



MahWengKwai & Associates

ADVOCATES AND SOLICITORS



Speaker
JEREMY BALANG
Senior Associate



Speaker
JASON LIM
Associate



Moderator
**MUHAMMAD AQIL
NASHARUDDIN**
Associate

Wed 7 May 2025
3:00pm (GMT +8)
mwka.com/talks

MWKA ONLINE TALKS

**Understanding Medical Negligence Claims:
A Patient's Guide to Medical Litigation**



DATO



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Trusted by small medium enterprises (SMEs),
family businesses and individuals since 1985.

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About Us

- Welcome to MahWengKwai & Associates!
- Trusted by small medium enterprises (SMEs), family businesses and individuals.
- Established in 1985 by Dato' Mah Weng Kwai, now a consultant with the firm.
- Medium-sized law firm with 33 lawyers and 30 staff.

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Our Services



Corporate



Dispute
Resolution



Employment



Individuals &
Families

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Our Services

- Full-service law firm with 4 Departments:
 - Corporate
 - Dispute Resolution
 - Employment
 - Individuals & Families

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Our Practice Groups



Our Practice Groups

- 5 Practice Groups:
 - ASEAN-China Desk
 - Construction
 - Foreign Direct Investment
 - Real Estate
 - Sports & Esports

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MWKA Online Talks

- To share knowledge, raise awareness, encourage networking
- For clients, potential clients, in-house counsel
- Recent MWKA Online Talk:
 - 26.3.2025: Divorce: Insights on the Law of Division of Assets between Couples
- Upcoming MWKA Online Talk:
 - 28.5.2025: Understanding Dismissals and Remedies Under Malaysia's Industrial Relations Act 1967
 - 11.6.2025: Common Property Disputes: Recovering or Defending Ownership Claims

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Jeremy Balang

Senior Associate

- ❖ Senior Associate practising in the areas of medical law, personal injury, debt recovery and general litigation.
- ❖ Admitted to the Malaysian Bar in 2018.
- ❖ Specialises in acting for patients and/or their family members in medical negligence claims against owners and managers of hospitals, healthcare practitioners including doctors and nurses, and their respective professional indemnity providers.

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Jason Lim

Associate

- ❖ Admitted to the Malaysian Bar in 2021
- ❖ Bachelor of Laws (Hons) from Queen's University Belfast
- ❖ Associate in our Medical & Personal Injury department
- ❖ Areas of practice includes medical negligence, personal injury, occupier's liability, and general litigation

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Talk Points

- Assessing the Viability of a Claim
- Filing a Medical Negligence Suit
- Understanding the Pre-Trial Process
- Trial and Settlement Negotiations

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Introduction to Medical Negligence

***Prince Court Medical Centre Sdn Bhd v Lim Yoke Har
(suing through his son and litigation representative,
Goh Seng Cha) & Ors and another suit [2024] MLJU 2699***

- 75-year-old patient was left in a vegetative state after falling from her hospital bed at Prince sometime in 2018. The cause of her fall was later found to be a mechanical failure on the cot side of her hospital bed.
- In 2024, the Court awarded approximately RM 4.2 million in damages and costs, excluding interest.

Steps (Before Filing of Suit)

1. Contact a lawyer and seek his or her advice.
2. Obtain copies of the relevant medical records.
3. Engage an appropriate expert expert.
4. Prepare the cause papers in respect of the suit.

Limitation

1. Claim against a private hospital - 6 years from the date of accrual of cause of action (s6(1), LA)
2. Claim against a Government hospital or clinic- 3 years from the date of the tortious act (s2, PAPA)
3. Dependency claim - 3 years from the date of death (s7(5), CLA)
4. Estate claim - 6 years from the date of accrual of cause of action (s6, LA)
5. Concurrence of applicable limitation periods
6. **ALWAYS** seek legal advice on limitation

Obtaining Medical Records

1. A patient's right of access to his or her medical records
2. The difference between medical records and a medical report.
3. Internal inquiry documents
4. Grievance mechanism
5. Pre-action discovery under Order 24 rule 7A

Engaging an Expert

1. The need for experts before filing a claim
2. The difference between independent experts and treating doctors
3. The requirements of Bolam & Bolitho
4. Establishing the standard of care and the breaches of duty (i.e. the negligence)
5. Establishing causation, i.e. that the negligence had caused or materially contributed to the injuries, losses, harm, damage, etc

Initiating a Medical Negligence Suit

Writ of Summons

- A document initiating legal proceedings.
- Acts as a notice to the defendant, announcing to him that a legal action has been started against him by the plaintiff.

