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Speaker
**AGALYA
J. MUNUSAMY**
Partner



Moderator
AARON LIEW
Senior Associate

Wed 1 April 2026
3:00pm (GMT +8)

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MWKA ONLINE TALKS
From Seizure to Prosecution:
Caught For Evading Customs Duties



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- To share knowledge, raise awareness, encourage networking
- For clients, potential clients, in-house counsel
- Recent MWKA Online Talk:
 - 11.3.2026: Personal Liability of Directors: When the Corporate Veil Doesn't Protect You
- Upcoming MWKA Online Talk:
 - 8.4.2026: Strengthening Your Contracts in Uncertain Times: The Force Majeure Clause

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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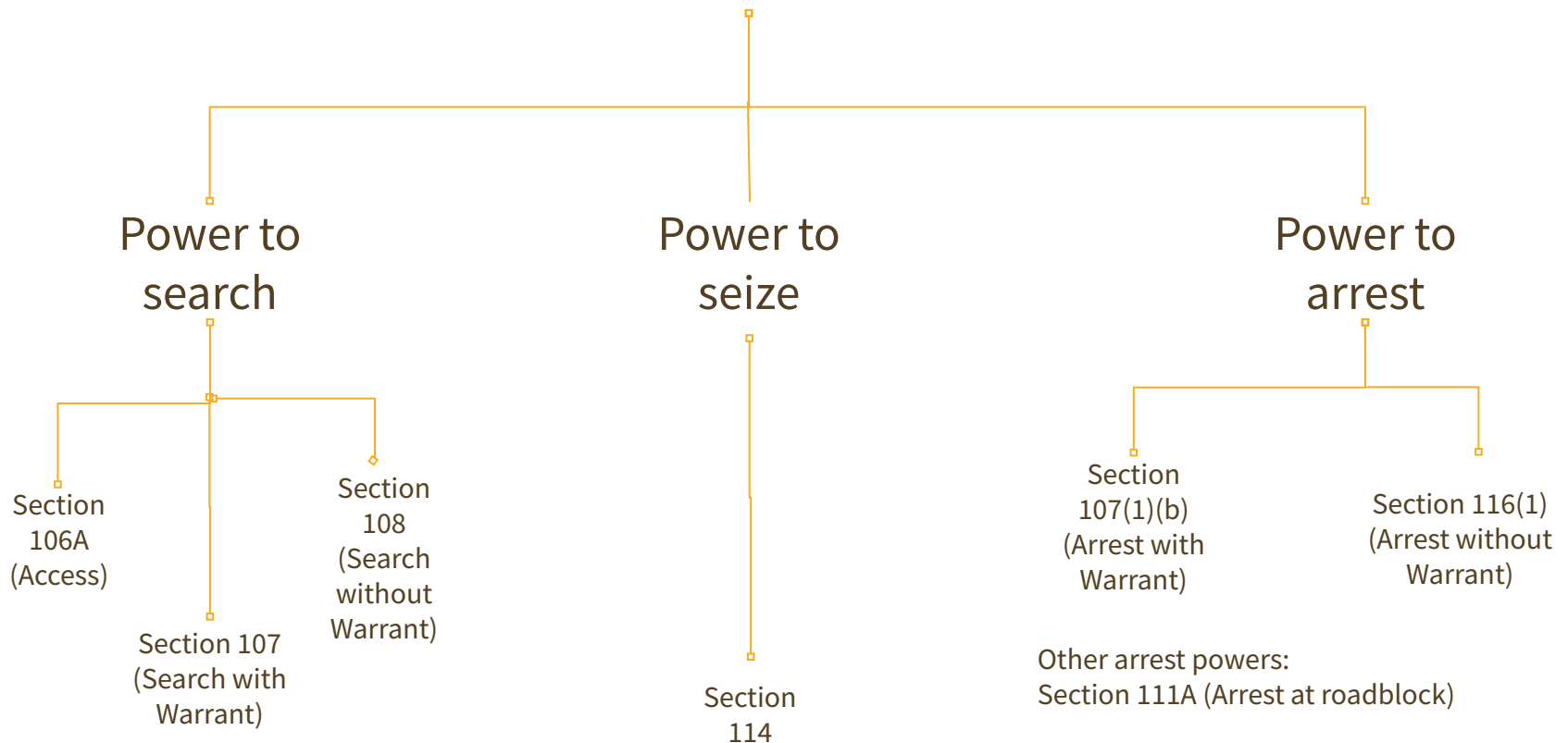
Talk Points

- Seizure of goods by the Customs Department
- Criminal prosecution
- Forfeiture proceedings
- Case Study and Analysis

Seizure of goods by the Customs Department

Power to search, seize and arrest

Customs Act 1967



Other search powers: Section 109 (Vessels),
Section 111 (Search conveyances), Section
113 (Search of persons)

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What can be seized?

