



MahWengKwai & Associates

ADVOCATES AND SOLICITORS



Speaker
AGALYA J. MUNUSAMY
Partner



Moderator
YONG HAO JET
Pupil In Chambers

Wed 29 Oct 2025
3:00pm (GMT +8)

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MWKA ONLINE TALKS
Legal Remedies for Unlawful
Customs Department Seizures



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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 35 lawyers and 30 staff.

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Our Services



Corporate



Dispute
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- 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:
 - 23.10.2025: Sustainable Deals: ESG Compliance in Mergers & Acquisitions
- Upcoming MWKA Online Talk:
 - 29.11.2025: Medical Negligence — How Much Do You Really Know? (In Mandarin)

Agalya J. Munusamy

Partner



- ❖ Partner in our Criminal, Customs & Logistics, Family & Matrimonial teams
- ❖ Bachelor of Laws (Honours) from Aberystwyth University, Wales
- ❖ Admitted to the Malaysian Bar in 2014
- ❖ Involved in advising on criminal defense strategies, anti-money laundering, corruptions charges, customs & smuggling offences, immigration offences, matrimonial and citizenship
- ❖ Areas of practice include criminal law, general litigation, customs advisory & seizure related matters.

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Talk Points

- Powers of the customs officers under the Customs Act 1967
- Immediate steps businesses should take after a seizure
- Legal remedies and claims for damages in wrongful seizure cases
- Key cases involving RMCD overreach and judicial trends

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Upvote/Like the questions you like.

Most liked / popular questions will be discussed and answered by the speaker(s) during the Q&A session.

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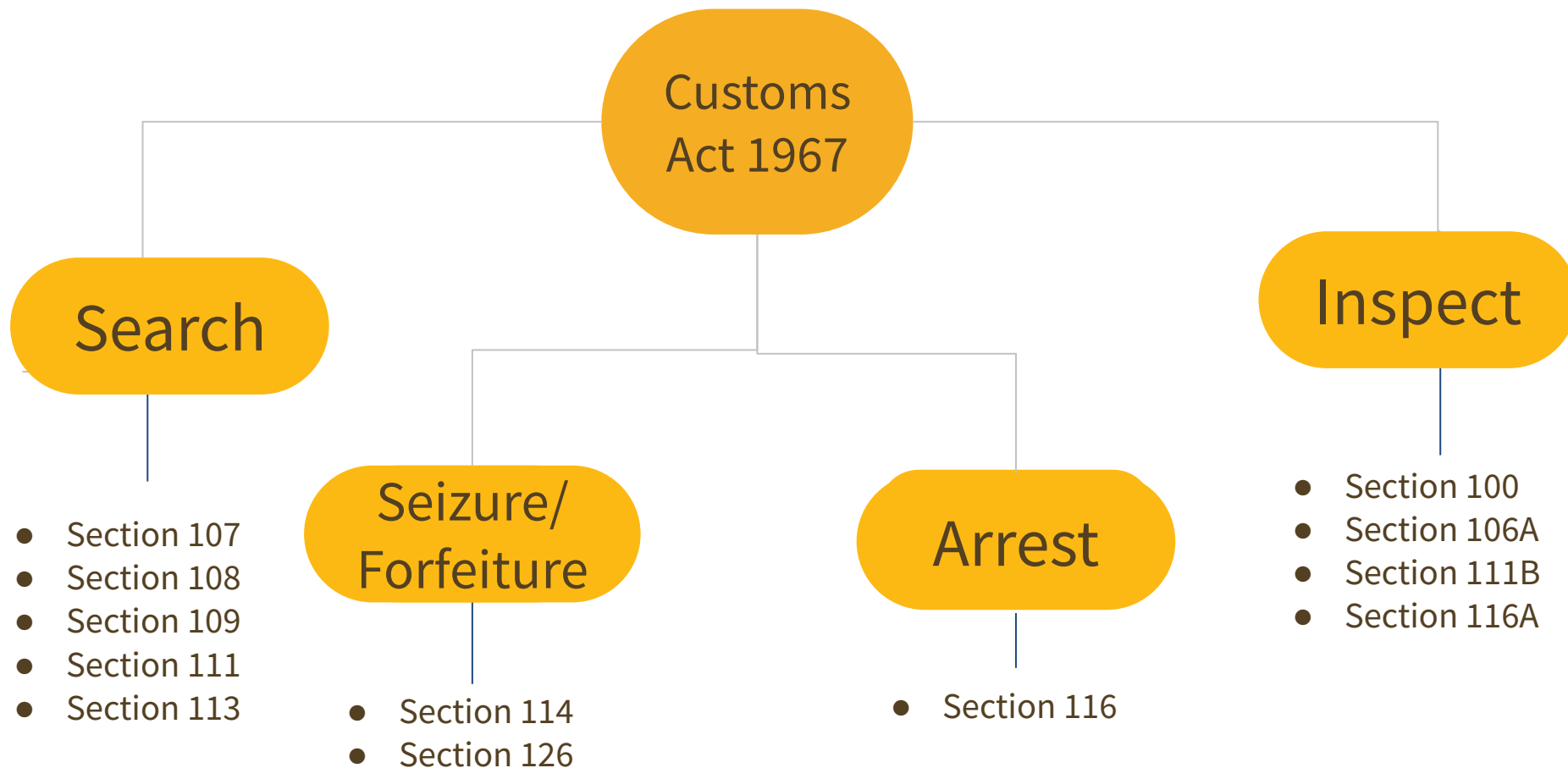
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Powers of the customs officers under the Customs Act 1967

