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***Voir Dire* in Civil Proceedings**

Voir Dire, or a “trial within a trial”, is essentially a procedure adopted by the courts to determine the admissibility of certain evidence. For instance, a *Voir Dire* can be held to determine whether confession made by an accused in a criminal trial has been lawfully obtained and admissible as evidence. In civil proceedings, it can be used to ascertain whether certain evidence deemed privileged is admissible. It is effectively a mechanism to safeguard a litigant’s right to a fair trial and the rules of natural justice.

While *Voir Dire* is relatively common in criminal proceedings, there are very few reported decisions concerning its application in civil proceedings.¹ However, in a recent case, the High Court discussed in detail its jurisdiction to order a *Voir Dire* in civil trials and the relevant procedures to be adopted.

In *Celcom*,² the issue was whether legally privileged communications between solicitors and their client were admissible as evidence. The judge, Justice Datuk Wong Kian Kheong, held that the court may adopt one of three options in determining the admissibility of evidence:

Option 1: The court may conduct a *Voir Dire*;

Option 2: It may rule on the admissibility of evidence in the course of the trial itself during the examination of witnesses, without the need for a *Voir Dire*;

Option 3: It may allow all evidence to be admitted first and reserve its decision on admissibility until the conclusion of the trial. Evidence ruled inadmissible at the end of the trial would be expunged from the records.

Based on the facts of the case, the judge adopted the first option as it was the most suitable.

¹ See *See Teow Chuan & Anor v Dato’ Anthony See Teow Guan* [1999] 4 MLJ 42 (HC)

² *Celcom (Malaysia) Berhad & Anor v Tan Sri Dato’ Tajudin bin Ramli & Ors* [2020] MLJU 823 (HC)

His Lordship also set out detailed procedures to be followed for the purpose of the *Voir Dire*:

- (a) The main trial will be suspended pending the *Voir Dire*;
- (b) Parties are at liberty to call witnesses to adduce evidence on facts which are relevant to the issue of admissibility of the privileged communications;
- (c) Only evidence relevant to the admissibility of the privileged communications can be adduced during the *Voir Dire*;
- (d) Parties will submit on the admissibility of the privileged communications at the end of the *Voir Dire*;
- (e) All evidence tendered during the *Voir Dire* cannot be used in the main trial; and
- (f) If the court admits the privileged communications, it has a discretion to redact the document containing such privileged communication, if necessary.

The judge also held that a *Voir Dire* can be held to determine the admissibility of various types of evidence, including marital privilege, “affairs of the State” privilege, “official communications” privilege, and privileged information concerning commission of offences.

The written judgment serves as a good precedent to guide courts and litigants on the appropriate procedure in determining the admissibility of evidence, and the relevant procedures of a *Voir Dire* in civil trials.

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