

Legal Issues Arising from Client-Driven Variation Claims in Construction Contracts

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Abstract

Variation claims are an almost inevitable feature of construction contracts due to the dynamic and complex nature of construction projects. Under the context of variation claims, it generally arise when a contractor is required to execute the work that is outside of the contract parameters and in return, proposes a compensation in terms of time or cost. Among these, variations initiated by clients frequently give rise to legal disputes, particularly in relation to entitlement, procedural compliance, valuation, and dispute resolution. This research examines the legal issues arising from client-driven variation claims in construction contracts, with a specific focus on how such claims are interpreted and resolved within the Malaysian legal framework. Adopting a doctrinal legal research methodology, this study analyses statutory provisions, standard forms of construction contracts, namely the PWD Form 203A, PAM Contracts 2018, and FIDIC Contracts 2017, and a comprehensive selection of recent Malaysian court decisions. Through systematic case law analysis, the research identifies key legal issues underpinning client-driven variation claims, including the classification of works as variations, entitlement to variation payments, procedural non-compliance with contractual requirements, and the role of adjudication under the Construction Industry Payment and Adjudication Act 2012 (CIPAA). The study further examines the repercussions of such variation claims on contractors, particularly in terms of loss of entitlement, financial disruption, exposure to liquidated ascertained damages, failure to recover loss and expense, and prolonged dispute resolution. The findings reveal that courts consistently emphasise strict adherence to contractual procedures, especially regarding written instructions, timely notices, and proper documentation. While judicial decisions demonstrate an effort to balance contractual certainty with commercial realities, contractors who fail to comply with procedural requirements often face adverse outcomes despite the substantive merits of their claims. This research contributes to construction law scholarship by clarifying prevailing legal principles governing client-driven variation claims and highlighting the practical implications of judicial reasoning for contractors. The study also provides useful guidance for industry

1. Introduction

In accordance to Olanrewaju & Lee (2022), more than 10% of the workforce employed and up to 10% of Gross Domestic Product (GDP) in many countries derives from the construction sector, which is widely regarded as one of the highest contributors to the national economy. The development and growth of the construction industry depend on the effective and successful delivery of construction related projects (Alaloul et al., 2021). However, the inherent complexity of construction processes often results in the production of complicated contract documents, which consequently lead to complex disputes (Harmon, 2003).

Among the most common causes of disputes in construction contracts is the issue of variation. According to Akomah et al. (2018), this type of issue is seen as almost an unavoidable factor in construction projects, occurring across all types of projects and have significant implications to the final cost and time of project completion. In accordance with Ismaeil & Sobaih (2024), variation can be defined as a modification or deviation to the original scope of the contract, which may involve additions, omissions, or substitutions to the quality, quantity, or schedule of the work.

In construction projects, although variations are frequently required to account for design modifications, changing project requirements, or unanticipated circumstances, client-driven variation claims may result in legal issues. Legal concerns typically involve vague wording in regard to the change management process in the contract, delays to project completion, interpreting the scope of work, and obligations of parties involved in managing the changes. Therefore, to limit disputes and improve project outcomes, it is important to understand the potential legal impact of variations to the project especially those that are driven by the client.

This research seeks to investigate the legal issues that arise from client-driven variation claims in construction contracts, examining on how these claims impact project completion and figuring out best practices to handle these difficulties within the bounds of the law.

2. Background of Research

Variations are widely recognised as an inevitable feature of construction projects, often necessitated by design changes, evolving client requirements, or unforeseen circumstances (Matarneh, 2024). However, empirical studies demonstrate that clients are frequently the primary initiators of variations due to inadequate project definition, changes in specifications, delayed decision-making, and financial constraints (Ali & Majeed, 2020; Mohammad & Hamzah, 2019).

While client-driven variations may be introduced to improve project outcomes, they often disrupt project progress and create legal uncertainty. Disputes commonly arise where variation instructions are issued informally or retrospectively, or where contractors fail to comply with contractual notice and documentation requirements (Do et al., 2023). These issues are further compounded by inconsistent interpretation and application of variation clauses in standard forms of construction contracts, such as the PWD Form 203A, PAM Contracts 2018, and FIDIC Contracts 2017.

Given the legal and contractual nature of disputes arising from client-driven variation claims, this research adopts a doctrinal legal research approach to examine how such claims are regulated and resolved under Malaysian construction law. The study is grounded in the analysis of legal principles derived from statutes, standard forms of construction contracts, and judicial decisions, as doctrinal research is particularly suited to clarifying legal rights, obligations, and procedural requirements governing variation claims (S. I. Ali et al., 2017; Soren, 2021). This approach allows for a structured examination of how courts interpret variation clauses, assess compliance with contractual procedures, and determine entitlement to payment, time extensions, and loss and expense arising from client-driven variations.

The research methodology involves a qualitative approach of selected reported and unreported Malaysian court cases, with emphasis placed on recent superior court decisions to reflect current judicial trends. In addition, a comparative examination of variation provisions in commonly used standard forms of construction contracts—namely the PWD Form 203A, PAM Contracts 2018, and FIDIC Contracts 2017, is undertaken to evaluate how contractual mechanisms govern the instruction, valuation, and administration of variations in practice. By synthesising case law analysis with contractual interpretation, this methodological framework enables the research to identify recurring legal issues, assess the repercussions of client-driven variation claims on contractors, and evaluate the consistency of judicial reasoning. Overall, this approach supports the study's aim of providing legal clarity and practical insight into the management and resolution of client-driven variation disputes in construction contracts.

3. Literature Review

This chapter reviews existing literature relating to variation claims in construction contracts, with particular emphasis on client-driven variations and the legal issues arising therefrom. Given the dynamic and complex nature of construction projects, variations are widely recognised as an inevitable feature of construction contracts, often arising from changes in scope, design modifications, or evolving client requirements (Akomah et al., 2018; Memon et al., 2014). While variations are contractually permitted under standard forms of construction contracts, their implementation frequently gives rise to disputes concerning entitlement, valuation, and procedural compliance. The literature highlights that client-driven variations are among the most significant contributors to construction disputes, largely due to delayed decision-making, inadequate project definition, and persistent changes initiated by clients (Ndiokubwayo, 2009; Mohammad et al., 2017; Mohammad & Hamzah, 2019).

3.1 Disputes in Construction Industry

Disputes are a prevalent feature of the construction industry due to the complexity of construction projects, the involvement of multiple contractual parties, and the strict procedural and technical requirements governing construction contracts (Harmon, 2003; Olanrewaju & Lee, 2022). The literature consistently identifies variation claims, particularly those initiated by clients, as a major source of construction disputes, often giving rise to disagreements over entitlement to additional payment, extension of time, and recovery of loss and expense (Akomah et al., 2018; Mohammad et al., 2017). Such disputes are commonly exacerbated by informal or delayed variation instructions, inadequate documentation, and non-compliance with contractual notice provisions, which undermine contractors' ability to enforce their claims (Mohammad & Hamzah, 2019; Do et al., 2023). Furthermore, inconsistent interpretation and administration of standard forms of construction contracts contribute to prolonged and costly dispute resolution processes, resulting in financial strain and cash flow disruption for contractors.