KAMI PERINTAHKAN KAMU bahawa **dalam tempoh empat belas (14) hari** selepas penyampaian writ ini kepada kamu, tidak termasuk hari penyampaian itu, kamu hendaklah menyebabkan suatu kehadiran dimasukkan untuk diri kamu dalam suatu kausa atas guaman Plaintiff dan ambil perhatian, bahawa dalam keingkaran kamu berbuat demikian Plaintiff boleh meneruskan untuk mendapatkan penghakiman dan pelaksanaan.

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Initiating a Medical Negligence Suit

Statement of Claim

- Sets out the foundation of the claim
(i.e. the facts that entitle the plaintiff to the remedy that he is seeking to obtain against the defendant.

Memorandum of Appearance

- Appearance refers to the act of “*coming into Court*” by a party to a suit, either in person or through a solicitor.
- The purpose of entering appearance is for the defendant to submit himself to the jurisdiction of the Court and normally indicates the defendant’s intention to defend the action.

Defence

- The Defendant's written answer or reply to the Plaintiff's Statement of Claim, admitting or denying each and every one of the facts contained in the Statement of Claim.
- Include such facts as the defendant wishes to assert at trial in opposition to the plaintiff's case.
- Failure to deny a statement in the Statement of Claim would be tantamount to an admission of facts pleaded in such statement.

Counter-claim

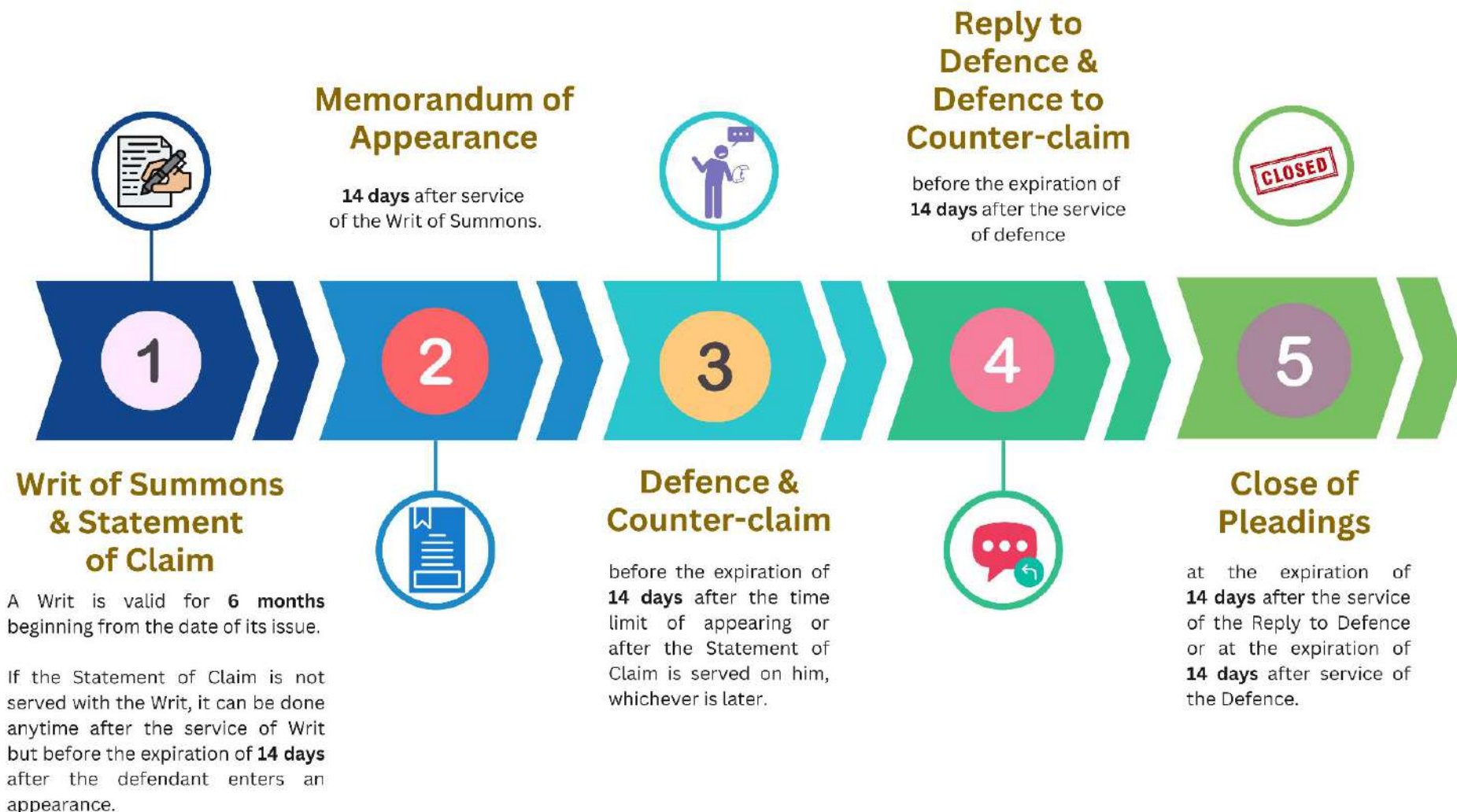
- A counter-claim asserts an independent cause of action and is not a defence to the claim made in the action by the Plaintiff.
- A separate and independent action by the defendant, which the law allows to be joined to the plaintiff's action in order to avoid multiplicity or circuitry of suits.

