Tuanku Nurzahirah v Clare Louise Brown (also known as Clare Rewcastle Brown) & Ors

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO WA-23NCVC-66–11 OF 2018
MOHD JOHAN LEE JC
1 JANUARY 2023

Tort — Defamation — Libel — Plaintiff claimed for damages against defendants for alleged defamatory and/or slanderous statements in short passage in book — Whether there was publication — Whether statements referred to plaintiff — Whether statements were defamatory — Whether defendants succeeded in raising defences

This was the plaintiff's libel claim ('the claim') for damages against the defendants for alleged defamatory and/or slanderous statements in respect of a short passage in a book authored by the first defendant titled 'The Sarawak Report: The Inside Story of the 1MDB Expose' ('the book'). The second and third defendants were the publisher and the printer respectively of the book. The passage stated 'Jho was also friendly with a key player in Terengganu, the wife of the Sultan, whose acquiescence was needed to set up the fund and he later cited her support as having been crucial to his obtaining the advisory position' ('the impugned statement'). It was the plaintiff's claim that the impugned statement brought the imputations that the plaintiff: (a) interfered with the administration of the State of Terengganu; (b) used her position to influence and to establish the Terengganu Investment Authority ('TIA') and to set up the sovereign wealth fund; (c) consented to the establishment of the sovereign wealth fund; (d) used her position to assist and/or support Jho Low ('Jho') in obtaining Jho's advisory role in the sovereign wealth fund of the TIA; (e) was involved in corrupt practices; (f) was associated and had close ties with persons with questionable character namely Jho, whose reputation based on media report was a playboy and one who was sought by authorities; and (g) had the ability to influence the administration of the State of Terengganu and that she was the one who was running the administration and affairs of the State of Terengganu. The defences raised by the defendants were: (i) bane and antidote; (ii) justification and *Lucas-Box* defence; (iii) fair comment; and (iv) qualified privilege — *Reynolds*' defence.

Held, dismissing the claim with costs:

(1) There was no dispute on the first element ie, that there must be a publication, since it was indeed a clear fact that the book had already been printed and published at the time this claim was filed (see para 42).

(2) The word 'whose' in the sentence, referred to 'the wife of the Sultan' namely, the plaintiff. This was because 'whose' was a possessive pronoun used to indicate ownership, and in this sentence, it referred to the person who was friendly with Jho, which was (the person stated in the phrase immediately before it) 'the wife of the Sultan', ie, the plaintiff. The sentence suggested that 'the wife of the Sultan', namely, the plaintiff, played a key role in setting up the fund. It indicated that the wife of the Sultan was the one whose acquiescence was needed to set up the fund. The ordinary reader would naturally relate or conclude the impugned statement to the plaintiff here (see paras 56 & 76).

(3) From the perspective of a reasonable reader, there was nothing in the impugned statement to suggest imputations (i) and (ii). This was because the impugned statement was only related to the establishment of the TIA. To ascribe the plaintiff as an individual who had interfered with the administration of the state was too far-fetched. The same applied to imputation (ii) where it was within the knowledge of the public that Sultan Mizan established the TIA. Both imputations required an inference upon inference to arrive at such defamatory imputations. In addition, the impugned statement could not suggest the alleged imputations (v), (vi) and (vii) as these imputations did not come in natural and ordinary meanings of the impugned statement. Nowhere in the impugned statement was there any reference made to the plaintiff's friendship with Jho beyond 2009 and the TIA. It would be an unreasonable interpretation of the impugned statement to conclude that it implied that the plaintiff was as alleged in imputation (vi). As such, there was nothing in the impugned statement could suggest in its natural and ordinary meaning the alleged imputations (i), (ii), (v), (vi) and (vii) (see paras 112, 119, 124 & 127).

(4) There was no negative connotation that one could draw to arrive at imputation (iii). There was a factual error (which the first defendant admitted) in saying that the plaintiff consented to the establishment of the sovereign wealth fund. However, that did not in any way degrade the plaintiff's reputation. Next, a reasonable reader would only adduce a modified version of imputation (iv): that Jho claimed that the plaintiff had supported him in obtaining an advisory rule in TIA. The phrase 'he later cited' showed that it was only self-proclaimed by Jho that he had obtained the advisory position with the plaintiff's support, and there was nothing to suggest the truth in it. Moreover, there had never been allegations of impropriety made in respect of Jho's appointment to TIA. A statement alluding to the mere act of recommending or supporting Jho in him obtaining an advisory position in TIA was an innocent statement incapable of tarnishing the plaintiff's reputation or bringing her into disrepute, even though reference to the plaintiff was admittedly a mistake. Merely supporting or recommending Jho to any advisory role in

TIA would not in any way infer any negative derogation. Thus, the impugned statement did not in any way bring any negative connotation against the plaintiff. Consequently, it would not be capable of bearing defamatory against the plaintiff. Therefore, the plaintiff failed to prove that the impugned statement had defamatory implications against the plaintiff (see paras 131, 134–135, 138, 143 & 146).

(5) The antidote in pp 438–439 was too remote to be deemed as capable of neutralising any alleged defamatory imputations in the impugned statement. The impugned statement was stated at p 3 of the book while the passage was penned at pp 438–439, namely 435 pages later. Also, the suggestion by the defendants that the mentioning of the Sultan of Terengganu must be extended to the Terengganu Royal Family and thus meant the inclusion of the plaintiff in the passage in pp 438–439 of the book and that the same was an antidote to the sting too far stretched and improbable. To be the antidote, the passage in pp 438–439 must specifically mention the name of the plaintiff. Consequently, the defendants had failed to raise the defence of bane and antidote (see paras 162–163).

(6) The impugned statement was justified since the first defendant was merely connecting the dots by following the news articles which had already been published. The impugned statement was indeed untrue with regard to the connection of the plaintiff with the establishment of the TIA. However, since the impugned statement did not in any way materially injure the reputation of the plaintiff and the other charges/facts were truly as reported in the newspaper articles, the defendants had succeeded in raising the defence of justification under the principle in the case of *Lucas-Box v News Group Newspapers Ltd; Lucas-Box v Associated Newspapers Group plcs and others* [1986] 1 WLR 147 (see para 180).

(7) Since there was no detailed particularity that had been stated in the defence as to which of the words in the impugned statement were statement of facts and which of them were comments although they had specifically averred that the impugned statement consisted of a combination of fact and expression of opinion, by virtue of O 78 r 3(2) of the Rules of Court 2012, the defence of fair comment had failed. Also, the impugned statement did not contain any comment or opinion as alleged by the defendants. They were factual in nature. Hence, defence of fair comment was not available to them (see paras 203 & 207).

(8) The defendants had satisfied the court the need and duty to inform the entire episode by proving that the impugned statement was made pursuant to social interest and duty, considering the book was published at the height of the 1MDB scandal. However, the defendants had failed to satisfy the requirements laid down in *Reynolds v Times Newspapers Ltd*

and others [2001] 2 AC 127. The first defendant had not made any reasonable enquiry to investigate as to whether the plaintiff had involved in the setting up of TIA. Also, the defendants did not attempt to seek any comment from the plaintiff before the publication of the book. Neither had the impugned statement or anywhere in the book contain the gist of the plaintiff's side of story. Therefore, the impugned statement was not qualified and the defendants were not entitled to rely on the defence of qualified privilege (see paras 218 & 229–230).

(9) The first defendant's testimony was enough for the court to determine the three elements under the tort of defamation and all the defences raised. Since the second and third defendants were only the publisher and the printer respectively, their testimonies on defamatory implication of the impugned statement were not as important as the first defendant, who was the author of the book. The failure of the second and third defendants to testify should not in any way be considered as admission as argued by the plaintiff. No adverse inference should be drawn against them bearing in mind all the defendants had engaged a common set of solicitors and had filed one common defence (see paras 246–247).

(10) The plaintiff had failed to prove that the impugned statement was defamatory against her. No negative connotations could be made in reading the impugned statement although this was obviously a matter of mistaken identity. Even if the court was wrong in finding that the impugned statement bore no defamatory connotation against the plaintiff, the defendants had also successfully established a valid defence in showing that the impugned statement was justified (see paras 249–250).

[Bahasa Malaysia summary

Ini adalah tuntutan libel plaintif ('tuntutan') untuk ganti rugi terhadap defendan kerana dakwaan memfitnah dan/atau kenyataan fitnah berkenaan dengan petikan pendek dalam buku yang dikarang oleh defendan pertama bertajuk 'The Sarawak Report: The Inside Story of the 1MDB Expose' ('buku'). Defendan kedua dan ketiga masing-masing ialah penerbit dan pencetak buku tersebut. Petikan itu menyatakan 'Jho was also friendly with a key player in Terengganu, the wife of the Sultan, whose acquiescence was needed to set up the fund and he later cited her support as having been crucial to his obtaining the advisory position' ('kenyataan yang dipersoalkan'). Adalah dakwaan plaintif bahawa kenyataan yang dipersoalkan membawa tuduhan bahawa plaintif: (a) mencampuri urusan pentadbiran negeri Terengganu; (b) menggunakan kedudukannya untuk mempengaruhi dan menubuhkan Terengganu Investment Authority ('TIA') dan untuk menubuhkan dana kekayaan negara; (c) bersetuju dengan penubuhan dana kekayaan negara; (d) menggunakan kedudukannya untuk membantu dan/atau menyokong Jho Low ('Jho') dalam mendapatkan Jho peranan penasihat dalam dana kekayaan

negara TIA; (e) terlibat dalam amalan rasuah; (f) telah dikaitkan dan mempunyai hubungan rapat dengan orang yang mempunyai perwatakan yang boleh dipersoalkan iaitu Jho, yang reputasinya berdasarkan laporan media adalah seorang kaki perempuan dan yang dicari oleh pihak berkuasa; dan (g) mempunyai kebolehan untuk mempengaruhi pentadbiran negeri Terengganu dan beliaulah yang menjalankan pentadbiran dan hal ehwal negeri Terengganu. Pembelaan yang dibangkitkan oleh defendan ialah: (i) racun dan penawar; (ii) justifikasi dan pembelaan *Lucas-Box*; (iii) ulasan yang adil; dan (iv) perlindungan bersyarat — pembelaan *Reynolds*.

Diputuskan, menolak tuntutan dengan kos:

(1) Tiada pertikaian mengenai elemen pertama iaitu, mesti ada penerbitan, kerana memang fakta yang jelas bahawa buku itu telah pun dicetak dan diterbitkan pada masa tuntutan ini difailkan (lihat perenggan 42).

(2) Perkataan 'whose' dalam ayat tersebut, merujuk kepada 'isteri Sultan' iaitu, plaintif. Ini adalah kerana 'whose' adalah kata ganti nama posesif digunakan untuk menunjukkan pemilikan, dan dalam ayat ini, ia merujuk kepada orang yang mesra dengan Jho, iaitu (orang yang dinyatakan dalam frasa sejurus sebelum itu) 'isteri Sultan', iaitu, plaintif. Ayat itu mencadangkan 'isteri Sultan' iaitu plaintif memainkan peranan penting dalam penubuhan dana itu. Ia menunjukkan bahawa isteri Sultan adalah orang yang memerlukan persetujuan untuk menubuhkan dana itu. Pembaca biasa secara semula jadi akan mengaitkan atau menyimpulkan kenyataan yang dipersoalkan kepada plaintif di sini (lihat perenggan 56 & 76).

(3) Perkataan 'whose' dalam ayat tersebut, merujuk kepada 'isteri Sultan' iaitu, plaintif. Ini adalah kerana 'whose' adalah kata ganti nama posesif digunakan untuk menunjukkan pemilikan, dan dalam ayat ini, ia merujuk kepada orang yang mesra dengan Jho, iaitu (orang yang dinyatakan dalam frasa sejurus sebelum itu) 'isteri Sultan', iaitu, plaintif. Ayat itu mencadangkan 'isteri Sultan' iaitu plaintif memainkan peranan penting dalam penubuhan dana itu. Ia menunjukkan bahawa isteri Sultan adalah orang yang memerlukan persetujuan untuk menubuhkan dana itu. Pembaca biasa secara semula jadi akan mengaitkan atau menyimpulkan kenyataan yang dipersoalkan kepada plaintif di sini (lihat perenggan 56 & 76).

(4) Tiada konotasi negatif yang boleh diambil untuk sampai kepada tuduhan (iii). Terdapat kesilapan fakta (yang diakui oleh defendan pertama) dalam mengatakan bahawa plaintif bersetuju dengan penubuhan dana kekayaan negara. Walau bagaimanapun, itu tidak sama sekali menjatuhkan reputasi plaintif. Seterusnya, pembaca yang munasabah hanya akan mengemukakan versi tuduhan yang diubah suai (iv): bahawa Jho mendakwa bahawa plaintif telah menyokongnya dalam

mendapatkan peranan penasihat dalam TIA. Ungkapan 'he later cited' menunjukkan bahawa ia hanya pengisytiharan dirinya sendiri oleh Jho bahawa dia telah mendapat jawatan penasihat dengan sokongan plaintif, dan tidak ada apa-apa untuk mencadangkan kebenaran di dalamnya. Selain itu, tidak pernah ada dakwaan mengenai ketidakwajaran dibuat berhubung pelantikan Jho ke TIA. Kenyataan yang merujuk kepada tindakan semata-mata mengesyorkan atau menyokong Jho dalam dirinya mendapatkan jawatan penasihat dalam TIA adalah pernyataan tidak bersalah yang tidak mampu mencemarkan nama baik plaintif atau menjatuhkan nama baiknya, walaupun merujuk kepada plaintif diakui satu kesilapan. Sekadar menyokong atau mengesyorkan Jho kepada mana-mana peranan penasihat dalam TIA tidak akan sama sekali menyimpulkan sebarang penghinaan negatif. Oleh itu, kenyataan yang dipersoalkan itu tidak sama sekali membawa sebarang konotasi negatif terhadap plaintif. Akibatnya, ia tidak akan mampu membawa fitnah terhadap plaintif. Oleh itu, plaintif gagal membuktikan bahawa kenyataan yang dipersoalkan mempunyai implikasi fitnah terhadap plaintif (lihat perenggan 131, 134–135, 138, 143 & 146).

(5) Penawar dalam muka surat 438–439 adalah terlalu jauh untuk disifatkan sebagai mampu meneutralkan sebarang tuduhan fitnah dalam kenyataan yang dipersoalkan itu. Kenyataan yang dipersoalkan itu dinyatakan di ms 3 buku itu manakala petikan itu ditulis di ms 438–439, iaitu 435 muka surat kemudian. Juga, cadangan defendan bahawa sebutan Sultan Terengganu mesti diperluaskan kepada Kerabat Diraja Terengganu dan dengan itu bermakna kemasukan plaintif dalam petikan di ms 438–439 buku itu dan bahawa perkara yang sama adalah penawar kepada kenyataan adalah terlalu jauh dan tidak dapat dipercayai. Untuk menjadi penawar, petikan di ms 438–439 mesti menyebut secara khusus nama plaintif. Akibatnya, defendan telah gagal membangkitkan pembelaan racun dan penawar (lihat perenggan 162–163).

(6) Kenyataan yang dipersoalkan itu adalah mempunyai justifikasi kerana defendan pertama hanya menyambung titik-titik dengan mengikuti rencana berita yang telah diterbitkan. Kenyataan yang dipersoalkan itu sememangnya tidak benar berhubung kaitan plaintif dengan penubuhan TIA. Walau bagaimanapun, oleh kerana kenyataan yang dipersoalkan itu tidak sama sekali menjejaskan reputasi plaintif secara material dan pertuduhan/fakta lain benar-benar seperti yang dilaporkan dalam artikel akhbar, defendan telah berjaya membangkitkan pembelaan justifikasi di bawah prinsip dalam kes *Lucas-Box v News Group Newspapers Ltd; Lucas-Box v Associated Newspapers Group plcs and others* [1986] 1 WLR 147 (lihat perenggan 180).

(7) Oleh kerana tidak ada kekhususan terperinci yang telah dinyatakan dalam pembelaan tentang perkataan yang mana dalam kenyataan yang

dipersoalkan itu merupakan kenyataan fakta dan yang mana adalah ulasan walaupun mereka telah secara khusus menegaskan bahawa kenyataan yang dipersoalkan itu terdiri daripada gabungan fakta dan luahan pendapat, berdasarkan A 78 k 3(2) Kaedah-Kaedah Mahkamah 2012, pembelaan ulasan yang adil telah gagal. Juga, kenyataan yang dipersoalkan itu tidak mengandungi sebarang komen atau pendapat seperti yang didakwa oleh defendan. Mereka bersifat faktual. Oleh itu, pembelaan ulasan yang adil tidak tersedia untuk mereka (lihat perenggan 203 & 207).

(8) Defendan telah memuaskan hati mahkamah keperluan dan kewajipan untuk memaklumkan keseluruhan episod dengan membuktikan bahawa kenyataan yang dipersoalkan itu dibuat menurut kepentingan dan kewajipan sosial, memandangkan buku itu diterbitkan pada kemuncak skandal 1MDB. Walau bagaimanapun, defendan telah gagal untuk memenuhi keperluan yang ditetapkan dalam *Reynolds v Times Newspapers Ltd and others* [2001] 2 AC 127. Defendan pertama tidak membuat sebarang siasatan munasabah untuk menyiasat sama ada plaintif telah terlibat dalam penubuhan TIA. Selain itu, defendan tidak cuba mendapatkan sebarang komen daripada plaintif sebelum penerbitan buku itu. Kenyataan yang dipersoalkan atau di mana-mana dalam buku itu juga tidak mengandungi intipati cerita pihak plaintif. Oleh itu, kenyataan yang dipersoalkan itu tidak bersyarat dan defendan tidak berhak untuk bergantung pada pembelaan perlindungan bersyarat (lihat perenggan 218 & 229–230).

(9) Keterangan defendan pertama sudah cukup untuk mahkamah tentukan tiga elemen di bawah tort fitnah dan semua pembelaan yang dibangkitkan. Memandangkan defendan kedua dan ketiga masing-masing hanyalah penerbit dan pencetak, keterangan mereka mengenai implikasi fitnah terhadap kenyataan yang dipersoalkan itu tidak sepenting defendan pertama, yang merupakan pengarang buku itu. Kegagalan defendan kedua dan ketiga untuk memberi keterangan tidak sepatutnya dianggap sebagai pengakuan seperti yang dihujahkan oleh plaintif. Tiada anggapan bertentangan harus dibuat terhadap mereka dengan mengambil kira semua defendan telah menggunakan peguam sama dan telah memfailkan satu pembelaan bersama (lihat perenggan 246–247).

(10) Plaintif telah gagal membuktikan bahawa kenyataan yang dipersoalkan itu adalah memfitnahnya. Tiada konotasi negatif boleh dibuat dalam membaca kenyataan yang dipersoalkan walaupun ini jelas merupakan satu masalah identiti yang tersilap. Walaupun jika mahkamah tersilap dalam mendapati bahawa kenyataan yang dipersoalkan tidak mempunyai konotasi fitnah terhadap plaintif, defendan juga telah berjaya mewujudkan pembelaan yang sah dalam menunjukkan bahawa

A kenyataan yang dipersoalkan itu mempunyai justifikasi (lihat perenggan 249–250).]

Cases referred to

Aaron Anne Joseph v Chong Yip Seng [1996] 1 SLR 623; [1996] 1 SLR (R) 258, CA (refd)

B *Abdul Khalid @ Khalid Jafri bin Bakar Shah v Party Islam Se Malaysia & Ors* [2002] 1 MLJ 160; [2001] 4 CLJ 15, HC (refd)

Abdul Rahman Talib v Seenivasagam & Anor [1966] 2 MLJ 66, FC (refd)

All persons in occupation of the house and the wooden stores erected on a portion of land held under Grant No 26977 for Lot 4271 in the Township of Johor Bahru, Johor v Punca Klasik Sdn Bhd [1996] 4 MLJ 533, HC (refd)

C *Allied Physics Sdn Bhd v Ketua Audit Negara (Malaysia) & Anor and other appeals* [2016] 5 MLJ 113; [2016] 7 CLJ 347, CA (refd)

Allsop v Church of England Newspaper Ltd and others [1972] 2 All ER 26, CA (refd)

D *Amalgamated Television Services v Marsden* (1998) 43 NSWLR 158; (1998) 143 FLR 180; (1998) Aust Torts Reports 81—462; [1998] NSWSC 4, CA (folld)

Ayob bin Saud v TS Sambanthamurthi [1989] 1 MLJ 315; [1989] 1 CLJ Rep 321, HC (refd)

E *Bray v Deutsche Bank AG* [2008] EWHC 1263 (QB), QBD (refd)

Cameron's Unit Services Pty Ltd v Whelpton & Associates Pty Ltd and another (1985) 59 ALR 754, FC (refd)

Charleston v News Group Newspapers Ltd [1995] 2 AC 65, HL (refd)

F *Chen Cheng & Anor v Central Christian Church and other appeals* [1999] 1 SLR 94; [2000] 2 LRC 62, CA (refd)

Chew Sew Khian @ Chew Hua Seng v Saniboey Mohd Ismail & Ors [2003] 5 MLJ 91; [2002] 1 LNS 333, HC (refd)

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G *Crowd Care Sdn Bhd & Anor v Ling Lek Foo* [2021] MLJU 2831; [2021] 1 LNS 2384, HC (refd)

Dato' Dr Tan Chee Khuan v Chin Choong Seng @ Victor Chin [2011] 8 MLJ 608, HC (refd)

H *Dato' Ding Lian Cheon v Yap You Jee & Ors* [1999] 3 MLJ 209; [1999] 8 CLJ 98, HC (refd)

Dato' Seri Anwar Ibrahim v Datuk S Nallakaruppan [2012] 8 CLJ 939, HC (distd)

Dato' Seri Anwar bin Ibrahim v The New Straits Times Press (M) Sdn Bhd & Anor [2010] 2 MLJ 492; [2010] 5 CLJ 301, HC (refd)

I *Dato Seri Mohammad Nizar bin Jamaluddin v Sistem Televisyen Malaysia Bhd & Anor* [2014] 4 MLJ 242; [2014] 3 CLJ 560, CA (refd)

Dato' Sri Dr Mohamad Salleh bin Ismail & Anor v Nurul Izzah bt Anwar & Anor [2021] 2 MLJ 577; [2021] 4 CLJ 327, FC (folld)

Dato' Sri Dr Mohamad Salleh bin Ismail & Anor v Mohd Rafizi bin Ramli [2022] 3 MLJ 758, FC (folld)
Datuk Husam bin Musa v The New Straits Times Press (M) Bhd & Ors [2014] 8 MLJ 370, HC (refd)
Datuk Seri Anwar bin Ibrahim v Wan Muhammad Azri bin Wan Deris [2014] 9 MLJ 605, HC (refd)
De Souza Tay & Goh (suing as a firm) v Singapore Press Holdings Ltd and another action [2001] 3 SLR 380, HC (refd)
Dr Chong Eng Leong v Tan Sri Harris bin Mohd Salleh [2017] 4 MLJ 611, CA (refd)
Financial Information Services v Hj Salleh Hj Janan [2018] supp MLJ 176, FC (refd)
Gordon Berkeley Jones v Clement John Skelton [1963] 1 WLR 1362, PC (refd)
Grant v Torstar Corporation 314 DLR (4th) 1, SC (refd)
Grubb v Bristol United Press Ltd [1963] 1 QB 309, CA (refd)
Hj Saari bin Sungib v Pemegang Amanah Lembaga Zakat Selangor (MAIS), Berdaftar & Anor [2016] 2 MLJ 830; [2016] 5 CLJ 40, CA (refd)
Horrocks v Lowe [1975] AC 135, HL (refd)
Hulton (E) & Co v Jones [1910] AC 20, HL (refd)
Jameel (Mohammed) and another v Wall Street Journal Europe Sprl [2007] 1 AC 359, HL (refd)
Jefferson Ltd v Bhetcha [1979] 2 All ER 1108, CA (refd)
Jeynes v News Magazines Ltd and another [2008] EWCA Civ 130, CA (refd)
Jeramas Sdn Bhd & Anor v Datuk Wong Sze Phin @ Jimmy Wong [2021] MLJU 2037, HC (distd)
John v MGN Ltd [1997] QB 586, CA (refd)
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Kumarasamy a/l Naciappan v The New Straits Times Press (M) Bhd [2013] 7 MLJ 361, HC (refd)
Lee Kuan Yew v Chin Vui Khen & Anor [1991] 3 MLJ 494, HC (refd)
Lee Li Teng v Maturaiveeran a/l Perumal [2018] MLJU 836; [2018] 1 LNS 916, HC (distd)
Lim Chin Heng v Alliance Intel Consulting Sdn Bhd & Ors [2012] MLJU 1455, HC (folld)
Ling Wah Press (M) Sdn Bhd & Ors v Tan Sri Dato Vincent Tan Chee Yioun [2000] 4 MLJ 77; [2000] 3 CLJ 728, FC (distd)
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MMC Engineering Group Bhd & Anor v Wayss & Freytag (M) Sdn Bhd & Anor [2015] MLJU 477; [2015] 1 LNS 705, HC (refd)
Malik v Newspost Ltd and others [2007] EWHC 3063 (QB), QBD (refd)
Mani Segaran a/l Manickam & Ors v Bestino Group Berhad [2013] MLJU

282; [2013] 1 LNS 270, HC (refd)
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Monroe v Hopkins [2017] 4 WLR 68, QBD (folld)
Noor Asiah bte Mahmood & Anor v Randhir Singh & Ors [2000] 2 MLJ 175, HC (refd)
Port Kelang Authority v Datin Paduka Phang Oi Choo @ Phang Ai Tu (Tan Sri Datuk G Gnanalingam & Ors, intervener) [2016] MLJU 1605; [2017] 4 CLJ 780, HC (refd)
R Murugason v The Straits Times Press (1975) Ltd [1984] 2 MLJ 10 (refd)
RHB Bank Bhd v Tan Khay Guan [2009] 8 CLJ 612, HC (refd)
Raub Australian Gold Mining Sdn Bhd (in creditors' voluntary liquidation) v Hue Shieh Lee [2019] 3 MLJ 720; [2019] 3 CLJ 729, FC (refd)
Review Publishing Co Ltd and another v Lee Hsien Loong and another appeal [2010] 1 SLR 52, CA (refd)
Reynolds v Times Newspapers Ltd and others [2001] 2 AC 127, CA (refd)
Rowstead Systems Sdn Bhd v Bumicrystal Technology (M) Sdn Bhd [2005] 3 MLJ 132, CA (refd)
Rubber Improvement Ltd v Daily Telegraph Ltd [1964] AC 234, HL (refd)
S Pakianathan v Jenni Ibrahim [1988] 2 MLJ 173; [1988] 1 CLJ Rep 233, SC (refd)
Seaga v Harper [2008] 1 All ER 965; [2008] UKPC 9, PC (refd)
Sivabalan a/l P Asapathy v The New Straits Times Press (M) Bhd [2010] 9 MLJ 320, HC (refd)
Suruhanjaya Sekuriti v Datuk Ishak bin Ismail & Anor [2017] 3 MLJ 478, CA (distd)
Syarikat Bekalan Air Selangor Sdn Bhd v Tony Pua Kiam Wee [2015] 6 MLJ 187, FC (folld)
Tan Sri Dato' Lim Guan Teik v Tan Kai Hee [2014] 9 MLJ 363, HC (refd)
Tan Sri Dato Vincent Tan Chee Yioun v Haji Hasan bin Hamzah & Ors [1995] 1 MLJ 39; [1995] 1 CLJ 117, HC (refd)
Tan Sri Dr Muhammad Shafee Abdullah v Tommy Thomas & Ors [2018] 12 MLJ 98, CA (refd)
Thong King Chai v Ho Khar Fun [2018] MLJU 357; [2018] 5 MLRH 277, HC (refd)
Tun Datuk Patinggi Haji Abdul-Rahman Ya'kub v Bre Sdn Bhd & Ors [1996] 1 MLJ 393, HC (refd)
Utusan Melayu (M) Bhd v Lim Guan Eng [2015] 6 MLJ 113, CA (refd)
Utusan Melayu (M) Bhd v Othman bin Hj Omar [2017] 2 MLJ 80, CA (refd)
Viscount De L'Isle v Times Newspapers Ltd [1987] 3 All ER 499; [1988] 1 WLR 49, CA (refd)
Wonder Heat Pty Ltd v Bishop [1960] VR 489 (folld)
Wong Yoke Kong & Ors v Azmi M Anshar & Ors [2003] 4 MLJ 96; [2003] 6 CLJ 559, HC (refd)

Legislation referred to

Defamation Action 1957 ss 8, 9, 12, Schedule
Defamation Act 2013 [UK] s 4
Penal Code s 500
Rules of Court 2012 O 2 r 1, O 14A, O 78 r 3(2)
Rules of High Court 1980 (repealed by Rules of Court 2012) O 78 r 3(2)

Vishnu Kumar (with Mohd Haaziq Pillay bin Abdullah, Mohd Hilmi and S Manisha) (JS Pillay & Mohd Haaziq) for the plaintiff.
Gopal Sri Ram (with Americk Singh Sidhu and Mervyn Lai) (Tommy Thomas) for the defendant.