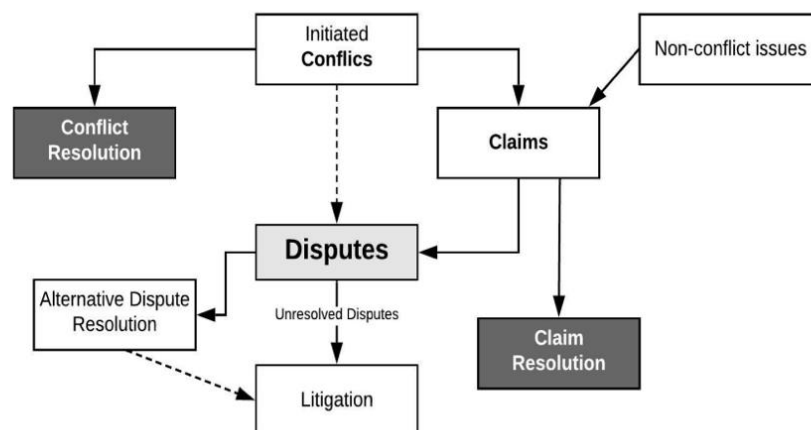


Fig. 1 The interrelationships between disputes, claims, and conflicts

3.2 Variation

Generally, construction contracts are known as an agreement that is legally binding between the parties involved in a project. The contract contains extensive specifications which serve as benchmark or standard for performance. Its rigidity and legal standing firmly establish the parameters on performance, and any deviation of specification leads to disagreement and conflict (Cheung et al., 2006).

In construction contracts, the term of variation can be defined or interpreted in various ways. Table below illustrates some of the definition on variation that can be acquired from several sources, such as standard forms of contract, journal articles, books, etc.

Table 1 Definition of variation from various sources

Source	Definition of Variation
PWD Form 203A	A change in the Contract Document that impacts the Contract Sum and necessitates the design, quality, or quantity of the Works as specified or referred therein to be altered or modified. Such changes include: (a) additions, omissions and substitutions of any work (b) alterations of kinds or standards of materials, goods (c) removal from site of materials delivered for the works unless due to defective
PAM Contract 2018	The alteration or modification of the Work's design, quality, or quantity including: (a) additions, omissions and substitutions of any work (b) alterations of kinds or standards of materials, goods (c) removal from site of materials delivered for the works unless due to defective (d) changes to working hours, working space, access, or the order of the work
FIDIC Contract 2017	Any change of the Works that may include: (a) changes to the quantities of any item of work (b) changes to the quality and other characteristics of any item of work (c) changes to levels, positions, dimensions of the work (d) omission of any work (e) additional work, plant, materials or services necessary for the permanent works including any tests (f) changes to the sequence or timing of the construction of the works
Ismaeil & Sobaih (2024) Enshassi et al. (2010)	A modification or deviation to the original scope of the contract, which may involve additions, omissions, or substitutions to the quality, quantity, or schedule of the work.
Imron et al. (2022) Ali & Majeed (2020)	Any change from the original scope of work as outlined in the contract or tender, which includes additions, deletions, or changes that affect the budget, schedule, or design of the project.
Memon et al. (2014)	Formal signed agreements between parties to a contract that indicate an addition, deletion, or appraisal to the contract tender documents.
Xavier (1991)	Changes that are made to the original scope of work, including extras, additions, enlargements, deductions, deviations, substitutions, alterations, as well as omissions, where it does not include with the omissions made with the intent to assign the unfinished work to another contractor.

3.3 Concept of Variation Claims

Variations arise when changes are made to the original scope of work under a construction contract and constitute a fundamental aspect of construction contract administration, involving additions, omissions, or alterations to the contractual works and corresponding adjustments to time and price (Memon et al., 2014). In Malaysia, the authority to instruct and value variations is governed by standard forms of construction contracts such as the PAM Contracts 2018, PWD Form 203A, and FIDIC Contracts 2017. Changes to scope, design, specifications, or construction methods commonly give rise to claims for additional time or cost, making variation orders one of the most significant causes of claims in construction projects (Apte & Pathak, 2016; Shaikh et al., 2020; Zanelidin, 2005).

Variation claims typically arise where contractors are required to perform works beyond the contractual parameters due to client-induced changes, design errors, or unforeseen site conditions (Arain & Pheng, 2005). While variations may sometimes enhance project outcomes, ineffective management often leads to disputes, delays, and increased costs, underscoring the importance of clear contractual procedures and proper documentation in managing variation claims (Ibbs et al., 2001).

Construction law jurisdictions within the common law tradition generally adopt similar principles in regulating variation claims, particularly in relation to contractual authority, written instructions, valuation mechanisms, and procedural compliance. In the United Kingdom, courts have consistently emphasised strict

adherence to contractual procedures governing variations, especially regarding written instructions and certification requirements, as demonstrated in *Henry Boot Construction Ltd v Alstom Combined Cycles Ltd*¹.

Similarly, Singaporean courts adopt a contract-centred approach by enforcing notice provisions and contractual mechanisms strictly to preserve commercial certainty in construction projects (Chuah & Kok Fong, 2024). In Australia, while courts also prioritise contractual compliance, greater flexibility has occasionally been recognised through remedies such as quantum meruit where additional works fall outside the contractual framework or where strict enforcement would result in unjust enrichment (Burr, 2024). These approaches demonstrate that although common law jurisdictions share similar foundational principles on variations, the degree of judicial flexibility differs according to each jurisdiction's emphasis on contractual certainty and equitable considerations.

The comparative position in these jurisdictions reflects trends similarly observed in Malaysian construction law, where courts generally uphold the contractual allocation of risks and procedural requirements in variation claims. Standard forms such as PAM Contracts 2018, PWD Form 203A, and FIDIC Contracts 2017 likewise incorporate detailed mechanisms governing the instruction, valuation, and administration of variations, reinforcing the importance of proper documentation and timely notification. Comparative analysis therefore illustrates that Malaysia's approach is broadly aligned with other common law jurisdictions in prioritising contractual certainty while recognising limited judicial discretion in exceptional circumstances.

3.4 Clauses on Variation in Standard Forms of Contracts

To manage variations effectively and minimise disputes, standard forms of construction contracts in Malaysia contain specific provisions governing the identification, instruction, and approval of variations, allowing changes to the scope of work during project execution (Othman, 2008). Although the procedures for instructing and valuing variations differ across contracts, the underlying concept remains consistent. This section therefore examines the key variation clauses in three commonly used standard forms of construction contracts in Malaysia, namely the PAM Contracts 2018, PWD Form 203A, and FIDIC Contracts 2017.

