T1719-C

THE 12TH ASIA INTERNATIONAL MOOT COURT COMPETITION

AT THE KUALA LUMPUR REGINAL CENTRE FOR ARBITRATION

2017

BETWEEN

THE ASAMURA INTERNATIONAL DEVELOPMENT COMPANY

(THE CLAIMANT)

AND

THE SHWE PWINT THONE COMPANY

(THE RESPONDENT)

MEMORIAL FOR THE CLAIMANT

TABLE OF CONTENTS

INDEX OF AUTHORITIES

Statutes

Treaties

Cases

Books

MICHAEL BRIDGE, PERSONAL PROPERTY LAW (3rd ed. 2002). 24

MICHAEL PRYLES, EXCLUSION OF THE MODEL LAW, 4(6) Int'L Arb. L.Rev. (2001). 12

R.H. KERSLEY, GOODEVE'S MODERN LAW ON PERSONAL PROPERTY (9th ed. 1949)...24, 27

RICHARD A. LORD&SAMUEL WILLISTON, 2 WILLISTON ON CONTRACT (4th ed., 2009-2010). 19

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STATEMENT OF JURISDICTION

The Claimant, the Asamura International Development Co., Ltd. ("AID"), and the Respondent, the Shwe Pwint Thone Co., Ltd. ("SPT"), have agreed to submit the dispute to arbitration under the auspices of the Kuala Lumpur Regional Centre for Arbitration ("KLRCA"), and also consented to use the KLRCA i-Arbitration Rules.

STATEMENT OF FACTS

1. The Claimant is the Asamura International Development Co., Ltd. ("AID"). It is a private international development company founded in Tokyo, Japan. The Respondent is the Shwe Pwint Thone Co., Ltd. ("SPT"). It is a local Myanmar company aiming to provide secular and vocational training to students from underprivileged families.
2. On 9 September 2008, Dr. Yugi, representative from AID, and U Thein Kyaw, representative from SPT, entered into a partnership. Both parties decided to draft their own contract and sign the agreement ("Partnership Agreement") without engaging a lawyer.
3. Under the agreement, AID has duty to source for second hand jade-mining machinery and equipment from Japan, purchase, recondition and then import into Myanmar by SPT. There is no applicable product registration requirement. SPT is named as the importer of the jade-mining machinery that were bought by the fund of AID. Twenty-five of AID's employees were placed in SPT's base where they operated some of the equipment while imparting technical knowledge to SPT's employee and students. In March 2009, AID and SPT agreed to make capital contributions to the partnership. SPT also acquired permit necessary for operating jade mining machine and equipment from the government.
4. The jadeite venture has four main activities. AID is responsible for exploration and extraction, breaking and cutting while processing and production, distribution and sales is in responsibility of SPT.
5. Joe Yamashita, one of AID's finance executives, created JADEYE software which is capable of expedite assessment work. It was installed in all the computers and

equipment used on the sites because of its positive trial tests results. U Thein Kyaw then offered Joe with USD 18,000 in cash. Nevertheless, he declined it and said that it was for the benefit of all of us. On 4 January 2013, Joe resigned from AID and handed source code of JADEYE software to Head of Finance of AID in Tokyo.

6. The interview with the Asian influencers Magazine, Dr. Yugi and Dr. Fiona, Dr. Yugi's wife, were asked about their views on the plea of Rohingya in Rakhine state, giving their existing business involvement in Myanmar and Dr. Fiona's position in Second life. Dr. Fiona's answer upset many of SPT's employees and students, as a result, they went on strike for seven days.
7. On 10 January 2017, U Thein Kyaw decided to end the partnership with AID and offered to bear the relocation costs for AID's employees. He claimed that his team is unable to continue working with AID as they cannot look pass the interview.
8. Unable to compromise, the parties decided to submit the dispute to the arbitration and proceed the arbitration in accordance with the KLRCA i-Arbitration Rules. The arbitration is set to determine validity of the termination of contract, ownership of jade-mining machinery and equipment, and subsistence and ownership of rights in the JADEYE software.

QUESTIONS PRESENTED

I. What are the laws governing the procedural and substantive merits of the disputes.

II. Whether or not the termination of the agreement by SPT is valid.

III. Whether or not the ownership of jade-mining machinery and equipment belongs to the Claimant.

IV. Whether or not the subsistence and ownership of rights in the JADEYE software belongs to the Claimant.

SUMMARY OF PLEADINGS

I. The KLRCA i-Arbitration Rules and the Japanese laws govern the procedural aspect of the arbitration since the Parties agreed to use the KLRCA i-Arbitration Rules and the Parties agreed that the arbitration will be seated in Japan. The laws of Myanmar shall govern the substantive merits of contractual claims as indicated in the Agreement of the Parties. Moreover, laws of Myanmar shall also govern substantive merits of non-contractual claims relating to property and Intellectual property as considered the most closely connected laws to the dispute.

II. The Claimant is entitled to the ownership of the jade-mining machinery and equipment. The jade mining machinery and equipment are movable property and the possessor is the owner of them, which in this case the Claimant has legal possession and intention to possess as an owner. Besides, the Claimant is the owner of the jade mining machinery and equipment according to the duties stated in the Agreement. The Respondent only has custody of the jade mining machinery and equipment as an agent of the Claimant because the Claimant has to let the Respondent hold custody of the jade-mining machinery and equipment out of necessity to obtain the permits to operate jade-mining machinery and equipment as the law requires a Myanmar company as an operator.

III. JADEYE software belongs to the Claimant as it is considered as the original creator. Rights of copyright work created in the course of duties by employee belong to the employer, the Claimant. Joe Yamashita created JADEYE software based on the initiative of the Claimant who is the only employer of him in his course of duties so subsistence and ownership of rights in JADEYE software only belong to the Claimant. As JADEYE software is automatically protected by Japanese copyright law despite no registration, the Claimant is granted exclusive rights to reproduction and translation by Japanese law. The Respondent

does not have the ownership of copyright; therefore, the Respondent is not entitled to reverse engineering as it violates exclusive rights of the Claimant.

PLEADINGS

I. The Japanese laws and the KLRCA i-Arbitration Rules govern the procedure of this arbitration and the laws of Myanmar govern the substantive aspect of the dispute.

In international arbitration, several laws may apply to different aspect of cross-border disputes. It is possible that the procedural laws and the substantive laws are not governed by the same laws. The KLRCA i-Arbitration Rules and the Japanese laws govern the procedural aspect of the arbitration [A]. The laws of Myanmar govern the substantive merits of this arbitration [B].

