

DIGITAL EVIDENCE AND WHATSAPP MESSAGES IN CIVIL LITIGATION: REFLECTIONS FROM GIIB HOLDINGS BERHAD V WONG WENG YEW & ORS [2025]

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Abstract

In an increasingly digital age, the ephemeral nature of instant messaging often belies its profound legal significance. What happens, however, when seemingly deleted WhatsApp messages hold the key to unravelling complex civil disputes? This paper examines the critical role of WhatsApp messages, even those purportedly deleted, as discoverable evidence under Malaysian procedural law. Employing a qualitative research methodology centred on a detailed case study, the paper thoroughly analyses the High Court's pivotal decision in GIIB Holdings Berhad v Wong Weng Yew & Ors [2025]. The study scrutinises the judicial application of the Evidence Act 1950 and the Rules of Court 2012, particularly concerning the principles of admissibility, relevance, and authenticity of electronic records. The results demonstrate a significant judicial shift towards permitting targeted discovery of WhatsApp communications when clearly linked to the issues in dispute, acknowledging that such informal exchanges can constitute crucial probative evidence. The discussion further highlights the persistent legal and practical challenges inherent in relying on WhatsApp evidence, including authentication procedures under section 90A of the Evidence Act and the distinction between evidentiary weight and admissibility, especially given the ease of manipulation. This paper concludes that while Malaysian courts have shown commendable adaptability, clearer procedural guidance and robust authentication practices are imperative to ensure consistency, fairness, and the integrity of digital evidence in civil litigation, offering practical recommendations for legal practitioners navigating this evolving evidentiary landscape.

Keywords: *civil litigation, digital evidence, Evidence Act 1950, Malaysian court.*

INTRODUCTION

The proliferation of digital communication platforms, particularly instant messaging applications such as WhatsApp, has fundamentally altered the landscape of personal and professional interactions. Consequently, these digital exchanges are increasingly becoming central to disputes litigated in civil courts, demanding a nuanced and adaptive approach from legal systems worldwide. In Malaysia, the admissibility and probative value of digital evidence have been subjects of ongoing judicial consideration, largely guided by the Evidence Act 1950 (Commissioner of Law Revision, Malaysia, 2006) and the Rules of Court 2012 (Malaysian Judiciary Portal, 2023). This paper delves into the intricacies of digital evidence, with a specific focus on WhatsApp messages, by critically examining the recent High Court decision in GIIB Holdings Berhad v Wong Weng Yew & Ors [2025].

This case presents a compelling illustration of the Malaysian judiciary's evolving stance on the discovery and admissibility of electronic communications in civil litigation. The plaintiff in GIIB Holdings sought the discovery of WhatsApp messages and associated media files, alleging a conspiracy among former directors. This decision serves as a crucial benchmark for understanding how Malaysian courts navigate the challenges of digital evidence, particularly concerning issues of relevance, authenticity, and the appropriate scope of discovery. By analysing the judicial reasoning in GIIB Holdings within the existing legal framework, this paper aims to identify the progress made and the persistent challenges that require further attention. It will also offer practical recommendations for legal practitioners to navigate the complex terrain of digital evidence effectively in the contemporary legal environment.

LITERATURE REVIEW

The integration of digital evidence in judicial proceeding is a global phenomenon which has influenced a transformation across development of evidence law. The digital evidence revolving on the balance of probabilities for digital information considering the possible risk such as manipulation, privacy consideration, and the complexity of technicality regarding the authenticity and the validity (Mason & Seng, 2017). The early discussion on electronic evidence centralise on the principle of accuracy, relevancy, and authenticity applied for new data. According to Gooderham (2018), the court is reluctant with full admission of digital evidence due to lack of exposure with the related technology, hence has more tendency to choose the traditional approach of documentary evidence. However, the wide nature of digital communication requires a transformation. The "best evidence rule," which previously applied in documents is now facing new interpretation in this new digital era whereby the court is gradually accepting the copy of electronic records with the condition to prevail and establish the integrity (Ching, 2021).

In Malaysian judiciary landscape, the introduction of section 90 of Evidence Act 1950 (Act 56) in the year of 2012 is a massive milestone specifically in addressing the admissibility of computer generated documents as part of the evidence in litigation process. This provision specifically aimed to standardise the process of admission of electronic record, however the interpretation and the applications is complex and is not an easy task to establish. However, Lee (2014) argued the requirement for practical implications of certificate under section 90A(2) is too burdensome for disputant especially for data from personal device or the third party's application. Furthermore, Alias et al. (2024) examine the requirements under section 90A, section 90B and section 90C of Evidence Act (Act 56) and highlight the challenges remain, particularly regarding the authenticity, integrity, and reliability of electronic documents. The challenge lies upon the sufficient guarantee concerning the reliability and integrity of electronic records without the need of technical expertise to establish for digital evidence.