Table 2 *Clauses on variation in standard forms of contracts*

Common Clauses	Standard Forms of Contracts		
	PAM Contracts 2018	PWD Form 203A	FIDIC Contracts 2017
Clause Reference	[Clause 11] • Variations	[Clause 24] • Variation	[Clause 13] • Variations and Adjustments
	[Clause 24] • Loss & Expense	[Clause 25] • Valuation [Clause 44] • Loss & Expense	[Clause 20] • Claims
Authority to Instruct Variations	[Clause 11.2] • Architect	[Clause 24.1] • Superintending Officer	[Clause 13.1] • Engineer
Contract Administrator Instructions	[Clause 2.2] • Instructions must be in writing • Must notify within a stipulated time	[Clause 5.2] • Instructions must be in writing • Must notify within a stipulated time	[Clause 3.5] • Instructions must be in writing • Must notify within a stipulated time
Scope of Variation	[Clause 11.1] • Additions, omissions, and substitutions of any work • Alterations of kinds or standards of materials	[Clause 24.2] • Additions, omissions, and substitutions of any work • Alterations of kinds or standards of materials	[Clause 13.1] • Changes to the quantities • Changes to the quality and other characteristics

¹ *Henry Boot Construction Ltd v Alstom Combined Cycles Ltd* [2005] EWCA Civ 814.

Common Clauses	Standard Forms of Contracts		
	PAM Contracts 2018	PWD Form 203A	FIDIC Contracts 2017
	- Removal from site of materials delivered for the works unless due to defective - Change to working hours, working space, access, or the order of work	Removal from site of materials delivered for the works unless due to defective	- Changes to levels, positions, dimensions - Omission of any work - Additional work, plant, materials or services for permanent works - Changes to the sequence or timing of construction works
Valuation Method	[Clause 11] - Contract rates - Fair valuation - Agreed rates between parties	[Clause 25] - Bill of quantities or schedule rates - Agreed rates between parties - Fair valuation if no rates available	[Clause 12.3] - Contract rates - New unit rates - Agreed rates between parties
Entitlement to Extension of Time (EOT)	[Clause 23] Yes, subject to proper claims	[Clause 43] Yes, subject to proper claims	[Clause 20.1] Yes, subject to proper claims
Entitlement to Loss and Expense	[Clause 24] Yes, subject to proper claims	[Clause 44] Yes, subject to proper claims	[Clause 20.1] Yes, subject to proper claims

3.5 Requirements for Valid Variation Claims under Contract Law

Due to the dynamic and complex nature of construction projects, variations are an almost inevitable feature of construction contracts (Do et al., 2023; Matarneh, 2024). When variations arise, whether initiated by clients, contractors, or unforeseen circumstances, a proper legal and procedural basis is required to ensure their enforceability and entitlement to reimbursement. The validity of a variation claim depends on compliance with specific legal and contractual requirements, which are determined by the standard form of contract governing the project (Zaneldin, 2005). As each standard form prescribes distinct rules on authority, procedure, documentation, and valuation, it is essential for parties to understand and adhere to these requirements to minimise disputes. Accordingly, this section outlines the key legal elements of valid variation claims under the PAM Contracts 2018, PWD Form 203A, and FIDIC Contracts 2017.

Table 3 Requirements for valid variation claims

Requirements	Standard Forms of Contracts		
	PAM Contracts 2018	PWD Form 203A	FIDIC Contracts 2017
Authority to Instruct	[Clause 11.2] Architect	[Clause 24.1] Superintending Officer	[Clause 13.1] Engineer
Written Instruction	[Clause 2.2] Written instructions are mandatory	[Clause 5.2] Must be in writing, verbal instructions are not binding unless confirmed	[Clause 13.1 & 13.2] Instructions must be in writing; contractor may also propose variations
Claim Limitation	[Clause 11.1] Excludes any changes intended to rectify any negligence, omission, default or breach of contract by the contractor	[Clause 24] Instructions issued arising from contractor's default does not entitle the contractor to any EOT	[Clause 7.6] The employer may appoint others to execute the remedial works and recover the costs if the contractor fails to do so
Timely Notification	[Clause 11.7] Contractor to notify promptly within 28 days from the date of AI or CAI	[Clause 44] Contractor must submit claims within 30 days of the issuance of instructions	[Clause 20.1] Time-bar clause applies; notice of claim must be given no later than 28 days
Valuation Method	[Clause 11]	[Clause 25]	[Clause 12.3]

Requirements	Standard Forms of Contracts		
	PAM Contracts 2018	PWD Form 203A	FIDIC Contracts 2017
	Based on contract rates, agreed rates, or fair valuation	BQ rates, agreed rates, or fair valuation	BQ rates, agreed new rates, or fair valuation
Claim Documents	[Clause 11.8 & 24.2] Contractor to provide supporting records and particulars, including all contemporaneous records of all the claims	[Clause 44.2] Detailed claim submission including supporting documents, vouchers, explanations, and calculations	[Clause 20.2] Fully detailed claim submission including detailed description of the event, statement of the contractual and/or other legal basis of the claim, contemporary records, supporting particulars of the amount of additional payment claimed or extension of the DNP claimed
Legal Effect	Properly instructed and valued variations are enforceable for claims	Valid variations may result in entitlement to EOT or additional payment	Properly notified and valued variations lead to payment or EOT entitlement

3.6 Causes of Client-Driven Variation Claims

Variations are a prevalent issue in construction projects, particularly those initiated by clients, and may arise due to factors such as project complexity, statutory changes, or site conditions. However, numerous studies have identified clients as one of the primary contributors to variations, often due to delayed decision-making, frequent changes to scope or design, vague initial project requirements, and limited construction knowledge (Ali & Majeed, 2020; Mohammad et al., 2017; Mohammad & Hamzah, 2019; Ndihokubwayo, 2009).

In this research, the focus is placed on individual factors, which refer to person-centric decisions, behaviours, and preferences of the client that directly influence the occurrence of variation claims, as distinct from external or technical factors. These client-related factors are typically subjective and situational, reflecting internal processes, understanding of the project, and evolving objectives. Prior studies further support that client, particularly in large-scale projects, are frequently the main cause of variations due to an inability to fully comprehend or visualise project designs, unclear drawings, or changes in client preferences during construction (Jawad et al., 2009). Identifying these client-driven factors is therefore essential in minimising the occurrence and impact of variation claims in construction projects.

