

GMAP Internship Report / GMAP インターンシップ報告書

No. 2020-02

I. Basic information / 基本情報

- 1) Name / 名前: Helen Huang
- 2) Enrolled year / 入学年: 2019
- 3) Period of internship / インターン期間: 01 November 2020 ~ 30 November 2020
- 4) Place of internship / インターン場所: Jeff Leong, Poon and Wong Law Firm (online)
- 5) Person who accepted your internship / インターン受入担当者: Anne Wong
- 6) Content of work in your internship / インターン中の作業内容: Death penalty and punishment of whipping in Malaysia; IPO; Director's duty in private company

II. Details and impressions / 詳細と感想

Due to the pandemic, I performed my internship online with JLPW law firm from Malaysia, from which I deeply acknowledged that a country's law truly reflects its culture and religion and other aspects as well. Here I'd like to share my experience gained from my two important tasks.

My first task was to help my team to summarize all the criminals for the death penalty and the conditions under which the punishment of whipping is applicable. I am very interested in it because the punishment of whipping is a very ancient and old punishment in China's history that had already been abandoned in its legal regime. Furthermore, because of the diversity of the religion in Malaysia, the application of whipping as a punishment varies accordingly. For example, the whipping is applicable only to man, but in religious court to both man and woman. For the death penalty, Malaysia applies the execution of hanging which is again totally different from China because China applies shooting. Even in ancient China, hanging had never been used as an official primary death penalty, but only as a grace offered by the emperor to his close family members or high ranking officials when they committed serious crimes. They committed suicide by a white clothing rope (offered by the emperor) hanging across the beam of the house, through which they can keep their body unscathed since, in ancient China, the death penalty usually means your body would be ravaged. This is the reason why it was considered as a grace from the emperor.

My second task was to help a team member to analyze an old case of dispute over shares between two private family companies with regard to the duties of the director of the company. It is a very typical and complicated case. The two parties were in a good relationship till their dispute erupted. The plaintiff agreed, under the request of the defendant, to pledge his company ("Palmco") share to the bank to help the defendant take out the loan from the bank to purchase its special shares (issued by Palmco to the minority group which excludes the plaintiff by Malaysia's law). There was no written agreement regarding the loan of these shares and neither was there any board resolution of the plaintiff approving this exercise. The only documentary evidence for this "transaction" was the memorandums of deposit executed by the plaintiff in favour of the banks granting the loans. The "transaction" happened in 1984 and in 1989 the defendant failed to pay its debt to the bank due to the recession in Malaysia. The pledge was force sold by the bank. Therefore the plaintiff filed an action in the High Court against the defendant with the claims including recovering his shares pledged to the bank in favour of the defendant.

The defendants defended that they had an oral agreement that the plaintiff agreed to pledge its shares just in the consideration of the transaction of defendants' 500,000 special shares (which were held on

trust by the defendants in the pool account for the plaintiff). Such transaction of special shares was against the law, so it was voided and unenforceable.

The defendants defended further that the plaintiff's pledge violated the section 133A(b) of the Companies Act 1965 (*A company shall not enter into any guarantee or provide any security in connection with a loan made to such person by any other person*), because of the fact that at the material time the defendant was a director of Palmco together with three other directors of the plaintiff and as such the plaintiff ought not to provide any security in favour of the defendant for the loans.

Since the "transaction" happened in 1984 and that section of law took in effect in 1987, both the high court and the court of appeal decided that the plaintiff did not violate s 133A.

This case also related to the self-incrimination statement of the witness from the defendant, the withdrawal of this statement, and whether the judge performed his duty in the due process regarding the removal of that statement. This case taught me how to analyze a case in different aspects and the solid practice that all the decisions of the court on the merits of the case should come from the evidence without a doubt.

What I am always thinking afterward is what if the "transaction" happened after 1987. Can the plaintiff be entitled to recover his lost shares when he violated the law regarding his duty as a director? I believe he can because the Companies Act 1965 also emphasizes that *Nothing in this section shall operate to prevent the company from recovering the amount of any loan or the amount for which it becomes liable under any guarantee entered into or in respect of any security provided in contravention of this section.*

I truly benefit a lot from my internship not only from cases but also from the attitude of my team lawyers and the manner and professional way they dealt with their businesses. Hereby I'd like to express my thankfulness to JLPW law firm and to my supervisor Professor Akira Saito for their efforts to and arrangement of my internship.

7th, Dec. 2020