Meanwhile, the concept of 'discovery' in civil litigation process also developed significantly with the existing of digital information. The giant amount of data and the temporary nature of this digital communication including WhatsApp has arisen massive challenges for 'traditional discovery approach'. White (2019) discussed the challenges to identify, and to check the electronically stored information (ESI) known as 'e-discovery'. The traditional scope of 'discovery' aimed to achieve fair trial or to cut the trial cost now expended broadly in digital world including private messaging applications. The court facing greater challenges to balance between parties' dispute over the relevance of the information to the case and the individuals privacy rights as well the practicalities of retrieving the data from personal devices (Chang, 2020). This is especially in messenger application such as WhatsApp whereby the main concern is regarding the authenticity and the manipulation of the data.

Unlike traditional document such as in physical paper forms, WhatsApp messages are able to be modified, deleted or fabricated easily. Furthermore, the temporary nature of this digital communication which commonly saved in private devices rather than the centralised server adds another layer of complexities to preserve and to perform forensic examination. Therefore, the need to establish efficient identification procedures is crucial beyond the screenshot only (Mohd Sani & Hassan, 2022). This also includes but not limited to the metadata identification, hash value, and if possible to access the original device for the messages. The challenges to establish and develop the chain of custody for digital evidence is also a recurring theme, underlining the importance of proper acquisition and preservation techniques (Tan, 2023).

Lastly, the distinction between the 'admissibility' and 'weightage' are compelling for digital evidence. Although section 90A of Evidence Act 1950 allowing the 'admissibility' of digital evidence, however the burden of proof lie upon the discretion of court depending on the several factors such as corroboration, the manner of acquisition, and the overall reliability of the evidence presented (Suresh, 2019). In the case of *Public Prosecutor lwn Dato' Sri Mohd Najib bin Hj Abd Razak* [2022], although in a criminal case, the court emphasis this principle for digital evidence which can be verifiable and reliable to carry significant weight. This literature review stresses the complex interplay of legal principles, technological advancements, and practical challenges that shape the judicial application of digital evidence, framing the context for an in-depth analysis of GIIB Holdings.

METHODOLOGY

The methodology for this paper using a qualitative method based on 'Black letter methodology' or doctrinal approach, which is "*closely linked with the doctrine of precedent — legal rules take on the quality of being doctrinal because they are not just casual or convenient norms, but because they are meant to be rules which apply consistently and which evolve organically and slowly*" (Hutchinson & Duncan, 2012) as well as library

based research. Library research based is the most well-known method of research including in legal doctrinal research or '*Black letter methodology*' (Bradford v. Huntington, 1831). Doctrinal research is '*research into the law and legal concepts*' (Hutchinson & Duncan, 2012) concerning the formulation of doctrine through the analysis of legal rules found in legislation but unable to codify without applying the relevant legal rules to the particular facts of a situation under consideration (Chynoweth, 2008).

This approach mainly related to qualitative approach in presenting the in depth study of legal issues and digital evidence focusing on WhatsApp messages in civil litigation. The main research data is based on the judicial decision of the case *GIIB Holdings Berhad lwn Wong Weng Yew & Ors* [2025], which serve as primary sources for analysis. Besides, the other primary sources from the legislation (statutes) especially in procedural law such as Evidence Act 1950 (Act 56), Rules of Court 2012, and other secondary sources such as journal articles, books, official portal and other case reports as references to support this study.

The collection of data for analysis was conducted via systematic documentation consists judicial decision of case report, legislations and others relevance secondary. The analysis of data was conducted through legal analysis approach involving several critical methods which are:

1. Identify the main legal issue in the *GIIB Holdings Berhad lwn Wong Weng Yew & Ors* [2025].
2. The analysis of *ratio decidendi* (legal reasoning) in the court judgement
3. Applying the finding in the *GIIB Holdings Berhad lwn Wong Weng Yew & Ors* [2025] with applicable and relevant legal principle
4. Identifying the challenges involving digital evidence in civil litigation process based on the analysis and proposing the recommendations to address the challenges.
5. Finally to conclude the study based on the analysis conducted.

RESULTS AND DISCUSSION

RESULTS

Brief case of *GIIB Holdings Berhad v Wong Weng Yew & Ors* [2025]

GIIB Holdings Berhad v Wong Weng Yew & Ors [2025] is a high court civil case involving a claim for conspiracy to injure the Plaintiff's interest and or its business against the Defendants who are former directors of the company (*GIIB Holdings Berhad*). The plaintiff's allegation of the conspiracy is based on the numerous WhatsApp conversations from different WhatsApp Groups which are considered as material information to the conspiracy's allegation. The WhatsApp conversations implying that defendants together with various third party discussed to plan and take pre-meditated action to cause injury to the Plaintiff. Plaintiff made an application for discovery against the WhatsApp conversations including media file, which some already deleted.

