

SEXUAL MISCONDUCT AT WORKPLACE AND DISMISSAL FROM EMPLOYMENT

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Abstract

An employee must uphold the employer's good name and reputation by exhibiting a high ethical and moral standards in their dealings with the co-workers, company's customers, suppliers, investors and public authorities, among others. Any conduct of an employee at the workplace which is prejudicial or is likely to be prejudicial to the reputation of the employer may form a basis for disciplinary action. The burden is on the employer to prove on a balance of probabilities that the employee is guilty of conduct which has brought the employer into disrepute. The facts and circumstances of each individual case have to be considered and this includes inter alia, the nature and degree of the alleged misbehaviour; its significance in relation to the employer and to the position held by the employee and its effect on the employer's customers and the co-workers, among others. Having said the above, this article discusses a Muslim employee's misconduct or misbehaviour which has the potential of affecting the employer's reputation with particular reference to sexual offences committed at the workplace and outside the workplace.

Keywords: *Misconduct, Workplace, Dismissal*

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1. Introduction

An employee must uphold the employer's good name and reputation by exhibiting a high ethical and moral standards in their dealings with the co-workers, company's customers, suppliers, investors and public authorities, among others. Any conduct of an employee at the workplace which is prejudicial or is likely to be prejudicial to the reputation of the employer may

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form a basis for disciplinary action.³ Dishonesty, drugs and alcohol abuse, sexual offences and demanding, offering, receiving or accepting bribery or illegal gratification, to name but a few, are examples of improper conducts or misbehaviours which is likely to affect the employment relationship. Even an improper conduct committed outside the normal working hours and away from the workplace may justify disciplinary action so long as there exist some nexus between the employee's conduct and the employer's organisation. For disciplinary action to be initiated, it is important to show that the improper conduct of the employee outside the workplace has an impact on the employer's image or reputation.

The burden is on the employer to prove on a balance of probabilities that the employee is guilty of conduct which has brought the employer into disrepute. The facts and circumstances of each individual case have to be considered and this includes inter alia, the nature and degree of the alleged misbehaviour; its significance in relation to the employer and to the position held by the employee and its effect on the employer's customers and the co-workers, among others. Having said the above, this article discusses a Muslim employee's misconduct or misbehaviour which has the potential of affecting the employer's reputation with particular reference to sexual offences committed at the workplace and outside the workplace.

2. Consensual immoral activities at workplace

In Islam, illicit sexual intercourse or *zina* between a man and a woman who are not validly married to each other is a major sin.⁴ Islamic law prescribed the punishment for fornication which is one hundred lashes,⁵ while the punishment for adultery is stoning to death.⁶ Section 23 of the Syariah Criminal Offences (Federal Territories) Act 1997 provides that a

³ In the classic English case of *Pearce v Foster and Others* (1886) QB 356 at 359, Lord Esher MR stated: "The rule of law is, that where a person has entered into the position of servant, if he does anything incompatible with the due or faithful discharge of his duty to his master, the latter has a right to dismiss him. The relation of master and servant implies necessarily that the servant shall be in a position to perform his duty duly and faithfully, and if by his own act he prevents himself from doing so, the master may dismiss him. ... But if a servant is guilty of such a crime outside his service as to make it unsafe for a master to keep him in his employ, the servant may be dismissed by his master; and if the servant's conduct is so grossly immoral that all reasonable men would say that he cannot be trusted, the master may dismiss him.... If a servant conducts himself in a way inconsistent with the faithful discharge of his duty in the service, it is misconduct which justifies immediate dismissal. That misconduct, according to my view, need not be misconduct in the carrying on of the service of the business. It is sufficient if it is conduct which is prejudicial or is likely to be prejudicial to the interests or to the reputation of the master, and the master will be justified, not only if he discovers it at the time, but also if he discovers it afterwards, in dismissing that servant."