Table 4 Concept matrix on the causes of client-driven variation claims

Author(s)	Causes of Client-Driven Variation Claims					
	Change of Scope	Change of Specifications	Factors of Design	Difficulty to Prompt Decision-Making	Financial Problems	Persistent Behaviour of Client
Ndihokubwayo (2009)				√	√	√
Enshassi et al. (2010)	√		√	√	√	
Arain & Pheng (2005)		√				
Ali & Majeed (2020)		√	√	√	√	
Arain & Pheng (2006)			√			
Mohammad et al. (2017)	√	√	√	√	√	√
Hanna et al. (2002)	√	√				
Mohammad & Hamzah (2019)	√	√	√		√	√
Memon et al. (2014)		√	√		√	

Author(s)	Causes of Client-Driven Variation Claims					
	Change of Scope	Change of Specifications	Factors of Design	Difficulty to Prompt Decision-Making	Financial Problems	Persistent Behaviour of Client
Abdullah et al. (2023)				√		
Do et al. (2023)				√		√
Keane et al. (2010)				√		

3.7 Claims Arising from Variations

Variations are a common feature of construction contracts and frequently give rise to legal and contractual claims when changes to the works affect cost, time, or performance. Client-initiated variations often result in claims beyond adjustments to the contract sum, including claims for additional payment, extensions of time, loss and expense, acceleration, omissions, and, in limited cases, quantum meruit. Disputes arising from such claims commonly involve issues of entitlement, valuation, causation, and compliance with contractual procedures, making variations a significant source of construction disputes.

3.7.1 Valuation and Payment Claims

Valuation and payment claims arise when contractors seek additional payment for work carried out pursuant to variations that alter the quantity, quality, or nature of the original works (Ismaeil & Sobaih, 2024). Contractors are generally entitled to additional payment if variations are instructed and valued in accordance with contractual procedures (Murdoch & Hughes, 2002). Disputes frequently arise over the applicable rates and valuation methods, particularly where instructions are unclear or inconsistent, and courts generally require parties to follow the valuation mechanisms stipulated in the contract (Odenigbo et al., 2020; UFF, 2017).

3.7.2 Extension of Time (EOT) Claims

Client-driven variations often disrupt project schedules and give rise to claims for extension of time. Standard forms of contracts, including PAM Contracts 2018, PWD Form 203A, and FIDIC Contracts 2017, generally recognise variations as events entitling contractors to time relief. The purpose of EOT provisions is to prevent the imposition of liquidated damages where delays result from employer-initiated changes rather than contractor default (Yusuwan & Adnan, 2013). Failure to grant a valid EOT may result in time becoming “at large,” with serious legal consequences for the employer (James et al., 2014; Irsan et al., 2024).

3.7.3 Loss and Expense / Prolongation Claims

In addition to time relief, contractors may be entitled to recover loss and expense arising from prolonged project durations caused by variations. Prolongation claims typically cover additional site overheads and time-related costs incurred due to delays (Le Roux, 2014). To succeed, contractors must demonstrate a clear causal link between the variation and the additional costs, supported by detailed records and evidence (Kikwasi, 2023). Entitlement to loss and expense is legally distinct from entitlement to an extension of time and must be founded on express contractual provisions (UFF, 2017).

3.7.4 Acceleration Claims

Acceleration claims arise where contractors are required to expedite works to overcome delays caused by variations. Although most standard forms of contracts do not expressly provide for acceleration, entitlement may arise where acceleration is directed by the employer or effectively forced by the refusal to grant an extension of time (Long, 2015). Such claims often involve increased labour costs, overtime, and reduced productivity, and are contentious due to the difficulty in proving that acceleration was instructed rather than voluntarily undertaken (Nelson, 2013).

3.7.5 Omission Claims

Omission claims arise where the employer omits part of the works through a variation instruction. While employers generally have the contractual right to omit work, legal issues arise where omitted works are reassigned to others. Contractors may be entitled to recover loss of profit for omitted works unless expressly excluded by the contract, making omission claims a complex area involving valuation and the scope of variation clauses (Cunningham, 2013).

3.7.6 Quantum Meruit Claims

Quantum meruit claims may arise where contractors perform work outside the contractual scope without a valid variation or agreed price. In such cases, contractors may seek reasonable remuneration for work performed to prevent unjust enrichment of the employer (Fridman, 1999). However, quantum meruit claims are generally secondary remedies and are only available where contractual mechanisms for valuation are absent or unenforceable.

3.7.7 Consequences of Client-Driven Variation Claims

Client-driven variation claims have significant consequences on construction projects, particularly in relation to cost, time, and quality, which collectively form the core performance indicators of the project management “iron triangle” (Pollack et al., 2018). Although variations may be beneficial if properly managed, unplanned or poorly administered client-driven variations often lead to adverse project outcomes (Ibbs et al., 2001). From a cost perspective, variations are widely recognised as a major contributor to cost overruns, arising from additional resources, rework, extended overheads, and administrative and dispute-related expenses (Ndiokubwayo, 2009; Mohamed, 2001; Love et al., 1999; Zanelidin, 2006).

In terms of time, client-initiated variations frequently disrupt project schedules, cause re-sequencing of works, and delay critical activities, resulting in project delays and potential exposure to extension of time claims (Ibbs, 1997; Zeitoun & Oberlender, 1993; Arain & Pheng, 2006; Sambasivan & Soon, 2007). Variations also adversely affect construction quality, particularly where changes are introduced late or without adequate planning, leading to reduced productivity, compromised workmanship, rework, and defects (Mohammad et al., 2017; Hanna et al., 2002; Arain & Pheng, 2005; Hwang & Low, 2012). Collectively, these impacts demonstrate that client-driven variation claims, if not effectively controlled, can undermine overall project performance and contribute to disputes, inefficiencies, and diminished value in construction projects.

Table 5 *Concept matrix on the consequences of client-driven variation claims*

Author(s)	Consequences of Client-Driven Variation Claims		
	Cost	Time	Quality
Alias et al. (2014)	√		
Ndiokubwayo (2009)	√		
Mohamed (2001)	√		
Enshassi et al. (2010)	√		
Ndiokubwayo & Haupt (2008)	√		
Love et al. (1999)	√	√	
E. K. Zanelidin, (2006)	√		
Arain & Pheng (2005)	√		√
Hwang & Low (2012)	√	√	√
Ali & Majeed (2020)		√	√
Ibbs (1997)		√	
Ibbs & Allen (1995)		√	

Author(s)	Consequences of Client-Driven Variation Claims		
	Cost	Time	Quality
Zeitoun & Oberlender (1993)		√	
Yogeswaran et al. (1998)		√	
Arain & Pheng (2006)		√	
Sambasivan & Soon (2007)		√	
Mohammad et al. (2017)			√
Hanna et al. (2002)			√
Patrick & Toler (2008)			√
CII (1990)			√
Amzafi et al. (2024)			√

3.8 Impact of Client-Driven Variation Claims to Contractors

Client-driven variation claims are a common and critical issue in construction projects, as changes initiated by clients during the execution stage often affect project workflow and performance (Sunday, 2010). Such variations typically arise from changes in design, scope, specifications, or project objectives, and although some may be necessary, they frequently have consequences beyond the initiating party (Akomah et al., 2018). Due to the interdependent nature of construction activities, client-driven variations can disrupt project coordination, scheduling, and contract administration, with ripple effects across the supply chain.