Although the application filed near to the date of court trial, the High Court allowed the Plaintiff's application. Plaintiff's argued that the WhatsApp messages are relevant to establish the allegation of conspiracy and justify to be accepted as material facts (evidence) for the trial. The decision by the court to allow the application to access the digital evidence reflects the pragmatic approach of the court as 'justice to be done' hence the application to access the WhatsApp conversations is relevant and necessary for the trial.

Legal Framework on Digital Evidence

The admissibility and management of digital evidence in Malaysian civil litigation are primarily governed by two main substantive law namely the Evidence Act 1950 (Act 56) and the Rules of Court 2012. These legal frameworks provide the foundational principles and procedural mechanisms for incorporating electronic records as digital evidence into judicial proceedings.

a) Section 90A and Electronic Records under Evidence Act 1950 (Act 56)

Section 90A of the Act allows the admissibility of computer document as evidence generated on ordinary use of computer. However, under subsection (2) of the Act stated that certificate requirement of the responsible individual on the operation of the computer or the issuing of the document. The certificate must certify that:

- The document was generated on ordinary use of computer; and
- The computer function properly, or any dysfunctional or damages of the computer did not jeopardise the accuracy of the document.

The purpose of the certificate to ensure the integrity, credibility and reliability towards electronic records. However, for WhatsApp messages, this requirement raised critical challenges because the evidence from WhatsApp messages generated from personal device or cloud backup or cloud storage. As stressed by Thomas Philip Advocates & Solicitors (2023), the screen shot alone is not sufficient enough as its require further evidence to establish such as the origin of the messages and the integrity of the data, which usually obtained through testimony of expert evidence witness or detailed affidavits of the expert witness to ensure the credibility of the evidence.

b) Order 24 (Discovery) under Rules of Court 2012

Order 24 provide procedural framework for discovery in civil litigation including obtaining digital record such as email, file, and instant messages. The court will consider whether the application for discovery to obtain the document is 'relevant' and 'necessary' in order to achieve justice and cost efficient (Order 24, Rule 7). The broad approach regarding the relevant concept allows court's order for issuing digital communication although the communication was stored on the personal device or the third party platform. The third party platform such as via cloud storage, for example Google Drive.

In the case of *GIIB Holdings*, illustrated the application of Order 24 regarding the digital communication via WhatsApp messages, whereby the court stressed the importance of this digital evidence to prevail the justice for the case. However, the requirement and scope of discovery must be balanced between proportionality, privacy, and potential "fishing expeditions to ensure the justice.

The establishment of both substantive requirements in Evidence Act 1950 (Act 56) for admissibility and the procedural mechanisms of the Rules of Court 2012 for discovery is compelling in administrating digital evidence for civil litigation effectively.

DISCUSSION

Analysis of *GIIB Holdings* [2025]

The decision of the High Court in this case proven that the WhatsApp messages as part of the discovery evidence, highlighted the readiness of court to adapt between the traditional evidence principle and the realm of digital communication. Despite in this case the application for discovery to obtain the WhatsApp messages, but the court in this case considered the probative value and the substantial requirement for justice. This also demonstrated the flexibility of court in prevail justice despite the rigidity and strictness of the procedural law.

WhatsApp Messages and Specific Discovery

In *GIIB Holdings*, the plaintiff who alleged the defendants on a conspiracy affirming from WhatsApp group between defendants and third parties enclosed essential evidence to support Plaintiff's claim. Plaintiff sought discovery of the WhatsApp conversations including the deleted media files. This application of discovery raised the challenge to the court which is how to enforce the potential material facts derived from private messages especially concerning the privacy issues and the flexibility and ease of deletion the messages.

Although in this case the application of discovery was made close to the trial date, however according to the court, it is not considered as abuse the court's process. The court in the view that that '*since some time was needed to peruse the voluminous documents involved*', hence the court allowed the application on the basis of justice to the case. The court further stressed the pivotal nature of these WhatsApp conversations as digital evidence as long as they can be authenticated and properly proven.

Ratio Decidendi (legal reasoning) in the High Court judgement's

The *ratio decidendi* in *GIIB Holdings* indicated clear balances between procedural efficiency and fundamental principle of justice in evidence. The court recognised the right of Plaintiff to access the evidence that potentially form a material fact to the case despite the evidence is private communication involving personal user or third party provider for medium of communication and easily can be deleted. A highlighted

aspect of the court's deliberation was its reliability on the "Proposed Bundle of Documents." The court interpreted and evaluated the existing evidence and the gap which the WhatsApp conversations are able to fill and avoid speculative evidence.

