

Contracting Risk in the Oil and Gas Industry

*A Comparative Legal Study of Malaysia, the UK,
and the US*

By

Wan Mohd Zulhafiz bin Wan Zahari

Contracting Risk in the Oil and Gas Industry: A Comparative Legal
Study of Malaysia, the UK, and the US

By Wan Mohd Zulhafiz bin Wan Zahari

This book first published 2026

Ethics International Press Ltd, UK

British Library Cataloguing in Publication Data

A catalogue record for this book is available from the British Library

Copyright © 2026 by Wan Mohd Zulhafiz bin Wan Zahari

All rights for this book reserved. No part of this book may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical photocopying, recording or otherwise, without the prior permission of the copyright owner.

ISBN Hardback: 978-1-83711-583-9

ISBN eBook: 978-1-83711-584-6

Table of Contents

List of Abbreviations	x
Table of Statutes	xii
Table of Cases	xiii
Preface	xx
Chapter 1: Understanding Risk and Liability in Malaysia's Oil and Gas Industry	1
Introduction	1
The Landscape of Industry Risks	1
Objectives and Significance of the Book	5
Approach and Sources	8
Structure of the Book	9
Conclusion	12
Chapter 2: Understanding Risk Allocation, Indemnity, and Hold Harmless Clauses in Oilfield Service Contracts.....	14
Introduction	14
Petroleum Contracts	15
Oilfield Service Contracts	17
Risk in the Oil and Gas Industry	23
Mechanisms of Contractual Risk Allocation in Oil and Gas Contracts	33
The Traditional Risk Allocation	59
Standard Form of Contract	61
IMCA General Contracting Principles.....	65
The Deepwater Horizon (Macondo) Case.....	67
Conclusion	87

Chapter 3: Risk Allocation and Indemnity Clauses in Malaysian Oilfield Service Contracts	90
Introduction.....	90
Petroleum Industry in Malaysia	91
General Overview of the Malaysian Legal Framework	95
Statutory and Judicial Approach to Indemnity Clauses in Malaysia	104
Empirical Analysis of Oilfield Service Contracts in Malaysia...	110
Analysis of the Indemnity and Hold Harmless Clauses of Operators A, B, and C.....	122
Liability with Regard to Personal Injury or Death of Employees and Loss of Property of the Parties	123
Claims by Third Party	133
Liability with Regard to Pollution.....	140
Insurance Coverage	147
Summary of Risk Allocation and Insurance Findings.....	151
Conclusion	151

Chapter 4: Risk Allocation and Indemnity and Hold Harmless Clauses in Oilfield Service Contracts in the United Kingdom	156
Introduction.....	156
The UK Oil and Gas Industry	157
Indemnity and Hold Harmless Clauses under English Law	158
Knock-for-Knock Indemnity Regime.....	160
Problem of Multiple Parties.....	168
Third Party Liability	172
Contracts (Rights of Third Parties) Act 1999	173
The Indemnity and Mutual Hold Harmless Deed ("IMHH Deed").....	174
Judicial Control of Knock-for-knock Indemnity under English Law	181
Statutory Control on Indemnity Clause under English Law	213

The “Guiding Principles”	219
Conclusion	227
Chapter 5: Risk Allocation and Indemnity and Hold Harmless Clauses in the United States of America	231
Introduction	231
The US Legal System	233
The Applicable Law	234
Outer Continental Shelf Lands Act (OCSLA)	234
Maritime Law	241
State Law	242
Texas Law	245
Texas Oilfield Anti-Indemnity Statute	253
Texas Anti Indemnity Act	265
Louisiana Law	269
Louisiana Oilfield Anti-Indemnity Act	274
The Louisiana Anti-Indemnity Act	288
Conclusion	292
Chapter 6: Discussion and Conclusion	299
Introduction	299
Analysis and Discussion	300
Suggestions and Recommendations	317
Malaysian Oilfield Anti-Indemnity Act	318
Future Study and Reform Directions	321
Conclusion	323
References	328

List of Abbreviations

Carigali	PETRONAS Carigali Sdn Bhd
EIA	Environmental Impact Assessment
GDP	Gross Domestic Product
JOA	Joint Operating Agreement
La. Rev. Stat. Ann	Louisiana Revised Statutes Annotated
LAIA	Louisiana Anti-Indemnity Act
LHWCA	Longshore and Harbor Workers' Compensation Act
LOAIA	Louisiana Oilfield Anti-Indemnity Act
MITI	Ministry of International Trade and Industry
MOF	Ministry of Finance
MOAIA	Malaysian Oilfield Anti-Indemnity Act
N.M. Stat. Ann	New Mexico Statutes Annotated
OBM	Oil-based mud
OCSLA	Outer Continental Shelf Land Act
Or. Rev. Stat.	Oregon Revised Statutes
PDA	Petroleum Development Act
PETRONAS	Perbadanan Petroliam Nasional (National Petroleum Corporation)
PS Contractors	Production Sharing Contractors
PSC	Production Sharing Contracts
TAIA	Texas Anti-Indemnity Act
Tex. Civ. Prac. & Rem. Code	Texas Civil Practice & Remedies Code
TOAIA	Texas Oilfield Anti-Indemnity Act
UCC	Uniform Commercial Code
UCTA	Unfair Contract Terms Act 1977
UK	United Kingdom
UKCS	United Kingdom Continental Shelf

US/ USA	United States of America
USC	United States Code
Wyo. Stat. Ann.	Wyoming Statutes Annotated

Table of Statutes

Malaysia

Civil Law Act 1956 (Revised 1972).
Civil Law Ordinance 1956.
Companies Act 1965 (Revised 1973).
Contracts Act 1950.
Federal Constitution.
Petroleum Development Act 1974.
Sabah's Application of Laws Ordinance 1951.
Sarawak's Application of Law Ordinance 1949.