A. The KLRCA i-Arbitration Rules and the Japanese laws govern the procedural aspect of the arbitration.

Both institutional arbitral rules designated by both parties and procedural laws govern the procedure of this arbitration. The procedural laws form the parameters of procedure and support like mandatory rules for international arbitration.[1] Moreover, they fulfill the matters failed to be addressed by the parties and the deficiency of institutional rules.[2]

The procedural laws in the arbitration are determined by *lex arbitri* or law of the arbitration which provides general principle of arbitration governing law.[3] In case the parties designate institutional rules to govern procedural aspects and conflicts with procedural laws, the institutional rules shall prevail except for the extent part that the procedural laws are mandatory.[4]

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[1] SIMON GREENBERG ET AL., INTERNATIONAL COMMERCIAL ARBITRATION: AN ASIA-PACIFIC PERSPECTIVE 59 (2012).
[2] MICHAEL PRYLES, EXCLUSION OF THE MODEL LAW, 4(6) Int'L Arb.L.Rev. 175, 177 (2001).
[3] GREENBERG, *supra* note 1, at 58.
[4] GREENBERG, *supra* note 1, at 65.

Therefore, KLRCA i-Arbitration Rules is procedural rules as the Parties agreed and [1] the Japanese laws are the procedural laws as the Parties designated Japan as the seat of arbitration.

1. The Parties agreed to use the KLRCA i-Arbitration Rules.

In case there is an agreement between the parties regarding the procedural rules, the rules which both parties agreed on shall be applied in the arbitration. The arbitration agreement of both parties is contractual arrangement which binds the parties to proceed the arbitration as in the agreement.[5]

The Parties decided in the Agreement to use KLRCA i-Arbitration Rules for disputes settlement in this arbitration[6]; therefore, the KLRCA i-Arbitration Rules govern procedural aspect of the arbitration.

2. The Japanese laws are the procedural law as the parties agreed to use Japan as the seat of arbitration.

The procedural law is determined by *lex arbitri*.[7] The law of the seat of the arbitration becomes *lex arbitri* as an automatic consequence of choosing the seat of arbitration.[8] The procedural laws of the country that is decided as the seat of the arbitration govern the procedure of the arbitration.[9]

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[5] GREENBERG, *supra* note 1, at 59.
[6] Moot Problem, ¶ 47.
[7] GREENBERG, *supra* note 1, at 58.
[8] GREENBERG, *supra* note 1, at 58; Garuda Indonesia v. Birgen Air [2002] 1 SLR 393.
[9] ALAN REDFERN ET AL., LAW AND PRACTICE OF INTERNATIONAL COMMERCIAL ARBITRATION 85 (4th ed. 2004).

In this case, the parties decided to bring the disputes to arbitration in Japan.[10] As Japan is set as the seat of arbitration, laws of Japan shall be procedural law and control procedural aspect of the arbitration.

As a result, procedural aspect of the dispute is governed by both KLRCA i-Arbitration Rules and Japanese Law.

B. The laws of Myanmar govern the substantive merits of this arbitration.

The laws of Myanmar, decided by the Parties, govern both the substantive merits of the contractual claims originating from the Agreement [1] and the substantive merits of the non-contractual claims as the law of the state mostly connected with the disputes [2].

1. The laws of Myanmar govern the substantive merits of the contractual claims originating from the Agreement.

The Japanese Arbitration law 2003 No.138 Section 36 (1) indicates that "The arbitral tribunal shall decide the dispute in accordance with such rules of law as are agreed by the parties as applicable to the substance of the dispute. In such case, any designation of the law or legal system of a given state shall be construed, unless otherwise expressed, as directly referring to the substantive law of that state and not to its conflict of laws rules."[11] As the dispute between the Claimant and Respondent arise from the Partnership Agreement, it has been designated to be in accordance with and interpreted under the law of the golden land of Myanmar.[12]

As the disputes between the Claimant and Respondent arise from the Partnership Agreement, it has been designated to be in accordance with and interpreted under the law of

[10] Moot Problem, ¶ 47.
[11] Chūsai-hō [Arbitration Law], Law No.138 of 2003, art. 36 (Japan).
[12] Annexure 1, Partnership Agreement, Clause 10.

the golden land of Myanmar[13]. It has been reflected in the Model Law Article 28 (1) which most Asia-Pacific jurisdiction lies on that the most important rule in international arbitration is that parties are free to choose applicable substantive law.[14] Therefore the substantive merit of the contractual claims originated from the Partnership agreement shall be govern by the law of Myanmar.

2. The laws of Myanmar govern the substantive merits of the non-contractual claims.

In case where no agreement decided on substantive law applicable to substantive merit, Article 36 (2) of Japanese Arbitration law provides that "the arbitral tribunal shall apply the substantive law of the State with which the civil dispute subject to the arbitral proceedings is most closely connected."[15]

i. The ownership of jade-mining machinery and equipment claims are governed by the laws of Myanmar.

The claim regarding the ownership of the jade-mining machinery and equipment that the Parties agreed to be decided by the arbitration[16] is an issue concerning the proprietary of tangible movable property. Generally, ownership of tangible movable property is not represented by formal title. So the law that determines the acquisition or transfer of rights in movable property is not always obvious[17] since tangible movable property can change location or *situs* and the law in each place may differs. Disputes concerning title to, or the

[13] Annexure 1, Partnership Agreement, Clause 10.
[14] GREENBERG, *supra* note 1, at 101.
[15] Chūsai-hō [Arbitration Law], Law No.138 of 2003, art. 36 (Japan).
[16] Moot Problem, ¶ 48.
[17] JANEEN M. CARRUTHERS, THE TRANSFER OF PROPERTY IN THE CONFLICT OF LAW: CHOICE OF LAW RULES CONCERNING INTER VIVOS TRANSFERS OF PROPERTY 76 (2005).

right to possession of, movable property are generally governed by the *lex situs*, law of the place, of the movable at the date of the event which is claimed to have affected title to it.[18]

In this case, the jade-mining machinery and equipment are used at the jade fields in Hpakant in Myanmar.[19] According to the *lex situs*, the law governing the claim on ownership of the jade-mining machinery and equipment is Myanmar law.

ii. Intellectual property claims are governed by the laws of Japan.