- Under the wide powers of Section 114 of the Customs Act 1967, Customs officers may seize:
 - Goods
 - Any goods suspected to be: (i) involved in a offence or (ii) in breach of any licence/permit requirement
 - Conveyances
 - Any vehicle used in connection with the offence, including
 - cars, lorries, motorcycle
 - Vehicles can be seized even when you are not the owner of the vehicle or goods seized found in the vehicle

What can be seized?

- Under the wide powers of Section 114 of the Customs Act 1967, Customs officers may seize:
 - Containers and packaging
 - boxes
 - containers
 - storage units
 - Documents and records
 - invoices
 - shipping related documents (eg. Bill of Lading, Inward Manifest etc)
 - business records & dealings

What can be seized?

- Under the wide powers of Section 114 of the Customs Act 1967, Customs officers may seize:
 - Containers and packaging
 - boxes
 - containers
 - storage units
 - Documents and records
 - invoices
 - shipping related documents (eg. Bill of Lading, Inward Manifest etc)
 - business records & dealings

Effect of Seizure by Customs Department

- What happens to goods/vehicles that are seized?
 - Pursuant to Section 115 of the Customs Act:
 - Seized goods are placed under the control and custody of Customs
 - Customs may:
 - Return (with bond), detain, store, remove, sell or destroy of the goods as appropriate
 - The goods are preserved pending investigation, forfeiture, or prosecution in court (used as evidence in trial)

Effect of Seizure by Customs Department

- What happens to goods/vehicles that are seized?
 - Pursuant to Section 126 of the Customs Act 1967
 - All seized goods shall be liable to forfeiture; and
 - All forfeited good shall be disposed off according to the directions of the Director General of Customs
 - Pursuant to Section 127(1) of the Customs Act 1967
 - Only court can order for forfeiture of any seized goods if it has been proven that an offence under the Customs Act 1967 has been committed

Important definition of goods

- What is dutiable goods?
 - “dutiable goods” means all goods subject to the payment of customs duty and on which such duty has not yet been paid - Section 2 of the Customs Act 1967
- What is uncustomed goods?
 - “uncustomed goods” means goods in respect of which a breach of the provisions of this Act or of any subsidiary legislation made thereunder has been committed - Section 2 of the Customs Act 1967

Important definition of goods

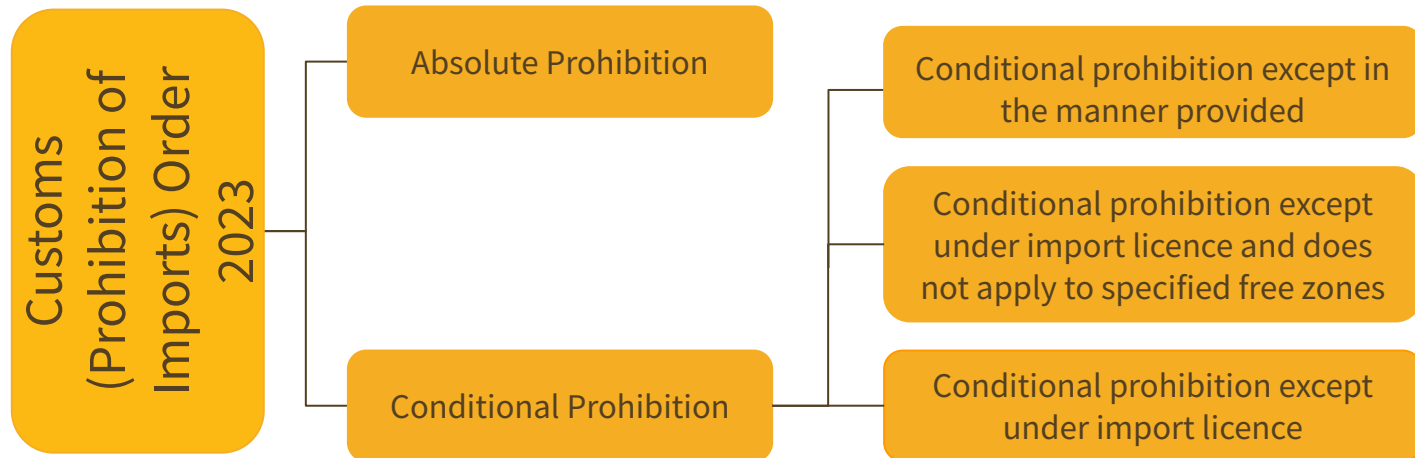
- Key characteristics of dutiable goods:
 - Lawful goods
 - Duty is payable but not yet settled
 - Still within customs control (e.g. port, warehouse)
 - Examples:
 - Imported goods awaiting clearance
 - Goods in bonded warehouse
 - Goods pending duty payment
- These are legal goods but those involving incomplete compliance. Once legal compliance is observed, they become lawfully imported goods.