⁴ The punishment for fornication is mentioned in the Quran, namely, one hundred lashes. "The woman and the man guilty of fornication flog each of them with a hundred stripes: Let not compassion move you in their case, in a matter prescribed by Allah, if ye believe in Allah and the last day: And let a party of the believers witness their punishment" (Quran, Surah Al Nur (24): 2). While the punishment for adultery is mentioned in the *hadith* namely, stoning to death. The Prophet (SAW) said, "The killing of a Muslim is not permissible except in three cases: (i) when he kills another person; (ii) when he commit zina after being married; and (iii) when he becomes apostate (Sunan Abu Daud, Vol 11, p. 117).

⁵ "The woman and the man guilty of fornication flog each of them with a hundred stripes: Let not compassion move you in their case, in a matter prescribed by Allah, if ye believe in Allah and the last day: And let a party of the believers witness their punishment" (Surah Al Nur (24): 2).

consensual immoral acts out of the wedlock is an offence and if found guilty shall be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to whipping not exceeding six strokes or to any combination thereof. It may be added that consensual immoral acts out of the wedlock between non-Muslims adults is not an offence in the Penal Code. What is an offence under the Code is rape. Section 375 of the said Code provides that the offence of rape is said to be committed by a man when he has sexual intercourse with a woman under any one of the following circumstances namely, against her will, without her consent, with consent obtained under fear of death or of hurt, with consent but given by reason of unsoundness of mind or under influence of intoxication, a girl under sixteen with or without her consent. To absolve a person from criminal liability for consensual immoral acts, consent must be given freely without any fear of injury or under misconception of fact. This is unlike under

In the context of employment law, any consensual immoral activity among co-workers within the company premises is a gross misconduct which may be subject to disciplinary action. For example, in *Projek Lebuhraya Utara Selatan Bhd v Azahar Ahmad*,⁷ the claimant contended that as the indecent act towards COW2 was done with the consent of the complainant the company should not take any action against him. In relation to the above, the Industrial Court noted that: ‘if that is the correct argument then it makes mockery of discipline in the workplace. It is common sense that employees cannot commit indecent or immoral acts at the workplace during working hours even if both parties agree.’ It is submitted that an employee who committed consensual immoral activity among co-workers within the company premises may be dismissed from employment as their conduct has the potential of tarnishing the employer’s good name and reputation. It is noteworthy that any conduct of an employee which is likely to damage the reputation of the employer may constitute gross misconduct and will lead to disciplinary action up to and including dismissal. In *Pearce v Foster And Others*,⁸ the English Court of Appeal stated inter alia, that the employer will be justified to dismiss an employee when his conduct is prejudicial or is likely to be prejudicial to the reputation of the employer and the misconduct is not restricted to misconduct in the carrying on of the service or the business but includes misconduct outside of work.

3. Consensual immoral activities outside workplace

Even consensual immoral activities outside the office hours and workplace for example, between students and faculty staff, could potentially tarnished the image and reputation of the institution and thus, disciplinary action can be taken against the employee as he had behaved in a manner that will result in disrepute to the company. In *Permint Plywood Sdn Bhd, Kuala Terengganu v Kesatuan Pekerja-Pekerja Perakayuan Semenanjung Malaysia*,⁹ the claimant, Mohd Sapri Bin Sulaiman, an assistant boiler man, who was employed by the company for more

6 Prophet (SAW) said, “The killing of a Muslim is not permissible except in three cases: (i) when he kills another person; (ii) when he commit zina after being married; and (iii) when he becomes apostate. (Sunan Abu Daud, Vol 11, p. 117).

7 [1998] 2 ILR 51.

8 See footnote 3.

9 [1993] 1 ILR 253.

than ten years, was demoted after he pleaded guilty of having an affair with Miss X, a female worker in the said company. The immoral act was committed in the claimant's house when his wife was not with him on the night in question. The union, representing the claimant, however submitted that the claimant had not committed any act of misconduct at the workplace. They argued that the employer was not the general custodian of the morals of its workmen away from the workplace and outside the working hours. Thus, however reprehensible the moral or criminal act of the claimant, committed in the sphere of his private life it could not be considered as an act subversive of discipline.