Reply to Defence

- Not in all cases will the Plaintiff be required to prepare a Reply to Defence.
- The Plaintiff will usually serve a reply to the Defence when he feels that it is necessary to further define the issues between the parties. This should normally only arise as a result of the contents of the Defence which may have raised issues which require to be answered.

Defence to Counter-claim

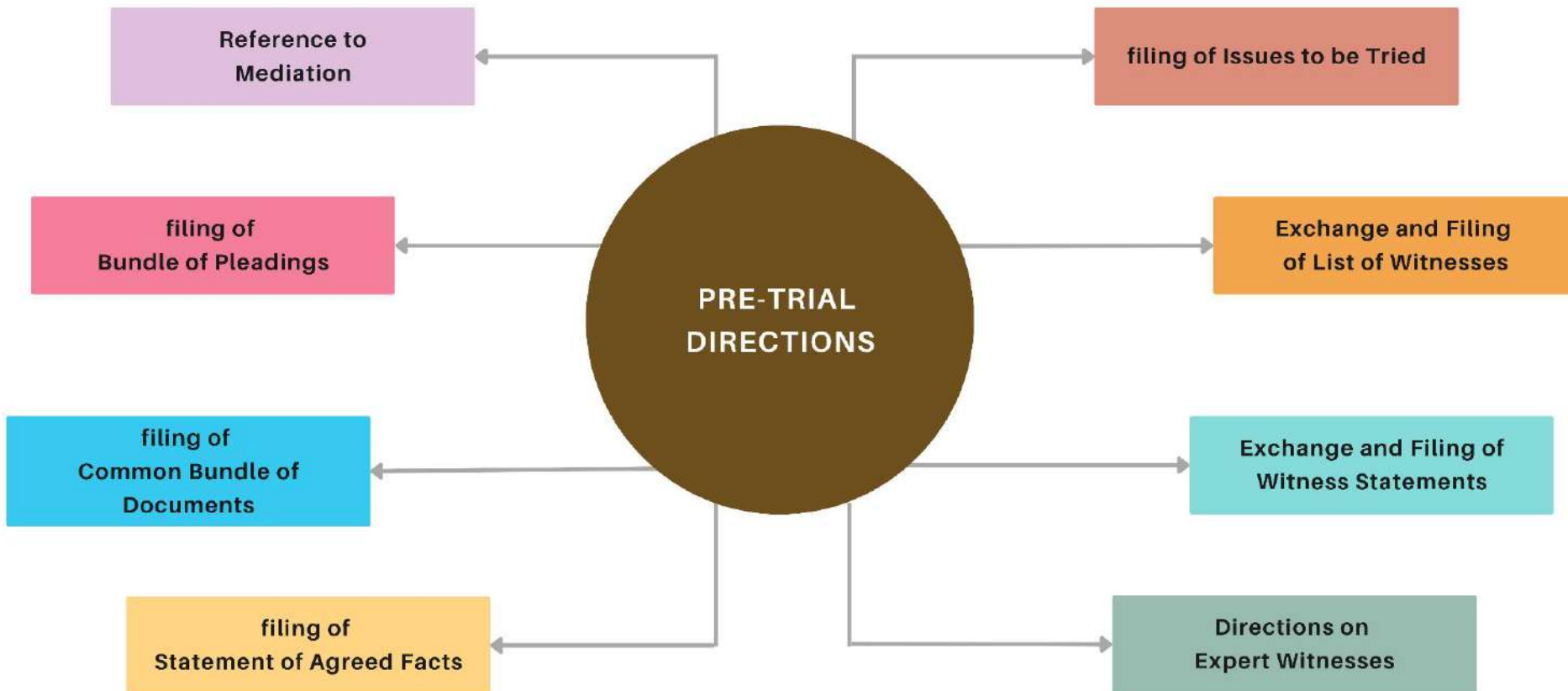
- Acts as a Defence in reply to the Counter-claim which acts as a Statement of Claim.
- The defendant is now the plaintiff and the plaintiff is vice versa in this claim.