Contractors are among the parties most significantly affected by client-driven variation claims. Studies indicate that variations often result in project delays, increased costs and overheads, reduced labour productivity, and cash flow disruption, particularly where rework or demolition is required due to design or specification changes (Jawad et al., 2009; Amzafi et al., 2024). Frequent or late variations further disrupt workflow and reduce productivity, increasing the likelihood of disputes and claims for additional payment (Hanna et al., 2002). Moreover, unresolved variation disputes may strain contractor–client relationships and adversely affect contractors’ reputations and future business opportunities (Oyewobi et al., 2016).

4. Findings

4.1 Legal Issues Underpinning Variation Claims

The first research objective aims to identify the legal issues underlying client-driven variation claims in construction contracts. Analysis of Malaysian cases shows that such claims arise not only from technical changes to the works, but more often from contractual and administrative issues, particularly in relation to the issuance, documentation, and enforcement of client instructions. Disputes commonly stem from uncertainty over contractual authority, failure to comply with prescribed procedures, and the evidentiary burden placed on contractors.

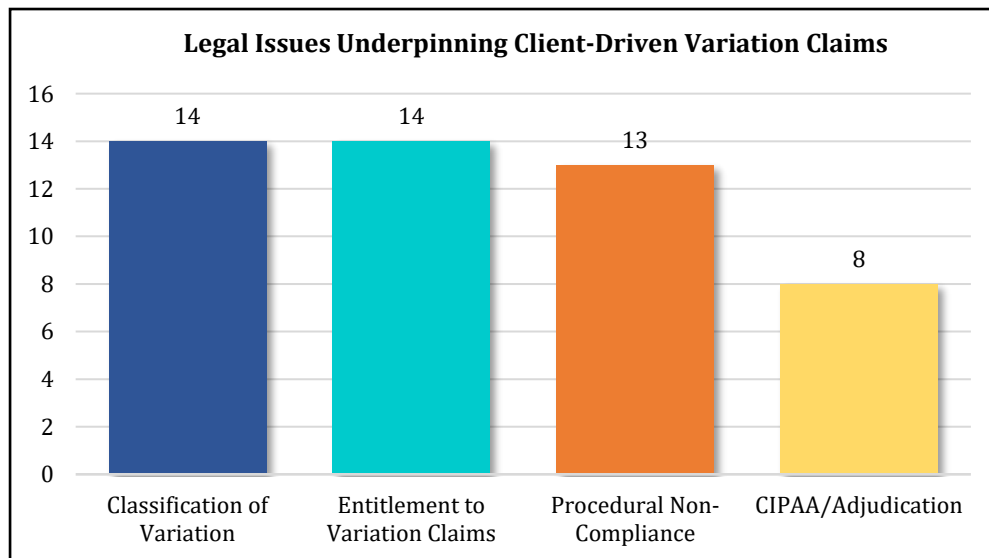


Fig. 2 No. of cases on legal issues underpinning client-driven variation claims

4.1.1 Classification of Variation

A key legal issue in client-driven variation claims is whether the disputed work constitutes a true variation or forms part of the original contractual scope. Malaysian courts consistently hold that variation entitlement does not arise merely because the work is more extensive or costly; the contractor must prove that the work goes beyond its contractual obligations. Where contracts impose broad performance duties, courts are inclined to classify additional works as within scope, even if they were carried out following client instructions. Cases such as *Syarikat Pembinaan Anggerik Sdn Bhd v Malaysia Airports Holdings Bhd*² and *KY Engineering Sdn Bhd v Chuah Kim Chye*³ demonstrate that client direction alone is insufficient to establish a variation. These cases confirm that misclassification of works is a common reason for failed variation claims, highlighting the importance of clear scope definition and contemporaneous contractual evidence.

4.1.2 Entitlement of Variation Claims

Entitlement to payment for variation works is one of the most frequently disputed legal issues in client-driven variation claims. Courts have consistently emphasised that entitlement does not arise automatically upon execution of variation works but is strictly governed by the terms of the contract. Compliance with contractual mechanisms for certification, valuation, and final accounts is decisive. In *SQA Builders Sdn Bhd v Luxor Holdings Sdn Bhd*⁴, the court held that variation valuations certified under the contract were final and conclusive, precluding further claims. Similarly, cases such as *Kok Bin Tractor & Construction v AS Fire Specialist Engineering Sdn Bhd*⁵ and *TCY Engineering Sdn Bhd v UEM Builders Berhad*⁶ illustrate that payment entitlement depends on contractual liability, privity of contract, and proper evidential proof. Overall, the courts' approach reinforces that entitlement to variation payment is both a substantive and procedural matter, requiring strict contractual compliance.

4.1.3 Procedural Non-Compliance

Procedural non-compliance is a significant legal barrier to successful client-driven variation claims, particularly where contractors rely on informal or oral instructions without proper documentation. Courts place considerable weight on compliance with contractual procedures requiring written instructions, authorisation, and supporting records. Failure to comply often defeats variation claims, even where additional works were carried out. While courts recognise that variations may arise through conduct, as seen in *RH Letrik Sdn Bhd v CML Plumbing Sdn Bhd*⁷,

² *Syarikat Pembinaan Anggerik Sdn Bhd v Malaysia Airports Holdings Bhd* [2022] 9 MLJ 391.

³ *KY Engineering Sdn Bhd v Chuah Kim Chye (suing as the sole proprietor of a business known as Bermuda Engineering)* [2023] MLJU 642.

⁴ *SQA Builders Sdn Bhd v Luxor Holdings Sdn Bhd & Anor And Other Cases* [2023] 10 MLJ 204.

⁵ *Kok Bin Tractor & Construction v AS Fire Specialist Engineering Sdn Bhd (Central Sugars Refinery (Padang Terap) Sdn Bhd (Formerly Known As Gula Padang Terap Sdn Bhd), Third Party)* [2025] MLJU 2615.

⁶ *TCY Engineering Sdn Bhd v UEM Builders Berhad & Anor* [2023] CLJU 576.

⁷ *RH Letrik Sdn Bhd v CML Plumbing Sdn Bhd* [2022] CLJU 788.

contractors bear a heavy evidential burden. Cases such as *CRCC Malaysia Bhd v Intelligent M&E Sdn Bhd*⁸ and *Global Explorer Sdn Bhd v JEKS BMC Sdn Bhd*⁹ demonstrate that reliance on unproven instructions and lack of documentation will disentitle contractors from payment. This underscores the courts' strict, contract-based approach and the importance of disciplined contract administration.