Powers of the customs officers under the Customs Act 1967

- General enforcements powers (s.106B)
 - a **senior officer of customs shall have all the powers of a police officer** of whatever rank as provided for **under the Criminal Procedure Code [Act 593]** in relation to **enforcement, investigation and inspection**, and such powers shall be in addition to the powers provided for under this Act

Powers of the customs officers under the Customs Act 1967



Immediate steps businesses
should take after a seizure

Immediate steps businesses should take after a seizure

1. Confirm the legality and basis of the seizure (s. 114)

- When a seizure occurs, customs officers must issue a written notice of seizure (known as Borang Kastam No. 1 or Notice of Seizure), stating:
 - The reason for the seizure, and
 - The goods, conveyance, or items seized.
- If the owner is not present, the notice must be posted at the place of seizure or later served on the owner (if known).

Immediate steps businesses should take after a seizure

- What you can do?
 - Obtain and keep a copy of the seizure notice.
 - Review the notice carefully — note date of seizure, description of goods, and officer in charge.
 - Check if the seizure was based on:
 - Prohibited or uncustomed goods;
 - Incorrect declarations; or
 - Alleged undervaluation or misclassification

Immediate steps businesses should take after a seizure

2. File a Formal Claim to Recover the Goods (s. 128)

- You must file a written claim to the Director General of Customs within one month from the date of seizure (or notice).
- The claim should assert ownership and request the return or release of the goods.
- Failure to act within 1 month: The seized goods (or sale proceeds) will be deemed to be forfeited to the Government under Section 128(1).

Immediate steps businesses should take after a seizure

- How to do this?
 - Engage a lawyer to write and send a claim promptly (ideally within 30 days) to the seizing officer or investigating officer.
 - Attach documents proving ownership (e.g. invoices, import permits, bills of lading). Key point: any person who asserts to be the “owner” can claim the return of the goods.
 - Keep records of letters sent and any acknowledgment of receipt by the Customs Department.

