

# What is a MEMORANDUM OF UNDERSTANDING?

“A memorandum of understanding is usually a bilateral or multilateral parties’ agreement to the terms in a non-formal way. It usually reflects the intent of the parties. It is often said to be a gentleman agreement...”

(Baldah Toyyibah (Prasarana)

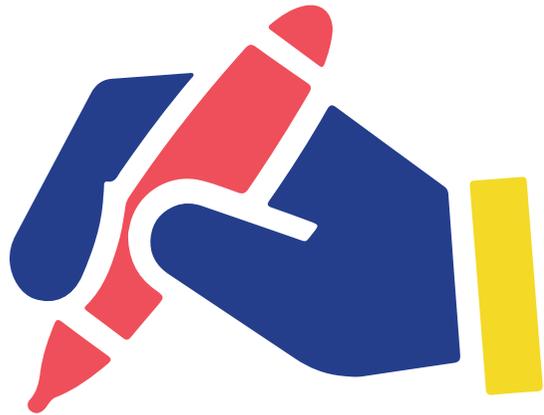
Kelantan Sdn Bhd v Dae Hanguru Infra Sdn Bhd and another appeal [2020] 5 MLJ 630)



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**Generally**, if the MOU is subject to a formal and definitive agreement, then a MOU would not be binding. *Kheamhuat Holdings Sdn Bhd v The Indian Association, Penang* [2006] 4 MLJ 656 held the following:



## **IS A MOU ENFORCEABLE BY LAW?**

“(1) As a whole, the MOU itself was subject to a formal agreement which was to be negotiated, prepared and agreed by the parties through their respective solicitors (see para 27). Therefore, the MOU was nothing more than a basis for negotiations and the parties did not intend to be bound by the MOU until a formal agreement was executed”

Nevertheless, whether a MOU is enforceable depends on the intention of the parties when parties entered the MOU (*Abdul Rahim bin Syed Mohd v Ramakrishnan Kandasamy Wan Ahmad Azlan bin Wan Majid & Anor, interveners and another action* [1996] 3 MLJ 385).



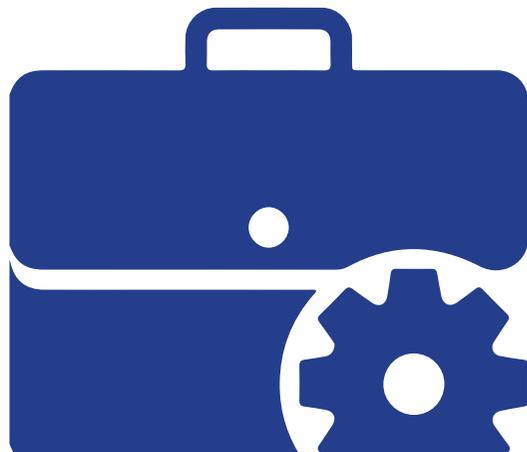
Abdul Rahim bin Syed Mohd v  
Ramakrishnan Kandasamy (Wan Ahmad  
Azlan bin Wan Majid & Anor, interveners)  
and another action [1996] 3 MLJ 385

# Brief Facts:

- The Plaintiff (“purchaser”) and the Defendant (“vendor”) had entered a MOU for a purchase of a house.
- In accordance with the MOU, the purchaser paid a deposit of 1% of the purchase price and further agreed to pay another 9% upon signing of a formal sale and purchase agreement (“SPA”) on or before 8 October 1993.
- The purchaser only signed the SPA on 11 October 1993.
- The vendor did not sign the SPA on the ground that it was not signed by the purchaser within time.
- The purchaser sued the vendor for specific performance of the SPA.

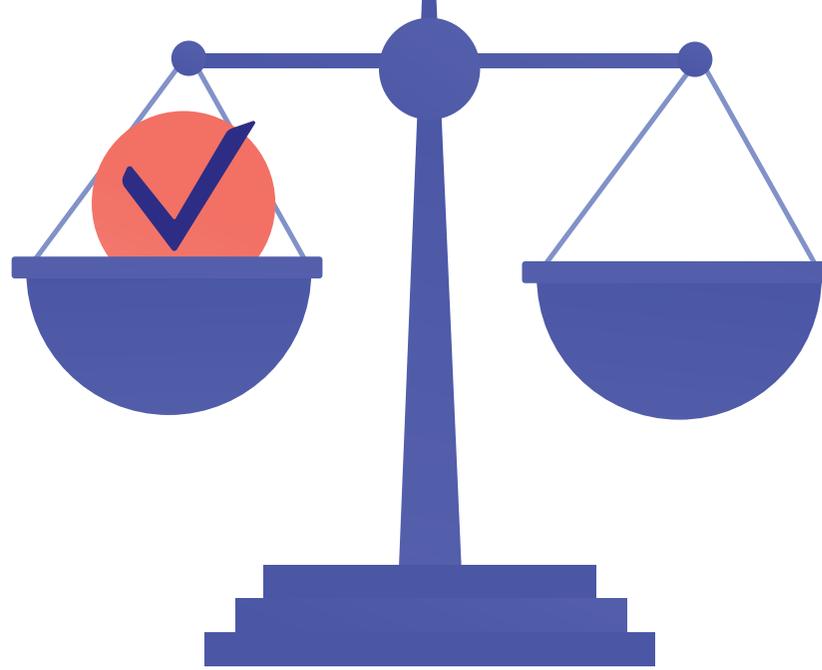
## Issue:

Whether the MOU  
was a binding agreement



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# Decision:



The Court dismissed the purchaser's claim and held the following:

“(3) Considering the MOU as a whole, and in particular, the objective of the MOU, the 'genesis of the agreement' and the intention of the parties at the time of the signing, the MOU was not a legally binding agreement, and as such, unenforceable (see p 401B-C).”

(4) A legally binding agreement could only come into force upon the execution of the formal sale and purchase agreement, by which time the parties would have considered all aspects of the sale in detail, and a formal agreement prepared by the solicitors to cover all these aspects of the sale for execution....”



# Key Takeaways

A MOU is generally non-binding.

However, a MOU may be binding provided that the parties had the intention of entering into a binding agreement and all elements of an agreement were fulfilled.

Consequently, if the parties do not intend to be bound by the MOU, parties should clearly state their intentions in the MOU and a non-binding MOU would usually include the words “subject to” a formal and definitive agreement.

In any event, parties are advised to seek legal advice before entering a MOU to ensure the same encompasses the intention of the parties.