Important definition of goods

- Key characteristics of uncustomed goods:
 - Goods in respect of which there has been a violation, such as:
 - Non-payment of duty
 - False declaration
 - Smuggling
 - Breach of licence/permit conditions
 - Examples:
 - Goods brought in without declaration
 - Undervalued imports
 - Prohibited goods imported without licence
- Ultimately, these are illegal and unlawful goods.

Where are the restrictions?

- The Customs Act 1967 is silent on what goods can be imported and exported.
- Where can a person find what goods are subject of an offence if imported?
 - Customs (Prohibition of Imports) Order 2023
 - In operation since 15.4.2023



Criminal Prosecution

Smuggling Offences

Section 133 of the Customs Act (Incorrect Declarations)

- A person commits an offence if they:
 1. Make False Declarations
 - Provide any declaration or document that is:
 - Untrue, or
 - Incorrect in any material particular
 2. Use or Submit False Documents
 - Submit false information to Customs
 - Use documents knowing they are inaccurate

Smuggling Offences

Section 133 of the Customs Act (Incorrect Declarations)

- A person commits an offence if they:

3. Forge or Falsify Documents

- Counterfeit or falsify:
- Customs documents
- Use or assist in using such documents

4. Tamper with Official Documents

- Alter documents fraudulently
- Forge Customs seals, signatures or markings

Smuggling Offences

Section 133 of the Customs Act (Incorrect Declarations)

- A person commits an offence if they:

5. Fail to Declare Goods

- Do not declare imported or exported dutiable goods as required

6. Fail to Produce Required Documents

- Refuse or fail to provide documents when requested by Customs

7. Fail to Comply with Declaration Procedures

- Do not submit declarations:
- In the required form
- Within the required time

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Smuggling Offences

Section 133 of the Customs Act (Incorrect Declarations)

- Penalties:
 - Fine up to RM500,000, or
 - Imprisonment up to 7 years, or both

Smuggling Offences

Section 135(1) of the Customs Act (Smuggling/Evasion)

- A person commits an offence if they knowingly:
 - Import/export uncustomed or prohibited goods
 - Example: Being involved in bringing illegal or undeclared goods into or out of Malaysia
 - Ships, unloads, delivers or assists with such goods
 - Helping to move, deliver, or handle illegal or undeclared goods by ship
 - Removes goods illegally from customs control
 - Taking goods out of customs control without permission

Smuggling Offences

Section 135(1) of the Customs Act (Smuggling/Evasion)

- A person commits an offence if they knowingly:
 - Harbours, keeps, conceals or possesses such goods
 - Example: Keeping, hiding, storing or having illegal or undeclared goods
 - Deals with goods with intent to defraud or evade duty/law
 - Handling goods in a way that avoids paying duty or breaks customs rules
 - Denies having goods but is later found with them
 - Saying you have nothing to declare but actually carrying dutiable or prohibited goods

Smuggling Offences

Section 135(1) of the Customs Act (Smuggling/Evasion)

- A person commits an offence if they knowingly:
 - Fraudulently evade duty or prohibition
 - Example: Being involved in any scheme to cheat customs duties or bypass import/export restrictions

Smuggling Offences

Section 135(1) of the Customs Act (Smuggling/Evasion)