This in line with emerging judicial practice where courts are gradually adjusting to the digital age, understanding that contemporary natures and personal interactions often occur outside traditional medium. The GIIB Holdings judgment thus serves as a prominent reminder to legal practitioners that digital exchanges must be thoroughly considered as potential sources of evidence and administrated properly from the outset of any dispute.

Legal Challenges in Addressing Digital Evidence

Even though cases like GIIB Holdings reflect the judiciary's increasing acceptance toward digital evidence, its application into civil litigation it appears to have faced multiple legal and practical challenges. These challenges fundamentally centralised around establishing the authenticity and integrity of digital records, and distinguishing between their admissibility and the weight accorded to them by the court.

a) Authenticity, Manipulation, and Certification Requirements

One of the vital challenges in relying on digital evidence particularly WhatsApp messages are to ensure the authenticity. Electronic records differ from physical documents whereby electronic records are easily exposed to manipulation, modification, or even outright fabrication. The screenshot alone is unreliable due to its nature which easily to alteration making it difficult to evaluate and determine the credibility and authenticity without other supporting evidence (Mohd Sani & Hassan, 2022).

The court requires strict and rigid application of authenticity under section 90A (2) of Evidence Act 1950 (Act 56) including the responsible individual's certificate, extraction and preservation of forensic, as well as metadata identification and hash verification to ensure the integrity of the data (Tan, 2023). The legal practitioners must apply the best practice such as forensic acquisition, metadata preservation, expert evidence via affidavit or expert testimony, and independent verification to safeguard the admissibility of digital evidence (Suresh, 2019; Thomas Philip Advocates & Solicitors, 2023).

b) Evidentiary Weight versus Admissibility

The next challenge is concerning to the distinction between admissibility and evidentiary weight regarding digital evidence. Despite section 90A of Evidence Act 1950 (Act 56) permits computer document as admissible evidence, the influence of this provision however reply upon the reliability, authenticity, or context is questionable.

In the case of *Public Prosecutor v Dato' Sri Mohd Najib bin Hj Abd Razak* [2022] highlighted although WhatsApp messages is accepted as digital evidence under the legislation of evidence law, the court however, must establish the reliability and verifiability. The regarding reliability and verifiability how the court evaluate the content of the digital evidence, the credibility of witness particularly and nature of legal dispute. The other supporting evidence such as chain of custody, the context, such as purpose of communication, absence of alteration and completeness (surround on portions of a conversation are presented, potentially misleading the overall meaning).

RECOMMENDATIONS

In order to administer the digital evidence landscape which gradually progresses in civil dispute via civil litigation effectively, legal practitioners should consider applying several recommendations of best practices:

Firstly, legal practitioners must identify the potential sources of digital evidence and preserve it from the beginning of the case including instant messages, emails, social media content, and other electronically stored information. Advice the client to preserve all digital evidence including preventing accidental deletion or alteration.

Secondly, the gathering of evidence must be conducted through forensic methods by the qualified expert. This ensuring the integrity and to maintain the reliability and credibility of the chain of preservation.

Thirdly, the requirement of authentication such as the original digital evidence, and deletion of digital evidence, including device types, dates, and times of communication under section 90A of Evidence Act (Act 56) must be to prioritise and to ensure the requirement of the provisions have been met.

Fourthly, the application for discovery of digital evidence must be planned accordingly and thoroughly while providing relevant and strong justification to access and obtain the digital evidence. Avoid broad and wider scope which has high possibilities the case will be rejected as it considered a "fishing expedition".

Finally, contextualisation and corroboration with other evidence such as supporting evidence or expert witness testimony. This approach is able to preserve and strengthen the probative value and the reliability of digital evidence in civil litigation.

CONCLUSION

The *GIIB Holdings Berhad v Wong Weng Yew & Ors* [2025] decision represents a progressive and pragmatic stride by the Malaysian judiciary towards acknowledging and integrating digital evidence, particularly WhatsApp messages, into the fabric of civil litigation. This case unequivocally demonstrates the courts' increasing openness to compel the discovery of such communications when they are demonstrably

relevant and necessary for the fair and efficient resolution of disputes. The judgment signals a crucial adaptation to the pervasive role of digital communication in contemporary society, recognising that key insights into factual matrices often reside within these informal electronic exchanges.

However, the analysis in this paper underscores that while judicial receptiveness is growing, the effective handling of digital evidence remains replete with significant legal and practical challenges. The critical issues of authenticity, the susceptibility to manipulation, and the stringent certification requirements under Section 90A of the Evidence Act 1950 continue to demand meticulous attention. Furthermore, the nuanced distinction between the admissibility of digital evidence and the weight ultimately accorded to it by the court necessitates a sophisticated approach from legal practitioners.

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