4.1.4 CIPAA/Adjudication

Client-driven variation disputes frequently extend into adjudication under the Construction Industry Payment and Adjudication Act 2012 (CIPAA), raising issues of jurisdiction, natural justice, and enforceability. Although CIPAA aims to provide swift interim relief, adjudication decisions are often challenged where adjudicators exceed their jurisdiction or deny parties a fair hearing. Courts generally favour enforcement of adjudication decisions and will only set them aside in exceptional circumstances. In *JEKS Engineering Sdn Bhd v PALI PTP Sdn Bhd*¹⁰, the court partially set aside an adjudication decision where variation sums were claimed prematurely and were not yet due. Similarly, *Tenaga Nasional Bhd v Malaysian Resources Corporation Bhd*¹¹ reaffirmed the limited scope of judicial intervention, emphasising that CIPAA challenges cannot be used as an appeal on the merits. These cases show that while CIPAA is effective in addressing variation-related payment disputes, strict jurisdictional and procedural compliance remains essential.

4.2 Repercussions of Variation Claim to the Contractor

The second research objective examines the repercussions of client-driven variation claims on contractors in construction contracts. Although variations are common and often unavoidable, client-initiated variations frequently expose contractors to risks beyond valuation and payment issues, particularly where works proceed despite unclear or disputed contractual instructions. Such circumstances may result in financial loss, cash flow disruption, and prolonged dispute resolution when variation claims are later challenged on procedural or contractual grounds. By analysing selected Malaysian cases involving both principal and subcontract arrangements, this research highlights the practical consequences faced by contractors when variation claims are not properly recognised or administered, thereby illustrating the broader impact of client-driven variations on contractors' rights, risk allocation, and project performance.

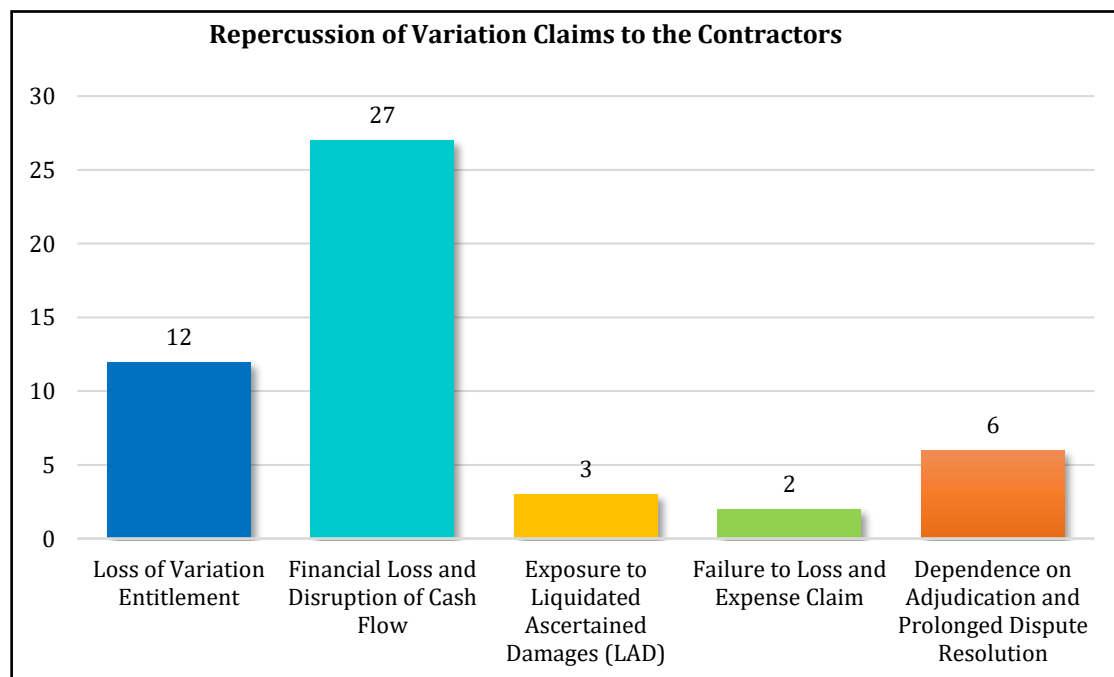


Fig. 3 No. of cases under the repercussion of variation claims to the contractors

⁸ *CRCC Malaysia Bhd v Intelligent M&E Sdn Bhd* [2024] MLJU 333.

⁹ *Global Explorer Sdn Bhd v JEKS BMC Sdn Bhd & Anor* [2023] MLJU 2532.

¹⁰ *JEKS Engineering Sdn Bhd v PALI PTP Sdn Bhd And Another Case* [2022] 9 MLJ 541.

¹¹ *Tenaga Nasional Bhd v Malaysian Resources Corporation Bhd* [2024] MLJU 682.

4.2.1 Loss of Variation Entitlement

A major repercussion of client-driven variation claims is the loss of entitlement to variation payment due to contractual finality mechanisms. Courts consistently hold that once valuation, certification, or final accounts become final and binding, variation claims cannot be reopened merely because contractors dispute the adequacy of payment. In *SQA Builders Sdn Bhd v Luxor Holdings Sdn Bhd & Anor*¹², the contractor lost further entitlement because the variations were absorbed into the final account. Similarly, *Tenaga Nasional Bhd v Malaysian Resources Corporation Bhd*¹³ confirms that adjudication under CIPAA provides only temporary relief and does not preserve variation entitlement where the underlying contract does not support it. These cases show that contractors risk losing variation entitlement entirely if contractual mechanisms are not challenged promptly and properly.

4.2.2 Financial Loss and Disruption of Cash Flow

Failure to secure payment for client-driven variations often results in serious financial loss and cash-flow disruption for contractors, who must fund additional works upfront. In *Aman Selama Sdn Bhd v Kerajaan Malaysia (Jabatan Kerja Raya)*¹⁴, the contractor suffered substantial financial loss when variation claims failed due to procedural non-compliance. A similar outcome occurred in *Kayangan Kemas Sdn Bhd v Kay Corporation Sdn Bhd & Ors*¹⁵, where prolonged non-payment of disputed variations exposed the contractor to significant liquidity pressure. These cases demonstrate that variation disputes have immediate and damaging financial consequences, extending beyond legal disagreement into operational hardship.

4.2.3 Exposure to Liquidated Ascertained Damages (LAD)

Client-driven variations may also expose contractors to LAD where delays caused by variations are not translated into extension of time entitlement. Courts adopt a strict contractual approach, under which contractors remain liable for delay unless time relief is formally granted. In *Lingkar Luar Butterworth (Penang) Sdn Bhd v IJM Construction Sdn Bhd*¹⁶, the court held that variation-related delays did not automatically protect the contractor from LAD. This highlights that failure to align variation claims with timely EOT applications may result in double financial exposure, comprising uncompensated variation costs and LAD deductions.

