

# Tan Sri Nallini Pathmanathan

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Nationality: Malaysian

Nallini holds a degree in Physiology from the University of London and undertook the conversion course in law, prior to being called to the English Bar in 1984. She joined Skrine in Kuala Lumpur and practiced at the Bar for 21 years. She co-authored a book entitled “The Law of Dismissal”.

Nallini is a Fellow of the Chartered Institute of Arbitrators and a certified mediator.

She presently sits as a full-time arbitrator and mediator. Nallini was appointed a judge of the Qatar International Court and Dispute Resolution Centre (QICDRC) as of end March 2026.

Appointed to the Bench in 2007, Nallini is the first female judge of South Asian ethnicity to be elevated to the superior judiciary in Malaysia. She served as a Judicial Commissioner at the Criminal Courts of the High Court of Shah Alam before serving as a Judge at the Kuala Lumpur Commercial Court and the Admiralty Court. She was elevated to the Court of Appeal in 2014. She served at the Court of Appeal from 2014 and subsequently the Federal Court, Malaysia’s apex court, from 2018.

She was conferred honorary awards by the King in 2014 and in 2023. Nallini retired from the Bench on 23 February 2026.

Nallini was a member of the Judicial Academy of Malaysia. She managed the Commercial Courts in Kuala Lumpur and oversaw the establishment of the Admiralty Court. Her judgments during her tenure set critical precedents in corporate insolvency and maritime law.

She was editor of the Malaysian “White Book” and is the general editor of Bullen & Leake & Jacob’s Malaysian Precedents of Pleadings, now going into its fourth edition.

Beyond Malaysia, Nallini actively engages in global legal discourse. As Vice Chair of the International Bar Association’s Judges’ Forum and a member of the Steering Group of the Standing International Forum of Commercial Courts (SIFoCC), she helps shape international best practices for commercial dispute resolution. Her commitment to legal education is reflected in her role as Patron of the Commonwealth Legal Education Association (CLEA). In 2025, she was appointed Chairperson of the Malaysia Maritime Law Review and Reform Committee under the Ministry of Transport, spearheading updates to the country’s maritime legal framework. Concurrently, she serves as Advisor to the Cross-Border Insolvency Law Reform Main Committee and Working Committee for the Malaysian Government, driving legislative modernisation.

On 26 May 2026, Nallini was appointed the Chairperson of the Malaysia Media Council.

In June 2026, Nallini was selected by the Government of Malaysia to serve on the Permanent Court of Arbitration’s (PCA) panel of arbitrators. She now sits as a Member of the Permanent Court of Arbitration (PCA) for Malaysia, The Hague.

She is a Bencher of the Honourable Society of the Middle Temple, and a corporate member of the Cheltenham Ladies’ College, United Kingdom.

She currently holds the following positions and affiliations

- Judge, Qatar International Court and Dispute Resolution Centre

- Adjunct Professor, University of Malaya (2026-2028)
- Chairperson of the Malaysia Media Council (2026-2028)
- Member of the Permanent Court of Arbitration (PCA) for Malaysia, The Hague (2026-2031)
- Fellow of the Chartered Institute of Arbitrators, 2006
- Certified Mediator, 2006
- Benchers, the Honourable Society of the Middle Temple
- Vice Chair of the International Bar Association's Judges' Forum
- Member, Steering Group of the Standing International Forum of Commercial Courts (SIFoCC)
- Patron, Commonwealth Legal Education Association (CLEA)
- Chairperson, Malaysia Maritime Law Review and Reform Committee under the Ministry of Transport 2025
- Advisor, Cross-Border Insolvency Law Reform Main Committee and Working Committee
- Member of the Senior Panel of Mediators, Singapore Mediation Centre
- Member, Newman's Row
- Member, London Court of International Arbitration