The claims concerning intellectual property matters raised to be arbitrated are the subsistence and ownership of rights in the JADEYE software.[20] The cross boarder of intellectual property dispute leads to conflict of law in deciding initial ownership of JADEYE software which shall be governed by *lex originis* principle or the law of the country of origin of the work.[21] The country of origin is the country which the author is a national as indicated in Article 5 of Berne Convention.[22]

In this case, the sole creator of the JADEYE software is a Japanese citizen. Regardless of the place where the work is created, the law of the country which the author is a national governs subsistence and ownership of the work. Therefore, the law governing the Intellectual property relating claims are Copyright law of Japan.

II. The termination of Partnership Agreement by the Respondent is not valid.

As the Partnership Agreement entered into by the Claimant and the Respondent is valid and enforceable [A], both parties are bound by the obligations contained therein. Since the Claimant's interview statement harm national interest and solidarity of the Golden land

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[18] ADRIAN BRIGGS, THE CONFLICT OF LAW 224 (2008); Cammell v. Sewell (1860) 5 H&N 728.
[19] Moot Problem, ¶ 16; Additional Clarifications, Question 11.
[20] Moot Problem, ¶ 48.
[21] INTERNATIONAL CONGRESS OF IMPERATIVE LAW, GENERAL REPORTS OF THE XVIIITH CONGRESS OF THE INTERNATIONAL OF COMPARATIVE LAW / *RAPPORTS GÉNERAUX DU XVIII CONGRÈS DE L'ACADEMIE INTERNATIONALEDE DROIT COMPARÉ* 411 (Karen B. Brown, David v. Snyder eds., 2012).
[22] Berne Convention or The Protection of Literary and Artistic Works art.5, Sept. 9, 1886, U.N.T.S.331.

of Myanmar, the Claimant breached the contract [B]. Therefore, the Respondent is rightfully terminating the Partnership Agreement [C].

A. The Partnership Agreement is valid and enforceable.

The relationship between the Claimant and the Respondent as governed by the Partnership Agreement was recognized as a partnership under the Myanmar Partnership Act as they agreed to share profit and carry on the business [1].[23] Also, such Partnership Agreement arises from a valid contractual basis [2] and was in force during the time the dispute arose [3]. Therefore, the Partnership Agreement is valid and enforceable in this case.

1. The relationship between the Parties is recognized as partnership under the Myanmar Partnership Act.

Section 4 of the Partnership Act 1932 indicates that "partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all" and "[p]ersons who have entered into partnership with one another are called individually "partners" and collectively "a firm"…"[24]

Once the Claimant and the Respondent entered into the Partnership Agreement, they are partners in operating the Jadeite venture business. Both parties clearly have distinguished tasks in handling and establishing the jadeite venture.[25] The business is carried by both partners acting for all and the Claimant is entitled to 35% of the profit while the respondent

[23] Partnership Act, 1932, § 4 (Myan.).
[24] Partnership Act, 1932, § 4 (Myan.).
[25] Moot Problem ¶ 19.

is entitled to 65 percent of the profit.[26] Therefore, the relationship between the parties is recognized as a partnership under the Myanmar Partnership Act.

2. The Partnership arises from a valid contractual ground.

Section 7 of the Partnership Act 1932 indicates that "The relation of partnership arises from contract and not form status;…".[27] Therefore, in order to determine whether the Partnership Agreement between the Parties is valid and enforceable or not, regard also needs to be put on the validity of its contractual basis.

In order for contract to be valid under the Contract Act 1872 of Myanmar: first, the contract must be based on a mutual agreement by the parties. Second, it must be made by competent parties.[28] Third, the promise or obligation of each party must be supported by consideration given by each party in the contract.[29] Fourth, it must be for a lawful purpose.[30]

In this case, the Claimant and the Respondent mutually entered into the Partnership Agreement when Dr. Yugi and U Thein Kyaw both agreed to draft their own agreement and willingly signed it.[31] Since the Agreement was signed and there was no evidence of coercion, undue influence, fraud, misrepresentation and mistake[32], it is reasonably implied that the Parties entered into such Agreement with their free consent. Moreover, both Parties are considered to possess contractual capacity as they have ability to understand that a contract is being made, understand the general rule, and have the legal competence to the contract. Moreover, Dr. Yugi, the chairman, representative from AID[33] and U Thein Kyaw, the owner,

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[26] Annexure 1, Partnership Agreement, Clause 7.
[27] Partnership Act, 1932, § 5 (Myan.).
[28] Contract Act, 1872, § 10 (Myan.).
[29] Contract Act, 1872, § 2 (Myan.).
[30] Contract Act, 1872, § 10 (Myan.).
[31] Moot Problem, ¶ 15.
[32] Contract Act, 1872, §14 (Myan.).
[33] Additional Clarifications, Question 19.

representative from SPT have the authority to enter into the contract. Third, the consideration given by both Parties is evident. Not only both Parties made capital contribution, the Claimant agreed to be responsible for the arrangement for second hand machinery and equipment from Japan, 25 of AID's employees, and a set of health and safety and environment (HSE) standards;[34] whereas the Respondent agreed to handle the visa and accommodations for AID's employee, obtain necessary permit and 50 students working at the base.[35] Lastly, apart from the profits, the business's purpose is to help local Myanmar people[36] and there is no evidence of unlawful purpose of this business. Therefore, the Parties' business is not made for an unlawful purpose.

3. The Respondent is bound by the obligations contained in the Partnership.

A contract's effective date may or may not be the same as the date of signing. If a contract does not specify its effective date, it goes into effect on the date it was signed by the person to whom the contract was offered for a signature.[37] Moreover, Section 37 of the Myanmar Contract Act indicates that, "The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provision of this Act, or any other law…"[38]

In this case, the offer to the Partnership Agreement was made when Dr. Yugi insisted they drawn up a contract and made U Thein Kyaw sign them as an acceptance. In the afternoon of 9 September 2008 when U Thein Kyaw agreed to sign the agreement, the contract was formed and became in to effect from 9 September 2008. Since there is no indicated expiration date of the Agreement, the agreement is valid until there is a rightful

[34] Moot Problem, ¶ 16.
[35] Moot Problem, ¶ 18.
[36] Annexure 1, Partnership Agreement, Clause 5.
[37] RICHARD A. LORD&SAMUEL WILLISTON, 2 WILLISTON ON CONTRACT § 6:1 (4th ed., 2009-2010).
[38] Contract Act, 1872, § 37 (Myan.).

termination of it. The dispute between both Parties started on 10 January 2017 when U Thein Kyaw made up his mind to end the partnership and informed his partner about the decision. The Agreement was still in force on 10 January 2017. Therefore, the Respondent is bound by the obligations as indicated in the Partnership Agreement.