Mohd Johan Lee JC:

INTRODUCTION

[1] This is the plaintiff's libel claim ('this claim') for damages against the defendants for alleged defamatory and/or slanderous statement(s) in respect of a short passage within a book authored by the first defendant. The second and third defendants in this claim were the publisher and the printer respectively of the book.

BACKGROUND FACTS

[2] The plaintiff alleged that there was a passage in a book authored by the first defendant titled 'The Sarawak Report: The Inside Story of the 1MDB Expose' ('the book') that tends to defame the plaintiff. The passage in issue states:

> In April he had netted himself an official advisory role at the newly set-up sovereign wealth fund designed to invest the oil revenues from the Malaysian State of Terengganu (since elections in this oil state had just been won by the opposition, BN was ruthlessly looking for its revenues into a federally controlled entity). *Jho was also friendly with a key player in Terengganu, the wife of the Sultan, whose acquiescence was needed to set up the fund and he later cited her support as having been crucial to his obtaining the advisory position*. This was the fund that would shortly be converted into the scandalous entity known as 1MDB. ('the impugned statement')

[3] Back in May 2019, the plaintiff filed a summary judgment pursuant to O 14A of the Rules of Court 2012 ('the ROC 2012') and was allowed by the then presiding judge. It was the judgment of that court that the impugned statement was indeed defamatory to the plaintiff. Dissatisfied with the decision, the defendants appealed. On 24 August 2021, the Court of Appeal allowed the appeal and ordered that the case be remitted before me to proceed with its full trial instead ('the Court of Appeal decision').

[4] The first defendant then applied for a stay of proceeding to request that all further proceedings of this claim to be stayed until the final disposal of the Kuala Terengganu Magistrates Court Criminal Case No TA-83–232–09 of 2021 ('the criminal proceeding'). However, I have dismissed the first defendant's application and ordered for it to proceed with full trial. I shall first set out my reason to this in the first part of my ground. Thereafter, I shall discuss about my decision of this claim (after the full trial conducted) and my reasoning.

THE STAY APPLICATION

[5] In the stay of proceedings application ('the application') filed, the first defendant sought that all further proceedings of this claim be stayed until the final disposal of the criminal proceeding.

[6] The application was made by the first defendant due to the following reasons:

(a) there were common issues and facts between the proceedings herein and the criminal proceeding, and a strong likelihood of overlap in the evidence in both matters although the burden of proof differed in each set of proceedings;

(b) both proceedings arose from the publication of the same passage in the book;

(c) a police report was lodged by the then Comptroller of the Royal Household of Terengganu Dato Hj Mohd Azmi bin Mohamad Daham on 14 September 2018 at the Kuala Terengganu police station alleging that the impugned passage in the book was defamatory/slanderous against the plaintiff ('police report');

(d) however, no action was initially taken by the Royal Malaysian Police in respect of the police report, and the criminal proceeding only commenced three years after the police report but only a month after the defendants were successful in their appeal to the Court of Appeal against the plaintiff's O 14A application;

(e) the criminal proceeding was brought pursuant to s 500 of the Penal Code. On 23 September 2021, the authorities applied for and obtained in the criminal proceeding a warrant of arrest against the first defendant. Soon after, on 5 November 2021, the Royal Malaysian Police informed the public that they were 'tracking down' the first defendant, and on 6 November 2021, issued a wanted poster of the first defendant;

(f) on 19 November 2021, the first defendant applied in the Kuala Lumpur High Court (Criminal Application No WA-44–277–11 of 2021) for the transfer of the criminal proceeding to the Kuala Lumpur High Court and

for an order that the charge therein be quashed ('quashing application') on grounds that the criminal proceeding was mala fide, malicious in nature, was an abuse of the court's process, contemptuous and/or was an abuse of prosecutorial power. The criminal proceeding was also allegedly brought as a result of the plaintiff's failed O 14A application in this claim;

(g) the unusual and sudden vigour in pursuing the criminal proceeding on the police report raised the irresistible imputation that the criminal proceeding was motivated by external pressure and that this claim and the criminal proceeding were being pursued in concert, where the criminal proceeding was reinvigorated due to the Court of Appeal decision; and

(h) it was highly unlikely that the criminal proceeding would be quashed or conclude, or that any decision would be delivered in respect thereof, before the trial of this claim. In the event the quashing application was successful, and if the trial of this claim was to commence prior to the criminal proceeding, the first defendant would be prejudiced of her right, inter alia, to remain silent and to have her full defence against the criminal charges not disclosed prior to her giving evidence therein. This posted a real potential of there being a miscarriage of justice in the criminal proceeding.

[7] The first defendant further reasoned that there was a real danger of miscarriage of justice, and it went beyond the two cases merely overlapping. If both proceedings were brought in concert, the prejudice to the first defendant's overall right to remain silence in respect of the criminal proceeding would become more pronounced. There was also a real danger to the case and evidence against the first defendant as the witnesses would also take the stand during the criminal proceeding.

[8] During oral submission, the first defendant's counsel also highlighted to this court that her personal liberty was at stake. The first defendant quoted several authorities to support her contention. The first defendant then contended that there was no urgency for the plaintiff to proceed with this claim other than her interest in the pecuniary claim.

[9] In opposing the application, the plaintiff submitted that the first defendant's right to remain silent did not arise because the first defendant was aware of the criminal proceeding against her and had announced that she did not intend to return to Malaysia. Thus, the question of her right to remain silent and her fear that her defences would be disclosed in this claim was not an issue.

[10] Next, the plaintiff argued that there was no proof of miscarriage of justice in the criminal proceeding in the event this claim was allowed to

proceed. The plaintiff quoted the case of *MMC Engineering Group Bhd & Anor v Wayss & Freytag (M) Sdn Bhd & Anor* [2015] MLJU 477; [2015] 1 LNS 705 to support her contention. Moreover, there was no prejudice that would arise against the first defendant as she had already disclosed her defences in this claim through the defence filed.

[11] The plaintiff also contended that she would be prejudiced if the application was allowed as the case was filed way back in 2018. For the criminal proceeding, there has yet to be a trial date. Hence, the proximity of the hearing of the criminal proceeding hearing was uncertain. To support, the plaintiff cited the case of *Port Kelang Authority v Datin Paduka Phang Oi Choo @ Phang Ai Tu (Tan Sri Datuk G Gnanalingam & Ors, intervener)* [2016] MLJU 1605; [2017] 4 CLJ 780.

[12] In respect of the personal liberty contention raised by the first defendant, the plaintiff submitted that the first defendant's right of silence in the criminal proceeding did not automatically entitle the first defendant to stay the proceeding even though it involved personal liberty. Moreover, if this court allowed the application, then there would be complete uncertainty as to when this claim could begin as there was no certain date for the trial of the criminal proceeding.

[13] Having appraised the arguments adduced by all the parties through respective submissions by the learned counsels, I found no merits in the application. Thus, the application was disallowed. Herein are my reasons.

[14] In essence, a stay of proceedings arises under an order of the court which puts a stop or 'stay' on the further conduct of the proceedings in that court at the stage which they have then reached, so that the parties are precluded thereafter from taking any further step in the proceedings. The purpose of the order is to avoid the trial or hearing of the proceedings from taking place where the court thinks it is just and convenient to make the order, to prevent any injustice to the opposite party (see *Halsbury's Laws of Malaysia — Civil Procedure* [190.6–078]).

[15] It is a trite law that the order for stay of proceedings is within the court's discretion and it will only do so if it thinks that there are special circumstances that warrant such stay. This is as mentioned in the Court of Appeal case of *Rowstead Systems Sdn Bhd v Bumicrystal Technology (M) Sdn Bhd* [2005] 3 MLJ 132, where His Lordship Azmel J at p 138 para [12] stated:

> [12] It is now a well-established principle that in an application for a stay of proceedings the applicant must show the existence of special circumstances. This principle was originally adopted in the case of *Serangoon Garden Estate Ltd v Ang Keng* [1953] 1 MLJ 116. The Court of Appeal in the case of *See Teow Guan & Ors*

v Kian Joo Holdings Sdn Bhd & Ors [1995] 3 MLJ 598 ruled that there is no need for the applicant to demonstrate special circumstances to warrant a stay or proceedings or of execution. However, the recent Federal Court ruling in the case of *Kosma Palm Oil Mill Sdn Bhd & Ors v Koperasi Serbausaha Makmur Bhd* [2004] 1 MLJ 257 appears to have overruled the decision of *See Teow Guan* and reinstate the principle that was established in *Serangoon Garden Estate* whereby the applicant still requires to show special circumstances in an application for stay of proceedings of execution. We are therefore bound by the ruling of the Federal Court (see also the Court of Appeal decision in *Ming Ann Holdings Sdn Bhd v Danaharta Urus Sdn Bhd* [2002] 3 MLJ 49).

[16] Also in the High Court case of *All persons in occupation of the house and the wooden stores erected on a portion of land held under Grant No 26977 for Lot 4271 in the Township of Johor Bahru, Johor v Punca Klasik Sdn Bhd* [1996] 4 MLJ 533, His Lordship Abdul Malik Ishak J (as he then was) explained the fundamentals of stay of proceedings application in his judgment at p 538:

A stay of proceedings arises under an order of the court and, in essence, it puts a stop the further conduct of the proceedings. The order is generally discretionary in nature (see *Bettinson v Bettinson* [1965] Ch 465; [1965] 1 All ER 102) and generally made very sparingly and only in exceptional circumstances (see *Lawrence v Lord Norreys* (1890) 15 App Cas 210 at p 219) or what is known in the local scene as special circumstances (see *Wu Shu Chen (sole executrix of the estate of Goh Keng How, decd) v Raja Zainal Abidin bin Raja Hussin & Anor* [1995] 3 MLJ 224) of which I have more to say later. It is true to stay of the court will exercise great care and circumspection so as not to drive the 'plaintiff from the judgment seat' when confronted with an application for a stay of proceedings pending an appeal (see *Dyson v A-G* [1911] 1 KB 410 at p 419 (CA)).

[17] In our case, the application was filed by the first defendant for an order to stay this claim pending the conclusion of the criminal proceeding. Truly, the courts have inherent jurisdiction and power to order for stay of proceedings in a variety of circumstances, including those stated in the application. The most notable case for this type of application can be seen in the English case of *Jefferson Ltd v Bhetcha* [1979] 2 All ER 1108. In that case, Megaw LJ set out the following principles at p 1113:

I should be prepared to accept that the court which is competent to control the proceedings in the civil action, whether it be a master, a judge, or this court, would have a discretion under s 41 of the Supreme Court of Judicature (Consolidation) Act 1925, to stay the proceedings, if it appeared to the court that justice (the balancing of justice between the parties) so required, *having regard to the concurrent criminal proceeding, and taking into account the principle, which applies in the criminal proceeding itself, of what is sometimes referred to as the 'right of silence' and the reason why that right, under the law as it stands, is a right of a defendant in criminal proceeding. But in the civil court it would be a matter of discretion, and not of right. There is, I say again, in my judgment, no principle of law that a plaintiff in a civil action is to be debarred from pursuing that action in accordance with the normal rules for the*

conduct of civil actions merely because so to do would, or might, result in the defendant, if he wished to defend the action, having to disclose, by an affidavit under O 14, or in the pleading of his defence, or by way of discovery or otherwise, what his defence is or may be, in whole or in part, with the result that he might be giving an indication of what his defence was likely to be in the contemporaneous criminal proceeding. The protection which is at present given to one facing a criminal charge (the so-called 'right of silence') does not extend to give the defendant as a matter of right the same protection in contemporaneous civil proceedings.

Counsel for the defendant, though he submitted that there was such a general principal, accepted that it was not a principle of absolute and invariable application, but that there was a measure of discretion in the court. He submitted, however, that in this case there ought here to be a stay of the proceedings in the civil action until such time as the criminal proceeding have come to a conclusion. In my judgment, while each case must be judged on its own facts, *the burden is on the defendant in the civil action to show that it is just and convenient that the plaintiff's ordinary rights of having his claim processed and heard and decided should be interfered with.*

Of course, one factor to be taken into account, and it may well be a very important factor, is *whether there is a real danger of the causing of injustice in the criminal proceeding*. There may be cases (no doubt there are) where that discretion should be exercised. In my view it would be wrong and undesirable to attempt to define in the abstract what are the relevant factors. By way of example, a relevant factor telling in favour of a defendant might well be the fact that the civil action, or some step in it, would be likely to obtain such publicity as might sensibly be expected to reach, and to influence, persons who would or might sensibly be expected to reach, and to influence, persons who would or might be jurors in criminal proceeding. *It may be that, if the criminal proceeding was likely to be heard in a very short time (such as was the fact in the Wonder Hear case in the Victoria Supreme Court) it would be fair and sensible to postpone the hearing of the civil action. It might be that it could be shown, or inferred, that there was some real, not merely notional, danger that the disclosure of the defence in the civil action would, or might, lead to potential miscarriage of justice in the criminal proceeding,* by, for example, enabling prosecution witnesses to prepare a fabrication of evidence or by leading to interference with witnesses or in some other way. (Emphasis added.)

[18] The decision in *Jefferson Ltd v Bhetcha*, was reiterated in the High Court cases of *Dato' Ding Lian Cheon v Yap You Jee & Ors* [1999] 3 MLJ 209; [1999] 8 CLJ 98 and *RHB Bank Bhd v Tan Khay Guan* [2009] 8 CLJ 612.

[19] His Lordship Abdul Malik Ishak J (as he then was) in *Dato' Ding Lian Cheong* held at pp 237–238 (MLJ); pp 129–130 (CLJ) that:

... In deciding whether a stay of civil proceedings should be granted until conclusion of criminal proceeding and where there are concurrent civil and criminal proceeding in respect of the same subject matter, this court having control of the civil proceedings could, in the exercise of its discretion, stay those proceedings if it appears to the court that justice so requires having regard to the defendants' right of silence in relation to the concurrent criminal proceeding. *An important factor to be*

taken into account by this court in deciding whether to grant a stay was whether there was a real and not merely a notional damage that the disclosure of the defence in the civil action would lead to a potential miscarriage of justice in the criminal proceeding. In my judgment, there was no impediment for the plaintiff to file the present civil suit while the criminal proceeding was in progress. The defendants' right of silence in the criminal proceeding remained intact and exercisable by them at the appropriate time. There was no miscarriage of justice nor prejudice on the part of the defendants when this court granted the stay of the civil proceedings. All the parties agreed that the burden of proof in a criminal trial differ from that of a civil suit. The documents produced during the criminal trial must be made available during the hearing of the present suit and the plaintiff certainly cannot produce those documents while the criminal trial was in progress. In so far as the criminal trial was concerned, the trial court at the sessions level hold the reins and must ensure that the defendants be given a fair trial.

[20] Meanwhile, in *Tan Khay Guan* the defendant applied for stay of proceedings for the civil action in favour of the criminal trial. It was the defendant's submission that if the civil proceeding before the court were to proceed it would expose the defendant's defence and prejudice its defence in the criminal trial. The defendant further submitted that an accused person was entitled to remain silent under the criminal justice system. His Lordship Sofian Abd Razak J (as he then was) in dismissing the defendant's application says this at pp 627–628:

[46] In the instant case, the court is of the view that justice of the case requires that the civil proceedings to be proceeded. *The court does not find that the disclosure of the statement of defence in the civil action and the filing of the affidavit-in-reply in respect of the plaintiff's application for a Mareva Injunction would lead to a potential miscarriage of justice in the criminal trial. The defendant's right of silence in the criminal trial remained intact and exercisable at the appropriate time*. There was no miscarriage of justice or prejudice on the part of the defendant by refusing the defendant's application for a stay of proceedings in the civil trial.

[47] *The court agrees with the decision in Jefferson Ltd v Bhetcha that the protection given to defendant facing a criminal charge did not extend to given the defendant as a matter of right the same protection (ie, the right of silence) in concurrent civil proceedings.*

[48] The court is satisfied that there will be *no real prejudice to the defendant's right to a fair trial if the civil proceedings were heard before the criminal proceeding and the court is not persuaded that there is any sufficient reason to stay the proceedings.* Until it is concluded many depositors, and shareholders of the plaintiff have no chance of recovering the money which they have lost. A serious injustice to the depositors and shareholders would be caused if all this had to wait until after the criminal trial had been concluded. In the court's view, the defendant's right and interest can be properly safeguarded in other ways. (Emphasis added.)

[21] Ultimately, the court in granting the stay of proceedings application must consider the factors set out below:

A (a) whether the first defendant's right of silence in the criminal proceeding is still intact; and

(b) whether there was a potential of miscarriage of justice.

B **[22]** I shall now discuss these two factors separately together with the application of each of them to our present case.

Whether the first defendant's right of silence in the criminal proceeding is still intact

C **[23]** The courts' position in regard to the right of silence in criminal proceedings is apparent: It does not extend to give the defendants the same protection in contemporaneous civil proceedings. The plaintiff had cited the case of *MMC Engineering* where Her Ladyship Mary Lim J (as she then was) at para [20] said this:

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> [20] First, where there are concurrent criminal and civil proceedings against the same defendant in respect of the same subject matter, the court has discretion to stay the civil proceedings pending the conclusion of the criminal proceeding. It is not an absolute principle of law that where there are concurrent civil and criminal proceeding against a defendant, the defendant's right of silence in the criminal proceeding is carried into the civil proceedings and that the defendant is entitled in the civil action to be excused from taking any procedural step which in the ordinary course be necessary or desirable to take in furtherance of his defence to that civil action; even if that step or action would or might have the result of him disclosing in whole or in part of his actual or likely defence in the criminal proceeding. *The right of silence is not extended into the civil proceedings. It is not a matter of right but one of discretion in the civil proceedings*. (Emphasis added.)

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[24] Likewise, it was further held that the court must consider the interest of all parties before granting the stay of application. The fact that the defendant will be compelled to reveal his/her defence in criminal proceeding as a result of defending himself/herself in civil proceedings will not be a reason for staying the civil proceedings. Her Ladyship Mary Lim J (as she then was) in *MMC Engineering* also quoted the rationale given by Wilcox J in the Federal Court of Australia's decision in *Cameron's Unit Services Pty Ltd v Whelpton & Associates Pty Ltd and another* (1985) 59 ALR 754 at p 760:

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> ... it is a right that an accused may waive incautiously or even deliberately to preserve some tactical advantage in his favour. An accused may face conflicting interests when deciding whether to waive the right. For example, if he has an alibi, he must issue a notice of alibi to enable the prosecution to challenge his alibi during the prosecution case. He cannot maintain his silence during the prosecution case and reveal his alibi during his defence. Hence, he must decide tactically in each situation whether to maintain his right of silence or waive it. *The existence of civil proceedings where he may be compelled to reveal his defence in criminal proceeding is merely one scenario where he will have to consider whether he should waive his right of silence. It is*

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not for the court to decide this matter in his favour by automatically staying civil proceedings simply because he claims he will be compelled to reveal his defence in concurrent criminal proceeding in the civil proceedings. The court is not concerned with his right of silence; it is concerned with determining whether there is a likelihood of injustice in the criminal proceeding in the event the civil proceedings are allowed to continue. A mere statement by a defendant that he will be compelled to give up his right of silence in the criminal proceeding continue is not sufficient for this purpose. The defendant must show proof of a real danger — and not merely a notional danger — that his rights in the criminal proceeding will be prejudiced in the event the civil proceedings are allowed to proceed. (The principal case setting out the above principles is *Jefferson v Bhetcha* [1979] 1 WLR 898 904–905). (Emphasis added.)

[25] The plaintiff's counsel argued that due to the fact that the first defendant had no intention to return to Malaysia to face the criminal proceeding, the question of her right to remain silent and her fear that her defences in the criminal proceeding would be disclosed due to the trial of this claim, did not arise. In response, the first defendant contended that the present case was related to the same subject matter unlike in *MMC Engineering* and *Mani Segaran a/l Manickam & Ors v Bestino Group Berhad* [2013] MLJU 282; [2013] 1 LNS 270 and the criminal proceeding and this claim would likely to have the similar witnesses.

[26] Nevertheless, it is clear from the facts presented before this court that the criminal proceeding was still in its infancy. Nothing has progressed ever since. Also, the material facts and defences had all been disclosed in detail in the defence and in all witnesses' statements filed. Thus, I am agreeable with the plaintiff's arguments that the right of silence of the first defendant is not affected by the disclosure of evidence in this claim. The first defendant's counsel also highlighted the decision of His Lordship Abdul Malik Ishak J (as he then was) in *Dato' Ding Lian Cheong* at p 236 (MLJ); p 128 (CLJ), where His Lordship cited the English case of *Wonder Heat Pty Ltd v Bishop* [1960] VR 489:

... Finally, to round it up Pape J in *Wonder Heat Pty v Bishop* had this to say in that case (see pp 495–496 of the report):

> For myself, I am one of those who believe that if an accused person has in fact and in law a good defence, it loses nothing by being disclosed. But the right to advance at a criminal trial a surprise defence is merely part of the wider proposition that an accused person is not obliged to say anything in his defence unless he so desires ...

[27] I am in total agreement with this ratio. However, the circumstances of the case must justify such a stay. Again, with due respect, at the time of my decision on the application, there was no indication that the criminal proceeding would commence any time soon unlike this claim where the matter

has been well settled and set for trial. Thus, I do not see that there is any concern for this court to proceed with the full trial of this claim. Plus, as mentioned by the authorities above, the right of silence could not be extended into the civil proceeding. Hence, this brings us to the second factor for the application which is whether there would be a potential for a miscarriage of justice if this claim was to proceed. Bearing in mind the first defendant had declared that she would not come back to Malaysia to participate in the criminal proceeding, this claim should not be stayed or kept in abeyance for an uncertain period of time.

Whether there is a potential miscarriage of justice

[28] The first defendant submitted that there would be a real danger that the case and evidence of the first defendant in the criminal proceeding being augmented or improved upon due to any prior disclosure of evidence in this claim. This is more so since the subject matter, and potential witnesses in the criminal proceeding were similar to or the same as the witnesses for this claim. Here, I have to disagree with the first defendant's contention.

[29] As pointed out in *MMC Engineering*, in order for the stay to be granted, the first defendant must show proof of real danger and not merely a notional danger that his/her rights in the criminal proceeding would be prejudiced in the event this claim was allowed to proceed. Other than insinuating that the first defendant's entire case would be revealed before the prosecution, the first defendant did not produce any evidence to this court that there were any attempts by the prosecution to refuse the first defendant's request in procuring relevant documents for her defence.

[30] Additionally, the first defendant also averred that there would be a danger that this court and the court hearing of the criminal proceeding might have different findings on the same facts and issues. The first defendant then cited the Court of Appeal case of *Suruhanjaya Sekuriti v Datuk Ishak bin Ismail & Anor* [2017] 3 MLJ 478 where the Court of Appeal held that if the stay application was allowed, there would be likelihood of conflicting decisions on the same facts by the two courts: one hearing the criminal proceeding while the other hearing this claim.

[31] I am indeed guided and bound by the ratio in *Datuk Ishak bin Ismail*. However, our current case is different from the facts in that case. In *Datuk Ishak bin Ismail*, His Lordship Idris Harun JCA held at p 490 para [21] that:

> [21] ... We note *the proximity of the hearing dates*. The criminal proceeding which were initially set for a seven day hearing were reschedule to 1–13 December 2016 while the civil suit remained as scheduled, which is, 6–9 December 2016 with follow up dates in February 2017. With these dates, clearly we have *a situation where*

> *both the criminal proceeding and the civil suit would be heard almost simultaneously*. The appellant's resources would inevitably be stretched as it was clear to us that the same resources and witnesses would be involved. There was moreover so much commonality of facts and issues as well as a strong likelihood of overlap in the evidence in both the criminal proceeding in the civil suit although *the burden of proof differed in each set of proceedings that would make conflicting decisions potentially an ineluctable fact*. (Emphasis added.)

[32] It is clear to me that unlike our present case, the criminal trial in *Datuk Ishak bin Ismail* would be heard almost instantly if the stay was not granted. In the current case, the situation is totally different. The proximity between the criminal proceeding and this claim is a non-issue as the trial dates for the criminal proceeding have not been fixed. The criminal proceeding was still at its early stage. The trial dates for this claim, on the other hand, has already been set and the parties were ready to proceed had it not because of the filing of application at the 11th hour just four days before the commencement of the trial.

[33] The plaintiff referred to the High Court case of *Port Kelang Authority* at p 790 (CLJ) para [39] where Gunalan Muniandy JC (as he then was) opined that:

> [39] In my view, the element of prejudice emanating from the above instances has not been properly established. Instead, *the slow progress of the criminal proceeding which the fact clearly disclose could impede the fair disposal of the civil suit to the plaintiff's prejudice. Although the criminal trial has commenced, only two witnesses have been called to date and subsequent trial date have been vacated for reason unknown. To estimate when the trial would be concluded would be a most difficult task and based on the current progress and postponements, it is likely to take several years. In the light of this, the question of unfairness and prejudice to the plaintiff in the event that the stay is granted remains as this civil suit was instituted way back in 2009.* (Emphasis added.)

[34] I echo and agree wholly with His Lordship. Thus, to me, this claim should proceed with its trial. No miscarriage of justice whatsoever would be caused if this claim was to proceed with its full trial.

[35] Next, the first defendant submitted that this court need to weigh the plaintiff's personal liberty and the integrity of the criminal proceeding. There was also no urgent right of the plaintiff's that needed protection other than her pecuniary interest. To support, the first defendant relied on the Federal Court case of *Ling Wah Press (M) Sdn Bhd & Ors v Tan Sri Dato Vincent Tan Chee Yioun* [2000] 4 MLJ 77; [2000] 3 CLJ 728 where in short, it was held in that case that the court must consider several factors when assessing damages. His Lordship Eusoffe Chin CJ at p 82 (MLJ); p 733 (CLJ), in delivering the judgment cited the case of *John v MGN Ltd* [1997] QB 586 at p 607, where Sir

Thomas Bingham MR said:

> In assessing the appropriate damages for injury to reputation the most important factor is the gravity of the libel; the more closely it (the defamation) touched the plaintiffs personal integrity, professional reputation, honour, courage, loyalty, and the core attributes of his personality, the more serious it is likely to be. The extent of publication is also very relevant: a libel published to millions has a greater potential to cause damage than a libel published to a handful of people. A successful plaintiff may properly look to an award of damages to vindicate his reputation but the significance of this is much greater in a case where the defendant asserts the truth of the libel and refuses any retraction or apology than in a case where the defendant acknowledges the falsity of what was published, and publicly expresses regret that that libellous publication took place.