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PROFESSIONAL CAREER

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| 2018 – 2026 | <b>Judge, Federal Court of Malaysia</b>                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 2014 – 2018 | <b>Judge, Court of Appeal of Malaysia</b>                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 2009 – 2014 | <b>Judge, High Court of Malaya</b> <ul style="list-style-type: none"><li>• Appointed Judge of the newly formed Commercial Courts, High Court of Kuala Lumpur</li><li>• Appointed Judge of the Admiralty Courts, High Court of Kuala Lumpur</li></ul>                                                                                                                                                                                                                      |
| 2007 – 2009 | <b>Judicial Commissioner, High Court of Malaya</b> <ul style="list-style-type: none"><li>• Judicial Commissioner of the Criminal Courts, High Court of Shah Alam</li></ul>                                                                                                                                                                                                                                                                                                |
| 1986 – 2007 | <b>Messrs Skrine</b><br>Partner, 1995 <ul style="list-style-type: none"><li>• Chairperson of the Executive Committee, 2003</li></ul> Legal Associate, 1986 <ul style="list-style-type: none"><li>• Practised in family law, industrial relations law, banking, insolvency and commercial law, medical negligence.</li><li>• Advised regulatory bodies and the statutorily constituted national recovery body during the 1998 Asian financial crisis</li></ul> Pupil, 1985 |

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EDUCATION AND QUALIFICATIONS

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| 1982 | Bachelor of Science (with Honours) in Physiology, University of London |
| 1983 | Diploma in Law, University of Westminster                              |
| 1984 | Called to the English Bar, the Honourable Society of the Middle Temple |
| 1986 | Called to the Malaysian Bar                                            |

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MEMBERSHIP OF BOARDS & COMMITTEES

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Former Member, Judicial Appointments Commission

Corporate Member, Cheltenham Ladies' College

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PROFESSIONAL & OTHER AFFILIATIONS

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SELECTED JUDGMENTS

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On the Bench, Nallini authored more than 340 reported judgments including several significant commercial and constitutional judgments. A selection of those judgments is highlighted below.

**Commercial & Insolvency Law**

*V Medical Services M Sdn Bhd v Swissray Asia Healthcare Co Ltd* [2025] 2 MLJ 744

In *Swissray*, Justice Nallini addressed a significant divergence in authority: whether to adopt the approach of the Singaporean and Hong Kong apex courts or that of the Privy Council in *Sian Participation Corp (in liquidation) v Halimeda International Ltd* [2024] UKPC 16 concerning debts underlying a winding-up petition governed by an arbitration agreement. Her Ladyship aligned with *Sian Participation* but enriched the analysis by explaining the need to still consider the interests of creditors at the point when a winding-up petition is filed. This was the first apex court decision in the Commonwealth to engage with the issue post-*Sian Participation*, offering a clarifying perspective on the intersection of arbitration and insolvency law.

*Detik Ria Sdn Bhd v Prudential Corporation Holdings Ltd & Anor* [2025] MLJU 575

In *Detik Ria*, Justice Nallini presided over a high-stakes dispute involving dividend claims totalling RM 4.2 billion (approx. USD 1 billion). The case required her Ladyship to reconcile the principles of illegality under Malaysia's Contracts Act 1950 with the evolving common law frameworks articulated in *Patel v Mirza* (UK Supreme Court) and *Ochroid Trading* (Singapore Court of Appeal). Her Ladyship crafted a novel legal test for assessing illegality, synthesizing Malaysia's statutory regime with comparative jurisprudence from leading common law jurisdictions. This approach provided much-needed clarity on the interplay between domestic contract law and transnational illegality doctrines, reinforcing Malaysia's position within the broader Commonwealth legal tradition.

*Low Cheng Teik & Ors v Low Ean Nee* [2024] MLJU 2174

Justice Nallini upheld the application of the principle of reflective loss, considering the largely novel question of its application to oppression actions. In doing so, her Ladyship dissected the underpinnings of the principle and devised a framework for determining whether a shareholder's complaint is properly actionable by way of an oppression action or a derivative action.

*Bursa Malaysia Securities Bhd. V Mohd Afrizan Husain* [2022] 4 CLJ 657

In *Afrizan*, the Federal Court had to determine whether Bursa Malaysia's listing requirements, in using the word "shall", mandated immediate delisting upon a winding-up order, notwithstanding pending appeals. Justice Nallini commenced her analysis by highlighting how any interpretation of an Act must be done purposively, with the object of the Act in mind, as prescribed by the Interpretation Act. After construing the object of the parent Act and finding that the primary duty of Bursa Malaysia was to ensure a fair and orderly capital market in the public's interest, her Ladyship held the word "shall" was not mandatory in nature but instead directory. This meant that Bursa had a discretion, and not a mandatory duty, to de-list the listed corporation.

