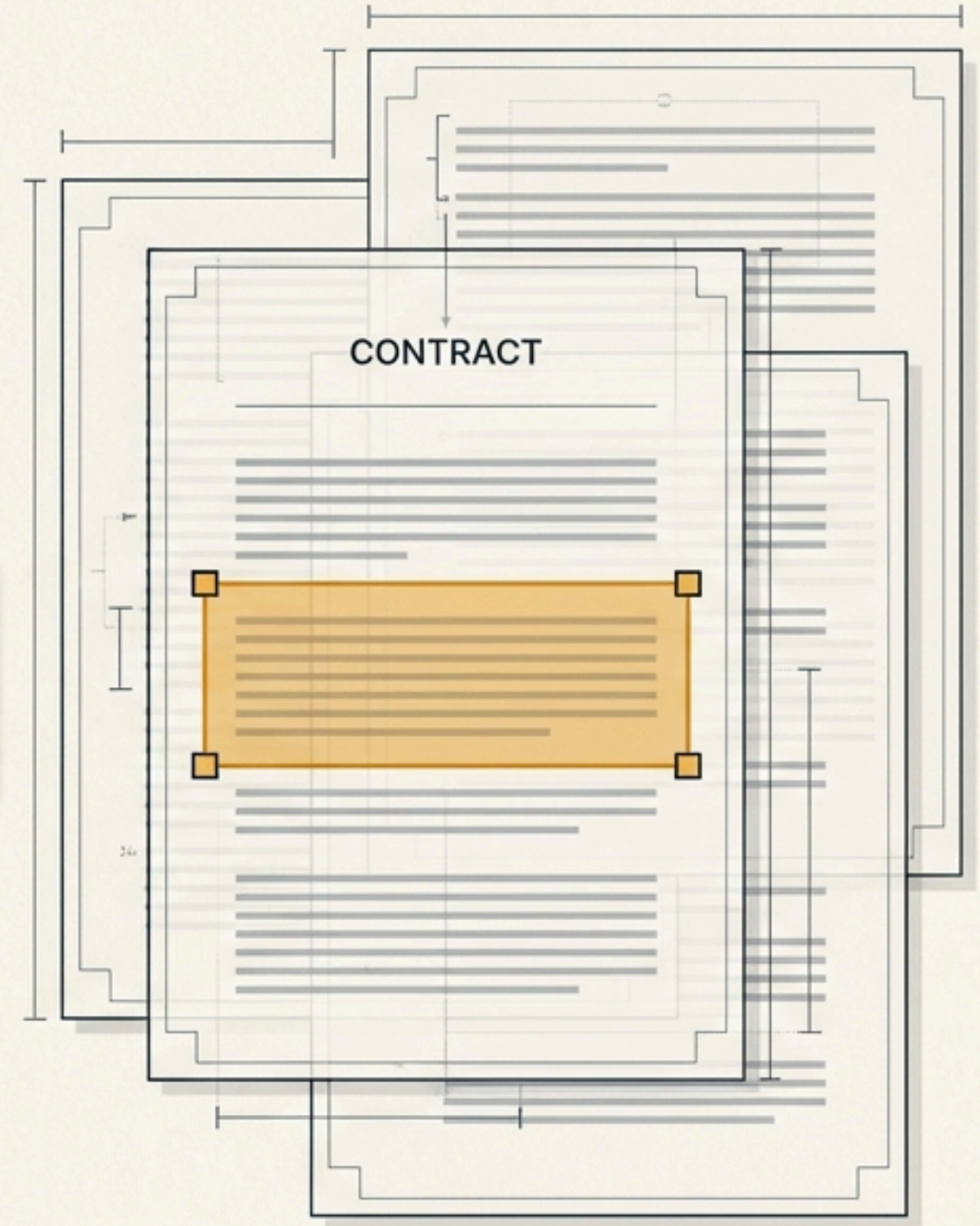


Substance Over Form: Decoding BASF Services v. Pemungut Duti Setem

A Case Study on Stamp Duty, Interlocking Contracts, and the 'Package Deal' Principle in Malaysia.

(Case Reference: 4 MLJ 596)



The RM 86 Million Disconnect

In 1997, BASF entered a multi-faceted Purchase, Sale, Development and Infrastructure Agreement with Perbadanan Kemajuan Negeri Pahang (PKNP).

