disappointed my parents. She would be the one to tell me we would need to know what failure is in order for us to appreciate the fruits of our success. Mom and Dad, thank you for all the lessons that you have equipped me with throughout my growing up years to this very day.

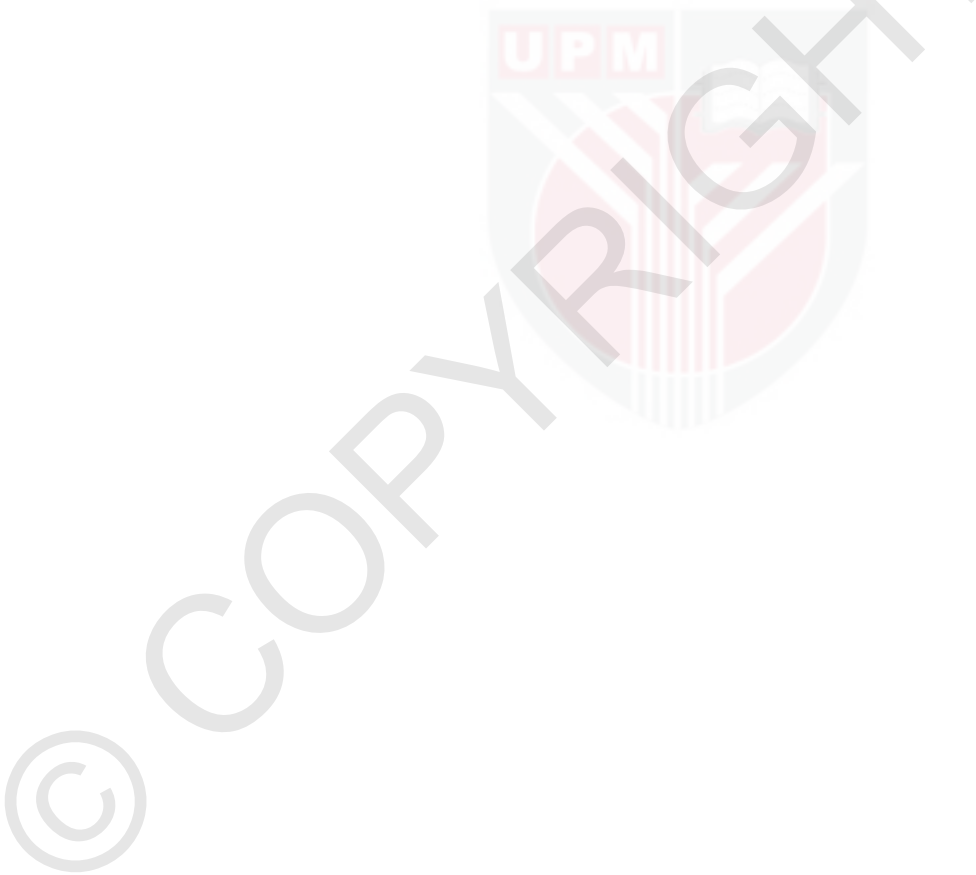
There are many things that can aspire one to greater heights but none could be compared with the love, patience and support of your loved ones. I thank Allah for choosing my partner in life, Rosli Bin Mazelan who has always been there for me through thick and thin, who stayed up at night to keep me company while I go through the piles of reading materials to write my thesis, who lifted me up even when

I wanted to give up because it was just impossible to complete my Ph.D in 3 years when I was working full time and doing this part-time, who patiently accepted my roller-coaster mood swings but most of all for giving me unconditional love and confidence that I would be able to reach this milestone in my life.

To my wonderfull little musketeers, Ahmad Daniel Ikhwan, Elisa Sabrina and Erina Sofea, having the three of you running and greeting Mummy after a hard day at work and looking into your beautiful trusting eyes always makes me feel very grateful to Allah for granting me the privelege of being a mother. I hope and pray that each of you will continue the tradition and charter your own journey of being among the best little caliphs that our Creater wanted you to be... Amin.

## ACKNOWLEDGMENT

By the time the final version of this thesis is approved by the Senate Committee, my mentor and supervisor, Allahyarham Professor Dr. Shaik Mohd Noor Alam S.M. Hussain is no longer part of this world. Always the ever humble man, arwah Prof once told me that what he most enjoyed in being a teacher is being the recipient of new knowledge by his fellow students. He gave me full ownership in my journey of discovery and only reigned me in when I started to stray too far away in the ocean. I was truly fortunate to have arwah Prof as my guiding angel. May Allah place arwah Prof among His Faithfuls...Al-Fatihah.



Abstract of thesis presented to the Senate of Universiti Putra Malaysia in fulfilment of the requirement for the degree of Doctor of Philosophy

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OF THE MOST FREQUENTLY NEGOTIATED CONTRACT TERMS  
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By

**AZURA SHAMSUDDIN**

2010

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The central argument of this thesis is that through the incorporation of proper management and treatment of the organizations' contractual agreement with respect to their most frequently negotiated contract terms as part of the organizations' contract management strategy in line with the organizations' goals, visions and missions would provide the relevant signals that could highlight potential legal issues before they become legal problems. This would enable the organizations to effectively handle legal disputes that may arise in the course of doing business in line with the law. Further, in doing so, the organizations would also be able to attain their core business objectives while minimising risks and creating value at the same time.