The case resounded the importance of purposive interpretation of legislation in Malaysia; that while it is true that the use of "shall" is often mandatory and "may" is permissive, a literal approach was not the beginning and end of statutory construction.

*Ong Leong Chiou & Anor v Keller (M) Sdn Bhd & Ors* [2021] 4 CLJ 821

In *Keller*, Justice Nallini engaged with the contentious issue of piercing the corporate veil, partially aligning with Lord Sumption's majority approach in *Prest (Appellant) v Petrodel Resources Limited & Others* [2013] UKSC 34, recognising the "evasion" and "concealment" principles as valid grounds for piercing the corporate veil. However, her Ladyship adopted and expanded upon Lady Hale's concurring opinion, cautioning against an overly rigid application of these categories. Emphasising that many cases defy such clear categorisation, Justice Nallini affirmed that this complexity should not automatically bar claimants from validly seeking veil-piercing remedies. Her Ladyship's analysis bridged English precedent with equitable flexibility, offering a refined framework for future Malaysian cases.

### **Admiralty Law**

*Fimbank Plc v Pemilik dan/atau Pencarter Demis Kapal atau Vesel 'Nika' kini dikenali sebagai 'Bao Lai'* [2023] MLJU 2286

The case concerned the maximum number of times an admiralty writ in rem may be renewed given the Malaysian Rules of Court 2012 provides that a writ in an admiralty action may only be extended five times where efforts to serve the writ have been unsuccessful. Justice Nallini held that an interpretation of the Rules so as to bar a party's statutory right of action in rem, as was done by the courts below who held that a writ could not be extended for a sixth time, was incorrect. Justice Nallini elucidated that as subsidiary legislation, the Rules could not eradicate a statutory right *in rem* that accrued within the limitation period. Reference was made to the facts of the case that the bank and trade financier had not slept on serving the writ but instead diligently monitored the movement of the vessel notwithstanding the changes in the vessel's ownership.

### **Arbitration**

*Tindak Murni Sdn Bhd v Juang Setia Sdn Bhd & Another Appeal* [2020] 4 CLJ 301

This appeal concerned whether a default judgment could properly be obtained when the underlying dispute was subject to a valid arbitration agreement. Justice Nallini explained that enforcing such a judgment would effectively sanction a breach of the arbitration clause and render its protections meaningless. Her Ladyship emphasized that parties cannot circumvent their agreed dispute resolution mechanism through procedural default, thereby affirming the primacy of arbitration agreements in Malaysian commercial jurisprudence.

*ING Bank NV & Anor v Tumpuan Megah Development Sdn Bhd* [2025]

In this appeal where Justice Nallini wrote the unanimous decision, the Federal Court of Malaysia established that foreign arbitral awards can be enforced through dual, co-existing routes under both the Arbitration Act 2005 and the Reciprocal Enforcement of Judgments Act 1958. The ruling clarifies that registering a foreign judgment based on an award is valid and not prohibited "judgment laundering," reinforcing Malaysia's status as an arbitration-friendly jurisdiction. The decision was highlighted in the Global Arbitration Review in 2025.

## **Constitutional and Administrative Law**

*Pendaftar Mualaf Negeri Perlis & Ors v Loh Siew Hong and another appeal* [2025] 2 MLJ 324

Justice Nallini provided much-needed clarity on the interplay between civil and syariah jurisdictions in matters of religious conversion. Her Ladyship reiterated the constitutional principle that any determination made beyond the syariah court's jurisdictional limits remains subject to judicial review by the civil courts.

*Kerajaan Malaysia v LFL Sdn Bhd & Another Appeal* [2025] 1 CLJ 851

In this decision, Justice Nallini addressed two major questions of public international law: first, whether conduct by the Singaporean Minister of Home Affairs constituted sovereign action protected by state immunity; and second, the proper approach to assessing extraterritorial legislation that engaged Malaysian constitutional protections. Her Ladyship's judgment marked a deliberate shift in jurisdictional principles. Justice Nallini departed from the permissive approach in *The Lotus Case*, which had allowed the exercise of prescriptive jurisdiction absent a prohibitive rule, and instead affirmed a more modern jurisprudence requiring a recognised basis in international law for the exercise of extraterritorial prescriptive jurisdiction.