As a result, the relationship between both parties is recognized as a partnership recognized under the Myanmar Partnership Act. The Partnership Agreement being made arises from a valid contractual ground. Therefore, the Agreement is valid and enforceable during the dispute.

B. The Respondent did not validly terminate the Partnership Agreement.

According to the Myanmar Partnership Act, partnership can be dissolved by three methods: acts of the parties, court decree and operation of law.[39] Section 40 of the Myanmar Partnership Act 1932 prescribes that "A firm may be dissolved with the consent of all the partners or in accordance with a contract between the partners." In this matter, Clause No. 8 of the Partnership Agreement between both Parties prescribes "The partnership and brotherhood will be for the long term."[40]

In this case, the termination of the Partnership Agreement by the Respondent is not valid because the Claimant did not consent to the dissolution of the partnership.

[39] JOHN D. ASHCROFT & JANET E. ASCHCROFT, LAW FOR BUSINESS 394 (Jack w. Calhoun ed., 17th 2011).
[40] Annexure 1, Partnership Agreement, clause 8.

1. The Respondent caused the end to the partnership.

Dr.Yugi decided to inform U Thein Kyaw about his decision to end the partnership on 10 January 2017[41]; therefore, the Respondent is considered to be the party terminating partnership.

2. The Respondent did not provide sufficient compensation.

After the dissolution of the firm, the settlement of account between partners has to be taken place. Section 48 of the Partnership Act indicates that "In settling the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners, be observed...". Therefore, the residue what the Claimant is entitled to, according to its share profit[42], must be calculated separately from the compensation.

According to the fact that the Respondent offered to bear all relocation costs, it is not considered sufficient to what the Claimant should acquire in the first place. Since the business is declared largely successful and makes an average net profit of USD 7.5 million a year[43], the residue should be relatively to that amount. Without taking the compensation into account, the Claimant is entitled to more partnership asset than the relocation cost. Therefore, the compensation offered by the Respondent is not proportionate to the amount of compensation that is sufficient to terminate the contract.

3. The Claimant is entitled to seek for more compensation apart from the relocation cost.

On the ground that the Respondent wants to terminate the contract, it has to pay more compensation in order to constitute an appropriate amount as a dissolution of the firm.

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[41] Moot Problem, ¶ 40.
[42] Partnership Act, 1932, § 48 (Myan.).
[43] Moot Problem, ¶ 26.

According to the court ruling, loss of future profits should be accounted into compensation [44] as they did not enter to the agreement they could have done it with other party which would allow them to gain that amount of profit. This principle of loss of chance doctrine is also lied in the case *Allied Maples Group Limited v Simmons and Simmons [1995]* and *Wellesley Partners LLP v Withers [2015]*. Moreover, the compensation should cover the severance pay to all the employees since the dissolution would cause termination of employees. The Respondent must cover any statutory severance obligations. The amount of compensation depends on the employee's length of service.[45]

In conclusion, the termination of the Partnership Agreement is not valid since the Claimant did not consent to the dissolution of the partnership. Moreover, the offer made by the Respondent to bear the relocation cost is not sufficient for compensation. Therefore, the Claimant is eligible to more compensation.

III. The Claimant is entitled to the ownership of the jade-mining machinery and equipment.

Myanmar's legal system is a combination of customary law, English common law, legislation, and judicial decision.[46] As it was part of the British colony in the past, the English common law and statue law were adopted and has been used until today. In the case where there are no applicable Myanmar laws, the English common law shall be applied.[47] There is no specific Myanmar law regarding ownership of possession of movable property. Therefore, the principle of English common law is also applied in this case.

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[44] Swift Initiative Pvt. Ltd. v. Dilip Chhabria Design Pvt. Ltd. on 19 October, 2015., (2015) (India).
[45] Notification No. 84/2015 Ministry of Labor, Employment and Social Security(Myan).
[46] NANG YIN KHAM, "An introduction to the Law and Judicial System of Myanmar", CALS Working Paper Series, No.14/02, March 2014, http://law.nus.edu.sg/cals/pdfs/wps/CALS-WPS-1402.pdf.
[47] *Id*. at 2; ADRAIN BRIGGS, PRIVATE INTERNATIONAL LAW IN MYANMAR 11 (2016).

The Claimant has both legal possession and intention to possess as an owner of the jade-mining machinery and equipment to qualify as possession in law [A] and the Respondent only has custody of the machineries as an agent on behalf of the Claimant [B].

A. The Claimant has legal possession and intention to possess as an owner.

The Claimant has possession of the jade-mining machinery and equipment, which are movable property [1], so the Claimant is the owner as the Claimant has both legal possession and the intent to possess as an owner to qualify for ownership [2].

1. The jade-mining machinery and equipment are movable property.

The jade-mining machinery and equipment used in this partnership included, among others, dump trucks, excavators, and drilling machines.[48] All of these properties can be categorized as 'movable property' as defined in a number of Myanmar laws.[49] Section 39 of the Burma General Clause Act 1898 provides that "moveable property" shall mean property of every description, except immoveable property."[50] Section 29 of the same Act provides that "immovable property shall include land, benefits to arise out of land and things attached to the earth, or permanently fastened to anything attached to the earth."[51] Therefore, the jade-mining machinery and equipment, which did not fit the description of immovable property provided by Myanmar laws, are movable property.

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[48] Moot Problem, ¶16.
[49] Burma General Clause Act, 1898; Transfer of Property Act, 1882 (Myan.); Registration Act, 1908 (Myan.).
[50] Burma General Clause Act, 1898, § 39.
[51] Burma General Clause Act, 1898, § 29.