United Kingdom

Consumer Credit Act 1974.
Contracts (Rights of Third Parties) Act 1999.
Law Reform (Miscellaneous Provisions) (Scotland) Act 1940.
Local Government Finance Act 1982.
Misrepresentation Act 1967.
Unfair Contract Terms Act 1977.

United States of America

Longshore and Harbor Workers' Compensation Act (LHWCA).
Louisiana Revised Statutes Annotated § 9:2780 (1999).
Louisiana Revised Statutes Annotated § 9:2780.1 (2015).
New Mexico Statutes Annotated § 56-7-2 (1978).
Oregon Revised Statutes § 30.140 (1999).
Outer Continental Shelf Land Act (OCSLA).
Texas Civil Practice & Remedies Code § 127.003 (1997).
Texas Civil Practice & Remedies Code §127.001.
Texas Uniform Commercial Code (UCC).
United States Code.
Wyoming Statutes Annotated § 30-1-131 (1999).

Table of Cases

Malaysian Cases

American International Assurance Co Ltd v Koh Yen Bee (f) [2002] 4 MLJ 301.

Amman Singh v. Vasudevan [1972] 1 LNS 7.

Ayer Hitam Tin Dredging Malaysia Bhd v YC Enterprises Sdn Bhd [1994] 2 MLJ 754.

Azman bin Mahmood & Anor v SJ Securities Sdn Bhd [2012] 6 MLJ 1.

Chin Hooi Nan v Comprehensive Auto Restoration Service Sdn Bhd [1995] 2 MLJ 100.

CIMB Bank Bhd v Maybank Trustees Bhd [2014] MLJU 117.

Fui Lian Credit & Leasing Sdn Bhd v Kim Leong Timber Sdn Bhd [1991] 1 CLJ 522.

Hotel Anika Sdn Bhd v Majlis Daerah Kluang Utara [2007] 1 MLJ 248.

Lee Kam Wah v. Associated Asian Securities (Pte) Ltd [1991] 3 MLJ 286.

Macon Works & Trading Sdn Bhd v Phang Hon Chin & Anor [1976] 2 MLJ 177.

Newfield Peninsula Malaysia Inc v The Owners of the Ship or Vessel 'Tanjung Pinang 1' [2013] 10 MLJ 650.

Ooi Boon Leong v. Citibank N.A. [1984] 1 MLJ 222.

Polygram Records Sdn Bhd v The Search [1994] 3 MLJ 127.

Saad Marwi v Chan Hwan Hua & Anor [2001] 3 CLJ 98.

Sabah Shell Petroleum Co Ltd & Anor v The Owners of and/or any other Persons Interested in The Ship or Vessel The 'Borcos Takdir' [2012] MLJU 606.

Sekawan Guards Sdn Bhd v Thong Guan Sdn Bhd [1995] 1 MLJ 811.

Siong Electronic Industries (1981) Sdn Bhd v. Sanyo Sales & Service Sdn Bhd [1997] MLJU 162.

South East Asia Insurance Bhd v. Nasir Ibrahim [1992] 2 MLJ 355.

Superannuation Fund Investment Trust v. Commissioner of Stamps (1979) 53 A.L.J.R. 614.

Syarikat Uniweld Trading v The Asia Insurance Co Ltd [1996] 2 MLJ 160.

Sze Hai Tong Bank Ltd v Rambler Cycle Co Ltd [1959] MLJ 200.

English cases

A Turtle Offshore SA v. Superior Trading (The A Turtle) [2008] EWHC 3034 (Admlty), [2009] 1 Lloyd's Rep 177.

Anderson v Fitzgerald (1853) 4 HLC 484; (1853) 10 ER 551.

Armitage v Nurse and Others [1997] 3 W.L.R 1046.

Arnold v Britton and others [2016] 1 All ER 1; also see [2015] UKSC 36.

AstraZeneca UK Limited v Albemarle International Corporation and Albemarle Corporation [2011] 2 C.L.C. 252.

Attorney General a/Belize and others v Belize Telecom Ltd and another [2009] UKPC 10.

Beswick v Beswick [1968] AC 58.

Caledonia North Sea Ltd v London Bridge Engineering Ltd ("London Bridge") [2002] UKHL 4, [2002] 1 Lloyd's Rep 553

Campbell v. Conoco (UK) Ltd. [2003] 1 All ER (Comm) 35.

Canada Steamship Lines Ltd v R [1952] 1 Lloyd's Rep 1; [1952] AC 192.

Currie v Misa (1875) LR 10 Exch 153.

De Beers UK Limited v Atos Origin IT Services [2010] EWHC (TCC).

EE Caledonia Ltd v Orbit Valve Co [1995] 1 All ER 174, [1994] 2 Lloyd's Rep. 239, [1994] 1 WLR (CA) 1515.

Farstad Supply A/S (Respondent) v Enviroco Limited (Appellant) [2010] UKSC 18, [2010] SLT 994.

Farstad Supply A/S v Enviroco Limited [2011] UKSC 16.

Farstad Supply AS v Enviroco Limited v ASCO UK Limited [2008] CSOH 63.

Farstad Supply AS v. Enviroco Ltd [2010] UKSC 18, 2010 SCLR 379.

Forder v Great Western Railway Co [1905] 2 KB 532.

Gillespie Bros & Co Ltd v Roy Bowles Transport Ltd [1973] QB 400.

Graham v Belfast and Northern Counties Railway Co [1901] 2 IE 13.

Great Scottish & Western Railway Co Ltd v British Railways Board (1993), unreported (CA), transcript 5.4.1993.

Guardian Assurance Co Ltd v Condoganis (1919) 26 CLR 231.

Hart v O'Connor [1985] A.C. 1000.