*Attorney General of Malaysia v Sabah Law Society* [2025] 1 CLJ 1

The case concerned an application by the Sabah Law Society, a statutory body, seeking leave to judicially review and compel payment of grants allegedly owed to the state of Sabah under the Federal Constitution. In concluding leave to appeal should not be granted, Justice Nallini's judgment provided the first comprehensive analysis of whether such claims should properly be brought under the Federal Court's original jurisdiction pursuant to Article 128(1)(b) of the Federal Constitution, rather than through judicial review in the High Court.

*Dhinesh A/L Tanaphll v Lembaga Pencegahan Jenayah & Ors* [2022] 3 MLJ 356

Justice Nallini reconciled conflicting authorities to establish authoritatively that Malaysia's Federal Constitution contains certain fundamental features beyond Parliament's amending power. The principled articulation of the reach of Article 4(1) of the Federal Constitution carried profound implications for judicial review, empowering courts on the facts of *Dhinesh* itself to examine not only procedural compliance in detention cases but to also scrutinise the substantive merits of the executive government's decision.

*Perbadanan Pengurusan Trellises & Ors v Datuk Bandar Kuala Lumpur & Ors* [2021] 3 MLJ 1

Justice Nallini departed from the restrictive approach to *locus standi* articulated in *Government of Malaysia v Lim Kit Siang* [1988] 2 MLJ 12 which required plaintiffs to demonstrate particularised injury to private rights. Her Ladyship's judgment brought Malaysian jurisprudence into alignment with contemporary Commonwealth principles by recognising that persons with a genuine interest in the matter, particularly where issues of public importance are engaged, should have standing

to bring claims. The decision has been widely regarded as having modernised Malaysia's approach to standing in constitutional and public law matters.

*Peguam Negara Malaysia v Mkini Dotcom Sdn Bhd & Anor* [2021] MLJU 242

In a seven-member panel considering whether a digital newspaper was liable for contempt in respect of third-party comments made on its website, Justice Nallini delivered the sole dissent, holding that contempt requires proof of actual knowledge of the offending content and not merely constructive knowledge. Her Ladyship grounded this distinction in a holistic reading of the Communications and Multimedia Act 1998 and the right to free speech under Article 10 of the Federal Constitution, warning that anything less would unduly restrain free speech.

*Maria Chin Abdullah v Ketua Pengarah Imigresen & Anor* [2021] 2 CLJ 579

In considering whether the right of a citizen to travel abroad, of freedom of expression and the right to be heard were rights open to suspension and preclusion by the executive government, Justice Nallini delivered her dissenting judgment and upheld what her Ladyship saw as being the full purport of Article 4(1) of the Federal Constitution. Her Ladyship built on case law that upheld the Federal Constitution as taking precedence over all arms of a government. In doing so, Her Ladyship found the Immigration Act's fettering of the court's jurisdiction to review a Minister's decision under s 59A, known commonly as an ouster clause, contravened the Federal Constitution and thus was void.

*Letitia Bosman v Public Prosecutor & other appeals* [2020] 8 CLJ 147

In this landmark constitutional challenge before a nine-member panel, Justice Nallini provided the sole dissent, holding that the mandatory death penalty violated the Federal Constitution. Her Ladyship emphasised that the circumstances leading to convictions for drug trafficking or murder varied so profoundly between cases that there could be no rational basis for imposing a uniform mandatory sentence. Significantly, Justice Nallini also clarified that adjudicating constitutional rights, particularly in a jurisdiction where a constitution is made supreme, does not amount to judicial encroachment into the parliamentary domain, but rather fulfils the judiciary's essential role as guardian of the Constitution. Following this dissent, Parliament passed the Abolition of Mandatory Death Penalty Act 2023.