4.2.4 Failure to Recover Loss and Expense

Another significant repercussion is the failure to recover loss and expense arising from client-driven variations due to strict procedural requirements. In *Jabatan Kerja Raya Malaysia & Anor v Sunissa Sdn Bhd*¹⁷, although delays were caused by employer-driven changes and EOT was granted, the contractor's loss and expense claim failed due to non-compliance with notice requirements and the finality of the final account. This case illustrates that variation-related delay does not automatically entitle contractors to cost recovery and that procedural non-compliance can leave contractors bearing unrecovered losses.

4.2.5 Dependence on Adjudication and Prolonged Dispute Resolution

Client-driven variation disputes often force contractors to rely on adjudication under CIPAA to maintain cash flow, leading to prolonged dispute resolution rather than final settlement. In *Hercules Engineering (SEA) Sdn Bhd v Naim Engineering Sdn Bhd*¹⁸ and *Sime Darby Energy Solutions Sdn Bhd v RZH Setia Jaya Sdn Bhd*¹⁹, variation disputes progressed from adjudication into court proceedings, extending uncertainty and legal costs. These cases show that while adjudication provides short-term financial relief, it often becomes the first stage in a longer dispute process, increasing contractors' dependence on legal mechanisms and delaying commercial closure.

4.3 The Court Judgements Pertaining to Variations Claims

This section examines how Malaysian courts have resolved disputes involving client-driven variation claims in construction contracts. Although variation clauses are intended to provide flexibility, court decisions show that disputes commonly arise over entitlement, procedure, valuation, and timing of claims. The analysis of recent cases

¹² *SQA Builders Sdn Bhd v Luxor Holdings Sdn Bhd & Anor And Other Cases* [2023] 10 MLJ 204.

¹³ *Tenaga Nasional Bhd v Malaysian Resources Corporation Bhd* [2024] MLJU 682.

¹⁴ *Aman Selama v Kerajaan Malaysia (Jabatan Kerja Raya)* [2025] MLJU 3294.

¹⁵ *Kayangan Kemas Sdn Bhd v Kay Corporation Sdn Bhd and other cases* [2024] MLJU 769.

¹⁶ *Lingkar Luar Butterworth (Penang) Sdn Bhd v IJM Construction Sdn Bhd* [2024] MLJU 297.

¹⁷ *Jabatan Kerja Raya Malaysia & Anor v Sunissa Sdn Bhd* [2022] 5 MLJ 705.

¹⁸ *Hercules Engineering (Sea) Sdn Bhd v Naim Engineering Sdn Bhd* [2024] 10 MLJ 72.

¹⁹ *Sime Darby Energy Solutions Sdn Bhd v RZH Setia Jaya Sdn Bhd (in liquidation) and another case* [2024] MLJU 1070.

reveals a consistent judicial approach that prioritises contractual certainty and strict compliance with contractual procedures and evidential requirements, even where variations were genuinely initiated by clients.

Table 6 Summary of court judgements pertaining to client-driven variation claims

No.	Legal Issues	Decision / Held	Ratio Decidendi (Legal Reasoning)	Relevant Cases
1.		Allowed Decision	1. Courts classified works as variations where there was a drastic or material change in the nature, scale, or depth of work compared to the BQ or drawings.	• <i>Sykt Pembinaan Anggerik Sdn Bhd v Malaysia Airports Holdings Bhd</i>
			2. Alternative designs proposed by contractors were treated as variations where the original design was impracticable or erroneous and the client accepted the alternative solution.	• <i>Sykt Pembinaan Anggerik Sdn Bhd v Malaysia Airports Holdings Bhd</i>
			3. Temporary or ancillary works were recognised as variations where they went beyond what was reasonably contemplated under the original contract.	• <i>Lingkaran Luar Butterworth (Penang) Sdn Bhd v IJM Construction Sdn Bhd</i>
	Classification of Variation	Dismissed Decision	1. Claims were dismissed where the disputed works were found to be expressly included or implied within the original scope or design intent.	• <i>KY Engineering Sdn Bhd v Chuah Kim Chye; SQA Builders Sdn Bhd v Luxor Holdings Sdn Bhd</i>
			2. Courts held that necessary construction methods to achieve a known design do not amount to variations.	• <i>Sykt Pembinaan Anggerik Sdn Bhd v Malaysia Airports Holdings Bhd</i>
			3. Works priced in the BQ, or reasonably foreseeable at tender stage, were treated as non-compensable scope items, even if they caused extra cost or effort.	• <i>Poteck Enterprise Sdn Bhd v Richallenge Corp Sdn Bhd</i>
			4. Merely labelling work as a "variation" did not affect classification, as courts focused on substance, not terminology.	• <i>KY Engineering Sdn Bhd v Chuah Kim Chye</i> • <i>TCY Engineering Sdn Bhd v UEM Builders Bhd</i>

No.	Legal Issues	Decision / Held	Ratio Decidendi (Legal Reasoning)	Relevant Cases
2.	Entitlement to Variation Claims	Allowed Decision	1. Courts allowed variation claims where the contractor proved the works are outside from the original contract scope, supported by evidence that the additional works were client-driven and not contemplated at contract formation.	• <i>Eastmont Sdn Bhd v Mega Planner Jaya Sdn Bhd</i> • <i>Sykt Pembinaan Anggerik Sdn Bhd v Malaysia Airports Holdings Bhd</i>
			2. Entitlement was recognised where instructions (written or oral) were given by a party with authority and the employer accepted and benefited from the works, making it unjust to deny payment.	• <i>Eastmont Sdn Bhd v Mega Planner Jaya Sdn Bhd</i> • <i>Hercules Engineering (SEA) Sdn Bhd v Naim Engineering Sdn Bhd</i>
			3. Where variation works were valued, measured, or certified (or accepted by conduct), courts treated this as strong evidence of entitlement.	• <i>Eastmont Sdn Bhd v Mega Planner Jaya Sdn Bhd</i> • <i>Aman Selama Sdn Bhd v Kerajaan Malaysia (JKR)</i> (certified portion only)
		Dismissed Decision	1. Courts dismissed claims where the contractor failed to prove entitlement, particularly where assertions of additional work were unsupported by contemporaneous records or proper valuation evidence.	• <i>Poteck Enterprise Sdn Bhd v Richallenge Corp Sdn Bhd</i> • <i>KY Engineering Sdn Bhd v Chuah Kim Chye</i>
			2. Entitlement failed where variation sums were not due or not yet payable at the time of the claim, especially in payment or adjudication contexts.	• <i>JEKS Engineering Sdn Bhd v PALI PTP Sdn Bhd</i>
			3. Claims were rejected where they were pursued against the wrong contractual party, even if the works were genuinely instructed by another entity.	• <i>Kok Bin Tractor & Construction v AS Fire Specialist Engineering Sdn Bhd</i>
3.	Procedural Non-Compliance	Allowed Decision	1. Courts allowed claims despite procedural defects where there was clear evidence of employer waiver, acceptance, or certification by conduct.	• <i>Hercules Engineering (SEA) Sdn Bhd v Naim Engineering Sdn Bhd</i>