HIH Casualty & General Insurance Ltd v Chase Manhattan Bank [2003] UKHL 6, [2003] 2 Lloyd's Rep 297.

In Re City Equitable Fire Insurance Company Limited [1925] Ch 407.

In Re St. Piran Ltd. [1981] 3 All E.R. 270.

Internet Broadcasting Corporation Ltd (trading as NETTV) v. Mar LLC (MARHedge) [2009] EWHC 844 (Ch).

Investors Compensation Scheme Ltd vs West Bromwich Building Society [1998] 1WLR 896.

Karsales (Harrow) Ltd v Wallis [1956] 2 All ER 866.

Kwik Fit Insurance Services Ltd v Bull Information Systems Ltd and Graham Technology Plc [2000] EWHC 88 (TCC).

Lloyds Bank v Bundy [1975] QB 326.

Mir Steel UK Ltd v Morris [2012] EWCA Civ 1397.

Monarch Airlines Ltd [1997] C.L.C. 698.

Multiservice Bookbinding Ltd v Marden [1979] Ch.84.

Photo Production Ltd v Securicor Ltd [1980] AC 827.

Porter v Magill [2001] UKHL 67, [2002] 2 AC 357 (HL).

Procter & Gamble Company and others v Svenska Cellulose Aktiebolaget SC4 and another [2012] EWHC 498 (Ch).

Rainy Sky SA v Kookmin Bank [2011] UKSCSO.

Red Sea Tankers Ltd v Papchristidis [1997] 2 Lloyd's Rep 547.

Rimmer v. Liverpool City Council [1984] 2 W.L.R. 426.

Scruttons Ltd v. Midland Silicones Ltd [1961] UKHL 4 [1962] AC 446.

Seadrill Management Services Ltd v. OAO Gazprom [2009] EWHC 1530 (Comm); [2010] 1 Lloyd's Rep 543.

Shared Network Services Ltd v. Nextiraone UK Ltd [2012] EWCA Civ 1171.

Smedvig Ltd v Elf Exploration UK Plc (The Super Scorpio II) [1998] 2

Lloyd's Rep 659.

Smit International Deutschland GmbH v. Josef Mobius Bau-gesellshacft GmbH [2001] CLC 1545

Smith v Hughes (1871) LR 6 QB 597.

Smith v South Wales Switchgear Ltd [1978] 1 All ER 18.

Smith v UMB Chrysler (Scotland) Ltd 1978 SC (HL) 1.

Suisse Atlantique Societe d'Armement v. NV Rotterdamsche Kalen Centrale [1967] 1 AC 361.

The Tilia Gorthon [1985] 1 Lloyd's Rep. 52.

TNT Global SPA v Denfleet International Ltd. [2007] 1 C.L.C. 710.

Total Transport Corp v Arcadia Petroleum Ltd [1997] All ER 77.

Tradigrain SA v Intertek Testing Services [2007] EWCA Civ 154.

Walters v Whessoe Ltd and Shell Refining Co. Ltd (1960) 6 BLR 23.

Westerngeco v ATP Oil & Gas [2006] EWHC 1164 (COM).

Woodman v. Photo Trade Processing Ltd. (1981) 131 N.L.J. 935.

Yuanda (UK) Co v. WW Gear Construction Ltd [2011] 1 All ER 550.

Scottish Cases

Gavin Slessor v. Vetco Gray UK Ltd [2006] CSOH 104.

Glen's Trs v Lancashire and Yorkshire Accident Insurance Co Ltd (1906) 8 F 915.

Nelson v Atlantic Power and Gas Ltd (1995) S.L.T. 102.

Kelly v. City of Edinburgh District Council 1983 S.L.T. 593.

US Cases

Amoco Prod. Co. v. Forest Oil Corp., (1988) 844 F.2d 251.

Atlantic Richfield Co v. Petroleum Personnel, Inc., (1989) 768 S.W.2d 724.

Babineaux v. McBroom Rig Bldg. Serv., Inc., (1987) 806 F.2d 1282.

Banner Chevrolet v. Wells Fargo Guard Services. (1987) 508 So. 2d 966.

Batson-Cook Co. v. Industrial Steel Erectors, (1958) 257 F.2d 410.

Bonner Cnty. v. Panhandle Rodeo Ass'n, (1980) 620 P.2d 1102.

Broussard v. Conoco, Inc., (1992) 959 F.2d 42.

Bryant v. Platform Well Service, Inc. (1983) 563 F. Supp. 760.

Chemical Leaman Tank Lines Inc v Aetna Casualty and Surety Co (1999) 177 F.3d 210.

Clarkco Contractors v. Texas Eastern Gas Pipeline, (1985) 615 F. Supp. 775.

Copous v. ODECO Oil & Gas Co., (1988) 835 F.2d 115.

Crews Well Service v. Texas Co., (1962) 360 S.W.2d 873.

Crown Central Petroleum Corp. v. Jennings (1987) 727 S.W.2d 739.

Cypress Creek Util. Serv. Co. v. Muller (1982) 640 S.W.2d 860.

Davis & Sons, Inc. v. Gulf Oil Corp. (1990) 919 F.2d 313.

DeLovio v. Boit (1815) 7 F. Case 418.

Demette v. Falcon Drilling Co., (2002) 280 F.3d 492.

Diamond Offshore Co. v. A & B Builders, Inc. (2002) 302 F.3d 531.

Dickerson v. Continental Oil Co., (1971) 449 F.2d 1209.

Dresser Indus., Inc. v. Page Petroleum, Inc., (1993) 853 S.W.2d 505.

Ethyl Corp. v. Daniel Construction (1987) 725 S.W.2d 706.

Fireman's Fund Ins. Co. v. Commercial Standard Ins. Co., (1972) 490 S.W.2d 818.