- Penalties:
 - Dutiable Goods (Duty Can Be Calculated)
 - First Offence: Fine 10x – 20x the duty (or RM50,000 – RM500,000, whichever higher) OR jail up to 5 years
 - Repeat Offence: Fine 20x – 40x the duty (or RM100,000 – RM1,000,000, whichever higher) OR jail up to 7 years
 - Uncustomed Goods (Not Dutiable / Not Prohibited)
 - Eg: Goods that are not subject to duty, but have still breached customs laws
 - Fine up to 2x value of goods or RM10,000 (whichever higher) (No imprisonment specified here)

Smuggling Offences

Section 135(1) of the Customs Act (Smuggling/Evasion)

- Penalties:
 - Prohibited Goods (General)
 - First Offence: Fine 10x – 20x the duty (or RM50,000 – RM500,000, whichever higher) OR jail up to 5 years
 - Repeat Offence: Fine 20x – 40x the duty (or RM100,000 – RM1,000,000, whichever higher) OR jail up to 7 years

Smuggling Offences

Section 135(1) of the Customs Act (Smuggling/Evasion)

- Penalties:
 - Cigarettes / Intoxicating Liquor (Dutiable)
 - First Offence: Fine 10x – 20x duty (or RM100,000 – RM500,000, whichever higher) AND/OR Jail: 6 months – 5 years (minimum jail sentence applies)
 - Repeat Offence: Fine 20x – 40x duty (or RM200,000 – RM1,000,000, whichever higher) AND/OR Jail: 6 months – 7 years (minimum jail sentence applies)

Smuggling Offences

Section 135(1) of the Customs Act (Smuggling/Evasion)

- Penalties:
 - Cigarettes / Intoxicating Liquor (Prohibited)
 - First Offence: Fine 10x – 20x duty (or RM100,000 – RM500,000, whichever higher) AND/OR Jail: 6 months – 5 years (minimum jail sentence applies)
 - Repeat Offence: Fine 20x – 40x duty (or RM200,000 – RM1,000,000, whichever higher) AND/OR Jail: 6 months – 7 years (minimum jail sentence applies)

Forfeiture Proceedings

Forfeiture under the Customs Act

- Section 127(1) of the Customs Act (Mandatory forfeiture provision)

1) An order for the forfeiture or for the release of anything liable to forfeiture under this Act shall be made by the court before which the prosecution with regard thereto has been held, and an **order for the forfeiture of goods shall be made if it is proved to the satisfaction of the court that an offence against this Act or any regulation made thereunder has been committed and that the goods were the subject matter of or were used in the commission of the offence** notwithstanding that no person may have been convicted of such offence.

Forfeiture under the Customs Act

- Section 128 of the Customs Act (Procedure for Forfeiture)
 - (1) **If there be no prosecution** with regard to any goods seized under this Act, such goods or the proceeds of sale of such goods which are held pursuant to paragraph 115(1)(c) **shall be taken and deemed to be forfeited at the expiration of thirty days from the date of the notice of seizure** of the goods unless, before such expiration—
 - (a) a claim to such goods or the proceeds of sale of such goods **is made under subsection (2)**;
 - (b) a **written application is made for the return** of such goods under paragraph 115(1)(a) or (b); or
 - (c) such **goods are returned under the said paragraph (a) or (b)**.

Section 128 of the Customs Act 1967

- Section 128(1) of the Customs Act 1967
 - If there is no prosecution, seized goods are deemed forfeited after 30 days unless a claim or application is made, or the goods are returned.
 - Simplification: If no one is prosecuted, the goods will automatically be forfeited after 30 days unless someone acts in time.
- Section 128(2) of the Customs Act 1967
 - A person claiming to be the owner and saying the goods are not liable to forfeiture may give written notice of claim.
 - Simplification: The owner must formally tell Customs in writing that they are claiming the goods and saying the goods should not be forfeited.

Section 128 of the Customs Act 1967

- Section 128(3) of the Customs Act 1967
 - If a claim or written application is made within 30 days and there is still no prosecution, the senior customs officer must refer the matter to the Director General.
 - Simplification: If a claim is made on time and no charge is filed, Customs must escalate the matter to the Director General.
- Section 128(3A)(a) of the Customs Act 1967
 - The Director General may direct that the goods, sale proceeds, or security be released.
 - Simplification: The Director General can decide to release the goods, the money from the goods, or any security paid.

Section 128 of the Customs Act 1967

- Section 128(3A)(b) of the Customs Act 1967
 - The Director General may direct the matter to be referred to a First Class Magistrate for decision.
 - Simplification: The Director General can also send the dispute to court for the Magistrate to decide.
- Section 128(4) of the Customs Act 1967
 - The Magistrate summons the claimant and the person from whom the goods were seized, hears the matter, and if an offence is proved and the goods were linked to it, orders forfeiture; if not, the goods, proceeds, or security may be released.
 - Simplification: The court will hear from the relevant parties and decide whether the goods should be forfeited or returned.