Immediate steps businesses should take after a seizure

3. Cooperate with Investigation & Provide Documents

- Section 106A – Access to premises and documents
- Section 100A – Requirement to maintain and produce customs records

Immediate steps businesses should take after a seizure

- How to cooperate?
 - Provide requested documents to assist investigation — e.g. import/export declarations, invoices, permits.
 - Do not obstruct officers — obstruction is an offence under Section 136.
 - However, consult and engage a lawyer/counsel before making or providing any written statements to ensure your rights are preserved

Immediate steps businesses should take after a seizure

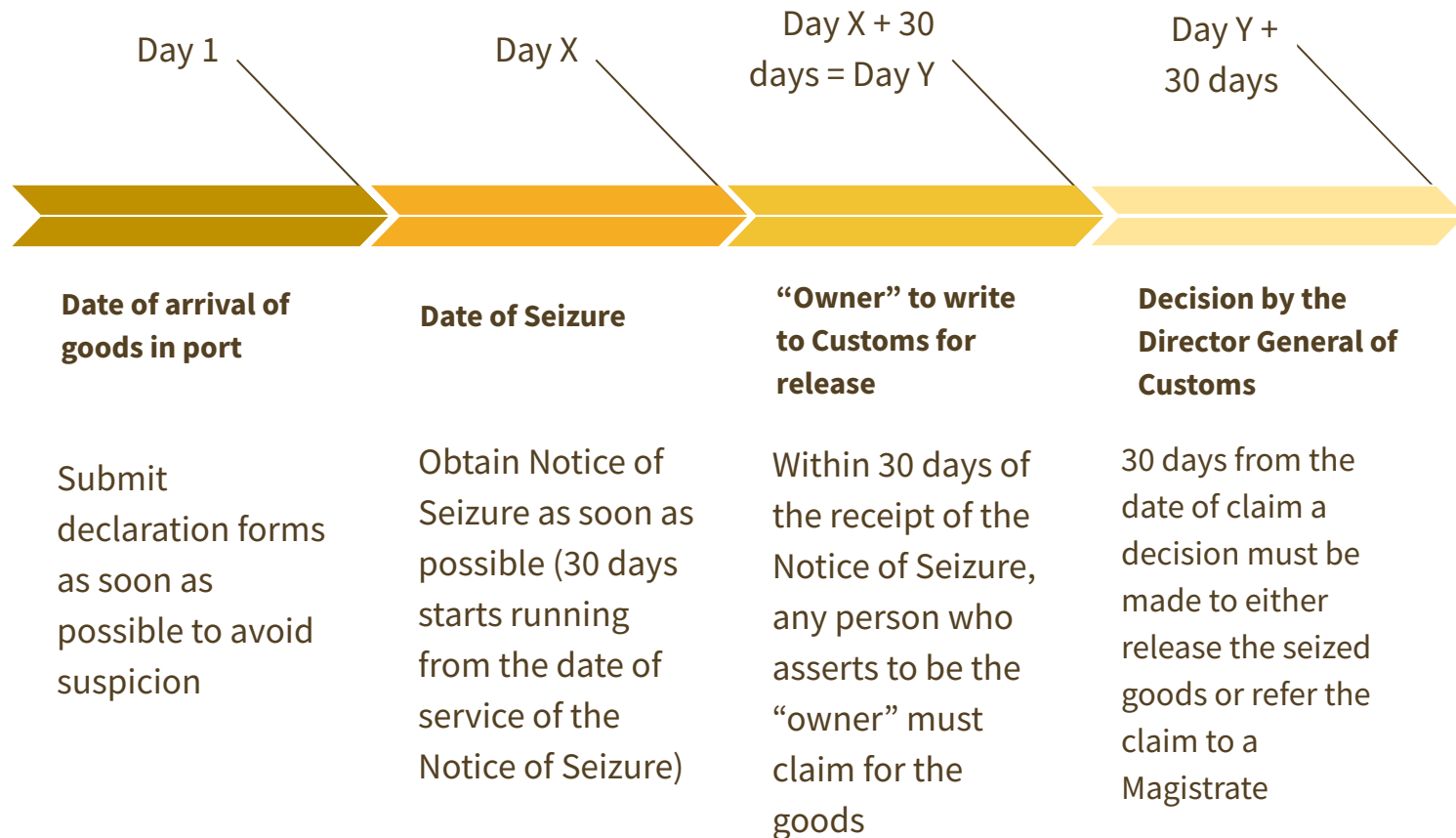
4. Await Prosecution or Forfeiture Proceedings