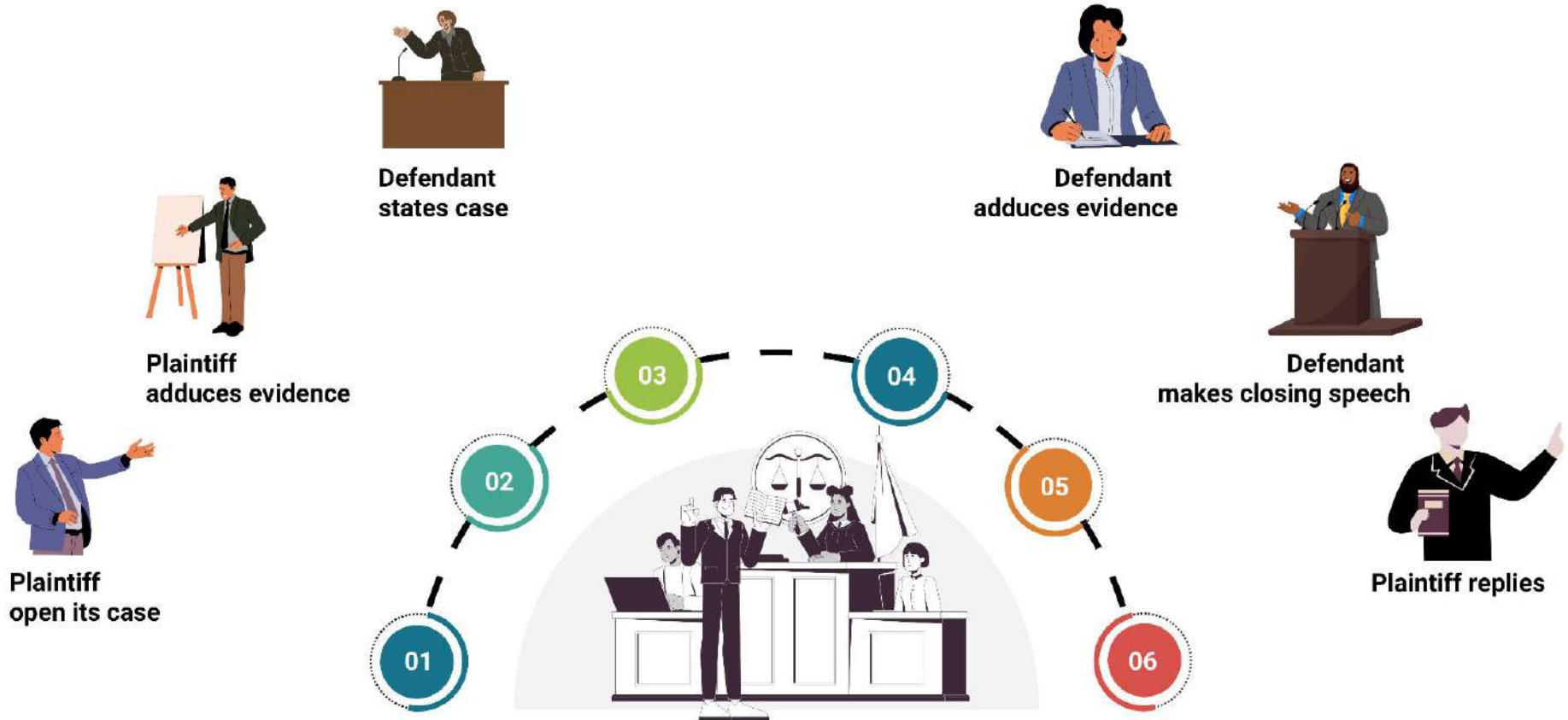
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Pre-Trial Case Management



Trial Process



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Appeals

- Appeal to the Court of Appeal against a decision of the High Court must be filed within **30 days** from the decision of the High Court.

Questions?

Upcoming Talks

Date	Topic	Speakers
28 May 2025 (Wednesday)	Understanding Dismissals and Remedies Under Malaysia's Industrial Relations Act 1967	Naveen Joshua & Tharani Kunasekaran
11 June 2025 (Wednesday)	Common Property Disputes: Recovering or Defending Ownership Claims	Kirbasyini Chandran



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<https://mahwengkwai.com/talks-signup/>

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Complimentary Consultation

Schedule a complimentary video- consultation
(up to 30 minutes) with our lawyers by filling up the form at
<https://mahwengkwai.com/schedule-a-meeting/>



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Thank you!

Notice: This presentation does not constitute legal advice and its contents should not be relied upon as such. The facts and circumstances of each and every case will differ and therefore will require specific legal advice. Feel free to contact us for complimentary legal consultation.