Forfeiture under the Customs Act

- Section 129 of the Customs Act (Goods or amount forfeited may be refunded to owner)

The **Minister** may, upon **application made to him in writing through the Director General**, order—

(a) **any goods seized** under this Act; or

(b) any amount secured under paragraph 115(1)(a) or (b) or the amount realized by sale under paragraph 115(1)(c); **whether forfeited, or taken and deemed to be forfeited, pursuant to section 127, 128 or 131, to be delivered or refunded**, as the case may be, **to the owner** provided that the **application shall be made** before the expiration of **one calendar month from the date on which such goods or amount are forfeited** or are taken and deemed to be forfeited

Case Study & Analysis

Case Study on seizure and forfeiture

- Keng Soon Finance Berhad v Pegawai Kanan Kastam, Johore Bahru [1981] 2 MLJ 249 (FC)
 - Customs officers set up an ambush and blocked the road, but the motor car drove past the barrier, crashed into a ditch, and was abandoned with dutiable goods inside. No one claimed the goods, although the applicant later claimed ownership of the car and was summoned to a forfeiture inquiry. The Sessions Court found that the car had been used in the offence of conveying dutiable goods and ordered forfeiture, which was upheld by the High Court.
 - The Federal Court held:

*“if the court is satisfied after considering the whole of the materials before it **that an offence against the Act has been committed and that the goods were the subject matter or the vehicle was used in the commission of such offence, then in that event, but not otherwise, it is mandatory for the court to make an order for forfeiture.**”*

Case Study on seizure and forfeiture

- PP v Nasrun Effendi [2008] 4 MLJ 272(HC)
 - The Magistrate's Court ordered that certain exhibits, including a boat named "KM Selamat", be forfeited to the Royal Malaysian Customs Department pursuant to section 127(1) of the Customs Act. The respondent, dissatisfied with the decision, filed an appeal to the High Court, which has yet to be heard. In the meantime, the respondent filed an application under section 407 of the Criminal Procedure Code seeking the release of the boat on a court bond.
 - The High Court held:

*"The provision of s 127 of the Customs Act regulates the manner in which a particular thing which formed the subject matter of a charge for a particular custom offence can be forfeited. Therefore the magistrate had no other choice but to follow that particular manner which had been fixed. In the circumstances, **the magistrate had acted properly when he ordered the forfeiture, among other things, the 'KM SELAMAT' boat on 1 October 2007, pursuant to s 127(1) of the Customs Act when the respondent pleaded guilty on the charge put before him and after being satisfied that the said boat was used to commit the said offence**"*

Case Study on seizure and forfeiture

- Chong Yin Kim v Public Prosecutor [2017] MLJU 1762 (HC)
 - The appellant was charged under section 135(1)(d) of the Customs Act 1967 for knowingly possessing prohibited goods, namely various liquors and beers. At the end of the prosecution's case, the trial judge acquitted the appellant without calling for his defence. Despite the acquittal, the court ordered the seized goods to be forfeited, and the appellant appealed against the forfeiture order.
 - The High Court held:

*“As can be gathered from the above case, central to a decision-making by the Court under Section 127(1) of the Act is the Court's satisfaction that both (as opposed to only one) of the conditions therein have been proven. Conversely, **if the Court is not satisfied that any or both of the said conditions have been proven, the Court is not to order forfeiture of the seized goods.**”*

Case Study on seizure and forfeiture

- Oceanborne Agencies Sdn Bhd v PP [1997] MLJU 349 (HC)
 - The appellant, acting as an agent of a vessel, was charged for making an incorrect declaration in the ship's manifest, which did not accurately reflect the contents of a container. The trial court acquitted the appellant but still ordered forfeiture of the goods under section 127 of the Customs Act. The appellant appealed against the forfeiture, arguing that no offence under the Act had been proven to justify such an order.
 - The High Court held:

***“Since no offence have been committed in respect of the goods the question of forfeiture does not arise under section 127 of the Act. The goods should have been released. I allow the appeal against the order of forfeiture. I set aside the order of the learned Magistrate and order that the goods together with the container be returned to the appellant.*”**

Case Study on incorrect declaration

- Public Prosecutor v Trans-Coastal Sdn Bhd and another appeal [2024] 6 MLJ 257 (CA)
- Facts
 - Trans-Coastal (a shipping agent) declared containers as machinery based on shipper's information
 - Customs inspection later found the containers actually contained beer (liquor)
 - The company was charged for making false declarations under section 133
- Issue: Is a shipping agent liable for false declaration if it relied on information from the shipper and could not verify the contents?