2. There is an intent to possess and control as an owner to the movable property.

Possession is part of the rights of ownership that includes the right to possess, the right to use, the right to manage.[52] Possession is so important that even ownership appears to rely on the owner having the best right to possess.[53] Possession has been defined into several types.[54]

The most basic and closet to common understanding is *de facto possession*. It is possession in fact or actual possession or actual control of the property that consists of two elements; a) the fact of physical possession or *corpus possessionis* and b) the intention to possess or *animus possidendi*[55] is "an intention to possess and control in one's own behalf"[56] usually to the exclusion of others.[57] The intention to posses is crucial to the fact whether one's action is considered as de facto possession or not. When there is a lack of intention to possess even though there is the element of physical detention of the property, it is not possession but only a mere custody.[58]

Another type of possession is *legal possession*. It is "the state of being a possessor in the eye of the law."[59] Legal possession is generally related with *de facto possession* as "[a] person in legal possession will usually be in actual possession."[60] However, "legal possession may exist without *de facto possession*, and *de facto possession* is not always regarded as possession in law."[61]

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[52] AM Honoré, *Ownership, in* OXFORD ESSAYS IN JURISPRUDENCE: A COLLABORATIVE WORK 108, 113 (A.G. Guest ed., 1961).
[53] DUNCAN SHEERAN, THE PRINCIPLES OF PERSONAL PROPERTY LAW 8 (2011).
[54] FREDERICK POLLOCK & ROBERT SAMUEL WRIGHT, AN ESSAY ON POSSESSION IN THE COMMON LAW 26-28 (1888).
[55] SHEERAN, *supra* note 53, at 9; POLLOCK & WRIGH, *supra* note 54.
[56] R.H. KERSLEY, GOODEVE'S MODERN LAW ON PERSONAL PROPERTY 32 (9th ed. 1949).
[57] MICHAEL BRIDGE, PERSONAL PROPERTY LAW 17 (3rd ed. 2002).
[58] Bridge, *supra* note 57, at 20-22.
[59] POLLOCK & WRIGH, *supra* note 54, at 26; SHEERAN, *supra* note 53, at 9.
[60] SHEERAN, *supra* note 53, at 11.
[61] 35 HARDINGE GIFFARD, HALSBURY'S LAWS OF ENGLAND para. 1111, at 617 (Quintin Hogg ed., 4th ed. 1981).

In this case, the focus is on the intent to possess element of legal possession since it would determine who has possession of the jade-mining machinery and equipment. Consequently, legal possession indicates which Party has the ownership.

The Claimant does not have physical control of the machinery and equipment while the Respondent is the one who has physical control of the assets. Even though the Respondent has physical detention of the assets, they do not have the necessary intent to possess the assets in their own behalf as an owner to exclude others from exercising control. The Respondent has only custody of the machinery and equipment and not in possession of them because they do not have all the elements required for legal possession or even for *de facto possession*. Therefore, the Respondent is not in possession of the assets and is not the owner of the machinery and equipment.

The Claimant is in fact the true owner of the machinery and equipment not only because the purchase was made by the Claimant with their fund[62] but also because the Claimant still has legal possession of the assets. Despite the fact that the jade-mining machinery and equipment is in physical control or custody of the Respondent, the Claimant still remains as the legal possessor since the Claimant still has the intent to possess as an owner on their own behalf. The Claimant never intended to transfer ownership of the machineries to the Respondent and only allow the Respondent to has custody as their agent.

Generally, the law does not require a registration of ownership of a movable property. As for the law of Myanmar, section 18(d) of the Registration Act 1908 provides that the registration of "instruments (other than wills) which purport or operate to create, declare, assign, limit or extinguish any right, title or interest to or in movable property" is optional.[63]

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[62] Additional Clarifications, Question 9.
[63] Registration Act, 1908, §18 (d) (Myan.).

The jade-mining machinery and equipment are movable property so there are no applicable product registration requirements.[64]

Possession is a *prima facie* evidence of ownership, especially when there is no registration document or title deed indicating the owner of the asset. In addition, there is an old proverb said "Possession is nine-tenth of the law" which means a possessor has an advantageous legal position in claiming property."[65] So, "there is a presumption that the person in possession is the owner."[66]

As a result, the ownership of the machinery and equipment, which are movable properties, can be presumed that the person in possession is the owner. In this case, the Claimant is presumed to be the owner of the machinery and equipment as they are in possession of the properties

In conclusion, the Claimant still has legal possession over the assets as they have the necessary intent to possess and control as an owner since the Claimant has never intended to transfer possession or ownership to the Respondent whereas the Respondent only has custody of the assets as an agent of the Claimant and does not have the intent to possess or control the assets as their own property. Therefore, the ownership of the jade-mining machinery and equipment belongs to the Claimant as they have legal possession.

B. The Respondent has custody of the jade-mining machinery and equipment as an agent of the Claimant.

The Claimant has to be the owner of the jade-mining machinery and equipment in order to be able to fulfill their duties as stipulated in the Agreement [1] and only allow the

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[64] Additional Clarifications, Question 8.
[65] Carol M. Rose, *The law is nine-tenths of possession: an adage turned on its head, in* LAW AND ECONOMICS OF POSSESSION 40, 40, (Yun-Chien Chang ed., 2015).
[66] SHEERAN, *supra* note 53, at 7; *Ramsay v. Margrett* [1894] 2 QB 18.

Respondent to has custody of the assets as their agent only because of the requirement of Myanmar law [2].

1. The Claimant is the owner of the jade-mining machinery and equipment according to the duties stated in the Agreement.

Ownership can be described as a bundle of rights, mainly the right to possess, the right to use, and the right to manage.[67] It means that in order to be able to have the authority to use or manage any property you have to own that property first.

Clause 4 of the Agreement prescribes that "AID will buy and provide equipment required, and provide technical expertise for the term of the agreement."[68] In order to fulfill this duty, the Claimant must purchase all the machinery and equipment and then provide them for the jade business as specified in the Agreement. By purchasing, the ownership of the machinery and equipment has transferred from the seller to the Claimant, making the Claimant the owner. The purchase was also fully paid by the Claimant.[69] These facts reaffirm that the Claimant is the true owner of the assets who has all the rights of ownership. If the Claimant did not own the machinery and equipment, they would not have the right to manage the assets in order to provide them for the jade business with the Respondent.

Since ownership is a bundle of rights, "[t]he owner may be divested of some of these rights without losing his ownership."[70] The owner is entitled to "use and enjoy the chattel (movable property) in any way in which it is capable of being used and enjoyed."[71]

In this case, the Claimant accomplished their duty stipulated in Clause 4 of the Agreement by obtaining the machineries in Japan and providing them for the jade business by importing them into Myanmar by the Respondent. It was the act of the Claimant

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[67] Honoré, *supra* note 52, at 113.
[68] Annexure 1, Agreement, Clause 4.
[69] Clarifications, Question 6; Additional Clarifications, Question 9.
[70] Kersley, *supra* note 56, at 22.
[71] *Id*. at 21.

exercising the rights of owner by giving custody of the machinery and equipment to the Respondent. 'Providing' does not mean transferring ownership but only means that the Claimant has to make the machineries available for use in the jade business and letting the Respondent has custody of them. Since the Claimant only committed to provide the jade-mining machinery and equipment, it cannot be concluded from the facts that the Claimant intended to transfer the ownership.