Getty Oil v. Insurance Co. of N. America (1992) 845 SW 2d 794.

Grose v. Sweet (1979) 49 N.Y.2d 102.

Gulf Offshore Co. v. Mobil Oil Corp. (1981) 453 U.S. 473.

Hyde v. Chevron U.S.A., Inc., 697 (1983) F.2d 614.

In re Incident Aboard the D/B Ocean King (1985) 758 F.2d 1063.

John E. Graham & Sons v. Brever. (2000) 210 F.3d 333.

K&S Oil Well Serv., Inc. v. Cabot Corp., (1973) 491 S.W.2d 733.

Kemp v. Gulf Oil Corp., (1984) 745 F.2d 921.

Ken Petroleum Corp. v. Questor Drilling Corp., (1998) 976 S.W.2d 283.

Ken Petroleum v. Questor Drilling (2000) 24 SW 3d 344.

Kenny v. Oak Builders Inc., (1970) 235 So. 2d 386.

Kent v. Gulf States Utilities Co., (1982) 418 So. 2d 493.

Knapp v. Chevron U.S.A., Inc., (1986) 781 F.2d 113.

Langlois v. Allied Chemical Corp., (1971) 258 La. 1067.

Laredo Offshore Constructors Inc. v. Hunt Oil Co. (1985) 754 F.2d 1223.

Livings v. Service Truck Lines of Tex., Inc. (1985) 467 So. 2d 595.

Marcel v. Placid Oil Co., (1994) 11 F.3d 563, 570.

Mitchell's, Inc. v. Friedman (1957) 303 S.W.2d 775.

Mountain Fuel Supply Co. v. Emerson (1978) 578 P.2d 1351.

Murray v. Trunkline Gas Co. (1989) 544 So.2d 28.

Nabors Corp. Servs., Inc. v. Northfield (2004) 132 S.W.3d 90.

Occidental Chem. Corp. v. Elliot Turbomachinery Co., (1996) 84 F.3d 172.

Ohio Oil Co. v. Smith, (1963) 365 S.W.2d 621.

Oliver Broussard v. Conoco, Inc. v. SHRM Catering, Inc., (1992) 959 F.2d 42.

Phillips Petroleum Co. v. Brad & Sons Const. Inc. (1993) 841 F.Supp. 791.

Polozola v. Garlock, Inc., (1977) 343 So. 2d 1000.

Queen Villas Homeowners Association v TCB Property Management (2007) 149 Cal App 4th 1.

Reding v. Texaco (1979) 598 F.2d 513.

Rickey v. Houston Health Club Inc. (1993) 863 S.W.2d 148.

Rodrigue v. Aetna Casualty and Surety Co., (1969) 395 U.S. 352.

Singleton v. Crown Cent. Petroleum Corp. (1985) 713 S.W.2d 115.

Smith v. Golden Triangle Raceway, (1986) 708 S.W.2d 574.

Smith v. Holley (1992) 827 SW 2d 433.

Solis v. Evins (1997) 951 S.W.2d 44.

Sovereign Ins. Co. v. Texas Pipe Line Co., (1986) 488 So. 2d 982.

Spence & Howe Construction Co. v. Gulf Oil Corp. (1963) 365 S.W.2d 631.

St. Amant v. Glesby-Marks Corp., (1988) 532 So. 2d 963.

Stephens v. Chevron Oil Co., (1975) 517 F.2d 1123.

Tony's Auto Parts, Inc. v. Honeywell, Inc., (1988) 522 So. 2d 680.

Torres v. McDermott, Inc., (1994) 12 F.3d 521.

Transcontinental Gas Pipe Line Corp. v. Transportation Insurance Co., (1992) 953 F.2d 985.

Transworld Drilling Co. v. Levingston Shipbuilding Co. (1985) 693 S.W.2d 19.

Union Texas Petroleum Corp. v. PLT Engineering, Inc. (1990) 895 F.2d at 1047.

Valero Energy Corp. v. M.W. Kellogg Constr. Co., (1993) 866 S.W.2d 252.

W.J. Steeger v. Beard Drilling, Inc. (1963) 371 S.W.2d 684.

Weber Energy Corp. v. Grey Wolf Drilling Co., (1998) 976 S.W.2d 766.

Whitson v. Goodbodys, Inc. (1989) 773 S.W.2d 381.

Yuba Consol. Indus., Inc. v. Fidelity & Casualty Co. of N.Y., (1964) 338 F.2d 341.

Preface

This book examines the problem of unfair risk allocation and the use of imbalanced indemnity and hold harmless clauses in oilfield service contracts, with particular reference to the Malaysian oil and gas industry. It is developed from the author's doctoral study, which has been substantially revised, updated, and refined for publication as a scholarly monograph. The revisions reflect subsequent doctrinal developments, comparative insights, and a broader engagement with regulatory and policy considerations affecting the petroleum sector. The motivation for this book arises from sustained engagement with oil and gas contracting practice, where indemnity and hold harmless clauses play a central role in allocating risk among operators, contractors, and subcontractors. While such clauses are commonly justified on grounds of efficiency and certainty, their operation in practice often reflects underlying disparities in bargaining power. In industries characterised by high capital intensity, technological complexity, and concentration of ownership such as oil and gas, contractual freedom may function unevenly, permitting dominant parties to transfer disproportionate risks to those least able to manage or absorb them. This book seeks to interrogate that dynamic from a legal perspective.

The focus on Malaysia is both timely and necessary. Malaysia's expansion into deep water petroleum exploration and production has intensified operational risks and magnified the consequences of contractual imbalance. At the same time, Malaysian contract law lacks a dedicated statutory framework governing the allocation of risk and the enforceability of indemnity clauses in oilfield service contracts. Judicial approaches to unconscionability and inequality of bargaining power remain unsettled, while insurance arrangements are largely left to private ordering. These factors combine to create a regulatory

environment in which contractors may be exposed to extensive and uninsured liabilities.