The company however, contended that the misconduct of the claimant was inconsistent with the expressed conditions of service. It had violated the company's rule which provides *inter alia*, that: 'an employee cannot behave in a manner that will result in disrepute to the company.' The company further submitted that the incident committed by the claimant was known not only to the employees of the company, but also to the public, including the Government departments and agencies around the small town of Bandar Al Muktafi Billah Shah. The company contended that the claimant's conduct had affected the image and reputation of the company and had directly resulted in difficulties for the company to recruit female workers, as parents would be reluctant to allow their daughters to work for the company after the above incident. In affirming the company's decision to demote the claimant, the Industrial Court stated:

"Whether sexual immorality by an employee in his private life is industrial misconduct depends on whether it will tarnish the employer's reputation or detract from his goodwill. In some positions, all sexual immorality is likely to hurt the employer, such as that of a priest. A married university professor who seduces one of his female students, or a school principal who seduces a native girl, as a result of which she bears an illegitimate child is guilty of misconduct. In the instant case, the claimant took another female worker from the company to his house and had an affair with her for the night. They were caught by a party during the night and during the inquiry, the claimant admitted his action. This, in our view, is misconduct, as the claimant's action has undoubtedly tarnished the company's reputation and is bound to affect the company adversely, especially in a small town like Bandar Al Muktafi Billah Shah. The next issue we have to consider is whether a reduction of RM80 a month is too severe a punishment for an offence of this nature. The union said it was too harsh as it represented 16% of his earnings. The company said that the Board's recommendation of a reduction of RM80 was fair and reasonable as the claimant's service could have been terminated forthwith for a misconduct of this nature. We agree with the company's contention and do not wish to interfere with it."

As from the above case, although the claimant's conduct of having an affair with his female colleague away from the place of work and outside office hours was within his private domain, nevertheless it had affected the company's reputation and goodwill.¹⁰ The claimant's misconduct was known not only among the employees of the company, but also to the public,

¹⁰ In *Lee Kim Yun v Cotra Enterprise Sdn Bhd* [2004] 2 ILR 225 (Award No 439 of 2004), YA Susila Sithamparam stated: 'In determining whether there is a clear nexus with his employment, all circumstances must be considered. If the impugned act took place at a function, the nature and purpose of the function, the venue, the time of the function, the persons attending the function, in what capacity they attended the function, the preparations for the function and the person or organisation bearing the expenses of the function are relevant'.

including the Government departments and agencies around the small town of Bandar Al Muktafi Billah Shah and thus, directly resulted in difficulties for the company to recruit female workers.

4. *Khalwat* or Close Proximity at secluded place at Workplace

Close proximity between a man and a woman who are not related to one another to the degree of *mahram* relationship at a secluded place for example, in a room or in the house is prohibited in Islam.¹¹ Such action could raise a reasonable suspicion that the couple were involved in the commission of an immoral act.¹² Section 27 of the Syariah Criminal Offences (Federal Territories) Act 1997 provides that if a man is found being alone together with a woman who is neither married to him nor is related to him at the degree of *mahram*, in any secluded place or in a house or room under circumstances which may give rise to suspicion that they were engaged in immoral acts, both the man and woman shall be liable for *tazir*. The punishment is a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or to both.

In *Transport Workers Union v Syarikat Pengangkutan Kemajuan Sri Perak Berhad*,¹³ the claimant and UW2, a female employee of the same company, were alleged to have spent several nights together in a Bachelors' Room at Lumut. They were not married. The claimant was given a termination letter but UW2 was given a final warning letter. CW1, the company's Managing Director, stated that the claimant's behaviour was improper and against Islamic law, as amounting to committing '*Khalwat*'. He contended that the claimant's misconduct as above could ruin the image of the company. The Industrial Court had to consider *inter alia*, whether the claimant's conduct was so grave a misconduct as to merit dismissal.