Therefore, the Claimant is still the owner of the jade-mining machinery and equipment and the Claimant letting the Respondent has custody of the assets in order to perform their duties does not cause the Claimant to lose their ownership since the Claimant still has legal possession. The Claimant was only exercising the rights of owner and there is no fact indicating that the Claimant intended to transfer ownership.

2. <u>The Claimant has to let the Respondent hold custody of the jade-mining machinery and equipment out of necessity.</u>

The Respondent only holds custody of the jade-mining machinery and equipment as an agent of the Claimant to obtain permits required with the government of Myanmar. Despite being named and recorded as the owner, importer, and operator of the machineries in the permits[72], the Respondent does not have ownership because they were acting as agent of the Claimant. So the Claimant still has ownership and legal possession of the machinery and equipment.

Since the law regarding the production of the jade business requires a Myanmar company as operator [a], the Claimant had no choices but to have the Respondent act as their agent to obtain permits from Myanmar government [b].

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[72] Moot Problem, ¶ 43.

i. The Myanmar Gemstone Law requires a Myanmar company as an operator of machinery.

The Partnership is a jade business and jade is categorized as one of the Gemstone under the Myanmar Gemstone Law 1995.[73] In this case, the jade business partnership is under control of this law.

Section 2(b) of this law provides that "Gemstone Production means all stages of operation for obtaining the naturally occurring raw gemstone."[74] The Gemstone Production Permit allows exploration, production, trading, processing, jewelry manufacture, retail, export and foreign sales.[75] The jade-mining machinery and equipment are used for exploration, extraction, breaking and cutting which are all parts of the Gemstone Production as described in section 2(b). As a result, operating the machineries is part of the stages of Gemstone Production.

Company that can obtain Gemstone Production permit has to be a Myanmar company as section 2(h) specifies "Company means a company formed as a Myanmar company under the Myanmar Companies Act or a company formed solely with Myanmar Citizens under the Special Company Act, 1950." Consequently, only a Myanmar company is able to obtain the permits required for operating the jade-mining machinery and equipment.

ii. The Respondent has to obtain permits to operate the jade-mining machinery and equipment.

Section 2(2A)(a) of the Burma Companies Act 1914 gives definition of Burmese company as "in the case of a company having a share capital, a company whose entire share

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[73] Myanmar Gemstone Law, 1995, § 2(a).
[74] Myanmar Gemstone Law, § 2(b).
[75] Emma Irwin, Gemstone Sector Review in support of Myanmar Extractive Industry Transparency Initiative (MEITI) 7,99 (Jul. 2016), http://www.mata-nrg.org/wp-content/uploads/2016/08/Myanmar-EITI-Gemstone-Sector-Review-190716-FINAL-1.pdf.

capital is, at all times, owned and controlled by the citizens of the Union of Burma,"[76] AID does not fit the description of Myanmar company as it is owned by Japanese citizens[77] which means they cannot obtain the Gemstone Production permit. The Claimant did not have a choice but to let the Respondent a Myanmar company[78] obtained the permits to operate the machineries[79] in their place as their agent as required by the law of Myanmar.

In conclusion, the Respondent only has custody of the jade-mining machinery and equipment because the Claimant, who has never intended to transfer ownership, still remains as the owner of the assets reaffirmed by the Agreement that the Claimant have to be the owner in order to manage and provide the machineries as agreed. The Respondent has to obtain the permits to operate the machinery and equipment as required by the law of Myanmar.

IV. JADEYE software belongs to the Claimant as it is considered as the original creator.

Computer software is protected under the copyright law of Japan. The Japanese Copyright Act grants copyright protection to authors of certain works indicated by such law. The provisions contained in the Japanese Copyright Act are in compliance with the Berne Convention,[80] which meet minimum standard protection required by the Agreement on Trade-Related Aspect of Intellectual Property rights, ratified by both Japan and Myanmar.

The Claimant is entitled to the right of the copyrighted JADEYE software because the software was created by the Claimant's employee in the course of his duties [A]. Also, JADEYE software is under the protection of copyright [B] and the Respondent does not have

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[76] Burma Companies Act, 1914, § 2(2A).
[77] Additional Clarifications, Question 19.
[78] Moot Problem, ¶ 7.
[79] Annexure 1, Partnership Agreement, Clause 3.
[80] JAPAN COPYRIGHT OFFICE, COPYRIGHT SYSTEM IN JAPAN (October 2016).

the ownership of copyright; therefore, the Respondent is not entitled to reverse engineer JADEYE software [C].

A. The Claimant is entitled to the right of the copyrighted JADEYE software because the software was created by the Claimant's employee in the course of his duties.

According to Article 15 (2) of the Japanese Copyright Act, ownership of program work, created on initiative of employer in course of duties of employee, belongs to the employer. Joe Yamashita created JADEYE software based on initiative of the Claimant in his course of duties [1]. The Claimant is the only employer of Joe Yamashita [2]; therefore, subsistence and ownership of rights in the JADEYE software only belong to the Claimant [3].

1. Joe Yamashita created JADEYE software based on initiative of the Claimant in his course of duties.

In the absence of direct order of the employer, the work of an employee is considered to be done on initiative of the employer, if it can be expected that the employee's work is naturally created in his scope of duties.[81]

It is important to consider whether the work that the employee created is in accordance with the business of the employer to determine whether the work of employee is done in his course of duties.[82] "[t]he presence or otherwise features of any control and supervision of the employer"[83] need to be considered so the work of employee is regarded as work done in course of duties of the employee.[84]

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[81] JAPANESE COPYRIGHT LAW*:* WRITINGS IN HONOUR OF GERHARD SCHRICKER, 37 (Ganea Peter, Christopher Heath and Hiroshi Saitō eds., 2005).
[82] Tōkyō Chihō Saibansho [Tokyo Dist. Ct.] Nov. 12, 2004, (wa) no. 12686 (Japan).
[83] *Id.*
[84] Shigeki Chaen, *Japanese Copyright Law*, OVERVIEW , http://www.law.kyushu-u.ac.jp/~tomeika/ip/index.html#_edn8 (last visited July 25, 2017).

Joe Yamashita created JADEYE software when he was a financial executive of the Claimant. Despite the fact that Joe Yamashita decided to create JADEYE software by himself, he did it to improve the efficiency of the Claimant's operation for financial efficacy.[85] As JADEYE software has an ability to "expedite assessment work and assist in determination of scalability and economic value of the site"[86], it could be reasonably implied that Joe Yamashita created JADEYE software to improve his performance as finance executive. Besides, the operation management[87] and economic value determination[88] capability of JADEYE software also comply with the core competencies of the Claimant in management and implementation of projects fostering economic growth.[89] Therefore, JADEYE software is considered to be created on initiative of the Claimant.

