

CPD

PROGRAMME



A seminar organised by  
Singapore Institute of Architects

# CONSTRUCTION CASE LAW UPDATE 2010

**Date** : 13 Nov 2010, Saturday  
**Venue** : SINGAPORE INSTITUTE OF ARCHITECTS  
 SIA THEATRETTE - LEVEL 1  
 79 NEIL ROAD S(088904)  
**Time** : 9.30AM - 12.00PM

## PROGRAMME

9.00am	Registration and light refreshments
9.30am	Welcome Remarks by SIA
9.35am	Presentation by Dr GUNAWANSA, ASANGA
11.30am	Questions & Answers
12.00pm	End

SIA Member	S\$ 50.00
BOA Registered Architect /CIJC Member	S\$ 75.00
Non-Member	S\$ 100.00

Registration on First-Come-First-Serve Basis

BOA-SIA CPD Accreditation **6 points**

## SYNOPSIS

Several interesting recent cases relevant to the construction industry have been selected for this seminar. Six of the cases are from Singapore and one is from Scotland. The selected cases cover the topics of (a) delay in completion; (b) breach of contract; (c) termination of contract; (d) acceptance of services provided by an Architect (e) consequences of delay in making an arbitration award; and (f) grounds for challenging an Arbitrator's award.

In *Alliance Concrete Singapore Pte Ltd v Comfort Resources Pte Ltd [2009] SGCA 34*, the key issue considered by the Court of Appeal was where both parties to the contract had committed breaches and one of them had terminated the contract based on the other's breach, whether the other party was entitled to claim that the termination was wrongful.

In *Animal Concerns Research & Education Society v ANA Contractor Pte Ltd and another [2010] SGHC 85*, the Singapore High Court considered inter alia the interesting issue whether there was construction delay or time for completion had been set at large under a status-of-funding clause in the contract.

The case of *Thode Gerd Walter v Mintwell Industry Pte Ltd and others [2010] SGHC 33* is an interesting one, although not arising out of a construction dispute. In this case the Court noted *inter alia* that although as a matter of principle, a plaintiff may be entitled to the measure of damages in contract for the judgment in contract as well as damages based on the measure of damages in tort for the judgment in tort; there should be no *double recovery*. This case is relevant to those engaged in the construction industry as often legal actions are filed on the basis of contractual breach as well as tort for incidents relating to construction activities.

In the case of *Boonchai Sompalpong v Low Tuck Kwong [2010] SGHC 266*, the dispute concerned the precise terms of the agreement relating to the agreed payment terms, and whether the plaintiff's (Architect's) designs had been accepted by the defendant and if so, how the Singapore Institute of Architect's Conditions of Appointment and Architect's Services And Mode of Payment Terms (the "SIA Terms") would operate with respect to payments claimed by the plaintiff. In addition, the court also considered inter alia whether the failure to receive an express written acceptance of design done by an architect, which is the standard industry practice, was fatal when trying to establish that the designs have been accepted by the client.

In the case of *Ting Kang Chung John v Teo Hee Lai Building Constructions Pte Ltd and others [2010] 2 SLR 625; [2010] SGHC 20*, the issue was whether a delay by the Arbitrator in making an award in terms of Article 14.1 of the SIA Arbitration Rules could be cured. The court considered inter alia the extent to which section 15 of the Arbitration Act (Cap 10, 1985 Rev Ed) should be exercised by a court to prevent a substantial injustice, in a situation in which the Arbitrator has failed to comply with the time limit set for making the award under the SIA Arbitration Rules.

In the case of *Sui Southern Gas Co Ltd v Habibullah Coastal Power Co (Pte) Ltd [2010] 3 SLR 1; [2010] SGHC 62* an arbitration award was challenged under Arts 34(2)(a)(iii) and 34(2)(b)(ii) of the First Schedule to the International Arbitration Act (Cap 143A, 2002 Rev Ed) on the basis that the award dealt with disputes or issues not contemplated by or not falling within the terms of the submission to arbitration and/or contained decision on matters or issues beyond the scope of the submission to arbitration; and/or that the award was in conflict with the public policy of Singapore. The court concluded *inter alia* that if an issue was within the scope of submission to arbitration, it could not be taken outside the scope of submission to arbitration simply because the arbitral tribunal came to a wrong, or even manifestly wrong, conclusion on it due to a manifest error of law or fact. Further, the court concluded that "breach of public policy" cannot be generalized and that the party who alleges such breach should establish the specific public policy that has been breached.

In the Scottish case of *City Inn v Shepherd Construction [2010] ScotCS CS1H68*, the majority opinion delivered by Lord Osborne, contains five principles relating to the evaluation of a delay and loss plus expense claim. Although in developing these principles, the Court was examining issues under clause 25 of the JCT form, the principles may be of general relevance to most construction contracts and illustrate the likely approach that would be adopted by other common law countries.

## SPEAKERS PROFILE



**Dr. GUNAWANSA  
ASANGA**

School of Design and  
Environment  
National University of  
Singapore

Dr. Asanga Gunawansa holds a Ph.D. in law from the National University of Singapore (NUS) and a LL.M in International Economic Law from the University of Warwick. He is an Attorney-at-Law of the Supreme Court of Sri Lanka. Dr. Gunawansa has over 15 yrs of experience as a legal counsel.