[36] Again, I have no qualm about the decision cited above. However, it must be noted that *Ling Wah Press (M)* was decided after trial. This can easily be distinguished from our present case. In our present case, the application is whether the stay of proceedings should be allowed and thus whether the trial should commence. I am also of the view that the subject matter at hand is far greater than mere pecuniary interest. As mentioned by His Lordship Harmindar Singh Dhaliwal JC (as he then was) in *Dato' Seri Anwar bin Ibrahim v The New Straits Times Press (M) Sdn Bhd & Anor* [2010] 2 MLJ 492 at p 522; [2010] 5 CLJ 301 at p 332 para [85]:

> [85] ... *The law of defamation, as I see it, must be more about the truth and reputation than money* ... (Emphasis added.)

[37] The matter in this claim is about the reputation of both parties. Bearing in mind both the plaintiff and the first defendant are prominent figures locally and internationally, the vindication of this claim is to the benefit of them for it would clear their names one way or another. Therefore, I agree with the plaintiff's arguments that if this court was to allow the application, it would bring more injustice to the plaintiff as this claim was ready from the get go. Hence, I answer the second issue negatively.

[38] To conclude, it is the decision of this court that the first defendant had failed to convince and establish her special circumstances in the application. Thus, the first defendant's application for stay of proceeding under encl 73 was dismissed. This claim then proceeded with its trial.

THE TRIAL, FINDINGS AND DECISION OF THIS COURT

[39] The plaintiff called three witnesses during the trial, while the defendants called two witnesses respectively:

(a) PW1: Tuanku Nur Zahirah;

(b) PW2: Dato Haji Mohd Azmi bin Mohamad Daham;

(c) PW3: Dato' Seri Ahmad bin Said;

(d) DW1: Claire Louise Brown; and

(e) DW2: John Ellison Khan.

[40] After perusing the facts adduced by the parties through witness statements, the exhibits, and all other evidence, and the submissions by the learned counsels for all parties, I have decided to dismiss the plaintiff's claim. Herein are my reasons.

[41] As alluded in various case laws, three crucial elements must be established in any defamatory claim:

(a) that there must be a publication;

(b) that the statement(s) must refer to the plaintiff; and

(c) that the statement(s) is/are defamatory

(See *Datuk Seri Anwar bin Ibrahim v Wan Muhammad Azri bin Wan Deris* [2014] 9 MLJ 605; *Ayob bin Saud v TS Sambanthamurthi* [1989] 1 MLJ 315; [1989] 1 CLJ Rep 321; *Sivabalan a/l P Asapathy v The New Straits Times Press (M) Bhd* [2010] 9 MLJ 320.)

[42] In our present case, there is no dispute on the first element since it is indeed a clear fact that the book has already been printed and published at the time this claim was filed. Thus, I shall now proceed with the discussion on the second and third elements together with the application of each of them to our present case.

Whether the impugned statements referred to the plaintiff

[43] Essentially, the plaintiff claimed that by reading the impugned statement, it could easily be understood that the impugned statement does refer to the wife of the Sultan ie, the plaintiff. The plaintiff quoted the case of *Chew Sew Khian @ Chew Hua Seng v Saniboey Mohd Ismail & Ors* [2003] 5 MLJ 91; [2002] 1 LNS 333, where it provides that there are two ways of proving the identity of the claimant if the statement does not specifically mention the claimant's name:

(a) by the calling of witnesses to testify that readers of the impugned article would understand the words appearing therein to refer to the plaintiff; or

(b) an ordinary reader reading the article would reasonably understand the words to refer to him.

[44] In order to fulfil the first test, the plaintiff had called upon her witnesses ie, PW2 and PW3. Both of them have agreed that they could relate and understand the impugned statement as indeed referring to the plaintiff. In question and answered No 8 of PW2's witness statement ('PWS2'), he mentioned this:

S8. Sila jelaskan mengapa YBhg Dato membuat Laporan Polis tersebut?

J8. Saya menyatakan seperti berikut:

a. bila saya baca Kenyataan Yang Diadukan, ia merujuk kepada Plaintif iaitu DYMM Tuanku Sultanah;

b. kenyataan Yang Diadukan ini bukan sahaja suatu kenyataan yang tidak benar sama sekali, palsu, tidak berasas dan merupakan suatu kenyataan fitnah, malah menghina Plaintif iaitu DYMM Tuanku Sultanah kerana berdasarkan pengetahuan saya, DYMM Tuanku Sultanah sama sekali tidak mempengaruhi atau melibatkan diri dengan urusan-urusan dan/atau pentadbiran kerajaan dan Plaintif tidak sama sekali melibatkan diri apatah lagi mempengaruhi dalam hal penubuhan Terengganu Investment Authority;

c. selanjutnya Kenyataan Yang Diadukan adalah tidak benar dan suatu kenyataan fitnah kerana berdasarkan kepada pengetahuan saya, Plaintif tidak pernah mengenali dan sekaligus tidak mempunyai sebarang pengetahuan mengenai individu bernama Jho atau Jho Low ini, apatah lagi memberi persetujuan kepada Jho Low dalam penubuhan Terengganu Investment Authority. Oleh yang demikian, Plaintif iaitu DYMM Tuanku Sultanah tidak pernah menyokong mana-mana individu termasuk individu bernama Jho atau Jho Low ini, untuk beliau mendapatkan peranannya sebagai penasihat di dalam Terengganu Investment Authority.

[45] During cross-examination, the defendants' counsel did not question PW2 concerning his interpretation of the above. Nonetheless, during the cross-examination of PW3, the defendants' counsel tried to suggest that two inferences could be made based on the impugned statement, in which PW3 disagreed:

(NOP at pp 122–123)

DC: Sekarang saya merujuk kepada buku yang diadukan itu. Now, kalau saya merujuk kepada buku yang diadukan itu. Now, kalau saya merujuk kepada B1 mukasurat 9. Ini adalah perenggan yang diadukan. Dan di tengah-tengah perenggan itu ada tulis, 'Jho Low was also friendly with the key player in Terengganu, the wife of the Sultan, whose acquiescence was needed to set up the fund.' Now, kalau seseorang membaca perenggan itu, bolehkah Dato' terima bahawa petikan ini mungkin boleh membawa dua maksud. Ertinya, maksud no.1, kebenaran atau 'acquiescence' yang disebutkan mungkin boleh bermaksud acquiescence ada daripada isteri Sultan atau acquiescence kebenaran itu ada daripada Sultan sendiri. Kalau kita baca perenggan itu ada dua maksud yang kita boleh terdapat. Betul atau tidak?

PW3: Tidak benar.

[46] The plaintiff further submitted that the phrase 'the wife of the Sultan, *whose acquiescence was needed* to set up the fund and he later cited her support' was referring to the plaintiff since the wife of the Sultan can only mean one person ie, the plaintiff. Moreover, the plaintiff contends that there was no need for an analytical reading of each of the words used. Here, the plaintiff quoted the case of *Crowd Care Sdn Bhd & Anor v Ling Lek Foo* [2021] MLJU 2831; [2021] 1 LNS 2384 where it was opined that:

> [62] ... the ordinary, sensible man, if he read the article at all, would be likely to skim through it casually and not to give concentrated attention or a second reading ...

[47] On the other hand, the learned counsel of the defendants argued that since the impugned statement was written in English, the interpretation of such phrase should be interpreted in the manner of an ordinary reasonable reader who is proficient in English language. Accordingly, the defendants' counsel submitted that the weight of testimonies by the plaintiff, and her two other witnesses are much lower than DW2's testimony. DW2 is a British citizen holding BA/MA from the University of Oxford. He also holds a doctorate (DPhil) in English from the same institution. He has written, compiled and edited several books on English language. English is his mother tongue.

[48] In DW2's witness statement (DWS2), he explained that the word 'acquiescence' used in the impugned statement does not associate with 'the wife of the sultan' but was rather to the Sultan himself. For ease of reference, his testimonies are:

> 5. Q. Please inform the Court whether you interpreted the word 'acquiescence' as referring to that of the wife of the Sultan, or of the Sultan himself.
>
> A: The grammar of the sentence, and the punctuation, would — by themselves — allow either interpretation, but in my view the correct interpretation was that the word 'acquiescence' refers to that of Sultan, not of the Sultan's wife.
>
> 6. Q. Why did you interpret the word 'acquiescence' to mean of the Sultan?
>
> A: There are two main reasons. The first reason is this: for a reader, interpreting a sentence involves more than just the grammar and words and punctuation of the sentence. It involves 'knowledge of the world'. My knowledge of the world is that, in respect of state matters, it is the active head of the state, not the spouse, who exercises power and makes state-related decisions. This basic default item of 'knowledge of the world' is something that would be shared by any objective and reasonable reader of the book.
>
> The Passage contained no suggestion that the Sultan's wife, even as 'key player in Terengganu', held any real power in the state, or was in a position to engage in 'acquiescence'. So, I could not interpret the Passage as referring to her acquiescence.

To put it another way, the word 'whose' relates to the word immediately preceding it, 'sultan', and not to the word several places earlier, 'wife' ...

[49] Consequently, the defendants counsel argued that if the phrase 'whose acquiescence was needed', referring to the plaintiff as suggested by the plaintiff, the phrase would be written as 'the Sultanah's acquiescence was needed'.

[50] Furthermore, the defendants also submitted that this court should consider that it is common knowledge that the plaintiff was never involved in any state affairs or corporate matters. PW1 attested to this during cross-examination by the defendants' counsel:

(Notes of Proceeding at p 38)

DC: Sebelum buku ini dikeluarkan dalam tahun 2018, adakah betul Tuanku tidak dikenali sebagai seseorang yang terlibat dalam perkara korporat?

PW1: Perkara apa?

DC: Korporat.

PW1: Korporat tidak.

DC: Dan sebelum buku ini dikeluarkan Tuanku tidak dikenali sebagai seorang yang terlibat atau campur tangan dalam atau mengeluarkan kenyataan berkaitan perkara-perkara negeri kepada perkara-perkara kerajaan negeri?

PW1: Betul.

[51] This is further agreed by PW3 in his testimony:

(Notes of Proceeding at pp 114–115)

DC: Saya merujuk kepada jawapan Dato' dalam soalan 5, dalam penyata saksi, akan dinaikkan ke skrin. Dalam soalan ini, Dato' telah kata, bahawa Tuanku Sultanah tidak mempunyai sebarang peranan dalam pentadbiran kerajaan negeri Terengganu dan beliau tidak mencampuri urusan dalam sebarang hal berkaitan pentadbiran kerajaan negeri Terengganu?

PW3: Memang benar.

DC: Jadi sebelum penerbitan buku Clare yang bertajuk, The Sarawak Report: the Inside Story of the 1MDB Exposed. Adakah peranan Tuanku Sultanan adalah seperti yang disebutkan tadi dalam jawapan Dato' itu, adakah peranan Tuanku Sultanah itu diketahui dan difahami oleh pihak awam?

PW3: Memang Tuanku Sultanah tidak pernah terlibat dalam apa-apa jua urusan pentadbiran kerajaan negeri.

DC: Dan orang ramai tahulah.

PW3: Orang ramai tahu. Ya.

DC: Jadi, sebelum buku tersebut diterbit, Tuanku Sultanah tidak ada reputasi

sebagai seorang pemain korporat atau berkaitan dengan perkara-perkara pentadbiran negeri, betul ke? A

PW3: Memang betul. Tidak pernah terlibat.

[52] To further support the defendants' argument, they also claimed that most of the previous articles and news reports had reported and written that the Sultan was the one who initiated the Terengganu Investment Authority ('TIA') before it was changed and/or expended as 1 Malaysian Development Bhd ('1MDB'). PW3 also agreed this during cross-examination by the defendants' counsel: B C

(Notes of Proceedings at pp 120–122)

DC: Saya merujuk kepada penyata saksi Dato' dan jawapan Dato' kepada soalan-soalan 10,11 dan 12. Mengikut jawapan yang Dato' beri kepada soalan ini, saya juga merujuk kepada B1, muka surat 73. Dan Dato' ini yang akan dikemukakan di skrin, ini merupakan laporan berita yang dikeluarkan oleh Star Online. Pada 22/7/2009. Di perenggan 3, telah dilaporkan di sini bahawa saya, saya baca dalam Bahasa Malaysia, saya terjemahkan. Di perenggan 3 ada melaporkan bahawa Agong, iaitu Sultan Mizan telah memberi persetujuan berkenaan dengan 1MDB mengambil alih TIA. Adakah Dato setuju dengan apa yang dilaporkan di sini? Adakah ini benar? D E

PW3: Ya benar.

DC: Sila rujuk kepada muka surat 72 di B1, ini adalah laporan berita yang dikeluarkan oleh Star Online pada 13/12/2008. Di bawah mukasurat ini, ada dilaporkan bahawa cadangan untuk menubuhkan dana kekayaan negeri Terengganu telah dikemukakan pada asalnya oleh Yang Dipertuan Agong Tuanku Mizan. Itu benar? F

PW3: Ya.

... G

DC: Adakah munasabah jika saya cadangkan bahawa TIA mungkin tidak akan ditubuhkan tanpa akuran persetujuan atau kebenaran 'acquiescence' Sultan Mizan sendiri?

PW3: Ya betul. H

DC: Jadi ia adalah dalam pengetahuan atau kefahaman orang awam melalui laporan tadi bahawa Sultan Mizan yang telah memberi persetujuan atau kebenaran untuk menubuhkan TIA, benar?

PW3: Ya. I

DC: Mengikut laporan berita tadi itu, adalah jelasnya bahawa pertubuhan TIA bukannya memerlukan persetujuan atau akuran 'acquiescence' Tuanku Nur Zahirah, isteri kepada Sultan, setuju?

PW3: Ya memang tak perlu.

[53] Now, in dealing with this issue, the most important question that this court needs to determine is whether the phrase 'whose acquiescence' refers to the plaintiff's acquiescence. Here, I agree with the plaintiff's submission that one must read the article casually and without critical analysis. It is for the court to read the phrase in the ordinary way in which the ordinary reader would read the article or view the statement. The plaintiff had quoted the following passage by Keith Evans (at pp 27–28) from his book, *Law of Defamation in Singapore & Malaysia* (Butterworths Asia, 1988) to support this:

> The plaintiff need not produce witnesses who will actually testify that they felt the article referred to him although if he can do so, so much the better ... the court will look to the ordinary way in which the ordinary reader would read the article, or view the statement — ie, causally, without cautious and critical analysis.

[54] DW2 also agreed with the plaintiff's counsel's suggestion that it is reasonable to read a statement or article as a whole without going through each word and looking at the dictionary meaning for each word:

> (Notes of Proceedings at pp 189–190)
>
> PC: Can I just clarify your last answer, when you read a passage, isn't it reasonable one would just read it as a whole? Rather than going through each sentence in detail, taking each word and looking at the dictionary? Isn't it better as a whole, just when reading an article, reading a passage, one would just read it as a whole and come to its conclusion and understanding it and coming to a conclusion? Rather than reading a passage or article, looking at each sentence and each words in detail by referring to a dictionary?
>
> DW2: Yes, that's reasonable.

[55] This court also note that none of the parties has provided detailed explanation to this court the linguistic or grammatical rules in determining the impugned statement. It is nonetheless the duty of the trial judge to ascertain whether an impugned statement(s) is/are capable of bringing any defamatory imputation. I refer to the ratio of Gopal Seri Ram JCA (as he then was) in *Chok Foo Choo @ Chok Kee Lian v The China Press Bhd* [1999] 1 MLJ 371 at p 375, para C-D:

> *Having decided whether, the words complained of are capable of bearing a defamatory meaning, the next step in the inquiry is for a court to ascertain whether the words complained of are in fact defamatory*. This is a question of fact dependent upon the circumstances of the particular case. In England, libel actions are tried by judge and jury and the question is left for the jury to determine. *However, in this country, libel actions are tried by a judge alone, he is the sole arbiter of questions of law as well as questions of fact. He must, therefore, make the determination* ... (Emphasis added.)

[56] Thus, as a trial judge it is my duty to determine and ascertain the meaning of the impugned statement. In view that the issue here is concerning

English grammar, I have resorted to determine this using established and normal English grammar rules. It is my finding that the word 'whose' in the sentence, refers to 'the wife of the Sultan' namely, the plaintiff. This is because 'whose' is a possessive pronoun used to indicate ownership, and in this sentence, it refers to the person who was friendly with Jho, which is (the person stated in the phrase immediately before it) 'the wife of the sultan', ie, the plaintiff. The sentence suggests that 'the wife of the sultan', namely, the plaintiff, played a key role in setting up the fund. And in this case, it indicates that the wife of the Sultan is the one whose acquiescence was needed to set up the fund.

[57] According to the *Cambridge Dictionary*, 'whose' is used to show possession or belonging. It can refer to a person, animal, or thing. In this sentence, 'whose' is used to indicate that the acquiescence of the wife of the Sultan was need in the establishment of the fund (see, 'Whose' — *Cambridge Dictionary*, https://dictionary.cambridge.org/grammar/british-grammar/pronouns/whose).

[58] Additionally, the *Oxford Learner's Dictionaries* notes that 'whose' can refer to a person or a thing that belongs to or is associated with someone. In this sentence, 'whose' refers to the person who is associated with the key player in Terengganu, which is the wife of the Sultan (see, 'Whose' — Oxford Learner's Dictionaries, https://www.oxfordlearnersdictionaries.com/definition/english/whose).

[59] Thus, the word 'whose' is a possessive pronoun that is used to refer to a previously mentioned person or thing, in this case, the 'key player in Terengganu' namely 'the wife of the sultan', ie the plaintiff who was mentioned earlier in the sentence.

[60] Also, the clause 'the wife of the sultan' is a defining clause in the sentence. A defining clause (also known as a restrictive clause) is a type of dependent clause that provides essential information about the noun or pronoun it modifies. It is called 'defining' because it helps to define or identify the specific person, place, thing, or idea being referred to. In this sentence, 'the wife of the sultan' is a defining clause because it specifies which key player in Terengganu is the subject of this sentence. Without this information, the sentence would be unclear and ambiguous.

[61] The subsequent clause, however, is a non-defining clause in the sentence: 'whose acquiescence was needed to set up the fund'. A non-defining clause (also known as a non-restrictive clause) is a type of dependent clause that provides additional information about the noun or pronoun it modifies but is not essential to the meaning of the sentence. Non-defining clauses are set off by

commas and can be removed from the sentence without changing the basic meaning.

[62] In this sentence, the phrase 'whose acquiescence was needed to set up the fund' provides additional information about the key player in setting up the fund but is not necessary to identify which key player Jho was friendly with. The clause is set off by commas to indicate that it is non-essential to the sentence (see, 'Defining and Non-defining Relative Clauses'. BBC, BBC, 10 April 2019, www.bbc.co.uk/worldservice/learningenglish/grammar/learnit/learnitv330.shtml Swan, Michael, and Catherine Walter. *Oxford English Grammar Course: Intermediate* (Oxford University Press, 2012) pp 256–257; and *Collins Cobuild English Grammar* (HarperCollins Publisher, 2017) [8.101]–[8.109]).

[63] In conclusion, in the sentence 'Jho was also friendly with a key player in Terengganu, the wife of the sultan, whose acquiescence was needed to set up the fund and he later cited her support as having been crucial to his obtaining the advisory position', the word 'whose' refers to 'the wife of the sultan', ie the plaintiff, and it is used as a possessive pronoun to indicate her ownership or association with the actions described in the sentence namely, the acquiescence.

[64] Moreover, I also agree with the plaintiff's submission that DW2's opinion on 'whose acquiescence' is not that of an expert since he was not testifying as an expert. DW2 admits this during cross-examination:

> (Notes of Proceedings at p 179)
>
> PC: I refer to your affidavit at enclosure 61, at page 3 of your affidavit, in particular at page 4, paragraph 4, line 3 and 4, you said in your affidavit and expressing your opinions and you're not claiming the role of an expert, isn't it?
>
> DW2: Not for this purpose, no.
>
> PC: And just to make it clear, and even for these proceedings, you agree that when you're expressing your opinions, you again are not claiming the role of an expert, isn't it?
>
> DW2: I'm wanting to give the opinion of an ordinary reader.
>
> PC: No, my question is, even for today's proceedings, earlier in your affidavit, when you expressing your opinion, you're not claiming to be role of an expert. You have signed an affidavit earlier. For today's proceedings, when expressing your opinion, you again are not claiming the role of an expert?
>
> DW2: Not for this purpose, no.

[65] From the notes of proceeding quoted above, DW2 had testified that he was not called as an expert witness but was called to give the opinion of an ordinary reader.

[66] Since DW2 was not testifying as an expert, his evidence and/or opinion about the impugned statement would not carry more weight than the evidence of the other witnesses. However, this court take note of his observation as an ordinary reader and as a native English speaker.

[67] Nevertheless, concerning this issue, even if DW2's opinion as an ordinary reader and as a native English speaker is to be considered alongside with the testimony of PW2 and PW3, I must disagree with the defendants' counsel that more weight should be put on the interpretation made by DW2. This is because, given the book was published by a Malaysian publisher, it is natural to presume that the book was meant for Malaysian readers; hence any testimonies by the plaintiff's witnesses on this issue are more relevant and acceptable than DW2 with regard to the interpretation by the ordinary Malaysian readers.

[68] I also disagree with the defendants' counsel's arguments that the plaintiff and her witnesses are not proficient in the English language because their oral testimonies were in Malay language. Firstly, witnesses who are bilingual, or even multilingual, can always choose to testify in any language they prefer. It is in no way to suggest that the witness is not well-verse in the other language(s). In many countries, the citizen who are proud of their national language or mother tongue would insist on conversing in their national language or mother tongue notwithstanding their proficiency in English language. They will only resource to English language when there is really such a need. I, thus, see no issue on this.

[69] Even if there might be a mistake in their interpretation because of their 'lack' of proficiency in English language, the defendants' counsel should confirm this allegation during the cross-examination. Yet, in this case, the defendants' counsel had failed to do so. Hence, it is my view that contention of the learned defendants' counsel on this matter was misplaced.

[70] The witness statements by PW2 and PW3, show that they understood the reference made in the impugned statement where the word 'whose acquiescence' blatantly refers to the plaintiff's acquiescence and not the Sultan's.

[71] Thus, based on the testimonies above and based on the discussion on the general English grammar rules concerning the usage of 'whose' and defining and non-defining clauses, it can be reasonably understood that the phrase 'whose acquiescence' in the context of the impugned statement refers to the plaintiff's acquiescence.

[72] Next, the defendants also brought it to this court's attention that this is

a case of mistaken identity. The first defendant admitted that there was a mistaken identity in which the words 'the wife of Sultan' in the impugned statement was meant to be 'the sister of Sultan' ie, Tunku Rahimah. This was also testified by DW1 during her cross-examination by the plaintiff's counsel:

(Notes of Proceeding at pp 142–145)

PC: Now, refer to your question and answer 6 of your witness statement at page 8, in particular at page 9 at the first paragraph, you said in the first print of the book, you mistakenly referred to the plaintiff instead of the sister of the Sultan, namely Tunku Datuk Rahimah, isn't it?

DW1: Yes.

PC: Now, I refer back to the later print, enclosure 58 at page 12. Where the words have now been replaced from wife of the Sultan to the sister of the Sultan, now you've already testified all the words are the same except the 'wife' to the 'sister'. Since the passage now in the later print now refers to the Sultan, then you would mean from the subsequent words, in the passage that when the statement says, he 'Jho Low cited her support as having been crucial to his obtaining the advisory position', it naturally and logically means that Jho Low was citing the Sultan's sister as having being crucial to his obtaining the advisory position, isn't it?

DW1: Yes.

PC: Still with the later print of the book, since the words, 'wife of the Sultan' has now been replaced in the later print of the book, then reading the passage now at page 12, there would be not be any reference to the plaintiff at all isn't it?

DW1: Indeed yes.

...

PC: Thank you. Refer to Q&A 17, page 21 of your witness statement, I will read your answer first, you said, taking the passage at face value, you had written and I quote, the italics there, you cited, 'he cited her support as having been crucial to his obtaining the advisory position' and you went down to said, you said that the words leading to this were that. 'Jho Low was introduced to the Sultan of Terengganu by the plaintiff'. Now, you already testified that the key player is the Sultan's sister, you also testified that it was the Sultan's sister Tunku Rahimah who introduced the Sultan, so, you also testified, it was the Sultan's sister Tunku Rahimah who introduced Jho Low to the Sultan. My question, is do you agree with me that your statement here in the witness statement, that the words leading to this were that Jho Low was introduced to the Sultan of Terengganu by the plaintiff is incorrect, considering you said the key player is the Sultan's sister and it was the Sultan's sister who introduced Jho Low to the Sultan of Terengganu?

DW1: Yes there was an error of identification.

[73] The defendants' counsel further premised that this mistake had also been redeemed by making 'erratum' on the mistake in the later batch of the book. In the contrary, the plaintiff submitted that it is irrelevant for the

defendants to raise that it was not their intention to refer the impugned statement to the plaintiff. The plaintiff referred to the case of *Abdul Khalid @ Khalid Jafri bin Bakar Shah v Party Islam Se Malaysia & Ors* [2002] 1 MLJ 160; [2001] 4 CLJ 15, which held that the defendant's intention was immaterial. The question was rather whether the words complained of could be understood by reasonable people who knew the plaintiff to refer to him.

[74] Similarly, in *Kumarasamy a/l Naciappan v The New Straits Times Press (M) Bhd* [2013] 7 MLJ 361, Vernon Ong J (as he then was) has observed that:

> [29] *It is settled law that there is no necessity to show that the defendant intended to refer to the plaintiff; in other words, the defendant's intention or state of mind is irrelevant. It is enough if reasonable people would think the words to defamatory of the plaintiff; it being immaterial that the defendant did not intend to defame the plaintiff* (*Hulton (E) & Co v Jones* [1910] AC 20). *Where the plaintiff is not named, the court will consider whether the words would reasonably lead people acquainted with the plaintiff to the conclusion that he was the person referred to* (*Knupffer v London Express Newspaper Limited* [1944] AC 116).
>
> [30] So, when the photograph which points out the plaintiff is supposed by the defendant to point another man, whom in fact it does not describe, the defendant is equally liable as when the description is supposed to point out nobody. *Whether the article is about the plaintiff has nothing to do with the defendant's intent. The test is not whom the article intends to name, but who a part of the audience may reasonable think I named — not who is meant but who the article points to.*
>
> [31] In this case the words were not published of the plaintiff per se. The plaintiff's photograph was used by mistake in the article. PW3 a person who is acquainted with the plaintiff having read the article understood the impugned words to refer to the plaintiff by reason of the plaintiff's photograph. The court accepts PW3's evidence on this point as plausible. Given the fact that the plaintiff's photograph was published in the article identifying him to be Dr R Muruga Raj, the court finds that in all the circumstances described the impugned words could reasonable be understood to refer to the plaintiff. (Emphasis added.)

[75] In the present case, it is clear that the phrase 'the wife of the sultan' in the impugned statement can reasonably be understood as referring to the plaintiff. By the admission of the first defendant, there was indeed a mistake in which the later batch of the book was slipped with an erratum slip.

[76] Thus, it is my finding that the ordinary reader would naturally relate or conclude the impugned statement to the plaintiff here. However, in asserting her case, the plaintiff must also prove another basic element: that the impugned statement when seen, read or heard in any ordinary manner would be comprehended to be defamatory. The next section would discuss this in length.

Whether the impugned statement is defamatory?

[77] The next and the most essential element to be catechised in this claim is this: whether the impugned statement is defamatory to the plaintiff? It is the plaintiff's claim that the impugned statement brings these seven imputations:

(i) the plaintiff interferes with the administration of the State of Terengganu;

(ii) the plaintiff used her position to influence and to establish Terengganu Investment Authority and to set up the sovereign wealth fund;

(iii) the plaintiff consented to the establishment of the sovereign wealth fund;

(iv) the plaintiff used her position to assist and/or support Jho in obtaining Jho's advisory role in the sovereign wealth fund of Terengganu Investment Authority;

(v) the plaintiff is involved in corrupt practices;

(vi) the plaintiff is associated and has close ties with persons with questionable character namely Jho, whose reputation based on media reports is a playboy and one who is sought by authorities; and

(vii) the plaintiff has the ability to influence the administration of the State of Terengganu and that she is the one who is running the administration and affairs of the State of Terengganu.