- Section 126 – Goods Liable to Forfeiture
- Section 127 – Court to Order Disposal of Goods Seized
 - If prosecution is initiated: The goods remain in Customs custody until court proceedings are completed. The court may order forfeiture or release depending on the outcome.
 - If no prosecution is initiated within a reasonable time: Customs may treat the goods as administratively forfeited under **Section 128, unless a valid claim was filed**

Immediate steps businesses should take after a seizure

- What you can do?
 - Track the investigation status with the Customs Department or engage lawyers to oversee the procedure.
 - If goods are perishable or time-sensitive, request expedited decision or provisional release (though not explicitly stated, this can be requested under administrative discretion).

Important Timeline for the Return of Seized Goods



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Legal remedies and claims for damages in wrongful seizure cases

Legal remedies and claims for damages in wrongful seizure cases

- If you have grounds to believe that there is no reasonable or probable cause in the seizure:
 - i. File a claim at the High Court;
 - ii. Name the correct parties (seizing officer, investigating officer, relevant department, RMCD & Govt. of Malaysia)
 - iii. Prayer can include a declaration that the seizure was unlawful;
 - iv. Prayer for damages to be assessed;
 - v. Prayer for goods to be returned

Legal remedies and claims for damages in wrongful seizure cases

- Section 114A (Damages from entry, search or seizure)

“No person shall, **in respect of any entry or search of any premises, place or conveyance or seizure of any goods, book, record, document or thing** in the exercise of any powers conferred by this Act, **be entitled to the costs of such entry, search or seizure, or to any damages** or other relief **unless** such **entry, search or seizure was made without reasonable cause**”

Legal remedies and claims for damages in wrongful seizure cases

- Section 132 (Damages sought in court proceedings)

“No person shall in any proceedings before any court in respect of the seizure of any goods seized in exercise or the purported exercise of any power conferred under this Act, be entitled to the costs of such proceedings or to any damages or other relief other than an order for the return of such goods or the payment of their value unless such seizure was made without reasonable or probable cause.”

Key cases involving RMCD
overreach and judicial trends

Key cases involving RMCD overreach and judicial trends

- **Sunthararaju Pachayappan v. Jabatan Kastam Diraja Malaysia [2010] 3 CLJ 865 HC**

- On 5 September 2008, the plaintiff and two others were arrested by police near the Malaysian-Thai border with nine buffaloes loaded on the plaintiff's lorry.
- The plaintiff claimed the buffaloes were legally purchased at RM1,600 each.
- The plaintiff received a notice of seizure alleging offences under sections 133(1)(e) and 135(1)(e) of the Customs Act 1967, but was never charged.
- The plaintiff submitted two Statutory Declarations claiming the return of the seized buffaloes, which the defendant denied, and the defendant failed to refer the matter to court within 30 days after receiving the claim.

Key cases involving RMCD overreach and judicial trends

- Decision of the High Court:
 - The plaintiff's argument centered on the **failure to refer the seizure matter to the magistrate within one month.**
 - The plaintiff's counsel did not address whether the matter was referred to the Director General of Customs for a decision.
 - The court found **no evidence that the plaintiff's claim was referred to the Director General within or after one month.**
 - Consequently, **no decision was made by the Director General to release the goods or refer the case to the magistrate.**

Key cases involving RMCD overreach and judicial trends

- Decision of the High Court:
 - The **RMCD has failed to comply with the provisions of s. 128(3) of the Act** in that the **Director General of Customs has to make a decision whether to release the seized goods or direct such senior officer of customs to refer the matter to the magistrate for his decision**. The court agrees that the **decision to refer the matter to the magistrate must be made within the one (1) calendar month from the date of receipt of the notice of claimant which has to be served on the defendant within one (1) calendar month from the date of receipt of the notice of seizure by the plaintiff**.