Case Study on incorrect declaration

- Public Prosecutor v Trans-Coastal Sdn Bhd and another appeal [2024] 6 MLJ 257 (CA)
- Court of Appeal findings:
 - Section 133 is a strict liability offence, but
 - A valid defence still exists where:
 - The agent had no knowledge, and
 - Could not reasonably verify the contents
 - The Court of Appeal accepted that:
 - Containers were sealed by the shipper
 - The agent relied on shipping instructions in good faith
 - It is industry practice that agents do not verify contents

Case Study on incorrect declaration

- Public Prosecutor v Trans-Coastal Sdn Bhd and another appeal [2024] 6 MLJ 257 (CA)
- Decision
 - No criminal liability for the agent
 - Acquittal in one appeal upheld and conviction in another appeal was set aside
 - Agent acted bona fide and reasonably
- Even in strict liability offences, liability may not arise if the accused genuinely had **no knowledge and no ability to verify the truth of the declaration.**

Defences in Smuggling Offences

Defence

- There are various smuggling offences in Section 135(1)(a) - (g) of the Customs Act 1967
- Elements of the charge vary according to each subsection
- There is no standard element to prove with the exception of the status of the goods. It must be proven to be either prohibited goods or uncustomed goods
- The burden of proof to prove the status of the goods remain with the prosecution throughout the trial
- If any subsection refers to knowledge of the accused (using word “knowingly”), the element of knowledge too must be proved by the prosecution to secure a prima facie case.
- Only after prima facie case is proven, defence will be called

Defence

- Various defences available:
 - No knowledge
 - Status of the goods are not proven
 - Gaps in investigations or incomplete investigation
 - Procedural irregularities such as irregularities in valuation report, chemist report etc
 - Exclusive possession of uncustomed goods cannot be proven
 - Wrongful arrest/not the right accused/victim of circumstance

Case Study on defences

- Wolfgang Pzetzholt v Public Prosecutor [1970] 2 MLJ 195
 - Charged under Section 135(1)(d) and (e) Customs Act 1967
 - It must be proven that the accused:
 - knowingly possessed of prohibited goods; and
 - knowingly dealing (selling) uncustomed goods
 - The appellant in his defence narrated how he had at Singapore obtained all the impugned goods referred to in the charges. According to him the customs authorities at the Johore causeway checked those goods and allowed him to bring them with him in the bus in which he was travelling as a passenger

Case Study on defences

- Wolfgang Pzetzholt v Public Prosecutor [1970] 2 MLJ 195
 - The appellant maintained that he did not know the laws of this country, that he came here as a tourist from Germany, that having brought the goods without any ado from the customs at Johore, it was unfair and improper that he should be punished for what might have been negligence of the customs officers at the Johore causeway.
 - I am of the view that the learned president did not adequately consider the import and significance of the word “knowingly” in the definition of the offence under section 135(1)(d) and did not direct his mind at all to the absence of cross-examination of the appellant and his witness by the prosecution and to the quantum of proof which the law requires the accused to rebut a statutory presumption in the light of the observations of the Privy Council in the case of Public Prosecutor v P Yuvaraj [1969] 2 MLJ 89.

Case Study on defences

- Wolfgang Pzetzholdt v Public Prosecutor [1970] 2 MLJ 195
 - In order to convict a person under section 135(1)(e) of the Customs Act, 1967, mere knowledge on his part that the goods are uncustomed or prohibited goods is not enough. The sub-section further requires that there should also be an intent to defraud the government of the duty payable or to evade any of the provisions of the Act, or to evade any prohibition applicable to such goods
 - The appeal is allowed. The order of the learned president is set aside and an order of acquittal and discharge of the appellant is substituted therefore.