[78] As mentioned earlier, the first defendant has admitted that, in the impugned statement, there was a mistake with regard to the identity. The plaintiff's counsel urged this court to hold that their case of libel has been successfully due to the admission of the first defendant about the mistake. It is their submission that once there is a mistake, it does not matter that the defendants never intend for the impugned statement to refer the plaintiff. They relied on the old English case of *Hulton (E) & Co v Jones* [1910] AC 20 which they quoted through a textbook in view of the difficulty in obtaining the original law report.

[79] However, it is my finding that mistaken identity or not, the essential question to be answered is still with regard to the defamatory tendency of the impugned statement. In fact, it has been held that in certain cases, the impugned statements may appear to be defamatory to a plaintiff, yet they may actually appear as a compliment. Lee Heng Cheong J (as he then was) in *Datuk Husam bin Musa v The New Straits Times Press (M) Bhd & Ors* [2014] 8 MLJ 370 has held that:

> [16] (o) ... the words complained of in the *New Straits Times* edition of 23 November 2009 do not bear and are not capable of bearing the meanings or imputations as contended by the plaintiff. Simply put, the words are not

> defamatory of the plaintiff, when construed objectively in their natural and ordinary meaning. In fact, this court finds that the said newspaper article read as a whole, is a complimentary to the plaintiff ...

[80] Similarly, in *Kumarasamy a/l Naciappan*, the plaintiff initiated a libel action against the defendant for an article in the defendant's newspaper where the plaintiff's photograph was mistakenly published. The issues before Vernon Ong J (as he then was) were whether the impugned words were defamatory and if so, were the impugned words defamatory of the plaintiff. His Lordship stressed that:

> [19] It is settled law that to be defamatory, an imputation needs to have no actual effect on a person's reputation. The test revolves around the question of whether the words have the tendency to lower a person's reputation in the estimation of right-thinking members of society generally or whether it has the tendency to excite against the plaintiff the adverse opinion of others, although no one believes the statement to be true. This is a question of fact.

[81] His Lordship then analysed and held that he impugned words carried the natural and ordinary meaning ascribed to it and answered the first issue in favour of the plaintiff.

[82] In fact, in *Hulton v Jones* quoted by the plaintiff, Lord Loreburn LC of the House of Lords, had succinctly said (at p 23):

> Libel is a tortious act. What does the tort consist in? It consists in using language which *others knowing the circumstances would reasonably think to be defamatory of the person complaining of and injured by it*. A person charged with libel cannot defend himself by shewing that he intended in his own breast not to defame, or that he intended not to defame the plaintiff, if in fact he did both. *He has nonetheless imputed something disgraceful and has nonetheless injured the plaintiff*. (Emphasis added.)

[83] In *Hulton v Jones*, the defendants were publishers of a newspaper. They published a defamatory article of a person named 'Artemus Jones', whom they thought to be fictional, having an affair. The claimant, who happened to be named Artemus Jones, sued in defamation. The Court of Appeal decided in favour of the claimant. The defendants appealed to the House of Lords on the basis that they had no intention for the words to apply to the claimant as they were not even aware of his existence. The court dismissed the appeal and held that it was no defence that the publishers had no intention to defame the claimant. It is to be noted that in this case, the trial court had found that the article had defamed the plaintiff. This finding was not disturbed by both the Court of Appeal and House of Lords. It is on this basis that the House of Lords held that innocent dissemination or innocent publication was not a defence to the defendants. Therefore, regardless of mistake, the crucial issue is always

whether the impugned statement would in fact besmirch the plaintiff's reputation.

[84] The duty to ascertain whether the impugned statements are defamatory always falls on the courts. In *Tan Sri Dato Vincent Tan Chee Yioun v Haji Hasan bin Hamzah & Ors* [1995] 1 MLJ 39; [1995] 1 CLJ 117, Datuk Hj Mokhtar bin Hj Sidin J premised that the court has the duty to consider and determine whether such statements contended by the plaintiff were defamatory of the plaintiff or not. It was observed (at p 122, para b-d) that:

> The defendants when they give evidence in court admitted writing, publishing, and printing those articles. Though the plaintiff had contended that the statements in those articles are defamatory and no defence had been filed except by the seventh defendant, *the court has a duty to consider and determine whether those statements are defamatory of the plaintiff. In determining this the court has to consider the natural and ordinary meaning of the words used in the articles and determine whether they are capable of conveying a defamatory meaning of and concerning the plaintiff. This is a question of law for the court to decide* as clearly held by the Privy Council in the case of *Jones v Skelton* [1963] 63 SR (NSW) 644 at p 650:
>
> > It is well settled that the question as to *whether words which are complained of are capable of conveying a defamatory meaning is a question of law and is therefore one calling for decision by the court ...*
> >
> > *The test according to the authorities is whether under the circumstances in which the writing was published, reasonable men to whom the publication was made would be likely to understand it in a libellous sense. The ordinary and natural meaning of words may be either the literal meaning or it may be an implied or inferred or an indirect meaning; any meaning that does not require the support of extrinsic facts passing beyond general knowledge but is a meaning which is capable of being detected in the language used can be a part of the ordinary and natural meaning of words.* See *Lewis v Daily Telegraph* [1963] 2 All ER 151. *The ordinary and natural meaning may therefore include any implication or inference which a reasonable reader guided not by any special but only by general knowledge and not fettered by any strict legal rules of construction would draw from the words. The test of reasonableness guides and directs the court in its function of deciding whether it is open to a jury in particular case to hold that reasonable persons would understand the words complained of in a defamatory sense.* (Emphasis added.)

[85] Therefore, this court must analyse and examine the impugned statement to ascertain whether it would connote all or any of the seven imputations put forward by the plaintiff and if so whether such imputation(s) is/are defamatory of the plaintiff. Before I continue further, it should be noted that the plaintiff's entire case is based on the natural and ordinary meaning of the impugned statement itself and not legal innuendo. It is trite that if a claimant wanted to pursue legal innuendo, he/she must expressly plead it in his statement of claim since legal innuendo is a separate cause of action. To this, the defendants' counsel cited the case of *Grubb v Bristol United Press Ltd* [1963]

1 QB 309, where Pearce LJ articulated that at p 327:

> ... Thus, there is one cause of action for the libel itself, based on whatever imputations or implications can reasonably be derived from the words themselves, and there is another different cause of action, namely, the innuendo, *based on not merely on the libel itself but on an extended meaning created by a conjunction of the words with something outside them. The latter cause of action cannot come into existence unless there is some extrinsic fact to create the extended meaning.* This view is simple and accords with common sense ... (Emphasis added.)

[86] Similarly in the case of *R Murugason v The Straits Times Press (1975) Ltd* [1984] 2 MLJ 10 at p 14:

> *The plaintiff must, unless the words complained of are defamatory in their natural and ordinary meaning, plead the meaning he alleges the words to have*. In *Fullam v Newscastle Chronicle* [1977] 3 All ER 32 at p 35 Lord Denning MR said:
>
> > The essence of libel is the publication of written words to a person or persons by whom they would be reasonably understood to be defamatory of the plaintiff. But those words may give rise to two separate and distinct causes of action: see *Grubb v Bristol United Press Ltd* and *Lewis v Daily Telegraph Ltd.* They are these.
> >
> > *First, the cause of action based on a popular innuendo. If the plaintiff relies on the natural meanings of the word (pleading what is called a 'popular' innuendo so as to show what, in his view, is the natural and ordinary meaning) he must, in his statement of claim, specify the person or person to whom they were published,* save in the case of newspaper or periodical which is published to the world at large, when the persons are so numerous as to go without saying — or book, I would add.
> >
> > *Secondly, the cause of action based on a legal innuendo. If the plaintiff relies on some special circumstances which convey (to some particular person or persons knowing these circumstances) a special defamatory meaning other than the natural and ordinary meaning of the words* (pleading what is called a 'legal innuendo so as to show what is that special circumstances known to that persons, for the simple reason that these are the 'material facts' on which he relies, and must rely, for this cause of action. It comes straight within the general rule of pleading contained in RSC Ord 82 r 3. In this second cause of action there is no exception in the case of a newspaper, because the words would not be so understood by the world at large, but only by the particular person or persons who know the special circumstances.
>
> And in *Grappelli v Derek Block Holdings (S) Ltd* Lord Denning MR again said:
>
> > *In the case of these secondary meanings even innuendos, the plaintiff ought to specify the persons who have the particular knowledge from which they drew a defamatory meaning.* (Emphasis added.)

[87] The plaintiff's statement of claim (in paras 9 and 10) has pleaded the following:

A 9. By the said statement, *in the natural and ordinary meaning*, Clare's statements were meant and understood to mean, that:

(a) the plaintiff interferes with the administration of the State of Terengganu;

(b) the plaintiff used her position to influence and to establish Terengganu Investment Authority and to set up the sovereign wealth fund;

(c) the plaintiff consented in the establishment of the sovereign wealth fund;

(d) the plaintiff used her position to assist and/or support Jho in obtaining Jho's advisory role in the sovereign wealth fund of Terengganu Investment Authority.

10. In view of the above, it was an untrue and defamatory statement which was calculated to injure the plaintiff's reputation and/or degrade her which *in its natural and ordinary meaning* would lower her reputation in the estimation of right thinking members of society in general. (Emphasis added.)

[88] Since the learned counsel of the plaintiff did not plead 'legal innuendo' in the statement of claim and their submission and had stressed on the natural and ordinary meaning of the impugned statement, this court will only focus on the mission to ascertain and determine whether the impugned statement in its natural and ordinary meaning can infer the imputations pleaded by the plaintiff.

[89] Hence, this court must determine this by looking at the ordinary and natural meaning of the impugned statements. What does 'ordinary and natural meaning' mean? Our Court of Appeal in *Chok Foo Choo* had referred to the House of Lords case of *Jones v Skelton* [1963] 3 All ER 952 where Lord Morris had spelled out that:

> The ordinary and natural meaning of words may be either the literal meaning or it may be an implied or inferred or an indirect meaning: any meaning that *does not require the support of extrinsic facts passing beyond general knowledge but is a meaning which is capable of being detected in the language used can be a part of the ordinary and natural meaning of words* (see *Lewis v Daily Telegraph Ltd* [1963] 2 All ER 151). The ordinary and natural meaning may therefore include any implication or inference which a reasonable reader, guided not by any special but only by general knowledge and not fettered by any strict legal rules of construction, would draw from the words. The test of reasonableness guides and directs the court in its function of deciding whether it is open to a jury in any particular case to hold that reasonable persons would understand the words complained of in a defamatory sense. (Emphasis added.)

[90] Likewise, in the Court of Appeal case of *Utusan Melayu (M) Bhd v Othman bin Hj Omar* [2017] 2 MLJ 80, His Lordship Kamardin bin Hasim JCA in delivering the judgment of the bench held that:

> [21] ... It has always been the case in our own jurisdiction as decided in plethora of cases, that the test to determine whether the words complained of are capable of bearing defamatory meaning is based on the ordinary and natural meaning of the words published. *It may be either the literal meaning or it may be implied or inferred or indirect meaning. It does not require the support of extrinsic facts passing beyond the general knowledge. It is an objective test in which it must be given a meaning a reasonable man would understand it. In order to understand it, the whole article has to be considered.* (Emphasis added.)

[91] His Lordship also referred to an earlier case of *Keluarga Communication v Normala Samsudin* [2006] 2 MLJ 700 at p 708; [2006] 2 CLJ 46 at p 58 where His Lordship Zulkefli Makinudin JCA (as he then was) opined that:

> [15] At the outset we would state that the test to be applied when considering whether a statement is defamatory of a plaintiff is well-settled in that it is an objective one in which it must be given a meaning a reasonable man would understand it and for the purpose, that is, *in considering whether the words complained of contained any defamatory imputation, it is necessary to consider the whole article Gatley on Libel & Slander* (10th Ed) on this point at pp 108 and 110, inter alia, states as follows:
>
> > It is necessary to take into consideration, *not only the actual words used, but the context of the words*. It follows from the fact that the context and circumstances of the publication must be taken into account, that the plaintiff cannot pick and choose parts of the publication which, standing alone, would be defamatory. This or that sentence may be considered, but there must be passage which take away the sting. (Emphasis added.)

[92] Based on the above authorities, it can be safely said that in order to determine whether the impugned statement is defamatory in its ordinary and natural meaning, this court needs to consider:

(a) what would an ordinary reasonable reader construe the impugned statement to mean;

(b) would the impugned statement expose the plaintiff to hatred, ridicule or contempt in the mind of a reasonable reader; and

(c) would the impugned statement lower the plaintiff in the estimation of right-thinking society generally?

[93] As pointed out in the case of *Tun Datuk Patinggi Haji Abdul-Rahman Ya' kub v Bre Sdn Bhd & Ors* [1996] 1 MLJ 393 at p 402:

> As to whether the words complained of in this case were capable of being, and were, in fact, defamatory of the plaintiff, *the test to be considered is whether the words complained of were calculated to expose him to hatred, ridicule or contempt in the mind of a reasonable man or would tend to lower the plaintiff in the estimation of right-thinking members of society generally* (see *JB Jeyaretnam*) ... (Emphasis added.)

[94] The key determiner here is with regard to the mind of a reasonable ordinary reader. In the Federal Court case of *Dato' Sri Dr Mohamad Salleh bin Ismail & Anor v Nurul Izzah bt Anwar & Anor* [2021] 2 MLJ 577; [2021] 4 CLJ 327, His Lordship Harmindar Singh Dhaliwal FCJ referred to *Gatley on Libel and Slander* and explained who an ordinary reader would be:

> [21] In *Gatley on Libel and Slander* (12th Ed), the authors described the 'ordinary reader' in the following fashion (at para 3.26):
>
> > ... Nevertheless the 'ordinary reader' is perhaps a little closer to reality than the 'reasonable man' of the law of negligence, for the courts are ready to recognise his weakness up to a point. He is sort of half-way house between the unusually suspicious and the unusually naive. He is essentially fair-minded and reasonable but he may guilty of a certain amount of loose thinking and does not read a sensational article with cautious and critical care ...

[95] In similar veins, in an earlier case of *Wong Yoke Kong & Ors v Azmi M Anshar & Ors* [2003] 4 MLJ 96; [2003] 6 CLJ 559, Heliliah Yusoff J opined that (at pp 110–111 (MLJ); p 574 (CLJ)):

> To my mind the majority judgment in the *Morgan*'s case apart from affirming what was stated in the *Knupffer* case simply went on to explain further that the reasonable people who could reasonably understand the plaintiff are so described are also described as the ordinary sensible readers. This is succinctly described by Lord Pearson (at p 1267) as follows:
>
> > ... I do not think the reasonable man — who can also be described as ordinary sensible man — should be envisage as reading the article carefully.
>
> Lord Reid in the same case also held that:
>
> > If we are to follow *Lewis case* [1964] AC 234 and take the ordinary man as our guide then we must accept a certain amount of loose thinking. The ordinary reader does not formulate reasons in his own mind: he gets a general impression and one can expect him to look again before coming to a conclusion and acting on it. But formulated reasons are often an afterthought.

[96] As held by the Privy Council (on appeal from Australia) in *Gordon Berkeley Jones v Clement John Skelton* [1963] 1 WLR 1362 (at pp 1370–1371):

> The ordinary and natural meaning of words may be either the literal meaning or it may be an implied or inferred or an indirect meaning; any meaning that does not require the support of extrinsic facts passing beyond general knowledge but is a meaning which is capable of being detected in the language used can be a part of the ordinary and natural meaning of words.

[97] To understand what an ordinary reader would perceive the impugned statement(s), at times the courts would refer to the dictionary meanings of the relevant keywords and determine from there the meaning and imputation of

the relevant passage(s). Lord Denning MR in the often quoted Court of Appeal case of *Allsop v Church of England Newspaper Ltd and others* [1972] 2 All ER 26, when encountered with the issue as to the meaning and imputation of the phrase 'pre-occupation with the bent', had (at p 30) researched the dictionary meaning of the word 'bent' before coming to his conclusion that none of the dictionary meanings could shed light on the usage of it in the relevant passage. Likewise, Singapore Court of Appeal in *Chen Cheng & Anor v Central Christian Church and other appeals* [1999] 1 SLR 94; [2000] 2 LRC 62, had (at para [22]) mentioned few dictionary meanings of the word 'cult' before proceeding to analyse the imputation of the relevant publications (see also, *Utusan Melayu (M) Bhd v Lim Guan Eng* [2015] 6 MLJ 113).

[98] Therefore, to further understand what the impugned statement actually means in its natural and ordinary meaning, it is crucial to know the meaning of a few key words in the impugned statements.

[99] The defendants' counsel submitted that the word 'acquiescence' itself does not bring any derogatory remarks. The defendants' counsel alluded that 'acquiescence' is defined as 'agree, esp. tacitly' in the *Little Oxford Dictionary*. Further, the word 'tacitly' is defined as 'implied or understood without being stated'. Thus, the word 'acquiescence' connotes positive imputation.

[100] DW2 also attested to the above in his witness statement (DWS2), question and answer No 9:

> 9Q. The plaintiff has alleged that the word 'whose' in the Passage refers to her. She has alleged that the Passage is defamatory ... Assuming the word 'whose' in the Passage refers to the plaintiff, do you share the same understanding pleaded by the plaintiff?
>
> I have now studied Paragraph 9(a) to (d) of the Statement of Claim. First of all, your question is hypothetical, since the word 'whose' do not refer to the plaintiff. But even if it did, the plaintiff's interpretation of the Passage is puzzling. The Passage does not imply that anyone 'interferes with the administration of the state'. In fact, the two words 'acquiescence' and 'interfere' are almost opposite in meaning and in tone.
>
> 'Acquiescence' suggests a quiet and passive acceptance, just nodding something through, whereas 'interfere' suggests a very active involvement and an attempt to change things rather than accept them. In regard to tone, 'interfere' is disapproving and negative, whereas 'acquiescence' is gentle, and neutral or even positive.
>
> Similarly, there is nothing in the passage to suggest that anyone had managed to 'influence and to establish Terengganu Investment Authority and to set up the sovereign wealth fund'. Overall then, the common reasonable reader would certainly not interpret the Passage in the derogatory way that the Statement of Claim specifies. But it doesn't matter anyway, because — to repeat — the ordinary,

reasonable reader would not attribute the word 'whose' or 'acquiescence' to the plaintiff in the first place.

[101] This court finds that the word 'acquiescence' refers to the act of accepting something without protest or resistance. Acquiescence can be seen as a positive trait, indicating a willingness to compromise and work towards a resolution. For example, if two parties are negotiating a deal and one agrees to certain terms, this could be seen as an act of acquiescence that helps move the process forward (sources: passive acceptance or submission: Merriam-Webster dictionary: https://www.merriam-webster.com/dictionary/acquiescence.) 'Acquiescence' has been defined by *Cambridge English Dictionary* as 'the act of accepting or agreeing to something, often unwillingly (https://dictionary.cambridge.org/dictionary/english/acquiescence) while *Oxford English Dictionary* (https://www.oed.com/view/Entry/2928?redirectedFrom=acquiescence#eid) defines it as 'the state or condition of being acquiescent; agreement or consent without protest, reluctance, or enthusiasm; passive submission or compliance'. Therefore, the word 'acquiescence' means agreement or consent.

[102] As for the words 'key player', the impugned statement does not provide any detail to state what exactly the plaintiff was supposed to be a 'key player' in respect of; whether this relates to corporate matters, high society, or governmental affairs. The defendants thus premised that it was a general and innocuous statement describing the plaintiff's importance in the State of Terengganu. The plaintiff's counsel has not submitted anything on this. The defendants, however, quoted the following evidence namely, the testimony given by DW1 and DW2 respectively to put forward their case on the meaning of the words 'key player':

(DWS1/Pages 21–22)

18. Q What about the fact that you referred to the plaintiff as a 'key player in Terengganu'?

A. ...

I certainly did not mean by 'key player' that she interfered with matters of state or used her position to influence matters of state or was running the State of Terengganu. The words 'key player' are innocuous. I just meant someone of importance'.

(DWS2/Pages 4,5 10 & 11)

6. Q. Why did you interpret the word 'acquiescence' to mean that of the Sultan?

A. ...

The Passage contained no suggestion that the Sultan's wife, even as a 'key player in Terengganu', held any real power in the state, or was in a position to engage in

'acquiescence'. So, I could not interpret the Passage as referring to her acquiescence. **A**

...

11. Q. In Paragraph 11 of the Statement of Claim ... the plaintiff has also alleged that the Passage imputed defamatory meanings. Were these imputed meanings what you understood from the Passage? **B**

A. ... the Passage does state that Jho was 'friendly' with the plaintiff, but I cannot see how any reasonable reader would leap from that statement to the suspicion that the plaintiff 'is involved in corrupt practices'. Nowhere in the Passage is there any suggestion that the plaintiff knew that Jho was a person of 'questionable character' etc. As far as I can tell, the passage simply contains no imputation of corruption on **C** the part of the plaintiff or the Sultan.

The Passage does refer to the plaintiff as 'a key player in Terengganu', but again, that is certainly not saying the same thing as 'she is the one who is running the administration and affairs of the State of Terengganu'. For someone to be 'a key player', it is necessary to be a noteworthy person but it is not necessary to be a person **D** of power. To call her 'a key player' would not be to claim any powerful role for her in state affairs or administration.

[103] It is my finding that the term 'key player' refers to a person or entity **E** who plays a crucial or important role in a particular situation, event, or organization. A 'key player' is someone who has significant influence or impact on the outcome. According to *Merriam-Webster Dictionary*, he/she is 'a person or thing that is pivotal in some respect'. (Merriam-Webster.com Dictionary. Merriam-Webster, https://www.merriam-webster.com/dictionary/key% **F** 20player.) Lexico, on the other hand, defines 'key player' as 'a person or thing that has a decisive influence on the success or failure of a group, especially a sports team or company.' (Lexico.com Dictionary. Oxford University Press, https://www.lexico.com/definition/key_player.) Cambridge Dictionary, meanwhile, specifies 'key player' as 'a person, company, country, etc. that has an **G** important and active role in a particular activity or situation'. (Dictionary.cambridge.org. Cambridge University Press, https://dictionary.cambridge.org/dictionary/english/key-player.)

[104] Therefore, a 'key player' is a person who is important in a particular **H** situation or organisation. It is nothing derogatory. It just highlights that the plaintiff is someone important in Terengganu. She is indeed a key player in Terengganu in her role as the Sultanah.

[105] With regard to the word 'support', it is the defendant's submission that **I** the impugned statement does not elaborate on what the 'support' mentioned therein was supposed to be in respect of. It certainly does not state that the plaintiff used her influence or position to ensure Jho Low's appointment (which was the Sultan's decision), nor does it imply that the plaintiff was in

breach of any law by 'supporting' Jho's appointment. At all times it was the Sultan himself who made these decisions. The plaintiff did not forward any submission on this.

[106] Further, it was DW2's evidence, in his witness statement (DWS2), that the impugned statement did not mean anything determinative:

> 10. Q. What is your understanding of the portion of the Passage that reads 'he later cited her support as having been crucial to his obtaining the advisory position'?
>
> A. I understand it to mean that the person called *Jho claimed that* his success in obtaining the advisory position was largely thanks to the 'support' of the Sultan's wife.
>
> *The word 'support' denotes assistance, in the sense of vouching for or favouring or endorsing. It certainly doesn't suggest anything determinative*. Even the word 'crucial' doesn't suggest that. A common-sense interpretation of the passage might be that the Sultan's wife *provided a favourable reference on behalf of Jho*, and that this reference contributed to the decision made by the person who actually makes the appointments (perhaps the Sultan?) to appoint Jho. (Emphasis added.)

[107] According to *Lexico*, 'support' is defined as:

> ... (e) Recommend (a particular candidate) in an election.
>
> (See, 'Support.' Lexico, Oxford University Press, 2021, https://www.lexico.com/definition/support.)

[108] The most relevant definition to our present context is obviously the last definition: to 'support' means to 'recommend'. Supporting someone for a position in an organization generally means recommending that person as a candidate for the position.

[109] Unlike the defendants, no evidence or submission has been tendered nor forwarded by the plaintiff concerning the meanings of these few keywords. Instead, the plaintiff has focused on the imputations listed earlier and argued that those are the inference one could make from the natural and ordinary meanings of the impugned statement.

[110] Looking at the suggested imputations listed by the plaintiff's counsel, it is my view that in its ordinary and natural meaning, the impugned statement could only bring two of the imputations alleged by the plaintiff albeit one of these two imputations could only connote the imputation partially: imputations (iii) and (iv) (with some modification regarding the latter). Before I discuss these two imputations, I will first provide my views on why, in my mind, the impugned statement would not cause any defamatory tendency or imputation listed or alleged by the plaintiff. And for imputations (iii) and (iv),

I will analyse and examine them to assess if they could cause such reputational derogation to the plaintiff. A

Imputation (i), (ii), (v), (vi) and (vii)

[111] In respect of imputations (i) and (ii), it is submitted by the plaintiff's counsel that the impugned statement had insinuated that the plaintiff had interfered with the administration of the state Terengganu and consequently used her position as the Sultanah to establish the TIA. With due respect, I disagree. B C

[112] As discussed previously, since the plaintiff's counsel relied on the ordinary and natural meaning, this court is of the view that from the perspective of a reasonable reader, there is nothing in the impugned statement to suggest imputations (i) and (ii). This is because the impugned statement is only related to the establishment of the TIA. To ascribe the plaintiff as an individual who had interfered with the administration of the state is too far-fetched. This had already been testified by PW3 where he agreed that the plaintiff has never been involved with any of the state administrations, and it is in the common knowledge of the public. The same applies to imputation (ii) where it is within the knowledge of the public that Sultan Mizan established the TIA. Most importantly, it is my finding that both imputations required an inference upon inference to arrive at such defamatory imputations. Bearing in mind that this claim relies on the natural and ordinary meaning of the impugned statement, no extrinsic facts could be adopted to analyse this and obviously we cannot make any inference upon inference to arrive at any imputations. D E F

[113] This court also find great guidance in the English High Court case of *Monroe v Hopkins* [2017] 4 WLR 68, where Warby J observed at para 23 that: G

> (3) Most cases turn on the 'natural and ordinary meaning' that the ordinary reasonable reader would take from a statement. But there are cases in which the answer to the question, 'what does statement X mean?' will be altered by facts outside the statement itself, which are not matters of common knowledge. *If readers of the statement complained of were aware of such extraneous facts, and the knowledge would affect the way that an ordinary reasonable person would understand the statement, there will be an 'innuendo' meaning. By these means an otherwise innocent statement may be defamatory, or an otherwise defamatory statement innocent, in the eyes of readers aware of the 'innuendo facts'*. The principles are stated in *Fullam v Newcastle Chronicle & Journal* [1977] 1 WLR 651 and *McAlpine v Bercow* [2013] EWHC 1342 (QB) [49]–[55]. H I

[114] As held by the Singapore Court of Appeal in *Microsoft Corporation & Ors v SM Summit Holdings Ltd & Anor and other appeals* [1999] 4 SLR

529; [1999] 3 SLR (R) 465 at [53] that, '[t]he court decides what meaning the words would have conveyed to an ordinary, reasonable person using his personal knowledge and common sense'. It is, thus, the duty of this court to determine what the natural meaning of the impugned statement would have conveyed to an ordinary reasonable reader.

