

Tan Sri Nallini Pathmanathan (FCIArb)

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Nationality: Malaysian | **CALL:** 1985 (Middle Temple)

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 then 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 as well as a certified mediator.

Nallini was appointed to the Bench in 2007. She was the first female judge of South Asian ethnicity to be elevated to the superior judiciary in Malaysia. She was elevated to the Court of Appeal in 2014, and the Federal Court, the apex court in Malaysia, in 2018. In 2014, she was conferred an honorary award by the King. Nallini now sits as a full time arbitrator, mediator and international judge in the Qatar International Court.

Nallini is a member of the Judicial Academy of Malaysia. She manages the Commercial Courts in Kuala Lumpur. She edits the Malaysian "White Book" and is the general editor of Bullen & Leake & Jacob's Malaysian Precedents of Pleadings. She is the President of The Middle Temple Alumni Association of Malaysia and a corporate member of the Cheltenham Ladies' College, United Kingdom.

Tan Sri Nallini Pathmanathan's career has been defined by her expertise in both public law and private law, with a lasting impact on Malaysia's jurisprudence. Elevated to the Bench in 2007 as a Judicial Commissioner, she served at the Criminal Courts of the High Court of Shah Alam before her appointment as a High Court Judge in 2009. At the High Court, she played a pivotal role in the Commercial Courts and the newly established Admiralty Court, building Malaysia's reputation as a hub for commercial litigation. Her judgments during this period set critical precedents in corporate insolvency and maritime law. Her

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elevation to the Court of Appeal in 2014 marked a deepening expertise in appellate commercial law, where she shaped key legal principles in corporate disputes. In 2018, she was elevated to the Federal Court of Malaysia, the nation's apex court, where she has since delivered landmark rulings in constitutional, commercial, and public law matters.

Beyond Malaysia, Tan Sri 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 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, driving legislative modernisation. A Bencher of the Honourable Society of the Middle Temple, she remains deeply engaged with the Commonwealth legal tradition while advancing Malaysia's judicial prominence.

Her early legal practice encompassed family and industrial relations law before she transitioned into insolvency and commercial law during the Asian Financial Crisis of 1997, where she advised regulatory bodies and a statutorily constituted national recovery body.

She has recently been appointed as Judge of The Qatar International Court and Dispute Resolution Centre (QICDRC) as of end March 2026. She has yet to be benched.

PROFESSIONAL CAREER

Judge, Federal Court of Malaysia

2018 – February 2026

Judge, Court of Appeal of Malaysia

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2014 – 2018

Judge, High Court of Malaya

2009 – 2014

- Appointed Judge of the newly formed Commercial Courts, High Court of Kuala Lumpur
- Appointed Judge of the Admiralty Courts, High Court of Kuala Lumpur

Judicial Commissioner, High Court of Malaya

2007 – 2009

- 1986 – 2007 **Messrs Skrine**

Partner, 1995

- Chairperson of the Executive Committee, 2003
- Legal Associate, 1986
Practiced in family law, industrial relations law, banking, insolvency and commercial law, medical negligence.
- Advised regulatory bodies and the statutorily constituted national recovery body during the 1998 Asian financial crisis Pupil, 1985

EDUCATION AND QUALIFICATIONS

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 –
Bencher of Middle Temple 2022

1986 Called to the Malaysian Bar

MEMBERSHIP OF BOARDS & COMMITTEES

- Former Member, Judicial Appointments Commission
- Corporate Member, Cheltenham Ladies' College

PROFESSIONAL & OTHER AFFILIATIONS

- Fellow of the Chartered Institute of Arbitrators, 2006
- Certified Mediator, 2006
- Bencher, the Honourable Society of the Middle Temple

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- 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 Advisor, Admiralty Bill for Malaysia
 - Senior Mediator, Singapore Mediation Centre
- Appointed Judge of The Qatar International Court and Dispute Resolution Centre (QICDRC) as of end March 2026. Yet to be benched

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SELECTED JUDGMENTS

Commercial & Insolvency Law

V Medical Services M Sdn Bhd v Swisstray Asia Healthcare Co Ltd [2025] 2 MLJ 744 [[Press Coverage of landmark case](#)]

In *Swisstray*, 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 [[Court Coverage](#)]

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

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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.

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Admiralty Law

Fimbank Plc v Pemilik dan/atau Pencarter Demis Kapal atau Vesel 'Nika' kini dikenali sebagai 'BaoLai' [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.

Most of Justice Nallini's admiralty and maritime judgments were handed down when she was in the High Court sitting as the Admiralty Judge.

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.

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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.

Constitutional and Administrative Law

Pendaftar Muaf 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.

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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 Tanaphil 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 particularized 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

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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

- Co-Author, *The Law of Dismissal* (CCH Asia Pte Ltd, 2003)
- General Editor, *Bullen & Leake & Jacob's Malaysian Precedents of Pleadings* (1st edn, Sweet & Maxwell 2017)
- Editorial Board, *Malaysian Civil Procedure & Practice* (LexisNexis, 2018); *Malaysian Civil Procedure & Practice* (LexisNexis, 2021)

SELECTED LECTURES & APPEARANCES

- *Panellist : Conflicting Considerations: The Intersection between Insolvency and Arbitration* | INSOL/ UNCITRAL/World Bank Group Judicial Round Table (2025)
- *Panellist : Tsunami: New Technologies* | Singapore International Commercial Court Conference (2025)
- *Opening Address : International Women's Day* | International Chamber of Commerce Young Arbitration Forum (2025)
- *Keynote : ESG and the Law: Redefining Corporate Responsibility* | Asian International Arbitration Centre (2025)
- *Artificial Intelligence (AI) and the Law Speech* | Negeri Sembilan Bar's 60th Anniversary in (2025)
- *Keynote : Federal Constitution: A Commentary (With Introduction to Judicial Review), Second Edition* | Book Launch (2024)
- *Keynote : AI-Hype or Hyper Reality* | Lee Hishamuddin Allen & Gledhill Event (2024)
- *Moulding the Future: Legal Education Reimagined, Rethinking Legal Education Speech* | Asian Law Students' Association Forum Malaysia (2024)
- *Keynote : Artificial Intelligence (AI), Technology and the Law* | Commonwealth Legal Education Association (CLEA) Conference (2024)
- *Keynote : Beyond Boundaries: The Rise of Asia in Global Dispute Resolution* | Asian Alternative Dispute Resolution Summit (2024)
- *Case Management Considerations Speaker* | Multinational Judicial Colloquium and INSOL San Diego Conference (2024)

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- *Moderator: Climate Change and Commercial Law | 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)*
- *Keynote : A Practical Guide to Personal Data Protection | Book Launch (2024)*
- *Insolvency Judicial Training Course for Cambodian Judges Trainer | INSOL/World Bank Group Insolvency Program (2023)*
- *Panellist: Asian Focus: Regional Reform and Restructuring | 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)*
- *Keynote : Refuelling The Future – Sustainability and Growth in the Post-Covid Era | 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)*
- *7The 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)*

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- *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)*