In holding that the claimant's dismissal had been without just cause, the Court stated that it 'cannot see how the Claimant's spending the night in the Bachelors' Room could have affected a public transport business to the extent of ruining its image.' In arriving at the above decision, the Court relied on the English case of *Cassidy v HC Goodman Ltd*,¹⁴ where it was stated that: 'For an employee to be justifiably dismissed on the ground of his private conduct it has to be of exceptional gravity or be capable of damaging the employer's business.' It is submitted that had the employee been charged and convicted for *khalwat* under section 27 of the Syariah Criminal Offences (Federal Territories) Act 1997, it would have constituted a ground for his dismissal from employment as his conduct would have affected the employer's reputation.

It is noteworthy that where the company is a majority-Muslim owned such as the Islamic fund management companies or Islamic banking institutions, among others, the offence of

¹¹ *Mahram* refers to either her husband or any male relative with whom her marriage is permanently prohibited.

¹² Prophet (SAW) said: "Whoever believes in Allah and the last day must never be in proximity with a woman without there being a *mahram* with her, for otherwise *satan* will be the third person (with them). See Ahmad Ibn Hanbal, *Al-Musnad*, Vol 11, p 286.

¹³ [1981] 1 ILR 506.

¹⁴ [1975] IRLR 86.

khalwat committed by its employees away from the office premises and outside the office hours would attract disciplinary action as their improper conduct is likely to tarnish the employer's image and reputation. In *Pertubuhan Kebangsaan Melayu Bersatu (Baru) v Rozita Bt. Md Isa*,¹⁵ the claimant was dismissed from employment after he was found guilty and fined by the Syariah Court for the offence of *khalwat*. Again, in *Aziz Yaakob v Bank Muamalat Malaysia Bhd*,¹⁶ the claimant, a bank officer, was arrested by the officers of the Islamic Religious Department, Labuan (JAWI) on suspicion of committing '*khalwat*' under the Syariah Criminal Offences (Federal Territories) Act 1997. Following the said incident, the bank convened a domestic inquiry against the claimant on charges of 'committing close proximity' and of 'tarnishing the image and reputation of the bank'. The panel found the claimant guilty and accordingly, he was dismissed from employment.

In his claim for dismissal without just cause or excuse, the claimant argued that his private conduct outside the office premises and hours could not amount to misconduct. In allowing the claimant's application, the Industrial Court held inter alia, that there was no proof that the bank's legitimate interest had been injured or jeopardized as to justify the extreme punishment of dismissal imposed on the claimant. In particular, YAP Iruthayaraj D Pappusamy, Chairman of the Industrial Court, stated:

'The bank had not adduced cogent and tangible evidence that its image and reputation had been tarnished by the act of the claimant. The mere fact that the claimant was caught for suspected *khalwat* does not tantamount to tarnishing the image of the bank unless he is found guilty and convicted by the Syariah Court for the said alleged offence in which event the factor could be taken into consideration when meting the appropriate punishment. In any case, this court is only concerned with the issues of whether the fact that the claimant was caught outside his working hours by JAWI on suspicion of committing *khalwat* is an industrial misconduct, and whether the image and reputation of the bank had been tarnished as a result thereof. On the facts and in the circumstances, the answer to both has to be in the negative.'

Dissatisfied with the said decision, the Bank, the applicant, applied for judicial review to quash the said award.¹⁷ In allowing the application, the High Court held inter alia, that the Industrial Court erred when it concluded that the second respondent's act had not tarnished the applicant's image and reputation. The conclusion by the Industrial Court was rather speculative and not based on substantive evidence. Following the principles in *Permint Plywood's* case, Lau Bee Lan J held inter alia, that the Industrial Court had failed to consider that the applicant being an Islamic Bank, the second respondent's conduct was known to the applicant's customers or those accustomed to dealing with the Bank and that the applicant continues to employ employees who do not adhere to Islamic principles, that knowledge would have a damaging effect on the applicant. It was further stated that 'the fact that an employee in a criminal proceeding is acquitted because of the requirement of proof beyond reasonable doubt does not necessarily

15 [1995] 2 ILR 391.

16 [2005] 3 ILR 502.

17 See *Bank Muamalat Malaysia Bhd v Mahkamah Perusahaan Malaysia & Anor* [2011] 1 LNS 1067.

mean that on the available evidence a finding of guilt cannot be made out by the DI against the employee on a balance of probabilities.’