[115] Toward this end, the reasonable meaning of the impugned statement is essential. As elucidated by Hunt CJ at CL of the New South Wales Court of Appeal in *Amalgamated Television Services v Marsden* (1998) 43 NSWLR 158; (1998) 143 FLR 180; (1998) Aust Torts Reports 81–462; [1998] NSWSC 4:

> *The ordinary reasonable meaning of the matter complained of may be either the literal meaning of the published matter, or what is implied by that matter, or what is inferred from it. In deciding whether any particular imputation is capable of being conveyed, the question is whether it is reasonably so capable, and any strained or forced or utterly unreasonable interpretation must be rejected. The ordinary reasonable reader (or listener or viewer) is a person of fair average intelligence, who is neither perverse, nor morbid or suspicious of mind, nor avid for scandal. That person does not live in an ivory tower but can and does read between the lines in the light of that person's general knowledge and experience of worldly affairs.*
>
> ...
>
> What must be emphasized is that the test of reasonableness which guides any court in its function of determining whether the matter complained of is capable of conveying any of the imputations pleaded by the plaintiff. *In determining what is reasonable in any case, a distinction must be drawn between what the ordinary reasonable reader, (drawing on his or her own knowledge and experience of human affairs) could understand from what the defendant has said in the matter complained of and the conclusion which the reader could reach by taking into account his or her own belief which has been excited by what was said.*
>
> *It is the former approach, not the latter, which must be taken. The publisher is not held responsible, for example, for an inference which the ordinary reasonable reader draws from an inference already drawn from the matter complained of, because it is unreasonable for the publisher to be held so responsible.* That is an issue which has assumed some importance in this case. It is necessary to emphasise the important distinction between an implication and an inference. An implication is included in and is part of that which is expressed by the publisher. It is something which the reader understands the publisher as having intended to say. An inference is something which the reader adds to what is stated by the publisher; it may reasonably or even irresistibly follow from what has been expressly or impliedly said, but it is nevertheless a conclusion drawn by the reader from what has been expressly or impliedly said by the publisher. It is the reader's own conclusion.
>
> ...
>
> *An inference is drawn from an inference when the reader draws an inference which is available in the matter complained of and then uses that inference as a basis (at least in*

part) from which a further inference is drawn. The publisher is held responsible for the first of those inferences but not for the second because — as I have already said — it is unreasonable for the publisher to be held so responsible. In *Mirror Newspapers Ltd v Harrison,* the High Court illustrated the process which leads to an inference upon an inference in the case where the matter complained of states that the plaintiff had been charged with an offence. The first inference available from that statement (for which the publisher is held responsible) is that the police believed the plaintiff to be guilty or had a ground for charging him. The second inference, which is based at least in part upon that first inference (and thus is not one for which the publisher is held responsible because it is unreasonable to do so), is that the plaintiff is in fact guilty of the offence charged. That requirement of reasonableness must apply in every case. There can, however, be no unreasonableness involved in making the publisher responsible for an inference drawn by the reader from a statement which the publisher is reasonably understood to have intended to imply in the matter complained of. (Emphasis added.)

[116] Applying the ratio of Warby J in *Monroe v Hopkins* and the ratio of Hunt CJ at CL in *Amalgamated Television* to our current case, it is my reading that the impugned statement is only carrying the following information:

(a) Jho Low was friendly with a key player from Terengganu, namely the Sultanah;

(b) the acquiescence of the Sultanah was needed to set up the fund; and

(c) Jho Low cited the support of Sultanah as having crucial in getting the advisory position.

[117] To suggest that the impugned statement could naturally and ordinarily causes the alleged imputations (i) and (ii) is therefore misplaced. I agree with DW2 that the impugned statement does not imply the plaintiff as someone 'interferes with the administration of the state'. In fact, the two words 'acquiescence' and 'interfere' are almost opposite in meaning and in tone. Unlike 'acquiescence', 'interfere' suggests a very active involvement and an attempt to change or disrupt things rather than accept them. In regard to tone, 'interfere' is disapproving and negative, whereas 'acquiescence' is gentle, and neutral or even positive. Similarly, there is nothing in the impugned statement to suggest that anyone had managed to 'influence and to establish Terengganu Investment Authority and to set up the sovereign wealth fund'. In similar veins, the term 'key player' does not connote any negative tone. Rather, it showcases the respective and significant position of a person.

[118] Therefore, the common reasonable reader would certainly not interpret the impugned statement in the derogatory way that imputations (i) and (ii) specify. The ordinary reader would not arrive at imputations (i) and (ii) without the support of extrinsic facts. To conclude that the impugned statement had insinuated that the plaintiff had interfered with the

administration of the state Terengganu and used her position to establish the TIA would need the ordinary reader to draw his/her inference upon inference. Those imputations are not from the natural and ordinary meaning of the impugned statement. Rather, those are the legal innuendo which could only be reasonably inferred when the words are taken in their context together with knowledge that might be possessed by the ordinary person (see *Rubber Improvement Ltd v Daily Telegraph Ltd* [1964] AC 234). Such allegation could only arise where the imputation put on the impugned statement was derived from facts which were extraneous to the impugned statement or to the book (see *Aaron Anne Joseph v Chong Yip Seng* [1996] 1 SLR 623; [1996] 1 SLR (R) 258). This court must reject these imputations which 'can only emerge as the product of some strained of forced unreasonable interpretation' (per Lord Morris in *Jones v Skelton* at p 1370).

[119] In addition, I also find that the impugned statement could not suggest the alleged imputations (v), (vi) and (vii). Again, these imputations do not come in natural and ordinary meanings of the impugned statement. As eloquently put by the defendants' counsel, to suggest that the impugned statement is insinuating that the plaintiff had interfered in the administration of state affairs and is insinuating the plaintiff of corruption is most certainly a very strained and tenuous interpretation. PW1 in her testimony, also agreed that any involvement with TIA does not imply that such person is involved in corruption:

(Notes of Proceedings at p 20)

DC: Bolehkah Tuanku setuju dengan saya jika saya kata, kalau kata terlibat dengan TIA bukan tidak bermakna seseorang itu terlibat dalam rasuah. Ertinya jika seseorang berkata 'Oh, Encik atau Puan ada berkaitan atau terlibat dalam TIA' bukan semestinya bermakna seseorang itu terlibat dalam rasuah?

PW1: Ini perlu jawapan setuju atau tidak ke?

DC: Ya setuju atau tidak Tuanku?

PW1: Setuju.

[120] PW1 also testified as follows:

(Notes of Proceedings at p 27)

DC: So Tuanku adalah Tuanku setuju jika saya kata, passage dalam buku ini yang diadukan dan perbuatan penebusan kerajaan negeri Terengganu dan apa yang dilakukan oleh Sultan Mizan, kalau kita membacakan semua ini bersama-sama, adakah itu jelas kepada pembaca bahawa rumah Diraja Terengganu tidak terlibat dalam apa-apa rasuah?

PW1: Setuju.

DC: Dan adakah Tuanku setuju bahawa penebusan ini termasuk pengenalan dan

pelantikan Jho Low sebagai penasihat khas kepada TIA? A

PW1: Tolong ulang soalan ya.

DC: So penebusan ini itu termasuk fakta bahawa Jho Low telah diperkenalkan kepada Sultan Mizan oleh Tunku Rahimah, pelantikan beliau sebagai penasihat khas TIA ertinya pada buat masa itu tidak ada apa-apa kaitan dengan rasuah pada masa itu pelantikan Jho Low? B

PW1: Betul.

[121] No doubt the plaintiff has alleged that Jho Low carries with him such a negative connotation that any affiliation with him can only bear anything negative. But, again, to draw such imputations (v), (vi) and (vii) is too implausible based on the natural and ordinary meaning of the imputed statement. The principles in relation to the ordinary and natural meaning of words and phrases have been succinctly set out in our Court of Appeal case of *Allied Physics Sdn Bhd v Ketua Audit Negara (Malaysia) & Anor and other appeals* [2016] 5 MLJ 113 at p 125; [2016] 7 CLJ 347 at p 358, where Vernon Ong Lam Kiat JCA (as he then was) says: C D

[31] Accordingly, the words are to be taken in the sense that it is most natural and obvious. The ordinary and natural meaning of words may be either the literal meaning or it may be implied or inferred or an indirect meaning: *any meaning that does not require the support of extrinsic facts passing beyond general knowledge but is a meaning capable of being detected in the language used can be part of the ordinary and natural meaning of words* (see *Lewis v Daily Telegraph Ltd* [1963] 2 All ER 151). *The ordinary and natural meaning may therefore include any implication or inference which a reasonable reader guided not by any special but only by general knowledge and not fettered by any strict legal rules of construction would draw from the words*. (Emphasis added.) E F

[122] For imputations (v) and (vii), the natural and ordinary meaning of the impugned statement has nothing to suggest anything in proximity of such imputations unless the reader draws an inference from an inference or via extrinsic facts. It is unreasonable to hold the defendants responsible for such remote drawing. G H

[123] For imputation (vi), the defendants' counsel argued that the prologue (in which the impugned statement appears) was written by the first defendant to narrate about what transpired in 2009 when at the time, Jho Low's notorious character was not known in society. This is admitted by PW1 during cross-examination by the defendants' counsel: I

(Notes of Proceeding at p 31)

DC: Terima kasih. Adakah Tuanku mengetahui bila Jho Low secara khususnya boleh dikenali playboy?

PW1: Selepas masuk dalam surat khabar bila dia dikehendaki oleh pihak berkuasa dan bila saya baca surat khabar itu mereka menunjukkan dia seorang yang berfoya-foya dari situ saya tahu.

DC: Saya sekarang merujuk kepada B1, muka surat 79. Ini adalah artikel yang dikeluarkan di Star Online pada 1 haribulan November 2014.

PW1: Ya.

DC: Dalam artikel ini, dalam tahun 2014. Tidak ada apa-apa yang merujuk kepada Jho Low sebagai playboy, setuju?

PW1: Setuju.

DC: Now di perenggan pertama saya baca. 'Low Teik Jho or better known as Jho Low became a noticeable figure in the Malaysian corporate scene when investments from Abu Dhabi in the United Arab Emirates started to make their way to the local shores'. So, artikel ini pada tahun 2014 telah menggambarkan Jho Low dalam cahaya yang baik, ini a good light. Setuju?

PW1: Ya, berdasarkan artikel ini yes saya setuju.

(Notes of Proceeding at pp 32–33)

DC: Tuanku ada apa-apa bukti yang boleh menunjukkan bahawa Jho Low merupakan seorang playboy dalam tahun 2009?

PW1: 2009, tidak ada

DC: So dalam tahun 2009 pun pihak berkuasa di Malaysia, tidak mengejar Jho Low?

PW1: Betul.

DC: Dan pada 2009 pun Jho Low bukan merupakan seseorang yang dicari oleh pihak berkuasa juga?

PW1: Betul.

DC: So Tuanku jika seseorang mengatakan bahawa Tuanku adalah, ada persahabatan dengan Jho Low pada tahun 2009, tidak boleh membawa maksud bahawa Tuanku ada berkaitan dengan seorang yang playboy atau dikejar oleh pihak berkuasa, setuju dalam tahun 2009?

PW1: Jika dalam tahun 2009 saya setuju.

(Notes of Proceeding at pp 34–36)

DC: Ok, saya ulangkan lagi. Minta maaf, Bahasa Malaysia saya tidak beberapa baik tetapi saya akan cuba lagi. So, dalam tahun 2009 Tunku Rahimah telah memperkenalkan Jho Low kepada Sultan Mizan.

PW1: Hmmm ...

DC: Now, perbuatan itu kita tidak boleh mempersalahkan Tunku Rahimah kerana Jho Low pada masa itu bukan seorang yang tidak baik, setuju?

PW1: Setuju.

DC: Dan itu adalah kerana Jho Low pada masa itu 2009, tidak mempunyai reputasi sebagai playboy, atau seorang yang dikejar oleh pihak berkuasa?

PW1: Ya, betul.

...

DC: Boleh Tuanku. Di dalam perenggan 11b, Tuanku telah mengatakan bahawa perkataan-perkataan yang diterbitkan dalam buku Defendan Pertama ini di muka surat 3, adalah mempunyai maksud fitnah kerana Tuanku berkait rapat dengan seseorang yang tidak mempunyai perangai yang baik iaitu seorang playboy yang dikejar oleh pihak berkuasa. So, pada tahun 2009, perkara ini tidak benar kerana semasa itu Jho Low bukan seorang playboy atau dikejar oleh pihak berkuasa. Ada faham?

PW1: Ya.

DC: So ini tidak boleh bawa maksud fitnah dalam tahun 2009, itulah erti soalan saya?

PW1: Dalam 2009 ia tidak bermaksud fitnah tetapi buku ini ditulis pada tahun 2018. Jadi ia dah jatuh fitnah pada saya.

[124] I agree with the defendants' counsel that, indeed, the plaintiff had admitted that if she was said to be 'friend' with Jho Low in 2009, it could not mean that the plaintiff had befriended with a playboy, and someone wanted by the authorities. This admission completely supports the defence. Nowhere in the impugned statement is there any reference made to the plaintiff's friendship with Jho Low beyond 2009 and TIA. The corruption scandal involving 1MDB and Jho Low occurred few years later. It would therefore be an unreasonable interpretation of the impugned statement to conclude that it implied that the plaintiff was 'associated and has close ties with persons with questionable character namely Jho, whose reputation based on media reports is a playboy and one who is sought by authorities' as alleged in imputation (vi).

[125] Indeed, as the plaintiff's own evidence shows, there had been no such complaints made about Jho Low in 2009. Any interpretation suggesting that it would be defamatory to imply a friendly association with Jho Low in 2009 would be wholly unreasonable. No public complaint had ever been made against anyone for knowing Jho Low in 2009. The plaintiff herself concedes that Tunku Rahimah cannot be faulted for introducing Jho Low, because he did not have a bad reputation in 2009:

(Notes of Proceeding, p 34)

DC: Ok, saya ulangkan lagi. Minta maaf, Bahasa Malaysia saya tidak beberapa baik tetapi saya akan cuba lagi. *So, dalam tahun 2009 Tunku Rahimah telah memperkenalkan Jho Low kepada Sultan Mizan.*

PW1: Hmmm ...

A DC: Now, *perbuatan itu kita tidak boleh mempersalahkan Tunku Rahimah kerana Jho Low pada masa itu bukan seorang yang tidak baik, setuju?*

PW1: *Setuju.*

DC: Dan itu adalah *kerana Jho Low pada masa itu 2009, tidak mempunyai reputasi*
B *sebagai playboy,* atau seorang yang dikejar oleh pihak berkuasa?

PW1: *Ya, betul.* (Emphasis added.)

[126] It would have been impossible for the impugned statement to have
C caused implications of any negative connotations arising from an alleged link between the plaintiff and Jho Low at that time. In any event, the ordinary and natural meaning of the impugned statement would not be able to derive imputation (vi) out of it. Again, just like imputations (v) and (vii), it will not be possible to arrive at such imputation (vi) unless the reader exercises some
D strained of forced unreasonable interpretation.

[127] As such, following the above, it can be deduced that there is no doubt that nothing in the impugned statement could suggest in its natural and ordinary meaning the alleged imputations (i), (ii), (v), (vi) and (vii). In other
E words, a reasonable reader with general knowledge would not have thought of the alleged imputations as provided under (i), (ii) (v), (vi) and (vii) just by reading the impugned statement in the book.

Imputations (iii) and (iv)

F

[128] For imputation (iii), the plaintiff's counsel contended that the impugned statement, particularly the statement 'whose acquiescence is needed', can be understood to indicate that the plaintiff's acquiescence is needed to set up the TIA. The plaintiff's counsel again argued that one should
G not make a critical analysis of the impugned statement but rather to read it casually as a whole without breaking it up into parts. For the most part, I agree with the plaintiff's counsel that in determining the tendency of impugned statement to be defamatory, one needs to read it as a whole.

H **[129]** In *Monroe v Hopkins*, Warby J reiterated the ratio by Sir Anthony Clarke MR in *Jeynes v News Magazines Ltd and another* [2008] EWCA Civ 130 at para [14] regarding the principle to be applied when determining the meaning of the alleged defamatory statement. It was observed at para 29 that:

I (1) The governing principle is reasonableness. (2) The hypothetical reasonable reader is not naive but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but *he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available. (3) Over-elaborate analysis is best*

> *avoided*. (4) The intention of the publisher is irrelevant. (5) The article must be read as a whole, and any 'bane and antidote' taken together. (6) *The hypothetical reader is taken to be representative of those who would read the publication in question. (7) In delimiting the range of permissible defamatory meanings, the court should rule out any meaning which, 'can only emerge as the produce of some strained, or forced, or utterly unreasonable interpretation* ... (8) It follows that 'it is not enough to say that by some person or another the words might be understood in a defamatory sense ...

(See also, *De Souza Tay & Goh (suing as a firm) v Singapore Press Holdings Ltd and another action* [2001] 3 SLR 380.)

[130] By reading it as a whole, I am of the view that the impugned statement does carry with it the meaning or inference that the plaintiff consented to the establishment of the sovereign wealth fund. Nonetheless, the question remains whether by reading the impugned statement as a whole, can it materially injure the plaintiff's reputation? Moreover, it is a common knowledge that the plaintiff has never involved in or acquiesced in setting up the TIA.

[131] In considering this matter, I agree with the defendants' counsel's submission that there is no negative connotation that one could draw to arrive at imputation (iii). Undoubtedly, there is a factual error (which the first defendant admitted) in saying that the plaintiff consented to the establishment of the sovereign wealth fund. However, to my mind, this does not in any way degrade the plaintiff's reputation.

[132] For imputation (iv), the learned counsel of the plaintiff submitted that the impugned statement is indeed capable of being defamatory against the plaintiff because, at the time of the publication of the book, 1MDB was bombarded with high-profile corruption scandal involving the then Prime Minister, Najib Razak and Jho Low. The scandal has received extensive media coverage, and it portrayed Jho Low in a notorious manner ie, playboy and a fugitive. Thus, it is the plaintiff's counsel's submission that since the impugned statement in its natural and ordinary meaning has associated the plaintiff as having a close tie with Jho Low; it, in essence, degraded the plaintiff in the eyes of society.

[133] Since the plaintiff's counsel had taken the position to only confer the impugned statement in its natural and ordinary meaning, no extrinsic facts could be insisted upon in determining the possibility of defamatory implication. Thus, I am inclined to agree with the defendants' submission that an ordinary reader would not conclude imputation (iv) through natural and ordinary meaning of the impugned statement.

[134] Next, and more importantly, in my judgment, I find that a reasonable

reader would only adduce a modified version of imputation (iv): that Jho Low claimed that the plaintiff had supported him in obtaining an advisory rule in TIA. This is through the natural reading of the impugned statement,

> ... *he later cited* her support as having been crucial to his obtaining the advisory position. (Emphasis added.)

[135] The phrase 'he later cited' shows that it was only self-proclaimed by Jho Low that he had obtained the advisory position with the plaintiff's support, and there is nothing to suggest the truth in it. As testified by DW2, in his witness statement (DWS2):

> 10. Q. What is your understanding of the portion of the Passage that reads 'he later cited her support as having been crucial to his obtaining the advisory position?'.
>
> A. I understand it to mean that *the person called Jho claimed that* his success in obtaining the advisory position was largely thanks to the 'support' of the Sultan's wife ... (Emphasis added.)

[136] There is also nothing in it to even suggest that the plaintiff confirmed or endorsed this self-proclamation made by Jho Low. In fact, his position as the advisory position was also doubtful and lay solely on his self-proclamation. PW3 also testified to this allegation:

> (Notes of Proceeding at pp 124–125)
>
> DC: Adakah Dato' setuju, oleh sebab laporan berita tersebut masih ada dalam domain awam sehingga hari ini, pengetahuan bahawa Jho Low telah dilantik oleh Sultan Mizan untuk membantu dalam pertubuhan TIA dan beliau telah menjadi penasihat serta duduk dalam Lembaga Pengarah TIA masih dikekalkan lagi, setuju?
>
> PW3: Tak setuju.
>
> DC: Dato' saya tak dapat jawapan, minta maaf.
>
> PW3: Yang Arif saya tak setuju kerana Jho Low tidak pernah dilantik oleh kerajaan negeri sebagai penasihat atau apa-apa jawatan dalam TIA.
>
> DC: So kedudukan pendapat Dato adalah, bahawa Jho Low tidak bila-bila masa dilantik untuk membantu dalam penubuhan TIA?
>
> PW3: Dia peringkat awal memang diberi taklimat, tapi kita tak pernah melantik beliau sebagai penasihat atau apa-apa jawatan dalam TIA. Itu hanya dakwaan beliau. Kami tidak pernah Yang Arif.
>
> DC: Dan penasihat kepada sultan, adakah Jho Low jadi penasihat kepada sultan?
>
> PW3: Itu di luar pengetahuan saya Yang Arif, sebagai Menteri Besar.

[137] As discussed previously, PW1 had admitted that there was never impropriety in Jho Low's appointment. Moreover, it is also my view that mere support for someone for a job would not in any way discredit a person. Thus,

it is too remote to even suggest that one is involving in corrupted practice when one is said to be in support of another in the latter's obtaining a job (as merely self-proclaimed by the latter). To add on, there is nothing in the impugned statement to even indicate that this self-proclamation by Jho Low was true or was even confirmed by anyone.

[138] With regard to the phrase concerning 'support', I also agree with the defendants that there have never been allegations of impropriety made in respect of Jho Low's appointment to TIA. If this fact were to be superimposed on the plaintiff's claim that the impugned statement insinuates of interference in the administration of state affairs and of corruption, it most certainly reveals a very strained and tenuous interpretation. This would never be concluded through the natural and ordinary meaning of the impugned statement. A statement alluding to the mere act of recommending or supporting Jho Low in him obtaining an advisory position in TIA is an innocent statement incapable of tarnishing the plaintiff's reputation or bringing her into disrepute, even though reference to the plaintiff was admittedly a mistake.

[139] In fact, the plaintiff also agreed that there was never any impropriety in Jho Low's appointment alone:

(NOP/Page 27/Lines 6–23)

DC: So Tuanku adalah Tuanku setuju jika saya kata, passage dalam buku ini yang diadukan dan perbuatan penebusan kerajaan negeri Terengganu dan apa yang dilakukan oleh Sultan Mizan, kalau kita membacakan semua ini bersama-sama, adakah itu jelas kepada pembaca bahawa rumah Diraja Terengganu tidak terlibat dalam apa-apa rasuah?

PW1: Setuju.

DC: Dan adakah Tuanku setuju bahawa penebusan ini termasuk pengenalan dan pelantikan Jho Low sebagai penasihat khas kepada TIA?

PW1: Tolong ulang soalan, ya.

DC: So penebusan ini itu termasuk fakta bahawa Jho Low telah diperkenalkan kepada Sultan Mizan oleh Tunku Rahimah, pelantikan beliau sebagai penasihat khas TIA ertinya pada masa itu, perkara ini tidak salah. Ertinya pada buat masa itu tidak ada apa-apa kaitan dengan rasuah pada masa itu pelantikan Jho Low?

PW1: Betul.

[140] The plaintiff herself has also conceded that there was nothing corrupt, or corruption related, in respect of the mere involvement in TIA:

(NOP/Page 20/Lines 13–20)

DC: Bolehkah Tuanku setuju dengan saya jika saya kata, kalau kata terlibat dengan TIA bukan tidak bermakna seseorang itu terlibat dalam rasuah. Ertinya jika

A seseorang berkata 'Oh, Encik atau Puan ada berkaitan atau terlibat dalam TIA' bukan semestinya bermakna seseorang itu terlibat dalam rasuah?

PW1: Ini perlu jawapan setuju atau tidak ke?

DC: Ya setuju atau tidak Tuanku?

B PW1: Setuju.

[141] Nor can the passage be interpreted to mean that the Sultanah was involved in determining the appointment of Jho Low. This was the Sultan's C decision to make, not hers. Under cross-examination, the plaintiff had conceded that this was obvious, based on protocol:

(NOP/Page 48/Lines 6–9)

DC: Terima kasih. So, di antara Tuanku dan Sultan Mizan keputusan siapa itu untuk melantik Jho Low sebagai penasihat rasmi kepada TIA? D

PW1: Mengikut protocol sudah tentu Sultan Terengganu sebab saya tidak pernah campur, saya tidak pernah tahu semua ini.

E **[142]** Thus, even if the plaintiff had supported Jho Low in obtaining the advisory position, insinuating that such support was an interference in the administration of state affairs and corruption is extremely far-fetched. One cannot draw such imputation through natural and ordinary meaning. Such insinuation is again an 'inference upon inference' and is a legal innuendo.

F **[143]** To conclude the discussion on imputation (iv), it is my finding that merely supporting or recommending Jho Low to any advisory role in TIA would not in any way infer any negative derogation. Moreover, the impugned statement has made it clear that this is only a self-acclamation by Jho Low.

G **[144]** The plaintiff's counsel also submitted that the social media comments posted by the commentators in the MalaysiaKini News (Common Bundle of Documents, encl 58 at pp 64–71) shows that the plaintiff's reputation was being ridiculed and degraded because of the impugned statement. With due H respect, I must disagree. The defendants have drawn to the court's attention that the news article published by MalaysiaKini News was regarding the filing of this claim. In other words, the commentators of the said news article mainly commented on the plaintiff's action in filing this matter and it has nothing to do with the publication of the impugned statement itself in the book.

I **[145]** Besides, as per the defendants' counsel's submission, to which I agree, those comments reflect a manifestation of a growing sense of antipathy towards abuse of power generally and this is not confined to local sentiment alone. The defendants' counsel also quoted the case of *Raub Australian Gold Mining Sdn*

Bhd (in creditors' voluntary liquidation) v Hue Shieh Lee [2019] 3 MLJ 720; [2019] 3 CLJ 729 where the Federal Court affirmed the Court of Appeal decision in considering the attitude of the society at the time of the publication since there is a more liberal society where the concept of transparency and accountability are very much part and parcel of our lives.

[146] Thus, it is clear to me that, the impugned statement does not in any way bring any negative connotation against the plaintiff. Consequently, it would not be capable of being defamatory against the plaintiff. Therefore, the plaintiff's counsel has failed to prove to this court that the impugned statement has defamatory implications against the plaintiff. Accordingly, I dismiss the plaintiff's claim for defamation.

[147] Bearing in mind the cause of action in this case is based on the ordinary and natural meaning of the words and not legal innuendo, no extrinsic facts could be adopted to analyse the impugned statement. This court could only decide from the perspective of a reasonable reader. Only natural and ordinary inference from the literal meaning of the impugned statement could be accepted. No 'inference upon inference' nor extrinsic facts could be accepted. By this, and as a conclusion, my findings on the imputations pleaded by the plaintiff are as follows:

(a) there is nothing in the impugned statement that could suggest the alleged imputation (i);

(b) there is nothing in the impugned statement that could suggest the alleged imputation (ii);

(c) indeed, one can safely adduce the alleged imputation (iii) from the impugned statement;

(d) indeed, one can safely adduce the second part of the alleged imputation (iv) from the impugned statement, namely, that Jho Low claimed that the Sultanah supports Jho Low in his obtaining of an advisory role in the sovereign wealth fund;

(e) there is nothing in the impugned statement that could suggest the alleged imputation (v);

(f) there is nothing in the impugned statement that could suggest the alleged imputation (vi); and

(g) there is nothing in the impugned statement that could suggest the alleged imputation (vii).

[148] The next task for this court is, therefore, to closely look at imputation (iii) and (the amended) imputation (iv) listed above to ascertain if these imputations could bring any disparaging effect. I see no such negative

connotation from these two imputations. Despite the factual error on the identity, to say that the plaintiff consented to the establishment of the sovereign wealth fund, will, to my mind, not in any way degrade the plaintiff's reputation. Likewise, mere support for someone for a job would not in anyway discredit a person. Moreover, the impugned statement also highlights that such statement (about the support of the Sultanah in his obtaining of the position) was self-claimed by Jho Low himself. There is nothing to suggest the truth in it.

