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### The “Old” Tort of Detinue

*Puspakom Sdn Bhd v Strateq Data Centre Sdn Bhd* [2018] 1 LNS 1120

Detinue is an old form of action dating back to the 13th century used to recover one’s property from a person who refuses to give it up.<sup>[1]</sup> Detinue, however, has been abolished in England and Wales since 1978.<sup>[2]</sup> This has occasionally raised questions as to its actionability in Malaysia.

Puspakom engaged a vendor to provide network and data centre management services, including the provision of space for Puspakom’s servers and network equipment.

In carrying out these services, the vendor stored Puspakom’s equipment at a data centre owned by Strateq. Following a dispute over rentals with the vendor, Strateq stopped the vendor and Puspakom from accessing the data centre.

Puspakom commenced proceedings against Strateq, seeking the return of their equipment. The High Court ordered the return of the equipment on the grounds that the three essential ingredients for the tort of detinue were established,<sup>[3]</sup> namely that:

- Puspakom were the rightful owners of the equipment.
- Puspakom had made a proper demand for the return of their equipment.
- Strateq had refused to surrender the equipment to Puspakom.

The High Court also held that the common law tort of detinue still survives as a cause of action in Malaysia although it has been abolished in England and Wales.

Puspakom was represented by partner, SM Shanmugam, and associate, Shona Anne Thomas, of Lee Hishammuddin Allen & Gledhill.

The grounds of judgment of the High Court may be viewed here.

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- [1] Ames, Lectures on Legal History (1913) 70 *passim*
- [2] Torts (Interference with Goods) Act 1977, s 2(1)
- [3] *General and Finance Facilities Ltd v Cooks Cars (Romford) Ltd* [1963] 2 All ER 314