This book draws on doctrinal legal analysis, comparative law, and selected insights from industry practice to examine the development, interpretation, and limits of indemnity and hold harmless clauses under Malaysian law, as well as under English and United States law. Comparative analysis of the United Kingdom and selected United States jurisdictions provides a basis for assessing alternative regulatory responses and identifying models suitable for adaptation in Malaysia. Insights derived from industry practice are used to ground the legal discussion in commercial reality.

The comparative jurisdictions selected are not incidental. English law is examined due to its historical and continuing influence on Malaysian contract law, as recognised under the Civil Law Act 1956. United States law, particularly the experience of Texas and Louisiana, is analysed because of its extensive offshore petroleum activity and its use of sector-specific oilfield anti-indemnity legislation to address contractual inequity. These jurisdictions offer contrasting but complementary perspectives on how law may respond to imbalanced risk allocation, whether through industry practice, judicial interpretation, or statutory intervention.

This book does not argue against contractual risk allocation *per se*. Rather, it questions the assumption that freedom of contract alone is sufficient to ensure fairness in highly asymmetrical contracting environments. It contends that indemnity and hold harmless clauses must be evaluated not only in terms of drafting precision, but also in light of structural power relations, insurance availability, and public policy considerations. In this respect, the book seeks to contribute to broader debates on contractual justice, regulatory intervention, and the governance of extractive industries.

The primary contribution of this work lies in its articulation of a principled case for legislative reform in Malaysia through the proposed Malaysian Oilfield Anti-Indemnity Act. Drawing on comparative experience, the proposed framework aims to recalibrate contractual risk allocation without undermining commercial certainty or industry efficiency. While the focus is doctrinal, the analysis is intended to be relevant to academics, legal practitioners, policy makers, regulators, and industry participants concerned with the sustainability and fairness of oil and gas contracting practices.

This book is written at a time when contractual risk allocation in the oil and gas industry is undergoing renewed scrutiny. Post-Macondo contracting practices, increasing capital intensity in offshore projects, growing ESG and governance expectations, and heightened concern over accountability for catastrophic losses have intensified debates over the fairness and sustainability of traditional indemnity regimes. Despite these developments, Malaysian law has not evolved a coherent statutory or doctrinal response to contractual risk imbalance in oilfield service contracts. This book seeks to address that gap.

This book is written at a time when questions of risk, responsibility, and accountability in the extractive industries are increasingly intertwined with concerns about governance, environmental protection, and long-term economic sustainability. It is hoped that the analysis offered here will contribute to informed legal reform and serve as a foundation for further scholarly inquiry into the regulation of contractual risk in Malaysia and comparable jurisdictions.

Chapter 1

Understanding Risk and Liability in Malaysia's Oil and Gas Industry

Introduction

This chapter introduces the key elements that frame the discussion in this book. It outlines the fundamental themes explored throughout, provides an overview of the approach taken for collecting and analysing information, and previews the structure of the chapters to come.

The Landscape of Industry Risks

Oil and gas projects involve significant risks.¹ Industry players face various hazards, including the potential to destroy the entire facility and the danger of injuring or killing personnel.² For example, on January 26, 2012, in Malaysia, a Malaysia International Shipping Corporation (MISC) tanker, MT Bunga Alpinia, caught fire in Labuan while loading methanol.³ This unfortunate accident caused loss of life and property damage, and it also indirectly led to economic losses by disrupting operations at Patau-Patau Power Station.⁴

¹ Greg Gordon, John Paterson and Emre Usenmez, 'Oil and Gas Law on the United Kingdom Continental Shelf: Current Practice and Emerging Trends' in Greg Gordon, John Paterson and Emre Usenmez (eds), *Oil and Gas Law: Current Practice & Emerging Trends* (2nd ed, Dundee University Press 2011) 443.

² Toby Hewitt, 'Who Is to Blame? Allocating Liability in Upstream Project Contracts' (2008) 26 *Journal of Energy & Natural Resources Law* 177, 183.

³ Jeffrey Chiang Choong Luin, 'One More Lesson in Safety' (2012) September JURUTERA 20.

⁴ *ibid.*

The oil tanker caught fire and exploded at the Petronas Methanol jetty Labuan.⁵ The facility is situated within the Rancha-Rancha industrial zone on Pulau Enoe island, near Labuan. During a thunderstorm, the 38,000 deadweight-tonne MISC tanker, which was loading six tonnes of methanol, experienced a small fire outbreak.⁶ The fire reportedly spread quickly, causing at least three major explosions, which some witnesses stated could be felt throughout the island.⁷ MISC, a subsidiary of Petronas, confirmed that the incident caused five fatalities and a number of serious injuries.⁸ Following the incident, operations at the Patau-Patau Power Station, the only power plant in Labuan located next to the terminal, were halted for safety reasons.⁹ On July 11, 2012, an explosion occurred at the Petronas Tukau B drilling platform in Sarawak, Malaysia, injuring five offshore workers—two Petronas employees and three contractor workers.¹⁰ On May 10th, 2012, a similar incident occurred at a Petronas gas processing plant in the GPP Complex A in Kerteh, Terengganu, where one worker was killed and twenty-three others were injured in a gas plant explosion Malaysia.¹¹ Some of the victims were employed by the contractor servicing the GPP, the Hyundai-PFCE Consortium.¹²

⁵ 'Tanker Fire Halts Ops at Petronas' Labuan Terminal' .

⁶ Quintella Koh, 'Fatal Accidents at Petronas Sites Forces Relook at Safety Standards' (Rigzone, 1 August 2012) <http://www.rigzone.com/news/oil_gas/a/119752/Fatal_Accidents_at_Petronas_Sites_Forces_Relook_at_Safety_Standards>.