Defences

[149] In the event that I am wrong in finding that the impugned statement does not bring defamatory imputations, and for the completeness of discussion, I will now consider the defences raised by the defendants. In the defence, the defendants had pleaded the following headings of defence to which I shall deal with in turn:

(a) bane and antidote;

(b) justification and *Lucas-Box* defence;

(c) fair comment; and

(d) qualified privilege — *Reynold*'s defence.

Bane and antidote

[150] The defendants firstly rely on the defence of bane and antidote to denounce their liability. The defence of bane and antidote applies to both cases involving words in their natural and ordinary meaning and cases involving innuendo meanings. Basically, in a bane and antidote defence, the whole publication must be read in its context to consider if one part of the publication may be the antidote that would remove or negate the bane (namely the impugned statement(s)).

[151] The defence of bane and antidote is articulated by His Lordship Harmindar Singh Dhaliwal FCJ in the recent Federal Court case of *Dato' Sri Dr Mohamad Salleh bin Ismail & Anor v Nurul Izzah bt Anwar & Anor* at pp 591–592 (MLJ); pp 341–342 (CLJ):

> [24] This principle is derived from a passage from the judgment of Alderson B in *Chalmers v Payne* (1835) 2 Cr M & R 156 at p 159, where it was observed:
>
> > But the question here is, whether the matter be slanderous or not, which is a question for the jury; who are *to take the whole together and say whether the result of the whole is calculated to injure the plaintiff's character. In one part of this publication, something disreputable to the plaintiff is stated, but that is removed by the conclusion; the bane and antidote must be taken together.*

[25] This question of whether the defamatory sting of a statement can be neutralised by other sections of the same statement was later decided in the leading case on the subject, *Charleston v News Group Newspapers Ltd* [1995] 2 All ER 313 where Lord Bridge observed (at p 319):

> *Whether the text of a newspaper article will, in any particular case, be sufficient to neutralise the defamatory implication of a prominent headline will sometimes be a nicely balanced question* for the jury to decide *and will depend not only on the nature of the libel which the headline conveys and the language of the text which is relied on to neutralise it but also on the manner in which the whole of the relevant material is set out and presented*. But the proposition that the prominent headline, or as here the headlines plus photographs, may found a claim in libel in isolation from its related text, because some readers only read headlines, is to my mind quite unacceptable in the light of the principles discussed above. (Emphasis added.)

[152] The defendants' counsel submitted that if the impugned statement has defamatory inclination (thus, a bane), the passage in pp 438–439 of the book will serve as antidote to remove and neutralise the sting of the impugned statement. For ease of reference, the passage in pp 438–439 says:

> The Sultan of Terengganu had understandably complained of 'malpractice' and 'non-compliance' and accused AmBank of 'unauthorised issuance' of the bonds. It is this falling out that seems to have prompted the reinvention of the fund as 1MDB in July 2009, bringing it under the direct and sole control of the Ministry of Finance — to be run as Najib's personal toy, away from the inconvenient scrutiny of any state government partners.

[153] The defendants' counsel further contended that the plaintiff should not pick and choose the phrase or parts of the impugned statement that may bear a defamatory imputation. It is trite that, one needs to read any alleged defamatory statement as there might be other parts of the statement or phrase that can remove the negative connotations of the alleged defamatory statement. This is as per Faizah Jamaludin JC (as she then was) in *Thong King Chai v Ho Khar Fun* [2018] MLJU 357; [2018] 5 MLRH 277 where it was held that the plaintiff could not 'pick and choose' part of the email and the Facebook posting that contained the 'bane' or the 'sting' of defamation since there is another part of the statements may be the 'antidote' that takes away the sting of defamation. Hence, it is important to take the whole email and the whole Facebook posting and the context and circumstances of the publication of both.

[154] Her Ladyship in delivering her judgment at pp 708–709 (MLJ); pp 288–289 (CLJ), reiterated the position of the Court of Appeal in *Keluarga Communication*:

> At the outset we would state that *the test to be applied when considering whether a*

statement is defamatory of a plaintiff is well settled in that it would understand it and for that purpose, that is, in considering whether the words complained of contained any defamatory imputation, it is necessary to consider the whole article. Gatley on Libel & Slander (10th Ed) on this point at pp 108 and 110, inter alia, states as follows:

> It is necessary to take into consideration, not only the actual words used, but the context of the words.
>
> If follows from the fact that the context and circumstances of the publication must be taken into account, that the plaintiff cannot pick and choose parts of the publication which, standing alone, would be defamatory. *This or that sentence may be considered defamatory, but there may be other passages which take away the sting*. (Emphasis added.)

[155] To contradict, the plaintiff argued that the passage written under pp 438–439 does not take away any sting received by the plaintiff since the said passage was referring to the Sultan and not the plaintiff. This suggestion was also agreed by DW1 during her cross-examination by the plaintiff's counsel:

> (Notes of Proceeding at p 146)
>
> PC: Refer to Q&A 7, at page 9 at the first line where you refer to page 438 and 439 of the book. That page 43 and 439 is found in enclosure 58 at page 5 and 86. Starting with the words, the Auditor General, till the next page, continue right up till the words, 'scrutiny of any government partners'. Firstly, is the plaintiff's name or the word such as, 'Sultan's wife', 'wife of the Sultan', 'Sultan's spouse', specifically mentioned in page 85 and 6 of this enclosure?
>
> DW1: No.
>
> (Notes of Proceeding at pp 148–149)
>
> PC: Does the entire paragraphs, starting with the words, the 'auditor general' till the next page, 'inconvenient scrutiny by any state government partners', expressly mentioned the words, the Sultan, including the members of the Terengganu Royal family?
>
> DW1: No, it doesn't include the members of the Royal family.
>
> ...
>
> PC: I repeat the question there. Refer back to the page 9 of the book, the first print, enclosure 58 and cross refer to page 85 and 86, considering the paragraph in page 5 and 86 does not mention the plaintiff, and only mentions the Sultan of Terengganu and the shareholders of the Terengganu state government, do you agree that paragraphs in page 85 and 86 has nothing to do with the passage in page 9, as far as the plaintiff's involvement is concerned? You agree or disagree?
>
> DW1: It does emphasize the irrelevance of her role as far as the management, the fund is concerned. But it doesn't refer to her, because she doesn't have a role.

[156] Referring to *Dato' Sri Dr Mohamad Salleh bin Ismail & Anor v Nurul*

Izzah bt Anwar & Anor and *Thong King Chai*, the essence of the defence of bane and antidote lies in the importance of taking the context of the alleged defamatory statement as a whole. In our present case, within the span of 528 pages of the book, the plaintiff's claim was solely on the impugned statement, which is only a small paragraph situated in the prologue of the book. No other complaint was made other than the impugned statement. Hence, I agree with the defendants that it is unfair for this court to focus solely on the impugned statement if there are other statements in the book that could neutralise the defamatory tendency of the impugned statement.

[157] In *Allied Physics Sdn Bhd*, Vernon Ong Lam Kiat JCA (as he then was) also stated this in delivering his judgment at pp 124–125 (MLJ); p 358 (CLJ):

> [30] In this regard, the legal principles relevant to meaning have been summarised by the English Court of Appeal in *Jeynes v News Magazines Ltd and Another* [2008] EWCA Civ 130 (CA) as follows:
>
> (a) The governing principle is reasonableness.
>
> (b) The hypothetical reasonable reader is not naive but he is unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available.
>
> (c) Over-elaborate analysis is best avoided.
>
> (d) The intention of the publisher is irrelevant.
>
> (e) *The article must be read as a whole, and any 'bane and antidote' taken together*.
>
> (f) The hypothetical reader is taken to be representative of those who would read the publication in question.
>
> (g) In delimiting the range of permissible meanings, the court should rule out any meaning which, 'can only emerge as the produce of some strained, or forced, or utterly unreasonable interpretation ...' (see Eady J in *Gillick v Brook Advisory Centres & Another approved by this court* [2001] EWCA Civ 1263 at para 7 and *Gatley on Libel and Slander* (10th edn), para 30.6).
>
> (h) It follows that 'it is not enough to say that by some person or another the words might be understood in a defamatory sense.' *Neville v Fine Arts Co* [1897] AC 68, 61 JP 500, 66 LLQB 195 per Lord Halsbury LC at 73. (Emphasis added.)

[158] In our present case, does the passage in pp 438–439 of the book constitute as an antidote to cure the alleged sting of the impugned statement? The defendants' counsel argued that the passage in pp 438–439 shed a favourable light where the mentioning of the Sultan of Terengganu also extends

to the Terengganu Royal Family (and thus the plaintiff) had pointed out the malpractice and non-compliance made by TIA. PW1 admits this during cross-examination:

(Notes of Proceeding at pp 25–27)

DC: Adakah dalam penyataan saksi di jawapan 10A, kata apa yang dinyatakan di muka surat 438 dan 439 buku tersebut secara spesifik memberikan kredit kepada tindakan Sultan Mizan dan tidak ada kena mengena dengan Tuanku sendiri?

PW1: Betul.

DC: So, tadi Tuanku telah setuju bahawa interpretasi petikan yang diadukan itu tadi membawa maksud bahawa peranan Tuanku adalah atas peranan Sultan, tadi Tuanku telah setuju?

PW1: Ya.

DC: Dan juga atas kerajaan negeri Terengganu?

PW1: Itu yang ditulis di muka surat 3 menyatakan memberi gambaran saya sebagai ...

DC: Ya, benar.

PW1: Ya ...

DC: So saya sekarang Tuanku buat cadangan bahawa atas interpretasi itu segala perbuatan menerus yang dilakukan oleh Sultan Mizan dengan keluarga Raja-Diraja Terengganu dan kerajaan negeri pun akan dikaitkan dengan Tuanku juga?

PW1: Hmmm ...

DC: Maksudnya integriti Sultan Mizan.

PW1: Ya.

DC: Pun akan digambarkan dalam keluarga sekalinya, keluarga, rumahtangga Diraja Terengganu?

PW1: Ya betul, setuju.

DC: Termasuk Tuanku juga?

PW1: Ya.

DC: So kalau saya kata tindakan Tuanku Sultan apabila membebaskan diri daripada penglibatan dalam TIA, ini pun akan menunjukkan bahawa perkara ini pun akan mengaitkan Tuanku?

PW1: Saya tidak setuju.

DC: So Tuanku adalah Tuanku setuju jika saya kata, passage dalam buku ini yang diadukan dan perbuatan penebusan kerajaan negeri Terengganu dan apa yang dilakukan oleh Sultan Mizan, kalau kita membacakan semua ini bersama-sama, adakah itu jelas kepada pembaca bahawa rumah Diraja Terengganu tidak terlibat dalam apa-apa rasuah?

PW1: Setuju.

DC: Dan adakah Tuanku setuju bahawa penebusan ini termasuk pengenalan dan pelantikan Jho Low sebagai penasihat khas kepada TIA?

PW1: Tolong ulang soalan, ya.

DC: So penebusan itu termasuk fakta bahawa Jho Low telah diperkenalkan kepada Sultan Mizan oleh Tunku Rahimah, pelantikan beliau sebagai penasihat khas TIA ertinya pada masa itu, perkara ini tidak salah. Ertinya pada buat masa itu tidak ada apa-apa kaitan dengan rasuah pada masa itu pelantikan Jho Low?

PW1: Betul.

[159] Thus, looking at the plaintiff's admission above, the defendants premised that it can be said that even though the plaintiff's name was not named in the passage in pp 438–439, her position as Sultanah is indisputably known as part of the Royal Household of Terengganu. Hence, it is the defendants' submission that the praises that were heaped on the Sultan for having the foresight to abandon what was turning out to be a massive heist of public funds constituted an 'antidote' against the impugned statement.

[160] Unfortunately, both PW2 and PW3 (the only two witnesses testifying for the plaintiff) had not read the whole book. This has surely weakened the plaintiff's case. PW2 admitted during cross-examination that he had only read a portion of the book. He, had, however, read the relevant passage in pp 438–439:

(Notes of Proceeding at pp 101–102)

DC: So, itulah benarlah apa yang saya kata tadi? Now, adakah Dato baca buku yang terlibat dalam kes ini?

PW2: Keseluruhannya tidak, cuma bahagian yang penting saja saya baca.

DC: Oh itu Bahagia yang dituduhkan fitnah? Itu saja? Muka surat 3.

PW2: Sebahagian yang lainnya. Bukan semua the whole book tapi sebahagiannya.

DC: Sebahagian daripada buku?

PW2: Ya.

DC: Adakah Dato membaca mukasurat 438 dan 439 di muka surat, saya akan tunjuk, sebentar Dato. Mukasurat 85 dan 86. Kumpulan dokumen B1.

PW2: Saya ada baca sekali lalu.

[161] PW3, on the other hand, had admitted that he had not even read the book, let alone commenting on the antidote:

(Notes of Proceeding at p 115)

DC: Adakah Dato' pernah membaca buku tersebut, yang diterbitkan dalam Bahasa Inggeris itu?

PW3: Saya tidak pernah membacanya.

[162] As mentioned earlier, for the completeness of discussion and in the event that my earlier finding that there is no defamatory imputation in our present case is wrong, it is my finding that the antidote in pp 438–439 here is too remote to be deemed as capable of neutralising any alleged defamatory imputations in the impugned statement. Whether the antidote is effective depends on whether objectively it is of sufficient 'strength' to act as an antidote. Lord Nicholls of Birkenhead in *Charleston v News Group Newspapers Ltd* [1995] 2 AC 65 at p 74 had held that the antidote had neutralised the bane because the reader did not have to look far to find it. An ordinary reasonable reader is not expected to thumb through pages of the book and to read everything no matter how obscure to find the antidote to the bane. In our present case, the impugned statement was stated at p 3 of the book while the passage was penned at pp 438–439, namely 435 pages later. This is too far apart for it to be the antidote.

[163] Also, I find the suggestion by the defendants that the mentioning of the Sultan of Terengganu must be extended to the Terengganu Royal Family and thus means the inclusion of the plaintiff in the passage in pp 438–439 of the book and that the same is an antidote to the sting too far stretching and improbable. Normal influenza vaccine cannot prevent coronavirus infection albeit both of them could cause respiratory disease. Only specific vaccine specifically formulated for coronavirus could effectively work on the coronavirus. In similar veins, to be the antidote, the passage in pp 438–439 must specifically mention the name of the plaintiff. Then only it would functionally remove any defamatory imputation. To effectively neutralise the sting, the antidote must be in close proximity and cannot be too discreet or downplayed. When it is 'hidden' (per Lord Bridge of Harwich in *Charleston* at p 70) and too distant and detached, as in this case, for the ordinary reasonable reader the sting would not be neutralised by the antidote. Consequently, I find that the defendants had failed to raise the defence of bane and antidote.

Justification and *Lucas-Box* defence

[164] Next, the defendants' counsel urged this court to consider that the impugned statement was justified since the factual matrix was established based on articles that were previously published by other news media.

[165] On the contrary, the plaintiff's counsel submitted that neither of the articles referred by the defendants showed that the plaintiff was in any shape:

(a) involved or acquiesced in the setting up the TIA;

(b) has a role in setting up the TIA; and

(c) the plaintiff had supported Jho Low in obtaining the advisory position in TIA.

[166] DW1 also testified during cross-examination by the plaintiff's counsel that none of the articles published had mentioned the plaintiff's involvement in the establishment of TIA:

(Notes of Proceedings at pp 161–162)

PC: Now, let's go to the 4 articles step by step. Now, I refer to the first article The Star newspaper, page 72. Star article 13/12/2008, now, in this Star article, does it expressly state whether, does it expressly state that the plaintiff was involved in the establishment of the TIA in any manner whatsoever?

DW1: No.

PC: Okay, just to speed up the whole process, page 73, 74, 75, right up till page 81, does this remaining 3 articles expressly state that the plaintiff was involved in the establishment of TIA in any manner whatsoever?

DW1: Is this the interview with Jho Low, can I have a look?

PC: Alright, then I will go step by step.

DW1: No, just scroll them.

...

PC: And I go to the next page, again, does it expressly said that the plaintiff was involved in the establishment of TIA?

DW1: No, I think in this article it does not.

Also, at (Notes of Proceedings at p 164)

PC: My question, having you read that particular passage, does it say the plaintiff was involved in the establishment of TIA in any manner whatsoever?

DW1: No.

PC: Now, we go to the next page, page 81. Does this page 81 states expressly that the plaintiff was involved in the establishment that the plaintiff was involved in the establishment of TIA in any manner whatsoever?

DW1: No.

PC: And all these 4 articles from page 72 till 81 which you went through, does these 4 articles expressly states that the plaintiff knows or have met Jho Low?

DW1: No.

[167] This court refers to the High Court case of *Mirzan bin Mahathir v Star*

Papyrus Sdn Bhd [2000] 6 MLJ 29 wherein His Lordship Kamalanathan Ratnam J (as he then was) discussed the principle of *Lucas-Box* in his judgment at p 36:

> It is necessary for me to bear in mind that the defendant has pleaded justification within the meaning as set out in *Lucas-Box.* In *Lucas-Box v News Group Newspapers Ltd* [1986] 1 WLR 147 the Court of Appeal held that *where a defendant in defamatory proceedings wishes to rely on a plea of justification he must make clear in the particulars of justification the case which he is seeking to set up and must accordingly state clearly and explicitly the meaning which he seeks to justify*. With this principle as set out in *Lucas-Box* it is necessary therefore for me to find that prima facie the article is defamatory of and concerning the plaintiff since the defendant has pleaded that the defamatory meaning of the words complained of in the particle are as contended in para 7 of the defence. (Emphasis added.)

[168] Likewise, in the Federal Court case of *Syarikat Bekalan Air Selangor Sdn Bhd v Tony Pua Kiam Wee* [2015] 6 MLJ 187, His Lordship Azahar Mohamed FCJ (later CJM) referred to Ackner LJ's decision in *Lucas-Box v News Group Newspapers Ltd; Lucas-Box v Associated Newspapers Group plcs and others* [1986] 1 WLR 147 and reiterated the *Lucas-Box* plea of justification as follows:

> [51] In substance, the *Lucas-Box* plea of justification as decided by the English Court of Appeal is as follows:
>
> (a) *if a plaintiff, in its defamation pleadings, give a natural and ordinary meaning to the impugned words, the defendant may then rely on stating in his defence what he alleged was the natural and ordinary meaning of the words complained of; and*
>
> (b) *a defendant in defamation proceedings who wishes to rely on a plea of justification must make clear in the particulars of justification the case which he is seeking to set up and must accordingly state clearly and explicitly the meaning which he seeks to justify*. (Emphasis added.)

[169] Following the ratio in *Mirzan bin Mahathir* and *Syarikat Bekalan Air Selangor*, it is important to note that the defence of justification has to be specifically pleaded with full and clear particulars of the facts and matters relied on and that the burden of proof lies upon the defendants to show that the defamatory imputations are substantially justified. The defendants in their defence, listed the particulars of justifications and/or *Lucas-Box* defence as follows:

> Justification/The Lucas Box Defence
>
> 15. If, and in so far as the said statement, in its ordinary and natural meaning, bore or is understood to bear the meanings set out in paragraphs 7,9 and 11 of the Statement of Claim (which is denied), the defendants plead that the words in the said statement were true in substance and in fact.

16. ...

Particulars of Justification

a) Jho Low had been introduced to the Sultan of Terengganu when His Highness was the King of Malaysia in 2009. The introduction was made by the Sultan's younger sister, Tengku Dato Rahimah. She was the then Chairman of Loh & Loh Corporation Sdn Bhd. Jho Low had met her as a fellow shareholder of the Abu Dhabi-Kuwait-Malaysia Investment Corporation (ADKMIC).

b) Jho Low did in fact eventually succeed in being appointed by the Sultan of Terengganu (the then King) as an advisory to the setting up of the Terengganu Investment Authority (TIA) between January to mid-May 2009. The setting up of this fund was actually implemented on the advice of Jho Low. Tengku Dato Rahimah also sat on the Advisory Board of TIA. The Sultan was the Chairman of the Advisory Board.

c) The reason why the Sultan of Terengganu asked Jho Low to assist in the setting up of the TIA was Jho Low's involvement in, and relationship with, the Middle East as a result of which he had acquired knowledge as to how their own sovereign wealth funds had been set up.

d) As a result of the close association with the Sultan of Terengganu and his younger sister, Jho Low had been quoted as being a 'friend' of the Terengganu Royal Family.

e) The original plan for the setting up of the TIA was for the Federal Government to guarantee the issuance of a RM5 million debt paper and another RM6 billion to securitised from the annual royalty payment from Petronas.

f) TIA never took off as the Sultan of Terengganu was unimpressed with the unfavourable terms of the bond raising exercise conducted by AmBank. It was at this stage that the TIA was taken over by 1MDB.

g) Jho Low continued to advise 1MDB. Jho Low cheated 1MDB of billions of Ringgit over the next few years. This is common knowledge and was exposed by the first defendant in 2015. At the time Jho Low was an advisor to TIA and a friend of the Terengganu Royal Family, he had yet to, allegedly, commit theft of any monies and therefore his reputation was untainted.

h) The words complained of in their ordinary and natural meaning, clearly refer to claims made by Jho Low for the advancing of his position and influence in the setting up of, and involvement in, the fledgling TIA. This is evident from the press reports available in the public domain.

i) In the aforesaid press reports Jho Low publicly stated that:-

   i. He was involved in the setting up of the TIA from January 2009 to mid-May 2009.

   ii. He was asked by the Sultan of Terengganu to assist given his (Jho

Low's) relationship with the Middle East and his insight into how they had set up sovereign wealth funds.

iii. It was the Sultan of Terengganu's sister who had introduced him (Jho Low) to the Sultan.

iv. The Sultan's sister was the Chairman of Loh & Loh Corporation Bhd (a company in which Jho Low had an interest).

j) It is clear from the foregoing statements that Jho Low was on friendly terms with important persons in Terengganu, including members of the Royal family and had secured his advisory position with the TIA because of his friendship with the Terengganu Royal family. At all material times there was no public refutation of these facts made by the Terengganu Royal Household or any member thereof and hence remain unrebutted.

17. The defendants accordingly aver and will contend that the contents of the said statement were substantially accurate and true and that the defendants were justified in publishing the same.

Particulars of the Lucas-Box Defence

1) the defendants repeat paragraphs 12 and 16 above.

2) the defendants aver and will contend that the true meaning capable of being derived from the said statement are those set out in paragraphs i–v of paragraph 12 above.

[170] Paragraph 12 of the defence says:

12. From the contents of the abovementioned statement appearing at page 438 of the said book, read together with the impugned said statement appearing at page 3 of the said book, the defendants aver and will contend that an ordinary and reasonable reader, having read all the pages of the said book, would inevitably draw the following inferences, imputations and/or innuendos instead:-

i. That the members of the Terengganu Royal Family were deeply concerned for the welfare of the state by rejecting the obvious misfeasance in the fund raising exercise conducted by certain quarters, by abandoning the TIA and relinquishing all interests therein to 1MOB instead.

ii. That in the process of detecting the inappropriateness of the bond issues and rejecting the same, the Terengganu Royal Family were in effect behaving in an exemplary manner and in the best interests of the state and its peoples.

iii. That the decision taken by the Terengganu Royal Family in divesting the state of any involvement in the TIA was possibly the most appropriate decision in the circumstances and ought to be lauded.

iv. That in doing so, the Terengganu Royal Family were in effect rightly rejecting the advisory role Jho Low played in the setting up of the TIA acknowledging the possible mistake made in the initial decision to appoint Jho Low as such.

v. That the plaintiff, being a member of the Terengganu Royal Family, would also be appreciated as one of the key players involved in having made the decision to abort the setting up of the TIA for valid, appropriate, commendable and proper reasons in the circumstances.

[171] The defence counsel also referred to the Court of Appeal case of *Tan Sri Dr Muhammad Shafee Abdullah v Tommy Thomas & Ors* [2018] 12 MLJ 98, where His Lordship David Wong Dak Wah CJ (CJSS) outlined Mustil LJ's elucidation of *Lucas-Box* in *Viscount De L'Isle v Times Newspapers Ltd* [1987] 3 All ER 499; [1988] 1 WLR 49:

> First, as to *Lucas-Box*'s case [1986] 1 WLR 147: Two different interpretations have been put on the decision and judgment of this court. The first is that *a defendant is now required to plead the meaning which he ascribes to the writing of which the plaintiff complains if that differs from the meaning pleaded by the plaintiff. Second, that the defendant is obliged to make clear what version of the facts it is that he asserts to be true.*
>
> The first interpretation he said was wrong. A defendant in pleading justification is not obliged to ascribe a meaning to the words complained of; the defendant is, however, obliged to plead justification in a way which makes it clear the meaning he seeks to justify.
>
> *The essence of the decision of Lucas-Box's case is that justification must be pleaded so as to inform the plaintiff and the court precisely what meaning the defendant will seek to justify. This is however an altogether different matter from saying that the defendant is obliged to say, yea or nay, whether that meaning is the one which the writing really bears*. (Emphasis added.)

[172] This court is of the view that the defendants' reliance on the case *Tan Sri Dr Muhammad Shafee Abdullah* is not baseless. As stated earlier, the defendants had indeed listed the particulars of justifications in their defence. The issue now is whether the defendants could rely on justification to denounce their alleged liability.

[173] Section 8 of the Defamation Act 1957 has made it clear that:

> 8. In an action for libel or slander in respect of words containing two or more distinct charges against the plaintiff, *a defence of justification shall not fail by reason only the truth of every charge is not proved if the words not proved to be true do not materially injure the plaintiff's reputation having regard to the truth of the remaining charges.* (Emphasis added.)

[174] In other words, a defendant who is unable to prove the truth of all the material statements in the alleged libel may nevertheless succeed in the defence of justification if the defendant can show that the words not proven to be true or truthful do not materially injure the plaintiff's reputation.

[175] The defendants' counsel submitted that it is justifiable for them to include the impugned statement in the book since it was based on the facts that had been reported in the news articles before the publication of the book. According to the *Star Online* article dated 30 July 2010 (Common Bundle of Documents B at pp 76–77), Jho Low mentioned this in his interview:

> Q: What about 1Malaysia Development Berhad (1MDB) and what was your role in the Terengganu Investment Authority (TIA)?
>
> A: I was involved in the setting up of TIA from January 2009 to mid-May 2009. The Yang di-Pertuan Agong Sultan Mizan (Zainal Abidin) was kind enough to ask me to assist, given my relationship with the Middle East and insight I had on how they had set up their sovereign wealth funds ...
>
> ...
>
> Q: How did you get to know the Yang di-Pertuan Agong?
>
> A: His Majesty's sister Tunku Datuk Rahimah introduced us. She is the chairman of Loh & Loh Corporation Bhd, whom I met as fellow shareholder of Abu Dhabi-Kuwait-Malaysia Investment Corporation (ADKMIC).

[176] Also, in a different the *Star Online* article dated 1 November 2014:

> *Role in setting up TIA*
>
> However, his rise to fame came when he was made special adviser to the Sultan of Terengganu and the-then Yang di-Pertuan Agong Sultan Mizan Zainal Abidin, who was also at that point of the time the chairman of the now-defunct Terengganu Investment Authority (TIA). The aim of TIA was to manage the state's annual oil royalty from Petroliam Nasional Bhd (Petronas) ...