Joe Yamashita created JADEYE software as a part of the Claimant's business. The program is capable of determining scalability and economic value of the site[90] so it was created to improve financial work of Joe Yamashita and assist the conduct of the Claimant's jade business. The software was installed in machinery and equipment to help the exploration, extraction, breaking and cutting work of the Claimant.[91] Moreover, the fact that he handed the source code of JADEYE software to the Claimant before leaving the company[92] is evident that he created it for the Claimant's account, not for his own benefit. After satisfied with the trial test of JADEYE software, the Claimant ordered it to be installed in the machineries at the site.[93] This indicates that the Claimant has the right to check whether the work could be used in the business of the company so the feature of supervision and

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[85] Additional Clarifications, Question 26.
[86] Moot Problem, ¶ 22.
[87] Moot Problem, ¶ 21.
[88] Moot Problem, ¶ 22.
[89] Moot Problem, ¶ 2.
[90] Moot Problem, ¶ 22.
[91] Additional, Clarifications, Question 16.
[92] Moot Problem, ¶ 25.
[93] Moot Problem, ¶ 23.

control is present. As a result, Joe Yamashita created JADEYE software in his course of duties under the Claimant.

2. The Claimant is the only employer of Joe Yamashita.

Article 9 of Labor Standard Law of Japan defines "employees" as "one who is employed at an enterprise or place of business (hereinafter referred to simply as an enterprise) and receives wages therefrom, without regard to the kind of occupation."[94] According to the definition provided, a person is considered to be employed when he or she is under supervision and direction of the other and received wages from the employer.[95]

Joe Yamashita is a finance executive of the Claimant[96]. Even though Joe Yamashita was working at the Hpakant site, the Claimant still has an administrative supervision. The employer is deemed to exercise administrative supervision by setting objectives and resources for fulfilling duties and checking on employee's work process.[97] Joe Yamashita informed Dr. Yugi Asamura about his going on work and installed JADEYE software, which was created to help expedite the Claimant's duties in jade mining sites after receiving permission from Dr.Yugi Asamura.[98] The Claimant has supervision and right to control the manner of the work that Joe Yamashita did. In addition, the Claimant is the one who pays salary to Joe Yamashita as remuneration to the work;[99] therefore, the Claimant is the only employer of Joe Yamashita.

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[94] Rōdō kijun-hō [Labour Standard Act], Law No. 107 of 1995, art. 9 (Japan).
[95] Mutsuko Asakura, *Workers' Protection in Japan*, INTERNATIONAL LABOUR ORGANIZATION (Sept. 1, 1999), http://ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/genericdocument/wcms_205369.pdf.
[96] Moot Problem, ¶ 21.
[97] University of Alaska, *Level of supervision*,FAQ-CLASSIFICATION (May 18, 2016, 2:23 PM), https://www.alaska.edu/classification/faqs/levels-of-supervision/.
[98] Additional Clarifications, Question 32.
[99] Additional Clarifications, Question 14.

3. Subsistence and ownership of rights in the JADEYE software only belong to the Claimant.

According to Article 15 (2) of Japanese Copyright Act, the author a program work is not entitled to ownership but "[t]he authorship of a program work, which on the initiative of a legal person, etc. is made by his employee in the course of his duties, shall be attributed to that legal person,etc., unless otherwise stipulated in a contract, work regulation or the like in force at the time of making of the work."[100] Accordingly, all rights in program work belong to the employer[101] including right to reverse engineer program works of the author. This provision requires that the employee created the work based on initiative of the employer, the work was done by person engaged in employer's business in his course of duties and no contrary agreement was made for the employer to be entitled to ownership of the work.[102]

Joe Yamashita, the employee of the Claimant, created JADEYE software in the course of his duties under the Claimant. Moreover, the software was created by Joe Yamashita based on an initiative of the Claimant. No agreement indicating the person entitled to ownership of JADEYE software was made. Therefore, the Claimant is entitled to subsistence and ownership of the software as indicated in Article 15 (2) of Japanese Copyright Act.

Joe Yamashita is an employee in a contract of service under the Claimant. He created JADEYE software in his course of duties based on initiative of the Claimant. Besides, the agreement contrary to Article 15 (2) of Japanese Copyright Act was not made. As a result, all rights of JADEYE software which was created in the course of duties by Joe Yamashita, the employee, belongs to the Claimant, the employer.

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[100] Chosakukenhō [Copyright Act], Law No.35 of 2014, art. 15, no. 2 (Japan).
[101] Association Internationale pour la Protection de la Propriété Intellectuelle, *Employers' rights to intellectual property (Q183)*, AIPPI (2004), http://aippi.org/wp-content/uploads/committees/183/GR183japan.pdf.
[102] A. D. RUSSELL-CLARKE, COPYRIGHT AND INDUSTRIAL DESIGNS 106 (1951).

B. JADEYE software is under the protection of copyright.

The argument arises on ownership and subsistence of rights in the JADEYE software which is considered work protected by Japanese Copyright Act [1] so the copyrighted work is protected despite no registration [2].

1. JADEYE software is protected by Japanese Copyright Act.

Copyright of computer software or program is regarded as work of the author which is under protection of copyright law of Japan. Article 10 (1) (ix) provides that "works used in this Law shall include, in particular the following: program works".[103] In Article 2 (xbis) of Japanese Copyright Act, definition of program is provided as "an expression of combined instructions given to computer so as to make it function and obtain certain result".[104] This means source code and object code of computer software are included as program works and shall be protected by Japanese Copyright Act.[105]

The scope of protection of Copyright law of Japan covers the work of Japanese national as in Article 6 (i) of Japanese Copyright Act provides the copyright to "works of Japanese nationals ("Japanese nationals" includes legal persons established under Japanese law)."[106]

JADEYE is a process optimisation and operation management computer software.[107] According to article 10 (1) (ix) of Japanese copyright Act, the source code and object code of JADEYE software is considered as works protected in copyright law of Japan. The Claimant, entitled to JADEYE software ownership, is a Japanese national company as it was founded

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[103] Chosakukenhō [Copyright Act], Law No.35 of 2014, art. 10 (Japan).
[104] Chosakukenhō [Copyright Act], Law No.35 of 2014, art. 2 (Japan).
[105] Judith J. Welch & Wayne L. Anderson, Copyright Protection of Computer Software in Japan, 11 Computer L.J. 287, 295 (1991); http://repository.jmls.edu/cgi/viewcontent.cgi?article=1399&context=jitpl.
[106] Chosakukenhō [Copyright Act], Law No.35 of 2014, art. 6 (Japan).
[107] Moot problem, ¶ 21.

and established in Japan in 1958.[108] Therefore, copyright in the Claimant's work is in scope of protection under Japanese Copyright Act.