⁷ *ibid.*

⁸ 'MISC - Bunga Alpinia Update 7' (MISC, 30 July 2012) <http://www.misc.com.my/2012-@-MISC_-_Bunga_Alpinia_Update_7.aspx>.

⁹ 'MISC down after Tanker Catches Fire at Labuan' <<https://theedgemalaysia.com/article/misc-down-after-tanker-caughts-fire-labuan>>.

¹⁰ 'Five Workers Injured in Fire Outbreak on Petronas Offshore Platform (Malaysia)' Offshore Energy Today (12 June 2012).

¹¹ Farik Zolkepli, 'Worker Killed and 23 Hurt in Gas Plant Blast' The Star (11 May 2012) <<http://www.thestar.com.my/News/Nation/2012/05/11/Worker-killed-and-23-hurt-in-gas-plant-blast/>>.

¹² *ibid.*

It is important to understand that injuries to personnel and significant property damage can lead to substantial losses for project participants. Addressing the financial impact of these risks can be very expensive,¹³ and could result in substantial financial setbacks for a business.¹⁴ Industry players typically implement various measures and practices to manage risks and minimise their exposure. Risk allocation in the industry can be accomplished by including contractual clauses that specify which party is responsible for or exempt from a particular risk, and to what degree. This allows the risk to be shared between the parties effectively advance.¹⁵ Their respective liability shares in such events are usually assigned according to standard industry contracts that have been developed over many years.¹⁶ Before the 2010 Macondo oil spill in the Gulf of Mexico, these typical liability allocation models faced little opposition and were generally upheld as enforceable when examined in court.¹⁷ Since Macondo, operators in different settings have started questioning traditional liability divisions, aiming to change how risk is shared and negotiating contracts that place more responsibility

¹³ Piper Alpha is said to have occasioned a total insured loss of US\$3.304 billion; See Hewitt (n 2)178.

¹⁴ According to the Guardian the Deepwater Horizon incident has led to the dip of BP profits by 35% See Dan Milmo, 'BP's Deepwater Horizon costs rise \$847m' (The Guardian 2012) 'BP's Deepwater Horizon Costs Rise \$847m | BP | The Guardian' <<https://www.theguardian.com/business/2012/jul/31/bp-deepwater-horizon-costs>>.

¹⁵ Sir William Reynell Anson and others, *Anson's Law of Contract* (OU Press 2010) 3.

¹⁶ Peter Cameron, 'Liability for Catastrophic Risk in the Oil and Gas Industry' [2012] International Energy Law Review 207.

¹⁷ *ibid*; Cary A Moomjian, 'Drilling Contract Historical Development and Future Trends Post-Macondo: Reflections on a 35 Year Industry Career' *IADC/SPE Drilling Conference and Exhibition on 7th March 2012 in San Diego, California, USA* (Society of Petroleum Engineers 2012) <<http://www.drillingcontractor.org/wp-content/uploads/2012/04/Drilling-Contract-Historical-Development-and-Future-Trends-Post-Macondo.pdf>>.

on contractors in certain cases catastrophe.¹⁸ The insurance industry, on a different assessment, does not expect contractors to assume what is seen as operators' risk. It also doubts that the post-Macondo risk allocation accounts for potential contractor liability issues.¹⁹ As a result, the insurance industry opposes this revision of risk allocation. Additionally, such disproportionate risk distribution could result in substantial financial losses for the contractors.

Apart from that, the operator's dominant role, along with the presence of a national oil company (Petronas) and its Production Sharing Contractors, influences how liability is allocated in the oilfield contracts.²⁰ This is because these operators have more bargaining power than contractors in a weaker position within the oil and gas industry, enabling them to assume they can impose any conditions they wish.²¹ Additionally, most standard oilfield service contracts in Malaysia are created and maintained by operators. As a result, these

¹⁸ Cameron (n 16); Arinaitwe Patson Wilbroad, *Risk Allocation in Oil and Gas Service Contracts* (LAP Lambert Academic Publishing 2014) For further details see, 'In Re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010: Memorandum in Support of Transocean's Motion for Partial Summary Judgment against BP to Enforce BP's Contractual Obligations, including BP's Obligation to Defend, Indemnify and Hold Transocean Harmless against Pollution Claims' (United States District Court, Eastern District of Louisiana, 1 November 2011).

¹⁹ Cameron (n 16); Lyndsay Rebeca Garnica González, 'Self Insurance in the Offshore Drilling. The Aftermath of the Macondo.' (Thesis, Faculty of Law, University of Oslo 2011) 9.

²⁰ Wan Zulhafiz, 'Unfair Contract Terms Act 1977: Does It Provide a Good Model in Regulating Risk Allocation Provisions in Oilfield Contracts in Malaysia?' (2015) 8 International Journal of Trade & Global Market 3; Dennis Culligan and Barbara de Roo, 'Risk Allocation Future Prospects' Proceedings of the IMCA Contracts & Insurance Seminar: Allocation of Risk in the Current Challenging Market on 19th May 2015 in London, UK (International Marine Contractors Association (IMCA) 2015); Cameron (n 17) 210.

²¹ Chris Thorpe, *Fundamentals of Upstream Petroleum Agreements* (C P Thorpe Ltd 2008); Cameron (n 16) 213.

contracts often favour the operator, making risk distribution and the fairness of the terms and conditions less balanced.

Some might argue that the main cause of the issues mentioned above is the absence of national laws or international agreements in this area problem.²² Without regulation, contractors might face situations where they cannot completely manage the risks or have full control and decision-making power over operations powers.²³ This book advocates for establishing specific legal mechanisms that encourage or mandate operators to follow recognised industry standards. In essence, Malaysian authorities should enact legislation to regulate the loss and liability of project participants concerning risk allocation in oil and gas ventures. The primary aim of this book is to promote fairness in the contractual distribution of risk between the operator and the contractor.