No.	Legal Issues	Decision / Held	Ratio Decidendi (Legal Reasoning)	Relevant Cases
		Dismissed Decision	2. Where the contract did not expressly require written variation orders as a strict condition, courts treated oral instructions as a triable issue of fact rather than automatically invalid.	• <i>RH Letrik Sdn Bhd v CML Plumbing Sdn Bhd</i>
			3. Partial recovery was permitted where some variation sums were properly certified, even though other claims failed for lack of proof.	• <i>Aman Selama Sdn Bhd v Kerajaan Malaysia (JKR)</i>
			1. Courts treated notice, certification, and substantiation requirements as conditions precedent, especially under PWD contracts.	• <i>Jabatan Kerja Raya Malaysia v Sunissa Sdn Bhd</i> • <i>Aman Selama Sdn Bhd v Kerajaan Malaysia (JKR)</i>
			2. Failure to give timely notice, submit estimates, or comply with valuation procedures resulted in total or substantial rejection of claims.	• <i>Sunissa Sdn Bhd v JKR</i> • <i>Budaya Restu Sdn Bhd v Kerajaan Malaysia</i>
			3. Courts rejected variation claims supported only by assumptions, expert opinions without records, or unverified tabulations.	• <i>Poteck Enterprise Sdn Bhd v Richallenge Corp Sdn Bhd</i>
			4. Once final accounts became conclusive, procedural non-compliance barred reopening of variation claims.	• <i>SQA Builders Sdn Bhd v Luxor Holdings Sdn Bhd</i> • <i>Sunissa Sdn Bhd v JKR</i>
			1. Courts enforced adjudication decisions where the adjudicator acted within jurisdiction, respected natural justice, and decided only on sums properly due and payable.	• <i>Tenaga Nasional Bhd v Malaysian Resources Corporation Bhd</i> • <i>Hercules Engineering (SEA) Sdn Bhd v Naim Engineering Sdn Bhd</i>
			2. Minor errors or disagreements on merits were insufficient to set aside adjudication decisions, reflecting judicial support for cash-flow preservation.	• <i>Tenaga Nasional Bhd v Malaysian Resources Corporation Bhd</i>
4.	CIPAA/Adjudication	Allowed Decision		

No.	Legal Issues	Decision / Held	Ratio Decidendi (Legal Reasoning)	Relevant Cases
			3. Where defects affected only part of an adjudication decision, courts applied severance, enforcing the valid portions.	• <i>JEKS Engineering Sdn Bhd v PALI PTP Sdn Bhd</i>
			a) Adjudication decisions were set aside where adjudicators exceeded jurisdiction, such as deciding on non-due variation claims or matters not referred.	• <i>JEKS Engineering Sdn Bhd v PALI PTP Sdn Bhd</i>
		Dismissed Decision	b) Courts intervened where there was a serious breach of natural justice, including deciding issues without giving parties a fair opportunity to be heard.	• <i>Tenaga Nasional Bhd v Malaysian Resources Corporation Bhd</i>
			c) Courts reaffirmed that adjudication decisions are interim only, variation entitlement can still fail at final determination if unsupported by the contract.	• <i>Tenaga Nasional Bhd v Malaysian Resources Corporation Bhd</i> • <i>Sime Darby Energy Solutions Sdn Bhd v RZH Setia Jaya Sdn Bhd</i>

The analysed judgments show a consistent judicial approach that prioritises contractual certainty over practical difficulties faced by contractors in client-driven variation claims. While courts recognise that client-initiated changes are common in construction projects, they draw a clear distinction between compensable variations and works that fall within the contractor's original scope. Only works that involve a clear departure from the agreed scope are treated as variations, whereas additional works that were foreseeable or contemplated under the contract are generally classified as non-compensable.

In determining entitlement, courts require clear proof that the variation was authorised, client-driven, and contractually recognised. Claims based on weak evidence, informal assumptions, or incorrect contractual parties are consistently rejected. Procedural compliance is also decisive, as courts frequently treat notice, certification, and substantiation requirements as conditions precedent, resulting in the rejection of claims despite genuine additional works. With respect to adjudication under CIPAA, courts reaffirm its interim nature, supporting enforcement while setting aside decisions involving jurisdictional errors or non-due claims. Overall, Malaysian courts adopt a strict, contract-based approach, emphasising scope definition, procedural discipline, and evidential proof, and signalling that client instructions alone are insufficient to establish variation entitlement.

Conclusion and Recommendation

This research examined client-driven variation claims in construction contracts. The findings show that disputes commonly arise from misclassification of works, lack of entitlement to variation payment, procedural non-compliance, and challenges under CIPAA adjudication, and others. Courts consistently require strict compliance with contractual provisions governing variations, including proper instructions, documentation, and certification. Failure to comply often results in the rejection of otherwise legitimate claims.

The study further finds that client-driven variations expose contractors to significant risks, including loss of entitlement, financial loss, cash flow disruption, exposure to liquidated ascertained damages, failure to loss and expense, and prolonged dispute resolution. Malaysian courts adopt a contract-centric approach, prioritising contractual certainty over practical hardship, while recognising adjudication under CIPAA as an interim remedy subject to jurisdictional and procedural limits. Ultimately, contractors bear the burden of protecting their rights through disciplined contract administration and timely action.

Future research may expand this study by adopting empirical or mixed methods approaches through interviews or surveys with construction industry stakeholders to examine how variation clauses operate in

practice. Comparative studies between Malaysian construction law and other common law jurisdictions, such as the United Kingdom, Australia, and Singapore, may also provide insights into alternative approaches for handling client-driven variation claims and improving dispute resolution mechanisms.

In addition, further research could evaluate the effectiveness of adjudication under the Construction Industry Payment and Adjudication Act 2012 in resolving complex variation disputes, particularly in terms of enforcement and post-adjudication litigation trends. Lastly, future studies may assess the adequacy of variation clauses in standard form of construction contracts to propose reforms that enhance clarity, fairness, and risk allocation.

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Conflict of Interest

The authors declare that there is no conflict of interests or competing financial interests associated with the publication of the paper.

Author Contribution

*Author contributions: Study conception and design were carried out by **Zulkefly, N.A.N., Ismail Z.** Data collection was performed by **Zulkefly, N.A.N.** Analysis and interpretation of results were conducted by **Zulkefly, N.A.N., Ismail Z.** The draft manuscript was prepared by **Zulkefly, N.A.N.** All authors reviewed the results and approved the final version of the manuscript.*

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