Case Study on defences

- Public Prosecutor v Shathis Rao a/l Krishnan & Anor [2026] MLJU 149
 - Accused was charged under Section 135(1)(d) of the Customs Act 1967.
 - The Magistrate Court found that the prosecution failed to establish a prima facie case.
 - On appeal it was held:
 - Where the prosecution's own evidence shows that the investigation only focused on the respondent operating without a valid excise licence, and not on finding uncustomed goods, the evidence is weak to prove that the respondent knew such goods present in the premises.
 - for offences under section 135(1)(d) of the Customs Act 1967, the prosecution must first establish knowing possession of uncustomed goods before any statutory presumption of knowledge may arise

Case Study on defences

- Public Prosecutor v Shathis Rao a/l Krishnan & Anor [2026] MLJU 149
 - On appeal it was held:
 - the burden lies throughout on the prosecution to prove, at the prima facie stage and beyond reasonable doubt, two essential elements: first, that the accused were in possession, custody, or control of the goods; and second, that such possession was accompanied by knowledge
 - possession in criminal law requires proof of control, custody, and conscious knowledge, and cannot be assumed simply because the accused is found at the premises. Applying this principle, the Magistrate took into account the evidence that several boxes of liquor were sealed, had not been opened or verified in the presence of the respondents, and that their contents were only identified later during the investigation

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Case Study on defences

- Public Prosecutor v Shathis Rao a/l Krishnan & Anor [2026] MLJU 149
 - On appeal it was held:
 - There were material inconsistencies between the evidence of the raiding officer (SP1) and the investigating officer (SP7) on whether the boxes were checked at the scene and whether the respondents were ever shown the items alleged to be “barang tak berkastam” or duty unpaid. These inconsistencies were not minor. They directly addressed the issue of knowledge, specifically whether the respondents were aware of the nature and legal status of the goods.
 - In criminal proceedings, where doubts arise from gaps or contradictions in the evidence on essential elements, those doubts must operate in favour of the accused: *PP v Mohd Radzi Abu Bakar*

Case Study on defences

- Public Prosecutor v Lee Swee Chee [2020] MLJU 2630
 - The accused was charged under Section 135(1)(d) Customs Act 1967
 - After the close of prosecution's case, the Magistrate found that the prosecution failed to establish a prima facie case
 - The accused refused to open the gate and told customs officers that the house belonged to her uncle. The accused person told the officers that she had to call her uncle first before letting the party inside the house. She then went inside the house. After few minutes, she came back to tell them that she was unable to reach her uncle.
 - The conduct of the accused person was relevant under s. 8 of the Evidence Act. Nonetheless, when she was approached by the Customs Officers, she informed that she needed to call her uncle and claimed the place belonged to her uncle. This fact was stated by the SP1, SP2 and SP3 in the examination in chief. None of these three witnesses made any enquiry about the uncle.

Case Study on defences

- Public Prosecutor v Lee Swee Chee [2020] MLJU 2630
 - The accused person supplied the name of her uncle, which was Lee CH, and his phone number was 012-353xxxx. SP6 was also informed by the sister of the accused person that the impugned items belonged to their uncle. SP6 admitted the only thing she did in relation to this information was to make a phone call to the number 012-355xxxx, which was not successful. She had no other venture in investigating this information.
 - I am of the opinion this uncle is not an imaginary character. This little or no effort on the part of SP6 to investigate this uncle is fatal to the prosecution's case. This, in law, is known as "Alcontara Notice", which gives rise to a duty upon the prosecution to check the veracity of the fact.
 - The premise where the impugned items were found was also occupied by many others as in the evidence of prosecution's witnesses.

Case Study on defences

- Public Prosecutor v Lee Swee Chee [2020] MLJU 2630
 - Inside the house, as in photos P4, there was evidence that there were other residents inside the house. The impugned items were found in the living room area, a store beneath the stairs and in the kitchen as per evidence of SP2. These three areas were common areas inside a house, accessible by any of the occupants.
 - The prosecution had not adduced any evidence that pointed to the accused person as the sole individual having possession of the item in exclusion of others who were also resided inside the house. There was a valid inference that others might have possession of the items as well, which situated at common areas.
 - The absence of “fit (or intended) for use as a beverage” in the chemist report is fatal to the prosecution case. The label found on the bottles could not assist the prosecution in proving the items were fit for use as beverage, for it was hearsay

Questions?

Upcoming Talks

Date	Topic	Speakers
8 April 2026 (Wednesday)	Strengthening Your Contracts in Uncertain Times: Understanding Force Majeure	Cassandra Nicole Thomazios & Anis Mohd Sohaimi



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Complimentary Consultation

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Thank you!

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