Objectives and Significance of the Book

This book aims to explore the legal issues and challenges associated with indemnity and hold harmless clauses in Malaysia's oil and gas sector. It concentrates on how risks are allocated between operators and contractors. Additionally, it suggests a regulatory framework designed to safeguard the interests of both parties, drawing on indemnity laws from the UK and the US.

Contractors typically contend that risk is allocated in a way that favours operators, those who hold more bargaining power than contractors.²⁴ They also argue that the contract terms proposed by the operators include unfair risk allocation provisions. These terms, along

²² Cameron (n 16) 212.

²³ *ibid.*

²⁴ Timothy Martin, 'Model Contracts: A Survey of the Global Petroleum Industry' (2004) 22 *J.Energy & Nat.Resources L.* 281, 333.

with other Invitation to Bid documents, are provided to contractors during the bidding process for negotiation. However, contractors contend that they are unable to qualify or modify these conditions because they are concerned about losing the bid.²⁵ It is argued that operators and contractors do not have equal bargaining power when it comes to allocating contractual risks under Malaysia's oilfield service contracts.²⁶

This book presents the findings of an empirical study focused on imbalanced risk allocation, indemnity, and hold harmless clauses in oilfield service contracts in Malaysia. It specifically provides evidence on how risk is allocated during negotiation in the bidding process and how parties perceive these risks. The book uses a sample of oilfield service contracts collected from the involved parties, which serve as case studies.

This book also aims to discuss the analysis on the feasibility of applying statutory control over indemnity clauses in oilfield contracts in Malaysia. For instance, certain US states like Texas and Louisiana have enacted the Oilfield Anti-Indemnity Act ('Act'). These laws intend to protect contractors from disproportionate risk allocation and unfair indemnity and hold harmless clauses.

These Acts are generally used to regulate how risk transfer is managed in oilfield contracts. They define the extent of legal liability one party can shift to another through the contract. They also prevent the transfer of liability linked to the transferor's negligence, or sometimes only

²⁵ Mohammad Fadhil Mohammad, 'Procurement Strategies for the Oil and Gas Industry: To Capture Changing Values and Dealing with Multi Cultural Complexity', The Proceedings of the International Conference on Construction and Building Technology (ICCBT2008), Universiti Teknologi MARA (UiTM), Malaysia (2008) 33.

²⁶ Zulhafiz, 'Unfair Contract Terms Act 1977: Does It Provide a Good Model in Regulating Risk Allocation Provisions in Oilfield Contracts in Malaysia?' (n 21) 7.

liability from the transferor's sole negligence. In some states, the Act may restrict a contracting party's ability to require additional insured status on the other party's insurance policies. Additionally, it is important to consider some historical factors related to how these Acts originated in those regions, which will be discussed further below.

The UK lacks specific oilfield anti-indemnity laws to regulate clauses that hold parties harmless, so other legal measures within English contract law should be considered. Notably, the Unfair Contract Terms Act 1977 will be examined, along with the broader influence of contractual interpretation laws. Additionally, some British practices, such as the Industrial Mutual Hold Harmless Deed (IMHH), have addressed certain issues related to indemnity clauses. The discussion will also cover certain codes of practice related to indemnity clauses in UK oilfield service contracts. Ultimately, it will be argued that these measures do not offer adequate protection for the weaker contracting party, highlighting the need for specific statutory safeguards.

Many oilfield service contracts in Malaysia often have an imbalance in liability sharing, accompanied by unfair indemnity and hold harmless clauses. This book will examine and analyse the legality of such contracts, with a particular focus on risk allocation provisions. The goal is to shed light on issues related to uneven risk sharing and unjust clauses. By combining empirical evidence with legal doctrinal analysis, the book will propose a regulatory framework and practical solutions for Malaysian legislative authorities. Ultimately, it will recommend a suitable legal mechanism to address these concerns.

The regulations seek to address unequal risk sharing and unjust indemnity and hold-harmless clauses in oilfield service contracts between operators and contractors in Malaysia. This book suggests establishing a specific statutory law to regulate unfair risk distribution and imbalanced indemnity provisions. The proposed law aims

to protect contractors' interests in Malaysia and would be called the Malaysian Oilfield Anti-Indemnity Act.

The suggestions and recommendations in this book aim to assist policymakers in reviewing and subsequently amending Malaysia's current contract law. Additionally, it seeks to enlighten key industry players—especially those directly involved with contracts—about the repercussions of liability provisions on their companies in the event of a catastrophe. This book also aims to guide key stakeholders in Malaysia's oil and gas sector on reasonable terms when drafting oilfield service contracts.

This book argues that its analytical discussion is highly valuable for corporate lawyers, providing guidance for drafting oilfield service contracts. It also enhances the existing knowledge and literature on oil and gas contracts. The book adds both theoretical and practical insights into risk allocation, indemnity, and hold harmless clauses within Malaysian oilfield service agreements. Ultimately, the findings are expected to highlight the need for further study, especially concerning insurance aspects.

Approach and Sources

This book draws on doctrinal legal analysis, comparative law, and selected insights from industry practice to examine the problems of imbalanced risk allocation and unfair indemnity and hold-harmless clauses in Malaysian oilfield service contracts.

Doctrinal analysis examines how Malaysian courts and statutes regulate contractual risk allocation, with particular attention to the interpretation and enforceability of indemnity clauses. This analysis is complemented by a comparative evaluation of legal developments in the United Kingdom and the United States, two jurisdictions that are

frequently selected as governing law in oil and gas contracts and that offer contrasting regulatory responses to contractual risk imbalance.