It is noteworthy that even if the parties to the immoral conduct were non-Muslims, they can be tried in the civil courts for indecent behaviour provided that the said act was done in the public place.¹⁸ For example, in *Ooi Kean Thong & Anor v Public Prosecutor*,¹⁹ the accused persons were found behaving in a disorderly manner under the trees at Kuala Lumpur City Centre Park, to wit, hugging and kissing, an offence under section 8(1) of the Parks (Federal Territory) By-Laws 1981 and punishable under section 10 of the above statute namely, a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding one year or to both and in the case of a continuing offence to a fine not exceeding two hundred ringgit for every day during which the offence is continued after conviction. In affirming the conviction and sentence passed by the trial court, the Federal Court in their unanimous decision held that the impugned by-law was *intra vires* section 102 of the Local Government Act 1976 and the Federal Constitution.

5. Sexual Harassment at the workplace

Islam has placed special importance in the protection of one’s dignity and moral values. Not only promiscuity is prohibited but all doors that lead to illegal sex such as *khalwah*, free mixing of the sexes, provocative dress, nudity, obscenity and pornography, among others, are also prohibited. Further, making false or unfounded allegation of promiscuous relationship is prohibited. If a man accuses a woman of immorality but does not provide proof of his accusation, then not only is he exposed to the penalty prescribed for false accusation (slander), but he will also be declared in perpetuity as unworthy of giving evidence before a tribunal.²⁰

Sexual harassment refers to any unwanted or unwelcomed conduct of a sexual nature either by verbal, non-verbal, visual, psychological or physical harassment. The categories of sexual harassment in the workplace that are widely recognised are *quid pro quo* harassment and the hostile working environment. It can be committed by someone in the organisational structure who has the power to control over the victim’s job appraisals such as the manager of the company or someone else with whom the victim comes into contact such as the co-worker, customer, patient, delivery person and others. Such conducts if goes unchecked, would create an ‘intimidating, hostile and offensive work environment which can adversely affect the industrial relations climate in the organisation’.²¹

18 The word ‘public place’ was explained by Lee Hun Hoe J (as he then was) in *Public Prosecutor v Chen Geok Len & Anor* [1967] 1 MLJ 59 as ‘a place could be a public place if at the time a substantial part of the public had access to it’.

19 [2006] 3 MLJ 389.

20 See the Qur'an, *Surah Al- Nūr*: 4-5.

21 Excerpts from the keynote address of YB Dato' Lim Ah Lek, the then Minister of Human Resources, Malaysia at the official opening of the National Workshop on Sexual Harassment in the Workplace on 1 March 1999 at Kuala Lumpur.

Failure of the employer to attend to its employee's complaint of an alleged sexual harassment is now made an offence under part XVA of the Employment Act 1950. Section 81B(1) provides that upon receipt of a complaint of sexual harassment, an employer shall inquire into the complaint. In the conduct of an inquiry, if the employer is satisfied that sexual harassment is proven, the employer shall, take disciplinary action which may include summary dismissal of the employee. However, if the employer refuses to inquire into the complaint of sexual harassment, the employer must inform the complainant of the refusal and the reasons for the refusal in writing. The communication must be done as soon as practicable but in any case not later than thirty days after the date of the receipt of the complaint.

Any complainant who is dissatisfied with the refusal of the employer to inquire into his complaint of sexual harassment, may pursuant to section 81B(4) of the Act refer the matter to the Director General of Labour. The Director General may then inquire into the complaint of sexual harassment and decide accordingly whether the complaint of sexual harassment is proven or not. Section 81F provides that any employer who fails comply any of the following will be deemed to have committed an offence: '(a) to inquire into complaints of sexual harassment under subsection 81B(1); (b) to inform the complainant of the refusal and the reasons for the refusal as required under subsection 81B(2); (c) to inquire into complaints of sexual harassment when directed to do so by the Director General under paragraph 81B(5)(a) or subsection 81D(2); or (d) to submit a report of inquiry into sexual harassment to the Director General under subsection 81D(2).' The punishment on conviction is a fine not exceeding ten thousand ringgit.