Dr. Gunawansa is currently attached to the Department of Building of the National University of Singapore. His teaching and research areas include: construction law; Arbitration and other alternative dispute resolution mechanisms; legal aspects of infrastructure development; Public-Private-Partnerships; international environmental law; and legal and policy aspects of sustainable development. In addition to his teaching and research at NUS, Dr. Gunawansa is currently a Research Associate of the Institute of Water Policy of the Lee Kuan Yew School of Public Policy, where he is the principal investigator of a research project dealing with Public Private Partnerships in the water sector. He is also an Associate Member of the Executive Committee of the Asia Pacific Centre of Environmental Law. Outside his academic activities at NUS, Dr. Gunawansa is a Non-resident Associate of the Asia Society and a member of the Editorial Review Boards of the International Journal of Law in the Built Environment and the Journal of Built Environment Project and Asset Management.

Prior to joining NUS in May 2007, he worked as a legal officer for the United Nations Organization for over 7 years. During the period 1993 – 2000, he worked as a State Counsel attached to the Attorney General's Department of Sri Lanka.

In the quest to disseminate knowledge, Dr Gunawansa has delivered many conference/seminar papers and conducted numerous in-house training programs on matters pertaining to construction contracts, dispute resolution, professional negligence, Public-Private-Partnerships, sustainable development and climate change. Dr. Gunawansa is the joint author of the "Asia Pacific Construction Law Case Book Series" published by Lexis-Nexis.

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SINGAPORE INSTITUTE OF ARCHITECTS

2010/107/MS/IY

# REGISTRATION FORM

## Construction Case Law Update 2010

- Saturday, 13 November 2010  
- SIA THEATRETTE - LEVEL 1  
(All seminar fees are inclusive of GST)

SIA Member	S\$ 50.00
BOA registered Architect/CIJC Member	S\$ 75.00
Non-Member	S\$ 100.00
Closing Date for Registration	<b>8 Nov 2010</b>
BOA-SIA CPD Accreditation	<b>6 points</b>

### PARTICULARS

Name (as in Passport): \_\_\_\_\_

NRIC No: \_\_\_\_\_

Membership No: [ ] SIA \_\_\_\_\_

[ ] CIJC (Pls specify Institution) \_\_\_\_\_

[ ] BOA Reg No \_\_\_\_\_ [ ] Non-Member

Organisation: \_\_\_\_\_

Address: \_\_\_\_\_

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HP: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Fees paid are non-refundable under all circumstances. Replacement of participant will be allowed only if written notification is made at least 3 days before the event.

Where a Non-Member replaces a Member (must be from the same organisation) the fee difference will have to be made good to SIA prior to the event.

### MULTIPLE REGISTRATION

NAME:	NRIC NO.	SIA/BOA NO.	ORG.	AMT:
1. _____				
2. _____				
3. _____				
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### PAYMENT OPTIONS

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Bank/Chq # : \_\_\_\_\_ Amt S\$: \_\_\_\_\_  
Local Cheque (must be drawn in Singapore) should be crossed and made payable to "Singapore Institute of Architects".

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Please mail to:  
Singapore Institute of Architects  
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**Please indicate your name and company/institution (if any) and seminar date/title on the back of the cheque.**

[ ] **By Cash**  
You can drop by the SIA office to make cash payment between 9.30 am - 5.30 pm on weekdays.  
Address:  
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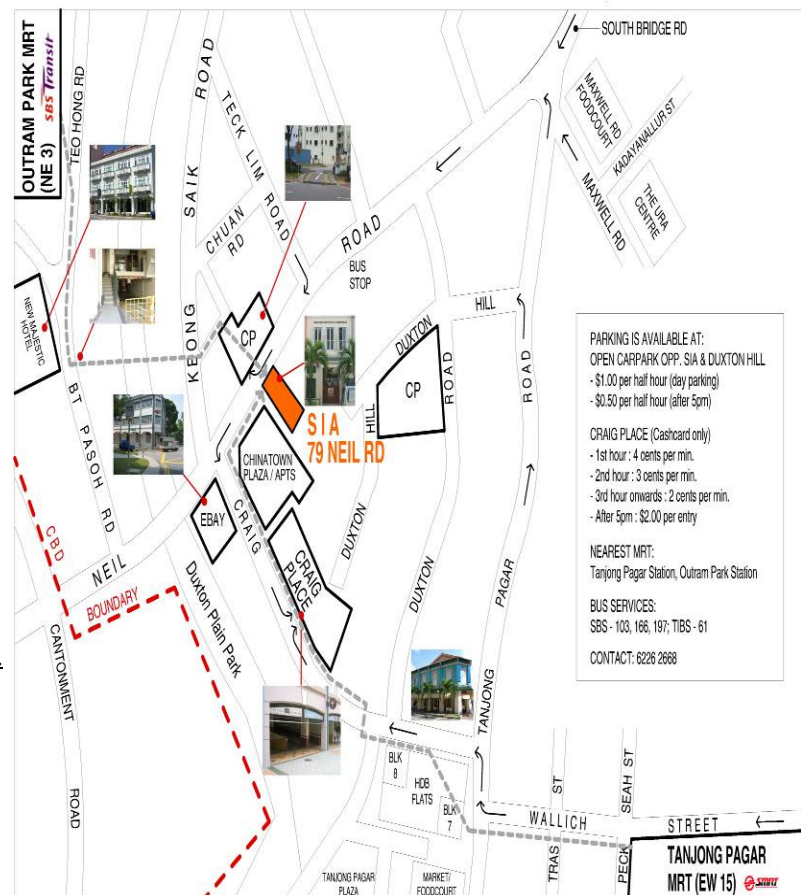
•All registration will be on a First-Come-First-Served basis and will be accepted upon receipt of registration form and payment to SIA. Registration by fax will only be confirmed upon receipt of payment.

Cheque payment for this activity should not be combined with payment for other SIA events/courses.

Registration Confirmation No.:-

For Enquiry (Ms Isabella Yeo):  
Tel: (65) 6226 2668  
Email: cpd@sia.org.sg

### LOCATION MAP



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