[177] Despite the above publication showing Jho Low relationship with the Terengganu Royal Family and TIA, no public denials were ever reported by the Terengganu Place nor the Terengganu Government. PW3 admitted this during his cross-examination by the defendants' counsel:

> (Notes of Proceeding at p 124)
>
> DC: Dan di muka surat 77, di perenggan 4, Jho Low di sini telah mengatakan bahawa beliau diperkenalkan kepada Sultan Mizan melalui adik kepada Sultan, iaitu Tunku Dato Rahimah, now, Dato' adakah apa yang disebutkan oleh Jho Low dalam laporan berita ini benar atau tidak?
>
> PW3: Saya tidak tahu mengenai soal ini. Perkara ini tidak berkenaan dengan kerajaan.
>
> DC: Kalau, apakah ini, kalau tidak benar, adakah pentadbiran negeri Terengganu pada masa itu mengambil apa–apa langkah untuk membetulkan atau menafikan penyataan Jho Low tersebut, tidak bukan?
>
> PW3: Ya, tidak. Kita tak perlu menjawab apa-apa perkara yang ditimbulkan oleh

surat khabar, yang kalau ia tidak berkaitan dengan kita Yang Arif. A

[178] Also, at Notes of Proceeding at pp 125–126:

DC: Saya rujuk Dato' kepada B1 mukasurat 79–81. Ini ada lagi satu laporan berita yang dikeluarkan oleh Star Online pada 01.11.2014. Sila merujuk kepada mukasurat 81. Di bawah tajuk, 'Role in setting up TIA'. Now, berita ini mengulangi lagi bahawa Jho Low telah melantik sebagai penasihat khas kepada Sultan Terengganu dalam TIA dan beliau juga terlibat dalam penubuhan TIA dalam bulan Januari hingga Mei 2009. Adakah Dato tahu sama ada pentadbiran kerajaan negeri Terengganu telah mengeluarkan apa–apa kenyataan rasmi secera am, yang menafikan isi kandungan laporan ini dalam tahun 2014? B C

PW3: Tidak pernah Yang Arif, tidak pernah. Kerana kita tak mahu terlibat dengan apa-apa juga perkara di luar pengetahuan negeri Yang Arif.

DC: Tidak pernah mengeluarkan apa-apa kenyataan rasmi? D

PW3: Ya.

[179] No doubt in our present case, the first defendant has stated wrongly the person in issue (instead of Tengku Rahimah, the Sultan's sister, the impugned statement states the plaintiff), and thus this is clearly a case of mistaken identity. However, as s 8 of the Defamation Act 1957 has made it clear: unproven truth does not in itself make the defence of justification fails. It would only cause so if the unproven portion of the impugned statement could materially injure the reputation of the plaintiff. E F

[180] In our present case, the remaining parts of the impugned statement are as per the newspaper articles. The only unproven truth is solely the identity of the person stated in the impugned statement. And this unproven truth does not in any way material injure the reputation of the plaintiff. Therefore, I am agreeable with the defendants' submission that the impugned statement is justified since the first defendant was merely connecting the dots by following the news articles which had already been published. The impugned statement is indeed untruth with regard to the connection of the plaintiff with the establishment of the TIA. However, since the impugned statement does not in any way materially injure the reputation of the plaintiff and the other charges/facts are truly as reported in the newspaper articles, I find that the defendants had succeeded in raising the defence of justification under the *Lucas-Box* principle. G H

Fair comment I

[181] Next, the defendants also claimed that the impugned statement is a fair comment. It is trite that in order for the defendants to succeed in raising the defence of fair comment, four essential elements must be fulfilled:

(a) the words complained of are comment, although they may consist of or include inferences of fact;

(b) the comment is on a matter of public interest;

(c) the comment is based on fact; and

(d) the comment is one which a fair-minded person honestly makes on the facts proved.

(See *Joshua Benjamin Jeyaretnam v Goh Chok Tong* [1989] 3 MLJ 1.)

[182] His Lordship Abang Iskandar JCA (now PCA) in *Dato' Sri Dr Mohamad Salleh bin Ismail & Anor v Nurul Izzah bt Anwar & Anor* had succinctly explained the defence of fair comment as follows:

> [58] As for fair comment, the law on the defence of fair comment amounts to this. *If a defendant can prove that the defamatory statement is an expression of opinion on a matter of public interest and not a statement of fact*, he or she can rely on the defence of fair comment. The court have said that whenever a matter is such as to affect people at large, so that they may be legitimately interested in, or concerned at, what is going on or what may happen to them or to others, then it is a matter a public interest on which everyone is entitled to make fair comment. It is also a requirement that *the comment must be based on true facts* which are either contained in the publication or are sufficiently referred to. It is for the defendant to prove that the underlying facts are true. If he or she is unable to do so, then the defence will fail. *As with justification, the defendant does not have to prove the truth of every fact provided the comment was fair in relation to those facts which are proved.* However, 'fair' in this context, does not mean reasonable, but rather, it signifies the absence of malice. The views expressed can be exaggerated, obstinate or prejudiced, provided they are honestly held (see the case of *Dato Seri Mohammad Nizar bin Jamaluddin v Sistem Televisyen Malaysia Bhd & Anor* [2014] 4 MLJ 242; [2014] 3 CLJ 560). (Emphasis added.)

[183] Therefore, applying the ratio to our present case, it is crucial for the defendant to prove that the impugned statement is an expression of opinion on a matter of public interest and based on true facts.

[184] In our present case, the defendants' counsel's arguments for fair comment are:

(a) public interest;

(b) honest belief based on facts; and

(c) absence of malice.

[185] On the first point, the defendants' counsel argued that the book, in

which the impugned statement was written, is a matter of a public interest considering the book was published at the height of the 1MDB scandal. DW1 in her witness statement (DWS1) also testified that the book and the impugned statement was to unfold the connection between Jho Low and 1MDB (previously known as TIA):

> 20. Q: Why did you write the book and the Passage?
>
> A: I wrote the book because it was important that the public knew, in a comprehensive manner, of how the large-scale sacking of the sovereign wealth fund 1MDB came to pass. When ordinary members of the public have access to such details and information, public debate and political discourse about such issues becomes more meaningful.
>
> The Passage provided an important historical narrative of how 1MDB came to be from its roots as the Terengganu state fund TIA, and the personalities involved, before it became controlled by then Prime Minister Najib Razak as 1MDB.
>
> It was also important to know how Jho (prior to becoming publicized as 'playboy' or having the ability to abuse positions of trust and power) first became involved in TIA in 2009 and obtained the role of special advisor to the Sultan of Terengganu. He did so by knowing members of the Terengganu Royal Family, leading to him being introduced to the Sultan.

[186] In *Dato' Sri Dr Mohamad Salleh bin Ismail & Anor v Mohd Rafizi bin Ramli* [2022] 3 MLJ 758, His Lordship Azahar Mohamed CJM defined 'public interest' as any matter which affect the people at large, so that they may be legitimately interested in, or concerned at what was going on. In view that the book was to narrate the historical development of 1MDB from the inception of the TIA, the public especially Malaysians were eager and thirst for all this information. At this juncture, I do agree with the defendants' submission that the impugned statement is a matter of a public interest.

[187] Secondly, the defendants further submitted that the impugned statement was substantially true since the factual basis was that one or more of the members of the Terengganu Royal Family had introduced Jho Low to the Sultan. This factual basis was based on previous news articles that had been published in which neither the plaintiff nor the Sultan's sister had come to any refute or rebuttal.

[188] It is also the defendants' submission that they do not need to prove the total accuracy of the facts so long as the central facts upon which the opinion is based are substantially true. They relied on s 9 of the Defamation Action 1957 as their support. Section 9 says:

> In an action for libel or slander in respect of words consisting partly of allegations of fact and partly of expression of opinion, *a defence of fair comment shall not fail by reason only that the truth of every allegation of fact is not proved if the expression of*

opinion is fair comment having regard to such of the facts alleged or referred to in the words complained of as are proved. (Emphasis added.)

[189] This is also alluded by His Lordship Azahar Mohamed CJM in *Mohd Rafizi bin Ramli* at pp 779–780:

[44] In my view, the key principles that may be extracted from the above discussion are, *first, in relying on the defence of fair comment the respondent must establish a sufficient substratum of facts upon which he draws inferences. Secondly those facts on which the comment or inferences were made must be truly stated so that the readers may form their opinion whether the comment or inferences were well founded*. This is consistent with *Joshua Benjamin* that the comments made on inference of fact must be true facts. Lord Oakley in a supporting judgment in *Kemsley* explained what are facts truly stated at pp 360–361 as follows:

> The forms in which a comment on a matter of public importance may be framed are almost infinitely various and, in my opinion, *it is unnecessary that all the facts on which the comment is based should be stated in the libel in order to admit the defence of fair comment.* It is not, in my opinion, a matter of importance that the reader should be able to see exactly the grounds of the comment. It is sufficient if the subject which *ex hypothesi* is of public importance is sufficiently and not incorrectly or untruthfully stated. A comment based on facts untruly stated cannot be fair. What is meant in cases in which it has been said comment to be fair must be on facts truly stated is, I think, that the facts so far as they are stated in the libel must not be untruly stated.

[45] This essentially means, *to constitute a sufficient substratum of fact it is not required that all the facts on which the respondent's comments or inferences were based on should be stated in order to admit the defence of fair comment. This makes sense as the defence of fair comment may be contrasted with the defence of justification that requires every defamatory allegations made are true or are substantially true* (see *Dato' Seri Mohammad Nizar bin Jamaluddin v Sistem Televisyen Malaysia Bhd & Anor* [2014] MLJU 262; [2014] 3 CLJ 560 (CA) (*Dato' Seri Mohammad Niza)*, *Syarikat Bekalan Air Selangor Sdn Bhd v Tony Pua Kiam Wee* [2015] 6 MLJ 187; [2015] 6 AMR 66 (FC) and *Dato' Sri Dr Mohamad Salleh bin Ismail & Anor v Nurul Izzah bt Anwar & Anor* [2021] 2 MLJ 577 (FC)). However, the substratum of facts relied upon by the respondent in making his comments must be true and existing. It is as what *Joshua Benjamin* stated, that 'a writer may not suggest or invent facts and the comment upon them. On the assumption that they are true'. In other words, a plea of fair comment is not available to the respondent if the respondent invented or created the facts he intended to rely. (Emphasis added.)

[190] Following the ratio in *Mohd Rafizi bin Ramli*, I agree with the defendants' counsel that based on the various news articles that were published, the fact is this:

(a) Jho Low was introduced to the Sultan by a member of the Terengganu Royal Family; and

(b) it is known that none of the members of the Terengganu Royal Family had disputed or made any public rebuttal to any of the news articles.

[191] Thus, the defendants premised that the defence of fair comments must be allowed. However, it is my finding that while the defendants had at great length established the public interest in this case and thus argued on the need for such fair comment, the elephant in the room is whether they had complied with the requirement laid down in O 78 r 3(2) of the ROC 2012. The plaintiff's counsel divulged that the defendants had failed to plead with particularity which words are comments, and which are facts. He referred to O 78 r 3(2) of the Rules of Court 2012 which provided as follows:

> Obligations to give particulars (O 78, r 3)
>
> 3(1) ...
>
> (2) Where in an action for libel or slander the defendant alleges that, in so far as the words complained of consist of statement of fact, they are true in substance and in fact, and in so far as they consist of expressions of opinion, they are fair comment on a matter of public interest, or pleads to the like effect, *he must give particulars stating which of the words complained of he alleges are statements of fact and of the facts and matters he relies on in support of the allegation that the words are true*.
>
> ... (Emphasis added.)

[192] In response, the defendants' counsel argued that the impugned statement itself is the comment. The defendants' counsel also informed this court that the plaintiff had never raised the irregularities before the trial. And even if there were such irregularities, it can easily be cured by O 2 r 1 of the ROC 2012. To support their contention, the defendants' counsel referred to the High Court case of *Jeramas Sdn Bhd & Anor v Datuk Wong Sze Phin @ Jimmy Wong* [2021] MLJU 2037 where the plaintiffs contended that the defendant had failed to provide particulars in the defence as required under O 78 r 3(2) of the ROC 2012. The defendant only pleaded this in his defence:

> The defendant avers that in so far as the impugned words consist of statement of fact, they are true in substance and fact, and in so far as the impugned words consist of expression of opinion, they are fair comment on a matter of public interest. The defendant shall rely on section 9 of the Defamation Act 1957 where appropriate.

[193] In *Jeramas Sdn Bhd*, the plaintiff further alleged that the defendant had failed to state what the actual comments were in the published statement that the defendant was trying to support. Nonetheless, the High Court was in favour of the defendant and held that particulars given by the defendant in his defence would be sufficient for the purpose of O 78 r 3(2) of the ROC 2012 and those particulars did not prejudice the plaintiff in knowing or preparing for the case.

[194] In our present case, the defendants had pleaded the following about fair comment in the defence:

> Fair Comment
>
> 17. Further and/or in the alternative, the defendants aver and will contend that the contents of the alleged defamatory statement complained of *constitute fair comment on a matter of public interest*.
>
> 18. Pending discovery and/or interrogatories and without prejudice to the defendants' rights to rely on matters not specifically pleaded but raised in cross-examination, the best particulars the defendants are able to provide at this stage are as follows:-
>
> Particulars of Fair Comment
>
> a) The said statement consists of *a combination of fact and expression of opinion* based on investigations derived from news reports, current, and available to the public at large, before and at the time of publication.
>
> b) The First defendant provided a concise narrative of the situation involving the setting up of the TIA and the personalities involved including members of the Terengganu Royal Family.
>
> c) The First defendant considered news reports relating to the setting up of the TIA in 2009 as being *reliable and accurate and relate to a matter of public interest*. The defendants will refer to and rely on news reports made available to the public, for their full terms and effect at the trial of this action. The plaintiff had not taken offence to any of these news reports.
>
> d) The defendants accordingly *published and printed the said statement in good faith under such circumstances in which a reasonably fair minded person would have done*. The defendants aver that having regard to the material available in respect of the issues involved in the said statement, they did not act recklessly or maliciously in publishing the same.
>
> e) The defendants accordingly aver and will contend that they were *not actuated by malice in publishing the said statement but were merely setting out the historical background to the setting up of the TIA and its metamorphosis into 1MDB*.
>
> The defendants accordingly aver and will contend *that the contents of the said statement complained of were made as fair comment on a matter of public interest*. (Emphasis added.)

[195] The defendants had, in para 18 particularised the defence by pleading the reasoning for the fair comment. However, no actual facts and/or comments were pinpointed by the defendants in both paras 17 and 18, respectively. It seems the particulars in paras 17 and 18 in the defence is not sufficient to fulfil the requirement under O 78 r 3(2) of the ROC 2012. Hence, this court must discuss the following two issues regarding this:

(a) whether the particulars pleaded is sufficient to fulfil the requirement

under O 78 r 3(2) of the ROC 2012; and

(b) if the answer to (a) is in the negative, what the position of this defence is, in view thereof.

[196] The defendants also referred me to the High Court case of *Dato' Seri Anwar Ibrahim v Datuk S Nallakaruppan* [2012] 8 CLJ 939 where Su Geok Yiam J opined that the intention and the objective of O 78 r 3(2) the (then) Rules of High Court was none other than to ensure that a plaintiff has the opportunity to understand and to prepare himself to meet the allegations of a defendant against the plaintiff in the impugned words in a defamation action.

[197] Referring to *Dato' Seri Anwar Ibrahim* and *Jeramas Sdn Bhd*, the defendants argued that the particulars provided by the defendants in their defence are sufficient and had not prejudiced the plaintiff.

[198] It is my finding that whether the wordings of the pleading are sufficient to fulfil O 78 r 3(2) of the ROC 2012 and whether the irregularity or non-compliance of it could deprive the defence of fair comment or not, would very much depend on the factual matrix and the pleading of the case. Hence, to determine this, we have to know what type of particular is needed in order to fulfil this order. To this, I refer to the case of *Lee Kuan Yew v Chin Vui Khen & Anor* [1991] 3 MLJ 494. In this case, instead of disclosing particulars of such facts required under O 78 r 3(2) of the then Rules of High Court 1980, in their original statement of defence the defendants had pleaded that such particulars would be supplied separately. In view of the lack of particulars in the defence filed, the plaintiff successfully applied for the defendants to give further and particulars of the defences of justification and fair comment. The defendants complied by filing further and better particulars thereto. Yet the plaintiff is still unsatisfied with the manner the particulars were filed and applied to have them struck out. After hearing the argument, the court ordered the defendants to restate their further and better particulars. The defendants then supplied the second set of further and better particulars. The plaintiff applied again to strike out the particulars as well as the defence. Siti Norma Yaakob J (as she then was) struck out the relevant paragraphs of the defence.

[199] Thus, it is clear that the particulars pleaded must be sufficient for the plaintiff to know the case that he has to meet at trial (see *Mirzan bin Mahathir* at 40H-41B) failure to do so will cause the defence to fail (see *Dato' Dr Tan Chee Khuan v Chin Choong Seng @ Victor Chin* [2011] 8 MLJ 608 at paras [30]; *Tan Sri Dato' Lim Guan Teik v Tan Kai Hee* [2014] 9 MLJ 363 at paras [51]–[53]).

[200] It seems from para [17] and the last portion of para [18] of the defence filed by the defendants in our present case, the defendants had pleaded that the

impugned statement was fair comment on a matter of public interest. Yet, in particular, (a) listed in para [18], they averred that the impugned statement consists of a combination of fact and expression of opinion. Such a contradiction has casted doubt in the defendants' defence of fair comment. In such situation, the court would have to be the final arbiter. It should be noted that even if the defendant has made clear which of his statements are comments and which are statements of fact, it is not conclusive as the court is the final arbiter of the same. However, if the defendant has done so, it would be a strong indicator to the court that the words would be recognisable by the ordinary reasonable person as such (see the decision of Court of Appeal, Singapore in *Review Publishing Co Ltd and another v Lee Hsien Loong and another appeal* [2010] 1 SLR 52 at para [147]).

[201] In our present case, the defendants had not provided any particulars in the defence as to the exact breakdown to explain which part(s) of the impugned statement is/are statement of fact and which part(s) of it is/are comment(s). Notwithstanding of what the defendants had pleaded in paras [17]–[18] of the defence, my reading of it indicates that the impugned statement is a statement of fact. Since the defence of fair comment applies only to comment and not to imputation of facts (*Review Publishing Co Ltd*), this defence of fair comment should fail. The more appropriate defence for them should be the defence of justification (*Dato' Dr Tan Chee Khuan*, *Joshua Benjamin*, *Chen Cheng* and the latest case of *Mohd Rafizi bin Ramli*) which has also been pleaded by the defendants here and has been discussed in the earlier part of this judgment. It is crucial to note here that in a situation where it is unclear whether the impugned statement is comment or statement of fact, then defendant will not be given the benefit of the defence of fair commen (see *Noor Asiah bte Mahmood & Anor v Randhir Singh & Ors* [2000] 2 MLJ 175 at pp 188I–189B).

[202] In respond to the issue concerning the compliance with O 78 r 3(2) of the ROC 2012, it is to be noted that the clear requirement of the rule is that in pleading the defence of fair comment, the defendant has to plead with particularity:

(a) the words which are alleged to be comments;

(b) the facts on which the comments are based;

(c) the public interest claimed; and

(d) that the comment is one which a fair-minded person can honestly make on the facts proved.

[203] No doubt in this case the plaintiff has never applied for further and better particulars. Neither has the plaintiff applied to strike out the particular part of the defence at interlocutory stage. Thus, the defence of fair comment

survived till trial. However, in view that no detailed particularity has been stated in the defence as to which of the words in the impugned statement are statement of facts and which of them are comments although they had specifically averred that the impugned statement consists of a combination of fact and expression of opinion, by virtue of O 78 r 3(2) of the ROC 2012, the defence of fair comment has failed. It is not something to be taken lightly for it has deprived the plaintiff the chance to know the case she has to meet at trial. Under the circumstance, this court has to disregard the defence of fair comment.

[204] It is also my finding that the cases of *Jeramas* and *Dato' Seri Anwar Ibrahim* can easily be distinguished from our present case. As mentioned earlier, whether the wordings of the pleading are sufficient to fulfil O 78 r 3(2) of the ROC 2012 and whether the irregularity or non-compliance of it could deprive the defence of fair comment or not, would very much depend on the factual matrix and the pleading of the case. In *Jeramas*, the plaintiffs did not plead and make it clear which part or passage or words from the alleged defamatory paragraphs that the plaintiffs had pleaded is defamatory. In the circumstances, the court was left to speculate and pick out the words or sentences or passage from paras 7 and 9 of the statement of claim that were capable of bearing a defamatory meaning. The court was also left to pick which of the 19 pleaded meanings in para 11 of the statement of claim could be construed and inferred from the alleged defamatory paragraphs. Thus, the court found that it was unreasonable for the plaintiffs to expect the defendant to plead and give precise particulars stating which of the words complained of were statements of fact and of the facts and matters he relied on in support of the allegation that the words were true. The particulars given by the defendant was held to be sufficient for the purpose of O 78 r 3(2) of the ROC 2012. Further, the court opined that the particulars given by the defendant did not prejudice the plaintiffs in knowing or preparing for the case they had to meet. Neither did the plaintiffs apply for further and better particulars of the defence of justification or fair comment. There was no reply filed by the plaintiffs to the defence as well. All of these are totally different from the material facts of our present case. Most importantly, the plaintiff has pleaded specifically the impugned statement which is only one paragraph in length bearing only 110 words. Thus, the defendants know very well the focus of this claim. They should and could therefore provide in particularity the facts and comments in the impugned statement.

[205] In similar veins, in *Dato' Seri Anwar Ibrahim*, Su Geok Yiam J merely discussed her opinion on the objective of O 78 r 3(2) of the ROC 2012. Immediately after that, Her Ladyship found that the defendant had not provided sufficient information. The court then struck out the defence in total and judgment was entered against the defendant.

[206] Verily, strict compliance with the requirement to provide the particulars stated in O 78 r 3(2) and the fatal effect of such failure to plead the particularity were the firm decision of the Court of Appeal in *Hj Saari bin Sungib v Pemegang Amanah Lembaga Zakat Selangor (MAIS), Berdaftar & Anor* [2016] 2 MLJ 830; [2016] 5 CLJ 40. In this case, the defendant had failed to provide the particularity required under O 78 r 3(2). Abdul Aziz Abdul Rahim JCA (at para [31]) delivering the judgment of the court, observed that if the statement contains facts and comments, the defendant must show or particularise in his defence which of the statements are facts and which are comments. For this defence to succeed, the defendant must prove that the comments made are based on some facts and that the facts must be true. The court then held that the defence of fair comment must fail because the defendant had not shown in his statement of defence which part of the impugned statements were comments and which part were facts. This did not however deprive the defendant from proceeding with the defence of qualified privilege. The court then held that the defendant had successfully established his defence of qualified privilege and there was no malice to defeat the same. The claim was thus dismissed by the court on appeal. Likewise in *Abdul Rahman Talib v Seenivasagam & Anor* [1966] 2 MLJ 66, the learned trial judge held that there was no substance in the plea of qualified privilege and fair comment but found for the defendants on the issue of justification and on that ground dismissed the plaintiff's claim. This was affirmed by the then Federal Court on appeal.

[207] To conclude the discussion under the defence of fair comment, it is the findings of this court that the defence of fair comment is of no avail to the defendants because of their failure to provide the particularity required under O 78 r 3(2). Also, it is the findings of this court that the impugned statement does not contain any comment or opinion as alleged by the defendants. They are factual in nature. Hence, defence of fair comment is not available to them. Rather, the most relevant defence available to them is the defence of justification which they have successfully established earlier.

Qualified privilege — *Reynolds*' defence

[208] Finally, the defendants also pleaded the defence of qualified privilege — *Reynolds*' defence claiming that the publication of the impugned statement is a matter of public interest.

[209] I shall now proceed to analyse whether qualified privilege could be a proper defence for the defendants. It is the defendants' submission that they had taken steps to gather, verify and publish the information fairly and reasonably considering the circumstances at the material time. Thus, the defence of qualified privilege should be allowed. On the contrary, the plaintiff's

counsel argued that the defence of qualified privilege should be rejected as the impugned statement is tainted with malice. The plaintiff's counsel also submitted that the defendants had failed to verify any of the facts before publishing the impugned statement.

[210] The defendants in any defamatory claim have to decide between two options in order to be protected by the shield of qualified privilege:

(a) to plead statutory qualified privilege under s 12 of the Defamation Act 1957; or

(b) to plead qualified privilege under the common law.

[211] Should the defendant wish to be shield by statutory qualified privilege, he must specify which paragraph or 'part' of the Schedule of s 12 he is relying on. He must also specify the supporting facts to show that the occasion fails within the stated event. If the defendant, just like the defendants in our present case, does not quote s 12 of the Defamation Act 1957, the other possibility is for him to seek the defence of qualified privilege under the common law. In such situation, the defendant must identify whether he is relying on:

(a) the reciprocal common interest; or

(b) the legal, social, or moral duty; or

(c) the defence in the protection of his own self-interest or to reply on an attack against him.

He must also plead the circumstances which give rise to the occasion of qualified privilege relied on (see Doris Chia, *Defamation Principles and Procedure in Singapore and Malaysia* (LexisNexis, 2016) at pp 497–498).

[212] In our present case, the defendants had pleaded in their defence:

> 20. The First defendant avers and will contend that the said statement *was published in the public interest*. The First defendant will further aver and contend that she was *under a duty to reveal the contents of the said statement as published in the said book and that the public had a corresponding interest in receiving that information. The First defendant made the said statement in good faith, believing it to be true and was made without malice*.
>
> 21. The First defendant avers and will contend that she *acted responsibly in publishing the said statement* which was prepared based on investigations conducted by the First defendant into the background of the setting up of the TIA and its evolution into the 1MDB.
>
> 22. Further and/or in the alternative and in the circumstances, if the said statement constitutes a libel on the plaintiff (which is denied), the defendants aver and will

contend that the said statement was published on an occasion of qualified privilege.

Particulars of Qualified Privilege

23. Pending discovery and/or interrogatories, and without prejudice to the defendants rights to rely on matters not specifically pleaded but raised in cross-examination, the best particulars the defendants are able to provide at this stage are as follows:-

a) The setting up of the TIA as a state sovereign fund into which billions of ringgit were to be invested *was a matter of public interest not only to the citizens of Malaysia but to the potential investors in such a fund*.

b) The involvement of the personalities responsible for the setting up of the TIA was *a matter of public interest*.

c) The TIA was a sovereign fund into which oil royalties were to be paid and invested for the betterment of the State of Terengganu and its peoples.

d) Members of the Terengganu Royal Family were involved in the setting up of the TIA with Jho Low appointed by the Sultan as a 'special advisor'. The Sultan himself was the Chairman of the advisory board.

e) The background to the initial setting up of the TIA was therefore *a matter of public interest. The defendants, in the discharge of their public responsibility, in good faith, without malice and acting reasonably and responsibly at all times published the said statement*.

f) In the circumstances, the said statement published by the defendants is protected by qualified privilege. (Emphasis added.)

[213] From these paragraphs, it is obvious that the defendants had pleaded that it is their duty and responsibility to publish the book and reciprocally, the public has an interest to receive the information therein. Also, they had pleaded the facts of the circumstances which give rise to the occasion in paras 21–23. Therefore, it is obvious that the defendants had sought to be shielded by qualified privilege at common law. The next issue is naturally as to whether the defendants had successfully raised the defence of qualified privilege.

[214] To answer this, this court must look on the principle of qualified privilege itself. In the Court of Appeal case of *Dr Chong Eng Leong v Tan Sri Harris bin Mohd Salleh* [2017] 4 MLJ 611, His Lordship Abang Iskandar JCA (as he then was) explained the nature of the defence of qualified privilege to succeed in raising the defence of qualified privilege as follows:

[55] Now, what is qualified privilege as a defence in a defamation suit? *Essentially, it is a defence that is available to a defendant whereby the defendant as the person communicating the defamatory statement usually has a legal, moral, or social duty to make it and the recipient has a corresponding interest in receiving it.*

[56] *Whether an impugned statement qualify for protection under this defence of*

qualified privilege would depend on the surrounding circumstances of the particular case. The essential elements that must however be present are a duty on the part of the defendant to state it and the corresponding duty on the part of the public to whom it was communicated via the publication, to receive it. (Emphasis added.)