As noted earlier, Islam prohibits all forms of illicit sexual advances and this includes that which occurs in the workplace. Islam has regulated the behaviour the parties at the workplace in that they should not only lower their gaze but also dress and behave decently and avoid flirtatious attitudes, among others.²² This is to avoid any form of desire from the opposite sex that can lead to undesired acts such as sexual harassment. Preserving these steps would significantly contribute to the decrease in occurrences of sexual harassment in the workplace or job related assignments away from the workplace.

Despite the above guidelines, it is noted that there had been many reported incidents of sexual harassment at the workplace where the perpetrator is a Muslim employee. These workers had totally disregarded the religious guidelines when conducting their activities at the workplace. In *Yahya Mat Wazir v Petroliam Nasional Berhad (Petronas)*,²³ the claimant, the head of Research & Technology Division, with twenty five years into his employment was dismissed for sexually harassing COW2, his subordinate. The alleged sexual harassment includes physical harassment, touching COW2's left hand, verbal harassment by uttering 'I don't plan to marry another one but you can never know... *nafsu lelaki satu, nafsu perempuan banyak... Fedora... you know la nafsu lelaki itu apa?*' and written harassment send via a personal SMS. The Industrial Court held inter alia, that the claimant had committed the acts of misconduct in regards to the charges which were clearly inconsistent with the fiduciary relationship between the employer and an employee. The company's decision to dismiss the claimant was reasonable. It was

22 Allah (SWT) commanded the believing men and women to lower their gaze (see *surah Al-Nūr* verse 30) and the criteria of dress for women that are considered modest in Islam is mentioned in *Surah Al-Nūr* verse 31.

23 [2015] 2 ILR 201.

manifestly clear that it justifies the managerial decision to dismiss the claimant as this involves the claimant's integrity and responsibility whilst in the employment of the respondent company.

Again, in *Muhammad Fikri Firdaus Abdullah v Malaysian Airlines System*,²⁴ the claimant, a Leading Steward, was dismissed on grounds of misconduct related to acts of sexual harassment against a flight stewardess by touched her breast using his right hand, rubbing her body and told her that 'kalau night stop I nak try you' and 'you turn me on' and exposing his private parts to her. The complainant lodged a police report against the claimant. The Industrial Court held that the company had "solid and sensible grounds" for coming to the conclusion that the charges against the claimant were well founded. It was clear that what the claimant did was serious misconduct. In fact, the claimant had been found guilty of sexual harassment previously and was given a second chance. The claimant was the complainant's superior. Instead of learning from his past mistake and setting a good example, he caved in to the craving of the flesh. His dismissal was therefore, with just cause and excuse.

In *Malayan Banking Berhad v Md Nor Kassim & Anor*,²⁵ the first respondent was dismissed for sexual harassment against COW1, female employee. The first respondent was alleged to have inter alia, brought to the workplace a book entitled "*Kehebatan Lelaki*" containing sexually explicit material that was wholly inappropriate and admitted to having given it to COW1 unsolicited. The Industrial Court Chairman ruled in favour of the employee / first respondent principally on the ground that the charges against him had not been satisfactorily proved on the required standard for the impugned misconduct. The High Court in allowing the review application stated inter alia, that sexual harassment of a subordinate in the workplace by a superior is undeniably serious misconduct which warrants the extreme penalty of dismissal. Whether or not the book was read by COW1 or kept by her for one week did not make the offence or misconduct any less grave. Conduct of this kind is plainly deplorable and inexcusable under any circumstances for executive staff against his subordinates. The Industrial Court had erred in law in applying the criminal standard of proof for sexual cases in holding that the allegation of sexual harassment against first respondent had not been proved whereas the applicable standard of proof for employment misconduct is the less stringent civil standard as above.