2. Copyrighted work is protected despite no registration.

Article 17 (2) of Japanese Copyright Act indicates that "the enjoyment of moral rights of author and copyright shall not be subject to any formality."[109] This means copyright protection is automatically available for authors regardless of any registration requirement.[110] For the term of protection, the author shall enjoy protection of copyright "until the end of period of fifty years following the death of the author".[111] As a result, despite the fact that JADEYE software is not registered under Japanese Copyright Act,[112] the copyright of the software is automatically protected by Japanese Copyright Act.[113]

JADEYE software is a work of the Claimant, who is regarded as Japanese nationals, and it is considered as a protectable work under Japanese Copyright Act so its source code and object code is automatically protected under Japanese Copyright Act, regardless of any registration.

C. The Respondent infringes the Claimant's JADEYE copyright by reverse engineering.

The Claimant, as the owner, has the exclusive rights to translate and reproduce the JADEYE software[1]. Reverse engineering violates exclusive rights of translation and

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[108] Moot Problem, ¶ 1.
[109] Chosakukenhō [Copyright Act], Law No.35 of 2014, art. 17 (Japan).
[110] Mark S. Lee, *Japan's Approach to Copyright Protection for Computer Software*, 16 LOY. L.A. INT'L & COMP. L. REV. 675, 682 (1994), Available at: http://digitalcommons.lmu.edu/ilr/vol16/iss3/4.
[111] Chosakukenhō [Copyright Act], Law No.35 of 2014, art. 51 (Japan).
[112] Additional Clarifications, Question 2.
[113] Lee, *supra* note 110 at 688.

reproduction of the author [2]. The Respondent does not have the rights as the owner; therefore, the Respondent is not entitled to reverse engineer JADEYE software [3].

1. The Claimant as the owner has the exclusive rights to make a translation and reproduction.

Article 21 of Japanese Copyright Act grants the author of the program work "exclusive right to reproduce his work".[114] The exclusive right granted covers the right to reproduce source code of the program work[115] as Article 2 (xv) of Japanese Copyright Act provides that "[r]eproduction means reproduction in a tangible form by means of photography, reprography, sound or visual recording or otherwise".[116] Moreover, Article 27 of the Japanese Copyright Act also grants the owner of the program works an exclusive right to translating the work.[117] Since copyright owner has the exclusive rights to make a reproduction and translation and reverse engineering process consists of the act of translation and reproduction of existing work, the copyright owner holds an exclusive right to reverse engineer computer software.

In this case, the Claimant, the owner of the copyright of JADEYE software, is entitled to exclusive rights to reproduction and translation of JADEYE software under Article 21 and Article 27 of Japanese Copyright Act. Therefore, the Claimant also holds an exclusive right to reverse engineer JADEYE software.

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[114] Chosakukenhō [Copyright Act], Law No.35 of 2014, art. 21 (Japan).
[115] Talley, Crystal D. Japan's Retreat from Reverse Engineering: An Unnecessary Surrender, 29 Cornell International Law Journal, 807, 835 (1996), http://scholarship.law.cornell.edu/cilj/vol29/iss3/5.
[116] Chosakukenhō [Copyright Act], Law No.35 of 2014, art. 2 (Japan).
[117] Welch, *supra* note at 105.

2. Reverse engineering violates exclusive rights of translation and reproduction of the author.

In *Microsoft Corp. v. ShuSys.Trading,Inc,* reverse engineering infringes rights of software copyright author.[118] Reverse engineering is an act of "creating new functional specifications for a system"[119] derived from a reverse analysis of former works. Unauthorized copying of existing work is done before object code translation process in order to analyze an existing system[120] resulted in infringing exclusive rights of reproduction and translation of the author which is granted by Article 21 of Japanese Copyright Act.

Moreover, reverse analysis of precedent system is disassembling low level assembly language or object code into high level language or source code in order to understand system of the software.[121] The object code disassembling process is an act of translating machine-readable language into human readable language violating exclusive right to translate work[122] granted to the author of the object code under Article 27 of Japanese Copyright Act.

3. The Respondent does not have the ownership of copyright; therefore, the Respondent is not entitled to reverse engineer JADEYE software.

The Claimant is entitled to ownership of JADEYE software as an employer of Joe Yamashita, the author of the software. The Claimant is entitled to exclusive rights of reproduction and translation of JADEYE software.

Ownership of JADEYE software does not subsist in the Respondent and the Claimant did not authorize the Respondent to translate and reproduce of the software and did not

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[118] Tōkyō Chihō Saibansho [Tokyo Dist. Ct.] Jan. 30, 1987, 1219 HANJI 48 (Japan).
[119] Pamela Samuelson, Reverse engineering someone else's software: Is it legal?, 7 IEEE software 90, 91 (1990), http://people.ischool.berkeley.edu/~pam/papers/ieee_1990.pdf.
[120] Talley, *supra* note 115.
[121] DAVID BAINBRIDGE, SOFTWARE COPYRIGHT LAW, 154 (2003).
[122] *Id,* at 159.

provide source code of JADEYE to the Respondent.[123] As a result, the Respondent is not entitled to reverse engineer JADEYE software as an act of reverse engineering infringes copyright of JADEYE software.

The Claimant, the only JADEYE software copyright owner, holds exclusive rights of reproduction and translation to the work and is considered to hold exclusive right to reverse engineer computer software. Reverse engineering by the Respondent violates exclusives rights of copyright owner; therefore, the Respondent, who does not have the ownership of the copyright of JADEYE software, is not entitled to reverse engineer JADEYE software.

[123] Moot Problem, ¶ 44.

PRAYER FOR RELIEF

For aforementioned reasons, the Respondent respectfully requests the arbitral tribunal to grant the following orders:

I. The termination of the Agreement by the Respondent is valid.

II. The Respondent is only liable to pay relocation cost of the Claimant's employees.

III. The Firm is the owner of the jade-mining machinery and equipment.

IV. The subsistence and ownership of rights in JADEYE software belong to the Firm.

V. The Respondent is rightfully entitled to reverse engineer JADEYE software.

Respectfully Submitted,

Counsel for the Claimant