[215] His Lordship further emphasised that the tortfeasor does not need to prove the truth of the alleged defamatory statement as unlike fair comment, qualified privilege derives from the sense of duty to inform the public:

> [57] The learned trial judge had stated the correct postulation of the law on qualified privilege. We also agreed with his observation, having cited a slew of case authorities in that, *unlike the defence of fair comment, the defence of qualified privilege provides a wider protection as the defendant need not prove that underlying defamatory imputation of fact was true. The defamatory imputation may be false. However, the defendant is only required to prove that the libellous statement was made pursuant to an interest or of a duty, legal, social, or moral and that the recipient of the statement had a corresponding duty to receive it. Clearly, the rationale for the defence of qualified privilege is not so much what was published was necessarily the truth, but rather, was driven by what needed to be informed, which the public would need to know*. (Emphasis added.)

[216] Therefore, the elements to be established for the defence of qualified privilege are:

(a) the publication must relate to a matter of public interest; and

(b) the defendant has a legal, social or moral duty to convey the information to the general public and there must be reciprocal interest on the part of the readers/public to receive the information.

[217] It is essential to note that once these elements have been established, as per His Lordship Abang Iskandar JCA (as he then was) in *Dr Chong Eng Leong*, the law is trite that the defamatory imputation might even be false. Yet, the impugned statement would still be qualified for the protection of qualified privilege.

[218] Here, the defendants had satisfied this court the need and duty to inform the entire episode by proving that the impugned statement was made pursuant to social interest and duty, considering the book was published at the height of the 1MDB scandal. As mentioned earlier, and as affirmed by the first defendant in her examination-in-chief, she wrote the book because it is important for the public to know. She had to write the book due to this. And in view of the impact of the entire 1MDB saga, the general public ie, the readers have an interest to receive this information. In instances where the publication is made to the world at large, as in this case, the defendant will then have to show that the requirements laid down by the House of Lords in *Reynolds*

v Times Newspapers Ltd and others [2001] 2 AC 127 are fulfilled before he could rely on the defence of qualified privilege (see *Malik v Newspost Ltd and others* [2007] EWHC 3063 (QB); *Bray v Deutsche Bank AG* [2008] EWHC 1263 (QB); *Seaga v Harper* [2008] 1 All ER 965; [2008] UKPC 9 and *Syarikat Bekalan Air Selangor*). The defendants here had pleaded *Reynolds*' defence in their defence as follows:

> 24. Further and in the alternative, if, which is denied, the said statement complained of is defamatory of the plaintiff by way of imputation as alleged, or otherwise, the defendants aver and will contend that the said statement was published as a matter of public interest and the defendants acted responsibly in its publication. In the circumstances, the defendants are protected by the *Reynolds*' public interest defence.
>
> Particulars of the *Reynolds*' Public Interest Defence
>
> 25. Pending discovery and/or interrogatories, and without prejudice to the defendants rights to rely on matters not specifically pleaded but raised in cross-examination, the best particulars the defendants are able to provide at this stage are as follows:-
>
> a) The subject matter of the said statement was a matter of public interest and therefore the defendants refer to and adopt the particulars pleaded in paragraph 23 above.
>
> b) Further the defendants exercised responsible journalism in the publication of the said statement and will contend as follows:-
>
> i. The subject matter of the said statement was derived from reliable media publications made at that time to which the plaintiff took no offence.
>
> ii. Alternatively, the subject matter of the said statement was taken from interviews conducted by The Star Newspaper with Jho Low and as such, published statements of this nature could reasonably be taken seriously and considered newsworthy.
>
> iii. The said statement was presented in a fair and accurate manner without sensationalism.
>
> iv. In publishing the said statement, the first defendant did not attribute or suggest any blameworthiness or guilt on the part of the plaintiff or that the plaintiff committed any wrong doing.
>
> v. The thrust of the said statement was merely to indicate the manner in which Jho Low obtained an advisory role in the setting up of the TIA utilizing his familiarity with members of the Terengganu Royal Family.

[219] In *Reynolds*, the plaintiff had been the Prime Minister of Ireland until a political crisis struck in 1994. He began proceedings for defamation against the defendant due to the publication of an article. The article alleged that Mr

Reynolds had misled the Irish Parliament. It was claimed that the words complained of bore the meaning that he had deliberately and dishonestly misled the Parliament and his cabinet colleagues. The defendant pleaded, amongst others, the defence of qualified privilege at common law. The House of Lords affirmed the decision of the Court of Appeal and held that while the matter was of public concern in England, qualified privilege did not apply to the publication because the defendants had deliberately omitted to mention the plaintiff's explanation to the Irish House of Representatives about the said allegations against him. The House of Lords declined to recognise a new category of qualified privilege for the dissemination of 'political information' but unanimously agreed that qualified privilege should be extended. the House of Lords looked at the issues of: freedom of expression, the role of the media in disseminating important information and the rights of an individual to protect their reputation. Having balanced these competing interests, the court proposed some 'leeway' in respect of the duty-interest concept of qualified privilege to give some protection to the media in cases where there is 'responsible journalism' and also where the information published to the public was important. To ensure such a balance, Lord Nicholls of Birkenhead (at p 205A-D) had laid down a non-exhaustive circumstantial test to be examined.

[220] In brief, to be entitled to the benefit of the *Reynolds*' defence, the defendants must first establish that they have a legal, social, or moral duty to publish the article. Thereafter, the defendants need to satisfy ten criteria which the court should consider in determining whether the public was entitled to know:

(a) the seriousness of the allegation;

(b) the nature of the information, and the extent to which the subject matter is a matter of public concern;

(c) the source of the information;

(d) the steps taken to verify the information;

(e) the status of the information, namely, whether the allegation have already been the subject of an investigation, which commands respect;

(f) the urgency of the matter;

(g) whether comment was sought from the plaintiff;

(h) whether the article contained the gist of the plaintiff's side of the story;

(i) the tone of the article; and

(j) the circumstances of the publication, including the timing.

[221] This was later affirmed by another decision of the House of Lords: *Jameel (Mohammed) and another v Wall Street Journal Europe Sprl* [2007] 1 AC 359. The application of the ratio of Lord Nicholls of Birkenhead and the applicability of *Reynolds*' defence can notably be seen locally in the decision of the Federal Court in *Syarikat Bekalan Air Selangor*.

[222] In *Syarikat Bekalan Air Selangor*, the Federal Court had to decide, inter alia:

(a) whether *Reynolds*' privilege would apply to an individual who is not a journalist; and

(b) whether a defendant needs to show that responsible and fair steps were taken to gather, verify and publish information, or whether it is sufficient to merely have an honest belief that the statements were true, even if the statements were in fact untrue?

[223] The Federal Court held that *Reynolds*' defence is available to an individual who is not a journalist as long as the publication of material or information is of public importance. The Federal Court further emphasised that a defendant who relies on *Reynolds*' privilege must show that the publication was made responsibly. In this case, the defendant had omitted to publish the plaintiff's side of the story which he had knowledge of. The failure to disclose this information in the publication was against the concept of responsible journalism. Consequently, the defendant was not allowed to rely on *Reynolds'* defence. However, the defendant was successful in establishing the defence of justification. Hence, the appeal was dismissed in his favour.

[224] In England, the *Reynolds'* defence was codified with modifications in s 4 of the Defamation Act 2013. The focus of this s 4 of the Defamation Act 2013 is on public interest as opposed to the accuracy and protection of a person's reputation. The ten-point test has been done away with in place of a catch-all approach: the court is to consider 'all the circumstances of the case'.

[225] However, s 4 of the Defamation Act 2013 has yet to arrive in Malaysia. We do not have such amendment to our existing Defamation Act 1957 to codify or modify *Reynolds*' defence. Hence, at present the ten factors laid down in *Reynolds* are still applicable to Malaysian courts. In our present case, the defendants had obviously failed to fulfil few of the ten-point guidelines laid down in *Reynolds*: among others, their failure to obtain the plaintiff's side of story.

[226] Must all the ten criteria laid down in *Reynolds* be fulfilled by the defendants for a successful *Reynolds'* defence? Or they are flexible? The plaintiff did not submit anything on this. The defendants, on the other hand, relied on

the decision of the Canadian Supreme Court in *Grant v Torstar Corporation* 314 DLR (4th) 1 in their attempt to convince this court that the ten-points guidelines are flexible. They also premised that, as decided in *Jameel* and further elaborated in *Grant v Torstar*, the court has the absolute power to determine on a case-to-case basis to rely on some of the guidelines heavier and to grant the defendants the *Reynolds* privilege even if one or two of them have not been fulfilled. In *Grant v Torstar*, McLachlin CJC observed and held that:

> [71] Reynolds was quickly recognized as a 'media-friendly' development. In practical terms, however, Reynolds only partially succeeded in changing the landscape. The ten *Reynolds* factors proved difficult to apply. Some courts saw them as merely an illustrative list of possible considerations, while others viewed them as a complete code for what constitutes responsible journalism ...
>
> [72] The House of Lords addressed this uncertainty in*Jameel (Mohammed) and another v Wall Street Journal Europe Sprl* [2007] 1 AC 359; [2006] UKHL 44 . The defendant Wall Street Journal Europe had published an article, shortly after September 11, 2001, revealing that the bank accounts of certain prominent Saudi Arabian businessmen, including the plaintiff, were being monitored for possible terrorist connections by Saudi authorities at the behest of the US government, citing anonymous sources. The tone of the article was neutral and unsensational, and the article bore the indicia of responsible journalism. Nonetheless, the trial judge denied the defendant's access to the *Reynolds* privilege, and the Court of Appeal upheld that denial on the sole ground that the paper had not waited long enough to hear back from the plaintiff before running the story.
>
> [73] The House of Lords reversed the judgment of the Court of Appeal and held that *the responsible journalism defence applied. It criticized the lower courts for applying the Reynolds factors restrictively as 'a series of hurdles to be negotiated by a publisher' (para 33, per Lord Bingham), rather than as an illustrative guide to what might constitute responsible journalism on the facts of a given case. Given that the defence was meant to foster free expression and a free press, its requirements should not be pitched so high as to make its availability all but illusory. The House of Lords also emphasized that the assessment of responsible journalism is not an invitation for courts to micro-manage the editorial practices of media organizations. Rather, a degree of deference should be shown to the editorial judgment of the players, particularly professional editors, and journalists. For instance, a court should be slow to conclude that the inclusion of a particular defamatory statement was 'unnecessary' and therefore outside the scope of the defence. As Lord Hoffmann put it:*
>
> > *The fact that the judge, with the advantage of leisure and hindsight, might have made a different editorial decision should not destroy the defence. That would make the publication of articles which are, ex hypothesi, in the public interest, too risky and would discourage investigative reporting. [para 51]*
>
> The House of Lords also made clear that the defence is available to 'anyone who publishes material of public interest in any medium', not just journalists or media companies: *Jameel*, at para 54, per Lord Hoffmann; *Seaga v Harper* [2008] 1 All ER 965; [2008] UKPC 9. (Emphasis added.)

[227] As discussed earlier, there is no doubt that the defendants have fulfilled the public interest test. For *Reynolds*' defence of 'responsible journalism', the defendants must also fulfil the key points highlighted in *Reynolds*. While I acknowledge the interpretation made by the court in *Grant v Torstar* (which is of persuasive value to this court) that these criteria are flexible, I am also mindful that few of the important aspects of the *Reynolds*' defence are the requirements that the party relying on the defence must have taken all steps necessary to verify the information, whether all relevant information has been disclosed in the said publication and whether he had acted reasonably in view of the potential harm of the statement (ie, what is commonly referred to as 'responsible journalism').

[228] Azahar Mohamad FCJ (later CJM), in *Syarikat Bekalan Air Selangor*, observed that:

> [39] In our judgment, the submissions of learned counsel for the defendant pose at least two problems. In the first place, the responsible journalism guidelines have consistently been upheld since *Reynolds v Times Newspapers Ltd* was decided by the House of Lords. As we see it, the 'circumstantial test' and the 'reasonable journalism test' was not the same. In fact, as pointed out by Lord Hope in *Reynolds v Times Newspapers Ltd* 'the circumstantial test is confusing, and it should not be adopted'. The guidelines as advocated by Lord Nicholls set out a number of important relevant matters to be taken into consideration in deciding whether the publication of impugned statements was privileged for the reason of its significance to the public at large. *The list was not all-inclusive, but was explanatory only and the weight to be given to those and other pertinent aspects would vary from case to case.* Secondly, according to the Court of Appeal, a defendant relying on the *Reynolds* privilege defence was absolved from proving that he took responsible and fair steps to gather, verify and publish the information, by simply claiming that he had an honest belief in the truth of the statements he made. With respect, this is plainly wrong. We agree with the submissions of learned counsel for the plaintiff that these new propositions by the Court of Appeal are diametrically opposed to the guidelines on responsible journalism as set out in *Reynolds v Times Newspapers Ltd*. In our view *the guidelines on responsible journalism as espoused in Reynolds v Times Newspapers Ltd is important because there is now a much more extensive protection for publications to the public at large where the matter is of sufficient public concern. For that reason, as a counter-balance, publishers must meet the test of responsible journalism to ensure that the privilege is not abused. Rights and responsibilities must go hand in hand. Freedom of speech is not an end in itself; it must be exercised with a sense of responsibility.* This point has already been made earlier but ought to be restated.
>
> [40] As noted earlier, the Court of Appeal held that 'once all relevant information is in the public domain, then, the defendant is not obliged to satisfy the further Reynolds requirements'. Emphasizing this point, to support this proposition of law, the Court of Appeal in its judgment cited para 14.3 of *Gatley on Libel & Slander* (11th Ed). On this, it is instructive to refer to said paragraph, which reads as follows:
>
> > If the requisite duty and interest can be found in a public communication the defendant is not obliged to satisfy the further *Reynolds* requirements, though in

> determining whether qualified privilege applies questions of reasonableness of conduct may be relevant and this may require a court to take account of factors such as whether any steps have been taken to verify the information being communicated.
>
> [41] As submitted by learned counsel for the plaintiff, a closer reading of the above passage did not support the Court of Appeal proposition of law. Clearly, the opinion in *Gatley* went further to say that parts of the *Reynolds* privilege test dealing with issues of reasonable of conduct (for example, whether steps have been taken to verify the information) were relevant. He further argued that a far-reaching implication of the Court of Appeal's proposition was that it would allow defendants to publish untrue defamatory statements, simply because the state of affairs had already been published before in the public domain. We see much force in this argument. We agree with the submissions of learned counsel for the plaintiff that this cannot be right as such a proposition runs counter to the very concept of fair and responsible journalism. (Emphasis added.)

[229] After considering the evidence adduced by the defence, I find that they have failed to satisfy the requirements to justify their reliance on *Reynolds*' defence. There is no evidence that the first defendant had made any reasonable enquiry to investigate as to whether the plaintiff has involved in the setting up of TIA. From the evidence of the first defendant, I find that she did not undertake any of the inquiries that would have been legally expected under the circumstances of this case. She had simply not investigated and had gone ahead to make the publication and thereby caused the mistake with regard to the identity in the impugned statement.

[230] As mentioned earlier, the defendants have not satisfied this court as to what steps have been taken by them to verify the information. Also, they did not attempt to seek any comment from the plaintiff before the publication of the book. Neither has the impugned statement or anywhere in the book contain the gist of the plaintiff's side of story. Therefore, it is my finding that the impugned statement is not qualified. I hold that the defendants are not entitled to rely on the defence of qualified privilege based on the legal proposition discussed.

[231] Even if I am wrong in holding that the defence of qualified privilege is not available for the defendants, just like the defence of fair comment, this defence of qualified privilege is not absolute. If it is shown that the statement was made maliciously or in instances where it was made recklessly without caring whether it is true or not, then the said defence falls (see the decision of Lord Diplock in *Horrocks v Lowe* [1975] AC 135 and Hepworth J in *Abdul Rahman Talib*).

[232] Regarding malice, the plaintiff's counsel firstly argued that the first

A defendant was not interested in finding the truth but rather focusing on printing more copies of the book. The plaintiff's counsel questioned the first defendant's action here, and to answer, DW1 testified this during the trial:

(Notes of Proceeding at p 170)

B PC: Referred to enclosure 68. At page 3, your email. Paragraph 2, 3 and 4. I will just read it out. 'It substitutes the word wife for sister (re the Sultan of Terengganu teacup storm). Not the end of the world but if doable, nice. Most important is probably to get more copies coming out of their print of the book to change from 'wife' to 'sister', if doable, nice. Isn't it?

C DW1: Yes I'm trying to be convivial with my correspondence and to encourage them without being to making life too difficult for them. But it was successful in achieving that objective.

PC: If the change based on your email, if the change from 'wife' to 'sister' is not doable in the later print, it is not the end of the world, so long as more copies are
D printed out as soon possible, isn't it?

DW1: Yes I don't like to give orders to people but I got my way.

[233] In response, the defendants' counsel contended that the plaintiff had
E failed to prove that there was malice on part of the defendants. Here, I agree with the defendants' counsel's submission that this is not sufficient to establish malice. The least I could gather is their allegation here is that the first defendant intended to increase the publication of the book which was admitted by DW1 during cross-examination:

F

(Notes of Proceeding at p 171)

PC: But actually, from this article, you're not actually interested in ensuring the change. Since you said, if doable, as you're more interested in getting more books printed and therefore more profits, isn't it? Can we agree with that?

G DW1: I wouldn't have written the email if I didn't want the change.

PC: No, do you agree with me, reading from this email, you're actually not interested in ensuring the change, since you said if doable, nice. As you're more interested in getting more books printed and therefore more profits. Do you agree with that?

H

DW1: No. Everyone was crying out for books; we were under pressure.

[234] The plaintiff's counsel contended that the first defendant was indifferent to the truth as the first defendant was only concerned with selling
I more copies of the book. However, that is not sufficient to establish malice.

[235] However, I find merit in the next argument of the plaintiff. The plaintiff's counsel submitted that the defendants had failed to make any enquiry to the plaintiff before publishing the book. This is admitted by DW1

during cross-examination by the plaintiff's counsel:

(Notes of Proceeding at pp 159–160)

PC: Considering you have a longstanding career as a reporter, correspondent, and have won many accolades, is there any letter or documents in the bundle to show that you at least wrote to the plaintiff to enquire whether the plaintiff was involved in TIA in any manner whatsoever before the first print of the book was sold to the public?

DW1: No, I didn't write letters asking people things that were in the public.

PC: Similarly, similarly, is there any letter or documents in the bundle to show you at least wrote to the plaintiff to enquire whether the plaintiff knew of Jho Low in manner whatsoever before the first print out was sold to the public?

DW1: No.

[236] The defendants rebutted this and argued that the fact that the first defendant did not make any verification with the plaintiff should not constitute malice. No doubt there was a mistake in stating the plaintiff in the impugned statement. Despite such a mistake, the impugned statement does not in any way confer negative remarks upon the plaintiff. The plaintiff's counsel submitted that the defendants' action was malicious since the defendants failed to make any enquiry to the plaintiff on any of the allegations of facts stated in the impugned statement. The absent of verification and proper checking before publication shows recklessness. And recklessness has been held to tantamount to malice. To support, the plaintiff's counsel quoted the decision of the Court of Appeal in *Dato Seri Mohammad Nizar bin Jamaluddin v Sistem Televisyen Malaysia Bhd & Anor* [2014] 4 MLJ 242 at p 257; [2014] 3 CLJ 560 at p 579:

> [46] In this regard, in the immediate appeal before us, we are of the view that the plaintiff had succeeded in showing that the *defendants had published the defamatory statements with malice against him by their failure to verify the tweets with the plaintiff himself,* when they themselves agreed that the defamatory statements were serious in their implications vis a vis the plaintiff whereby his reputation and image could be adversely affected as result thereof. In this case, we note that the defendants had not published the tweets in their original form and substance, that they had instead added on to the plaintiff's tweets what they thought the tweets meant as to their contents as intended by the plaintiff. Then they had it published as their news item over TV3 at prime-time news slot ... (Emphasis added.)

[237] In contrast, the defendants' counsel argued that allegations of facts stated in the impugned statement were from the previous media reports. The first defendant did not deny that there was a mistake. However, such mistake did not necessarily amount to malice. Moreover, the impugned statement has never put the plaintiff in a negative light. To support this, the defendants' counsel cited the Supreme Court case of *S Pakianathan v Jenni Ibrahim* [1988]

2 MLJ 173; [1988] 1 CLJ Rep 233 where His Lordship Wan Hamzah SCJ opined that (at p 179 (MLJ); p 424 (CLJ)):

> Broadly speaking express *malice mean malice in the popular sense of or desire to injure the person who is defamed. To destroy the privilege the desire to injure must be the dominant motive for the defamatory publication. Knowledge that it will have that effect is not enough if the defendant is nevertheless acting in accordance with a sense of duty or in bona fide protection of his own legitimate interests. The mere proof that the words are false is not evidence of malice, but proof that the defendant knew that the statement was false or that he had no genuine belief in its truth when he made it would usually be conclusive evidence of malice.* If the defendant publishes untrue defamatory matter recklessly without considering whether it is true or not, he is treated as if he knew it is to be false. *In ordinary cases, what is required on the part of the defamer to entitle him to the protection of the privilege is honest belief in the truth of what he published.* But *if he was moved by hatred or a desire to injure and used the occasion for the purpose, the publication would be malicious made even though he believed the defamatory statement to be true.* Where the defendant purposely abstained from inquiring into the facts or from availing himself of means of information which lay at hand when the slightest inquiry would have shown the true situation, or where he deliberately stopped short in his inquiries in order not to ascertain the truth, malice may rightly be inferred: *Lee v Ritchie* [1904] 6 F 642. (Emphasis added.)

[238] As per Wan Hamzah SCJ in *S Pakianathan*, to destroy the privilege the desire to injure must be the dominant motive for the defamatory publication. I agree with the defendants' contention that the plaintiff's counsel has failed to prove that there was such ill-intention by the defendants towards the plaintiff. This is due to the fact that it was never proven that there was any existing relationship between the defendants and the plaintiff. Mere proof that the words are false is not evidence of malice. As in ordinary cases, what is required on the part of the defendants is the honest belief in the truth of the impugned statement. Only when it is proven that the defendants knew that the statement was false or that he had no genuine belief in its truth when he made it would the court conclude that there is indeed such malice that would destroy the qualified privilege. There has not been any such evidence in this case.

[239] Nonetheless, the defendants have failed to note the ratio of Wan Hamzah SCJ in *S Pakianathan* that:

> Where the defendant purposely abstained from inquiring into the facts or from availing himself of means of information which lay at hand when the slightest inquiry would have shown the true situation, or where he deliberately stopped short in his inquiries in order not to ascertain the truth, malice may rightly be inferred: *Lee v Ritchie* [1904] 6 F 642.

[240] In similar veins, in *Financial Information Services v Hj Salleh Hj Janan* [2018] supp MLJ 176, the Federal Court has held that recklessness such as the conduct of appellant in this case imputed malice. In this case the

appellant/defendant has published about the bankruptcy status of the plaintiff without verifying the same with the relevant government departments. Abdul Hamid Embong FCJ in delivering the decision of the court held that (at para [30]), 'this fact could have easily been discovered if FIS had exercised a little care and prudence in making inquiries and checks from both the Department of Insolvency or from the Government *gazettes* which is readily available even at the slightest inquiry. In this case the evidence clearly showed that FIS had abstained from making that necessary inquiry. FIS was thus reckless in not updating its database'. Because of this failure, the defendant had been guilty of being wantonly reckless and thus qualified privilege could not be accorded to them.

[241] In our present case, the first defendant has admitted that no checking or further research was done prior to the publication of the book. Simple research conducted online would be able to shed light as to the correct person to be named in the impugned statement. However, this was not done. As much as I agree with the defendants that the first defendant did not know the plaintiff and thus, there is no hostility between them, a blunt careless and wantonly reckless attitude without caring whether it is true would deprive the availability of qualified privilege to the defendants. Nonetheless, as in *Syarikat Bekalan Air Selangor*, this does not deprive the defendants from their venture under the defence of justification which they have established earlier.

[242] To sum up, even if I am wrong in deciding that the impugned statement is not capable of being defamatory, I find that the defendants had successfully established the defence of justification.

The second and third defendants

[243] In essence, the plaintiff's counsel submitted that there was an admission of liability by the second and third defendants since they had failed to testify during the trial. To support this, the plaintiff's counsel quoted the case of *Lee Li Teng v Maturaiveeran a/l Perumal* [2018] MLJU 836; [2018] 1 LNS 916 where it was held that the plaintiffs' allegation was assumed to be true since the defendant had failed to testify in court.

[244] In response, the defence argued that both the second and third defendants did not need to testify since it was enough for this court to rely on the first defendant's testimonies alone. Moreover, it was never disputed that the book had already been published, and there has never been any dispute with regard to the publication of the book.

[245] I, nonetheless, agree with the approach taken by Lau Bee Lan J (as she then was) in *Lim Chin Heng v Alliance Intel Consulting Sdn Bhd & Ors* [2012]

A MLJU 1455. In this case, the plaintiff urged the court to draw an adverse inference against the second, fourth, fifth and sixth and tenth to 15th defendants for their failure to testify on the personal allegations made against them. It was held by Her Ladyship that D1's testimony was enough and since there were 16 defendants, it would be time-consuming for each of the B defendants to give evidence during trial.

[246] In our present case, as per the ratio given in *Lim Chin Heng*. I agree with the defendants' contention that the first defendant's testimony is enough for this court to determine the three elements under the tort of defamation and C all the defences raised. Since the second and third defendants were only the publisher and the printer respectively, their testimonies on defamatory implication of the impugned statement are not as important as the first defendant, who is the author of the book. It would be a different position if there was an issue with the publication. In that event, it will be more D appropriate to call the second and third defendants to testify.

[247] It is to be highlighted that the circumstance of this claim is different from *Lee Li Teng*. *Lee Li Teng* was a case in which the sole defendant completely E failed to testify at all. Thus, there was no evidence before the court on the defendant's version as to how the road accident occurred. In those circumstances the court was entitled to hold the view that all unrebutted evidence against that defendant must be assumed to be true. This is understandable in accordance with legal principles, logic, and basic common F sense. Our present case is totally different. There has never been any issue with regard to the publication of the book in our present case. Therefore, it is my view that the failure of the second and third defendants to testify should not in any way be considered as admission as argued by the plaintiff's counsel. No adverse inference should be drawn against them bearing in mind all the G defendants have engaged a common set of solicitors and have filed one common defence. Also, they were mere publisher and printer of the book. They were publishing and printing the book the manuscript of which was authored by the first defendant. They would be liable if it is established that the first defendant is to be liable. Vice versa, all of them would not be liable if the H first defendant is off the hook. Such were the common stance of all the defendants as revealed in their common defence that no adverse inference should be drawn against the second and third defendants just because they did not testify during the trial.

I CONCLUSION

[248] Verily, this is a case of mistaken identity. However, mistaken identity would not in itself cause the courts naturally deciding in favour of the plaintiffs. The courts still have to go back to the test under the law on libel to determine

the claim. The three elements of the tort of defamation must be established. The plaintiffs could only succeed in their claims when the impugned statements bearing such mistaken identity have fulfilled all the three elements.

[249] In a nutshell, it is this court's finding that the plaintiff had failed to prove to this court that the impugned statement is defamatory against her. It is the view of this court that no negative connotations can be made in reading the impugned statement although this is obviously a matter of mistaken identity. It is to be commentated that this claim is dismissed because of the natural and ordinary meaning approach taken where, unlike legal innuendo, extrinsic evidence cannot be adduced to determine whether the impugned statement could cause defamatory imputations.

[250] Even if I am wrong in my findings that the impugned statement bears no defamatory connotation against the plaintiff, the defendants have also successfully established a valid defence in showing that the impugned statement is justified. Hence, this claim is dismissed with costs.

Claim dismissed with costs.

Reported by Nabilah Syahida Abdullah Salleh