Again, in *Md Salehuddin Othman v New Straits Times Sdn Bhd*,²⁶ the claimant, a Group Editor, was dismissed from employment after the domestic inquiry panel found him guilty of sexually harassing a reporter under his charge. The charges against the claimant was established and this includes, holding her hand and stroking her arms without her consent and against her own free will, making strong sexual advances, continually making telephone calls to her asking to meet up, wrapping your arm around her and clasped her hand without consent and against her own free will.

24 [2014] 2 LNS 1426.

25 [2014] 1 LNS 1514.

26 [2013] 2 LNS 0568.

Similarly, in *Kamarul Zaman Mamat v Nippon Wiper Blade (M) Sdn Bhd*,²⁷ the claimant, an executive of the company, was dismissed after he was found guilty of sexually harassed one female employee, with suggesting remarks of a sexual nature i.e., "Marilah duduk sini" with hands showing on his thigh. Further, he was alleged to have sexually harassed the complainant with non-verbal/gestural harassment leering or ogling with suggestive overtones denoting persistent flirting which makes her uncomfortable and unsafe at workplace. It was also alleged that the claimant had touched and/or putted on her thigh twice and on both occasion she did. By the above acts, the claimant was alleged to have committed serious acts of misconduct in breach of his express and/or implied terms and conditions of service. His dismissal was therefore was held to be with just cause and excuse by the Industrial Court.

Lastly, in *Dzulkifli Ibrahim v Tenaga Nasional Bhd*,²⁸ the claimant, a senior engineer, was dismissed after the Disciplinary Appeals Committee found him guilty of the serious acts of sexual harassment on his subordinate namely, touching the shoulder, kissing the cheek and grabbing her breast. The claimant had committed the acts of misconduct which were clearly inconsistent with the fiduciary relationship between the employer and an employee. The claimant's proven acts of sexual harassment on his subordinate justifies the managerial decision to dismiss the claimant as this involves the claimant's integrity whilst in the employment of the respondent company.

In the above cited cases, the despicable acts of the perpetrator is abhorred in Islam as they insult a person's honour and dignity. The *Syariah* has provided certain guidelines as to how males and females must conduct themselves with one another. The wisdom behind this is to prevent ill conduct between the opposite sexes and close all doors that can lead to temptation, sexual harassment, rape and adultery. It is unfortunate that the perpetrator in the above cited cases had totally regarded the religious sanctions on decency and moral values and thereby, given in to their uncontrollable lust or sexual urges.

6. Conclusion

Any improper conduct of an employee, whether at the workplace or outside of work, which is likely to damage the employer's reputation may constitute gross misconduct and will lead to disciplinary action up to and including dismissal. The employee's improper conduct includes any conduct which is prejudicial or is likely to be prejudicial to the interests or to the reputation of the employer. Damage to employer's reputation is reasonably likely to occur when an employee commits wrongdoings such as sexual harassment against the company's clients,²⁹ using foul language to a client,³⁰ being rude and ill-mannered with company's trainers and colleagues,³¹ publishing anonymous derogatory statements online against the employer, and

27 [2013] 2 LNS 0517.

28 [2013] 2 ILR 153.

29 See *Colgate-Palmolive (M) Sdn Bhd v Yap Shyan Meng* [2007] 2 ILR 313.

30 See *Perabut Van Hin Sdn Bhd v Lee Lay Lay* [2002] 3 ILR 824.

31 See *Lim Chiew Seng v Jobstreet.Com Sdn Bhd* [2013] 3 ILR 664.

possession of drugs or obscene materials at the workplace,³² among other things. In the aforesaid circumstances, the company can lawfully dismiss an employee because their continued employment poses a risk to the employer's reputation. As noted in this article the misconduct or misbehaviour of a Muslim employee within and outside the workplace which has the potential of affecting the employment relationship such as consensual immoral activities, *khalwat* or close proximity at secluded place and sexual harassment, among others, may well form the basis for disciplinary action up to and including dismissal. Their improper conduct within and outside the workplace has an impact on the employer's image or reputation.

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³² In *Che Omar Ahmad v Petroliam Nasional Bhd* [2011] 2 LNS 0137 the claimant, the Head of Security, was found guilty for having in his possession obscene pictures and this offence.