

4. The owners were successful on their counterclaim.
5. The sum involved for costs was minimal—\$11,000-\$12,000.
6. The matters in issue did not “substantially affect the rights of one or more of the parties” as required by Section 38(5)(a).

## WHAT IS A QUESTION OF LAW

[1992] 2 NZLR 678

*GUS Properties Ltd v. Tower Corporation*

The rent review clause in a lease provided that in the event of disagreement between the parties as to the rent payable for the period under review, such dispute was to be determined by the arbitration of two valuers, one appointed by each party. A dispute arose and valuers were appointed as arbitrators. These valuers reached agreement upon some of the matters in dispute but were in disagreement upon other matters.

The parties then entered into an agreement to refer the outstanding matters in dispute to the arbitration of a lawyer who in due course handed down an award upon the matters referred to him.

It was sought to review the award for error of law on the face of the award. If however the parties had referred specific questions of law to the arbitrator then they were not reviewable for error of law on the face of the award. (The Kelantan Rule—*Government of Kelantan v. Duff Development Co. Ltd.* [1923] A.C. 395.) As Richardson J. stated:

“If the parties have asked the arbitrator to decide a specific question of law, in principle the answer is not amenable to review. In that case the proper inference is that the parties put the point of law to the arbitrator on the footing and intending that the arbitrator’s decision would be binding on them”.

It was a matter for the Court to construe the arbitration agreement to determine whether or not what was referred to the arbitrator were questions of law.

The Court of Appeal overturned the decision of the primary Judge and found that, on balance, specific questions of law were referred to the arbitrator for decision and therefore the award was not reviewable for error of law on the face of the award.

Under Section 38(1) of the uniform Commercial Arbitration Acts, an award can no longer be reviewed for error of law on its face. The decision however is still of relevance under the uniform Commercial Arbitration Acts since the Kelantan Rule may still be a relevant consideration for a Court in determining whether or not leave to appeal should be granted pursuant to Section 38(4)(b) of the uniform Commercial Arbitration Acts. (See “Appeals From Arbitration Awards” by S. P. Charles Q.C., *The Arbitrator*, Vol. 7, p. 105.)