In addition, the book draws on empirical insights derived from industry practice in Malaysia to ground the legal analysis in commercial reality. These insights inform discussions of how contractual risk is allocated in practice, how bargaining power disparities operate during contract formation, and how indemnity and hold-harmless clauses are perceived by key industry participants.

The book focuses specifically on contractual risk allocation in oilfield service contracts and does not seek to address the full scope of insurance law, environmental liability, or regulatory enforcement. Those issues are considered only to the extent they bear directly on indemnity clauses, hold-harmless provisions, and proposals for legislative reform.

Structure of the Book

This book consists of seven chapters. The first chapter, which is the current one, explains the book's structure and outlines the fundamental aspects of the analytical design. It also offers an overview of the entire book, covering the background, key questions, aims, importance, scope, objectives, approach, sources, boundaries, limitations, and the overall structure.

Chapter two offers a literature review and outlines key concepts, legal doctrines, and theories underpinning this book. It is organised into three main sections. The first briefly explains two points: first, the various types of petroleum contracts, including oilfield service contracts; second, the legal nature of the parties involved. The second section discusses different risk categories in the oil and gas industry and introduces the broad idea of risk allocation, which integrates risk

management, common law risk allocation, and contractual risk allocation. The section details mechanisms like exclusion clauses, limitation clauses, and indemnity clauses, with a focus on indemnity and hold harmless clauses. It examines various indemnity clause types, their relationship with insurance, and issues related to their enforceability, such as potential abuse by parties with bargaining power. The final section addresses a current issue in risk allocation post-Macondo, highlighting how operators often shift a larger share of risk to contractors, a scenario known as post-Macondo contractual risk allocation.

Chapter three explores the Malaysian legal framework surrounding indemnity and hold harmless clauses. It begins with an overview of Malaysia's oil and gas sector, emphasising key players. The chapter then discusses relevant laws, such as the Malaysian Contracts Act 1950, and analyses related case law. This case law highlights key issues in risk allocation provisions and shows how Malaysian courts interpret indemnity clauses. The second part also reviews data from empirical case studies and fieldwork for this book. Moreover, it addresses the first key question introduced earlier. It explains the analytical approach and process, then provides an overview of the case study, including background on the ten interviewees- covering their titles, experience, and the services their companies offer.

The findings are organised into three main sections. The first section examines how key players in the Malaysian oil and gas industry perceive the process of contract formation, emphasising whether contracts are formed fairly and if the parties have equal bargaining power during negotiations. The second section explores their views on oilfield service contracts, focusing on risk allocation between operators and contractors, as well as opinions on indemnity and hold harmless clauses. The third section provides examples of actual indemnity and hold harmless clauses drafted by operators, confidentially referred to as Operator A, Operator B, and Operator C. These

clauses are analysed and compared with industry-standard contracts, such as LOGIC and FIDIC.

Chapter four examines risk allocation, along with indemnity and hold harmless clauses, in the UK. It is divided into five sections. It begins with an overview of the UK oil and gas sector. The next section explains the current application of the knock-for-knock indemnity regime in the UK, including its legal validity and stance under English law. It also discusses the rationale behind this regime and its industry operations, including the use of back-to-back provisions and the Indemnity and Mutual Hold Harmless Deeds. The subsequent section reviews judicial interpretations of the knock-for-knock indemnity system and related issues, such as the courts' approach to indemnity clauses, negligence, third-party liability, and breaches of contract. It covers relevant legislation like the Unfair Contract Terms Act 1977 and how it influences the legality of these clauses. Additionally, the chapter explores the role of the "Guiding Principles"—notably, the Infrastructure Code of Practice—in regulating such clauses in the UK. It concludes by evaluating whether the UK's knock-for-knock indemnity framework could be a viable solution for similar challenges in Malaysia.

Chapter five explores risk allocation and indemnity, focusing on hold harmless clauses in US oilfield service contracts. As previously noted, the book does not cover all US states but concentrates on three jurisdictions: US federal law, Texas law, and Louisiana law. The first section outlines the American legal system. The second section reviews federal law regulating indemnity and hold harmless clauses, such as the Outer Continental Shelf Lands Act (OCSLA) and maritime law. This section also covers state laws, specifically Texas and Louisiana. It discusses Texas common law principles like the fair notice requirements, the express negligence doctrine, and the conspicuousness test. Additionally, it reviews Texas statutes such as the Texas

Oilfield Anti-Indemnity Act that govern these clauses in oilfield contracts. For Louisiana, it examines the common law, including the “clear and unequivocal test,” and statutory laws like the Louisiana Oilfield Anti-Indemnity Act. The chapter concludes with a comparison of Texas and Louisiana laws and considers which model might best address similar issues in Malaysia.

Chapter six examines and discusses the findings of this book, answering the key questions that underpin these findings. The main conclusions are supported by core concepts, theories, and legal principles such as common risk allocation, contractual risk distribution, the doctrine of freedom of contract, theories of unequal bargaining power, and public policy. This chapter also extends to a broader discussion on the impact of these findings on the contractual elements of oilfield service agreements in Malaysia. It examines procedural fairness concerns arising from the bargaining power imbalance and assesses the substantive fairness of contracts characterised by risk allocation disparities and unfair indemnity or hold harmless clauses.

Conclusion

This chapter highlights the core structure of the book, outlining its focus, which is essential for understanding its content. It begins by explaining the background, aims, significance, key questions, objectives, approach, and sources. The chapter also clarifies the boundaries and limitations of the book. At the end, it provides a chapter-by-chapter outline.

This book presents three main findings. First, it advocates for the recognition of the legal theory of “law in action,” supported by empirical evidence from case studies and systematic analysis of legal frameworks related to imbalanced risk allocation and unfair indemnity and hold harmless clauses in Malaysian oilfield service contracts.