Key cases involving RMCD overreach and judicial trends

- **Mehdi Dadashi Havadaragh v Ketua Pengarah Jabatan Kastam Diraja Malaysia & Ors [2015] 4 MLJ 646**

- Appellant was stopped at KLIA while attempting to leave for Iran with USD350,000 in his briefcase, which he had failed to declare or obtain approval from Bank Negara Malaysia.
- He was therefore suspected of offences under section 135 of the Customs Act 1967 and the Exchange Control Act 1953 for carrying uncustomed goods (the monies). A notice of seizure was signed by the senior customs officer who had effected the seizure.
- Immediately after the seizure, the same senior customs officer who had effected the seizure of the cash monies interviewed and recorded a statement in writing from the appellant. Money was to purchase a home under the MM2H programme.

Key cases involving RMCD overreach and judicial trends

- Decision of the Court of Appeal:

- We are of the view, for the reasons stated above, that **there was substantive compliance with ss 128(1)(a) and (2) of the said Act.** The learned judge did not consider the effect of the contents of the statement procured by the customs officer on the very day of seizure, having erroneously concluded that the statement had not been procured by the appellant. As such we concluded that **the written statement recorded by the senior customs officer on 4 August 2011 sufficed as a written claim for the return of the monies.**
- Having concluded that there was sufficient notice of a claim in writing by the appellant to the relevant customs officer, it follows that **no automatic or 'deeming' forfeiture of the monies would follow.** Automatic or '**deemed**' forfeiture only occurs under s 128 of the said Act **where there is no prosecution and no claim made for the goods.**

Key cases involving RMCD overreach and judicial trends

- Decision of the Court of Appeal:
 - It follows from the foregoing that as **we have concluded that the appellant did make a claim within the purview of s 128(1)(a) and (2) of the said Act**, the **respondents were bound to refer the matter to the director-general of customs, who in turn had to either release the goods or refer the matter to court**. That would then have enabled the appellant to be heard in full in relation to his claim for the seized monies. This unfortunately did not transpire. **There was a failure to comply with s 128(3)** on the erroneous conclusion that there was no ‘claim’ made by the appellant within the purview of s 128(1)

Key cases involving RMCD overreach and judicial trends

- **Modern Freight Express v Afzarizzal bin Abdul Wahab & Ors [2017] 6 MLJ 83**

- In September 2015, Plaintiff was appointed and instructed by six different consignors to take possession and to manage the declaration, clearance and shipping of the consignments of 'Beer and Apple Cider'.
- In November 2015, Plaintiff was informed that all the 40 containers were seized
- Plaintiff through its solicitors, made a claim to the State Director of Customs, Selangor ('the second defendant') pursuant to s 128(1) of the Act, demanding the release of the said goods. The defendants did not release the goods. Neither did the defendants refer the plaintiff's claim to the magistrate's court for decision after the expiration of one month from the date of the notice of claim.

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Key cases involving RMCD overreach and judicial trends

- Decision of the Court of Appeal:
 - There was **no merit** to the respondent's averment **that the appellant must be 'pemunya yang sah'** and that 'rujukan ke mahkamah hanya akan dibuat setelah tuntutan pemunya yang sah menuntut barangan tersebut dalam masa 1 bulan dari tarikh penyitaan barangan tersebut'. **The words 'asserting that he is the owner' in sub-s 128(2) were wider than 'lawful owner' ('pemunya yang sah').**
 - Where **a written claim was made by the appellant for the said good within one calendar month from the date of seizure** and where no prosecution had commenced in respect of the said goods within the same period of time, then **on the expiration of the one calendar month from the date of notice of claim, the respondent should release the goods or refer the claim to the magistrate court.**

Key cases involving RMCD overreach and judicial trends

- **Sarmiina Sdn Bhd v Gerry Ho & Ors [2023] 4 MLJ 870**
 - The appellant in the present case in its capacity as the **agent of the consignors of 17 containers containing liquor** which were seized by the RMCD had brought an action against the respondents seeking, inter alia, for a **declaration that the continuous seizure of the goods was unlawful and invalid, and for special, general, and exemplary damages.**
 - The High Court found that the **appellant's ownership of the goods and letters from the consignors appointing the appellant as their agent were doubtful**, as such, **the appellant had no locus standi to bring the claim to the court.** Premised on this finding, the High Court dismissed the appellant's claim with costs and this decision was affirmed by the Court of Appeal, hence, the present appeal.

