

**Malaysian Civil Litigation Series.
Volume 1: What and When?**

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1. Introduction

In this modern era, more individuals and companies have started to make their mark in other countries. Whether it is business or personal reasons, navigating around the social system which make the target country work is paramount in making said mark. One such system is the dispute resolution system to which parties' approach to enforce their rights.



By having a good idea on how such system of a country works it will enable stakeholders in making sound and grounded decisions. As such, the aim of this series is to answer the following questions:

- What is a legal action in Malaysia?
- When should one pursue legal action?
- Who can pursue such action and who can it be pursued against?
- Where should one pursue them?
- How does one pursue legal action?

In an attempt in providing a base for this discussion we will look at “what,” “when,” “who” and “where”. In an attempt in making things concise and easy to read, the remainder questions and their specific points will be elaborated in other parts of the series.

2. What is a legal action based on?

This series shall provide simple but comprehensive discussions on how the Malaysian dispute resolution system works, which generally revolves around the local courts. However, before we look into this, it is important to look into what causes parties go to court at the first place, which is the cause of action.

As the words suggests, a cause of action literally means the origin of a legal action to take place. Specifically, a cause of action normally is when there exists a person who can sue

and another who can be sued, and when all the facts have happened which are material to be proved to entitle the plaintiff to succeed¹. The party who sues is called a plaintiff and who can be sued is a defendant. Facts that have happened would then be seen as evidence.

As a practical example, a supplier who manufactures pipes will be seen as a defendant if their customers have obtained defective pipes. The purchasing order and invoices will then be seen as evidence. The cause of action will then be based on a breach of contract due to the provision of defective products. It should be noted that causes of action can come in various forms although, the most common ones are due to contractual or tortious claims.

3. When can legal action take place?

A prospective Plaintiff should always be aware of timelines of its civil action. In other words, whether the case is filed into the court too early or too late? A situation where the cause of action is deemed to be too early would be suing the manufacturer for defective pipes before placing an order. This is an obvious example of when things occur too early, whereby the cause of action has not yet accrued. However, there may be some instances where a potential outcome by a party not as clear cut is, such as a potential hostile takeover. However, those instances are unique on their own and will be investigated in the near future.

When it comes to being too late, it will be due to the limitation period of the particular case. Most businesses will be involved in contractual or tortious disputes, whereby they are usually required to be filed within 6 years from the date of the cause of action². In the event the aggrieved customer obtains the faulty pipes in the year 2022, he has up to 6 years (ie: latest in 2028) in order to file this claim for the pipes. A fresh acknowledgement could help reset the limitation period³. For example, if the supplier admits the defect in year 2023 and promised that they would provide functioning pipes, then the limitation period is then pushed to 2029 instead (6 years from 2023 onwards). It should be noted that if a potential defendant is the Malaysian government, then the limitation period for such a case will be 3 years instead⁴.

4. Who can proceed with a legal claim?

As alluded earlier, party that sues is called a Plaintiff and a party that is being sued is called a Defendant. More specifically, a cause of action exists if there is a Plaintiff who can sue, a Defendant who can be sued and there are material facts which entitle the

¹ Lim Kean v Choo Koon [1970] 1 MLJ 158

² Section 6 Limitation Act 1953

³ Section 27 Limitation Act 1953

⁴ Section 2, Public Authorities Protection Act 1948

Plaintiff to succeed⁵. In principle, both Plaintiffs and Defendants need to be proper legal entities. The most common will be living persons and companies. If there are several parties who have been aggrieved and/or an event was caused due to the actions (or otherwise) of several parties, multiple Plaintiffs and/or multiple Defendants can be involved. It is common for multiple Plaintiffs to be called a class-action.

It should be noted that there are exceptions to this. One of which is a sole proprietorship. A sole proprietorship is a type of business that is own and run by only one individual. A person who operates a sole proprietorship must bring an action against others under their own name⁶. However, the proprietor can be sued in his or her name or the business name.

Another exception is a conventional partnership. A partnership is defined as a business that is carried out by two or more person in the view to make a profit out of such business⁷. Hence, in civil proceedings, they must bring an action in the name of the firm, and any action against them must be brought against them as well⁸. This should not be confused with the recently introduced limited liability partnership, whereby such a partnership is treated like a separate legal entity⁹, and should sue and be sued like a regular company.

5. Where should a party sue?

Once the parties and cause of action has been ascertained, the next step is to determine which court is the right forum for the proceedings to begin. If a claim is between MYR 0 to MYR 100,000.00¹⁰, the claim is to be filed in the Magistrates' Court. If the claim value is from MYR 100,000.00 to MYR 1 million, then the proceedings should begin in the Sessions Court¹¹. If the claim exceeds the value of MYR 1 million, then it should be filed in the High Court.

The Malaysian legal system has a 2-tier appeal system whereby, if a case is heard in the Magistrates' or Sessions Court, the appeal will first be heard in the High Court and a second appeal, if filed, will be heard in the Court of Appeal. In the event the proceedings began in the High Court, then the appeal will first be heard in the Court of Appeal and finally, the Federal Court if an appeal is filed for a second time. The Federal Court is the apex court of the country.

It should be noted that there is an array of non-court dispute resolution avenues such as tribunals and arbitration. There are also other types of legal proceedings like interlocutory actions and judicial review. However, for the sake of consistency and brevity, they will not be discussed in this juncture and may be revisited in the future.

⁵ Lim Kean v Choo Koon [1970] 1 MLJ 158

⁶ Order 77 Rule 9, Rule of Court 2012

⁷ Section 3(1), Partnership Act 1961

⁸ Order 77 Rule 1, Rules of Court 2012

⁹ Section 3 and 4, Limited Liability Partnership Act 2012

¹⁰ Section 90 Subordinate Courts Act 1948

¹¹ Section 65(1) Subordinate Courts Act 1948

6. Conclusion

Before a party can pursue legal action, it is pertinent if there is a justifiable cause in doing so. Additionally, precautionary steps would need to be taken to avoid the claim being obstructed by factors such as time, location, and legal status of a counterparty.

We hope the above has provided you with some idea as to how the Malaysian litigation system operates. In the next instalment of this series, we will dive deeper into the actual litigation process. It should be noted that the above is merely a bird's eye view of a vast subject and we may revisit the topics that has been shared in greater detail in the future when the opportunity permits. If you would like to know more about the topics that were discussed, please feel free in contacting us

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