This thesis therefore, seeks to investigate the operations and effects of contract law, theories and practises with respect to the most frequently negotiated contract terms and how they relate to the contract management strategy of Malaysian business organizations as the social institutions. As there is no existing empirical evidence on the most frequently negotiated contract terms that is representative of Malaysian businesses prior to this thesis, a survey questionnaire was conducted to establish such a profile. The quantitative method used is however, limited to descriptive statistics only as it is not the purpose of this research to find any mathematical answers but rather for the purpose of making generalisation to a population from a sample with respect to the most frequently negotiated contract terms.

From the findings of the survey, the top two most frequently negotiated contracts terms i.e. liquidated damages and limitation of liability provisions were selected to be further researched. This involves the analysis of liquidated damages and limitation of liability provisions from both the legal and theoretical perspectives. Thereafter, having due regards to the legal and theoretical positions with respect to liquidated damages and limitation of liability provisions as they stand today, this thesis then analysed the mechanisms on how organizations could better manage these two provisions in particular and the contract in general, from a contract management perspective. Finally, as the *coup de grace*, this thesis concludes with a few recommendations for legal and management reforms pertaining to the two provisions as well as possible future research that can be taken in the research area.



Abstrak disertasi yang dibentangkan kepada Senat Universiti Putra Malaysia bagi memenuhi syarat kelayakan untuk Ijazah Doktor Falsafah

**ANALISA DARI SEGI UNDANG-UNDANG DAN PENGURUSAN KONTRAK  
BERKAITAN TERMA-TERMA YANG LAZIM DIRUNDING  
OLEH ORGANISASI PERNIAGAAN DI MALAYSIA**

Oleh

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**Pengerusi: Profesor Dr. Shaik Mohd Noor Alam S.M. Hussain, Ph.D.**

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Disertasi ini merangkumi hujahan terhadap pengurusan dan pengelolaan terma-terma kontrak sesebuah organisasi secara sistematik dan teratur berkaitan dengan terma-terma yang lazim dirunding sebagai sebahagian dari strategi pengurusan kontrak seiring dengan objektif, visi dan misi organisasi tersebut yang berkeupayaan memberikan isyarat yang relevan kepada isu undang-undang yang berkemungkinan mendatangkan masalah kepada organisasi tersebut. Ini membolehkan organisasi tersebut menangani permasalahan ini secara efektif dalam urusan perniagaannya mengikut lunas undang-undang. Dengan ini, organisasi tersebut dapat mencapai teras objektif perniagaannya dan mengurangkan risiko selain dapat mentaksirkan nilai yang sebenar pada masa yang sama.

Oleh itu, disertasi ini adalah bertujuan untuk menyelidiki operasi dan pengaruh undang-undang kontrak, teori dan amalan berkenaan terma-terma kontrak yang lazimnya dirunding dan bagaimana terma-term tersebut berkait rapat dengan strategi pengurusan kontrak organisasi perniagaan di Malaysia sebagai struktur organisasi sosial. Oleh kerana tiada bukti-bukti empirikal berkenaan dengan terma-terma kontrak yang lazimnya dirunding yang mewakili organisasi perniagaan di Malaysia sebelum disertasi ini ditulis, kaji selidik telah dijalankan melalui senarai soalan tinjauan bagi mengumpulkan data tersebut. Walaubagaimanapun, kaedah kuantitatif yang digunakan terhadap kepada statistik deskriptif sahaja kerana kaji selidik ini bukanlah bertujuan untuk mencari jawapan matematikal tetapi hanyalah bertujuan untuk membuat generalisasi terhadap populasi yang menjadi subjek kepada soal selidik ini daripada sampel yang diperolehi berkaitan dengan terma-terma kontrak yang lazimnya dirunding.

Daripada penemuan yang diperolehi, terma-terma kontrak yang paling kerap dirunding adalah gantirugi ketidaksiapan dan pertanggungjawaban terhadap di mana kedua-dua terma ini telah dipilih untuk dikaji dengan lebih lanjut dari segi undang-undang dan teori. Dengan mengambilkira kedua-dua perspektif ini, disertasi ini kemudiannya menganalisa mekanisme bagaimana sesebuah organisasi boleh mengurus kedua-dua terma ini dengan lebih sistematik dan teratur dari segi pengurusan kontrak. Daripada keputusan yang diperolehi, disertasi ini akhir sekali mengupas beberapa cadangan pembaharuan yang boleh dibuat dari segi undang-undang dan pengurusan terhadap kedua-dua terma tersebut dan juga cadangan untuk penyelidikan lanjutan yang boleh dibuat berdasarkan skop disertasi ini.

**APPROVAL**

This thesis was submitted to the Senate of Universiti Putra Malaysia and has been accepted as fulfilment of the requirement for the degree of Doctor of Philosophy. The members of the Supervisory Committee are as follows:

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**DECLARATION**

I hereby declare that the thesis is based on my original work except for quotations and citations which have been duly acknowledged. I also declare that it has not been previously or concurrently submitted for any other degree at UPM or other institutions.

.....  
**AZURA SHAMSUDDIN**

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