Key cases involving RMCD overreach and judicial trends

- Decision of the Federal Court:
 - Section 128(1) of Act 235 provided inter alia, **all seized goods, where there was no prosecution, were deemed to be forfeited after one month from the date of the seizure unless the existence of facts as stated under s 128(1)(a), (b) or (c).** Next, **if there was a claim under s 128(1)(a) as alleged by the appellant in the present case, the claim must be referred to the Director General who then had two choices; either to release the goods to the claimant or if not, to direct the senior officer of RMCD to refer the matter to a Magistrate for decision.**
 - In this regard, pursuant to s 2 of Act 235, **an agent was considered an ‘owner’ who may claim for the goods under s 128(2) of Act 235.** The uncontroverted facts showed that the appellant was the agent of all the consignors.

Key cases involving RMCD overreach and judicial trends

- Decision of the Federal Court:
 - The court found that the **non-consideration by the trial judge on s 128 had prejudiced and caused a miscarriage of justice to the consignors**. In addition, the **finding** of the High Court as affirmed by the Court of Appeal that the **appellant had no locus standi was against the weight of evidence**. In the circumstances, the court found that there was insufficient judicial appreciation of the evidence by **both the High Court and the Court of Appeal which amounted to a plainly wrong decision** that warranted the intervention of the Federal Court

Key cases involving RMCD overreach and judicial trends

- **AGM Duty Free (Tengah) Sdn Bhd v Mohamad Hafiz bin Ishak & Ors [2025] 2 MLJ 474**

- In September 2022, Customs officers seized 2,430 cartons of beer ('the seized goods') from the appellant's premises and from its lorry on suspicion that an offence under s 135 of the Customs Act 1967 had been committed. No prosecution followed.
- In October 2022, the appellant sent the respondents a notice claiming for return of the seized goods. There was no response.
- On June 2023, the appellant, through its solicitors, notified the respondents that it would take legal action if the seized goods were not released. On June 2023, the investigating officer wrote to the appellant stating that investigations had been completed and that consent to prosecute the appellant had been obtained from the public prosecutor.

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Key cases involving RMCD overreach and judicial trends

- Decision of the Court of Appeal:
 - The respondents **did not commence any prosecution** against the appellant **within 30 days of the date of notice of seizure** as required under s 128(1) of the CA, **nor did they refer the appellant's claim to the court for an inquiry under s 128(4) of the CA upon expiration of 30 days from the date of the appellant's claim.** The respondents' **blatant refusal to comply with the law rendered the seizure wrongful and unlawful** entitling the appellant to damages.
 - The scheme of the provision clearly does not allow the respondents to be the persons to decide the status of the seized goods on the expiration of the 30 days from the date of the claim when there is a valid claim. Instead under s 128(3) and 128(4) of the Customs Act 1967, it is for the court to decide.

Key cases involving RMCD overreach and judicial trends

- Decision of the Court of Appeal:
 - The **High Court erred in holding that there was no timeframe under ss 128(3) and (3A) of the CA for the seized goods to be released or to be referred to the court on the expiration of 30 days.** The High Court had **misconstrued the interpretation of s 128(3) of the CA and had failed to follow the Federal Court's decision on the point in Sarmiina Sdn Bhd v Gerry Ho & Ors [2023] 4 MLJ 870.**
 - The **High Court violated art 145 of the Federal Constitution** when it usurped the prosecutorial power of the AG/PP under that article by ordering that the appellant be prosecuted within two months of receipt by the respondents of the sealed order

Questions?

Upcoming Talks

Date	Topic	Speakers
29 November 2025 (Wednesday)	Medical Negligence — How Much Do You Really Know? (In Mandarin)	Jason Lim & Joyce Wong



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Thank you!

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