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#### PUBLICATIONS

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Co-Author, *The Law of Dismissal* (CCH Asia Pte Ltd, 2003)

General Editor, *Bullen & Leake & Jacob's Malaysian Precedents of Pleadings* (Sweet & Maxwell) and continuing as general editor for subsequent editions

Editorial Board, *Malaysian Civil Procedure & Practice* (LexisNexis, 2018); *Malaysian Civil Procedure & Practice* (LexisNexis, 2021)

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#### SELECTED LECTURES & APPEARANCES

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*Conflicting Considerations: The Intersection between Insolvency and Arbitration*

Panellist in Discussion | INSOL/ UNCITRAL/World Bank Group Judicial Round Table 2025

*Tsunami: New Technologies*

Panellist in Discussion | Singapore International Commercial Court Conference 2025

*International Women's Day*

Opening Address | International Chamber of Commerce Young Arbitration Forum 2025

*ESG and the Law: Redefining Corporate Responsibility*

Keynote Address | Asian International Arbitration Centre 2025

*Artificial Intelligence (AI) and the Law*

Speech | Negeri Sembilan Bar's 60th Anniversary in 2025

*Federal Constitution: A Commentary (With Introduction to Judicial Review), Second Edition*

Keynote Address | Book Launch 2024

*AI-Hype or Hyper Reality*

Keynote Address | Lee Hishamuddin Allen & Gledhill Event 2024

*Moulding the Future: Legal Education Reimagined, Rethinking Legal Education*

Speech | Asian Law Students' Association Forum Malaysia 2024

*Artificial Intelligence (AI), Technology and the Law*

Keynote Address | Commonwealth Legal Education Association (CLEA) Conference 2024

*Beyond Boundaries: The Rise of Asia in Global Dispute Resolution*

Keynote Address | Asian Alternative Dispute Resolution Summit 2024

*Case Management Considerations*

Speaker | Multinational Judicial Colloquium and INSOL San Diego Conference 2024

*Climate Change and Commercial Law*

Moderator for Panel Discussion | 4th Judicial Roundtable on Commercial Law 2024

*International Best Practice in Case Management: SIFoCC Observation Programme 2023*

Panel Chair | 5th Meeting of the Standing International Forum of Commercial Courts 2024

*International Women's Day – Inspire Inclusion*

Speech | Indian High Commission Event 2024

*A Practical Guide to Personal Data Protection*

Keynote Address | Book Launch 2024

*Insolvency Judicial Training Course for Cambodian Judges*

Trainer | INSOL/World Bank Group Insolvency Program 2023

*Asian Focus: Regional Reform and Restructuring*

Panellist in Discussion | INSOL/ UNCITRAL/World Bank Group Judicial Round Table 2023

*Is it Time to Set the Clock Back? Courts' Approach to Arbitral Awards: Rubber Stamp or Critical Review*

Speech | 1st ICC Malaysia Arbitration Day 2023

*Refuelling The Future – Sustainability and Growth in the Post-Covid Era*

Keynote Address | Maritime Law and Business Conference 2023

*International Commercial Courts within the Domestic System – Enhancing Commercial Dispute Resolution?*

Speech | 23rd Commonwealth Conference 2023

*Managing Complexity and the “Complexification” of Disputes*

Panellist in Discussion | 4th Meeting of the Standing International Forum of Commercial Courts 2022

*Tracing the Influence of Western Jurisprudence in Asian Jurisdictions*

Speech | International Bar Association Asia Pacific Regional Forum Litigation Conference 2022

*The International Environmental Rule of Law – the North and South Divide & Sustainable Development – the Malaysian Experience*

Speech | International Conference on Environmental Diversity & Environmental Jurisprudence: National and International Perspective 2022

*Law and Legal Practice in the Post-Pandemic Era: Opportunities, Solutions and Innovations*

Keynote Address | Taylor’s International Conference on the Future of Law and Legal Practice 2022

*Annual Arbitration Forum 2018*

Keynote Address | Asian-African Legal Consultative Organisation Annual Arbitration Forum 2018

*The Courts and Arbitration in Malaysia: Where in the Swing of the Pendulum Does the Balance Lie?*

Keynote Address | Chartered Institute of Arbitrators Presidential Lecture 2018

*Overview of the Changes Brought by the Companies Act 2016 to Corporate Rescue Mechanisms in Malaysia*

Presentation of Paper | INSOL International Seminar 2017