The Declaration

BASF declared a property transfer value of:

RM 84.5M

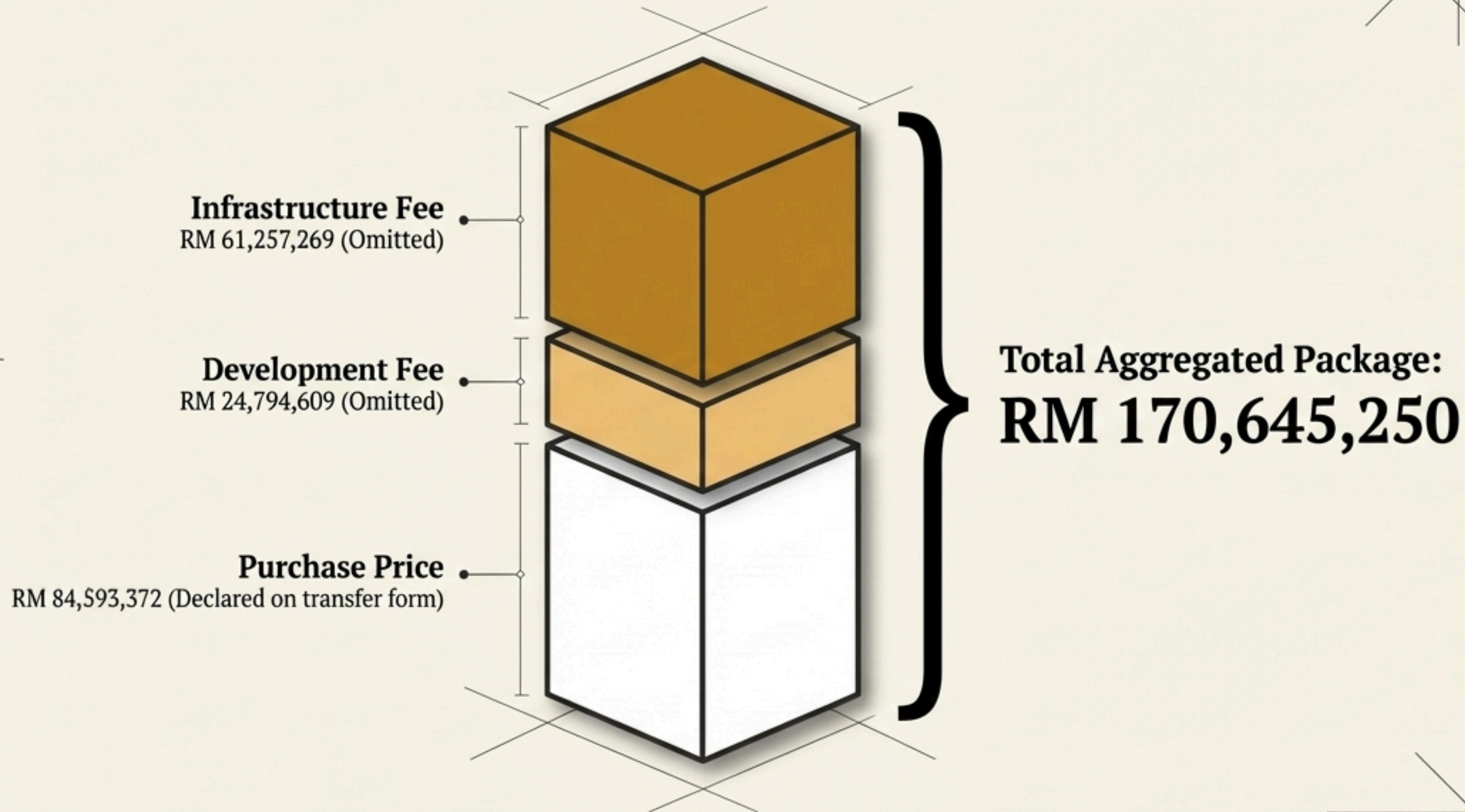
The Assessment

The Stamp Duty Collector assessed the transaction at:

RM 170.6M

The Stake: A disputed stamp duty bill of **RM 6,799,804**

Dissecting the Transaction Block



BASF's Justification:

The RM 61.2M Infrastructure fee was completely separate from the transfer. The works were carried out in the vicinity of the property, not physically on it.

Competing Legal Architectures

BASF
(The Appellant)

Stamp Duty Collector
(The Respondent)

The Transfer Form (Form 14A).

Relevant Instrument

The Main Agreement.

Independent works in the vicinity.
Completion of sale is entirely
separate from infrastructure.

The Infrastructure Fee

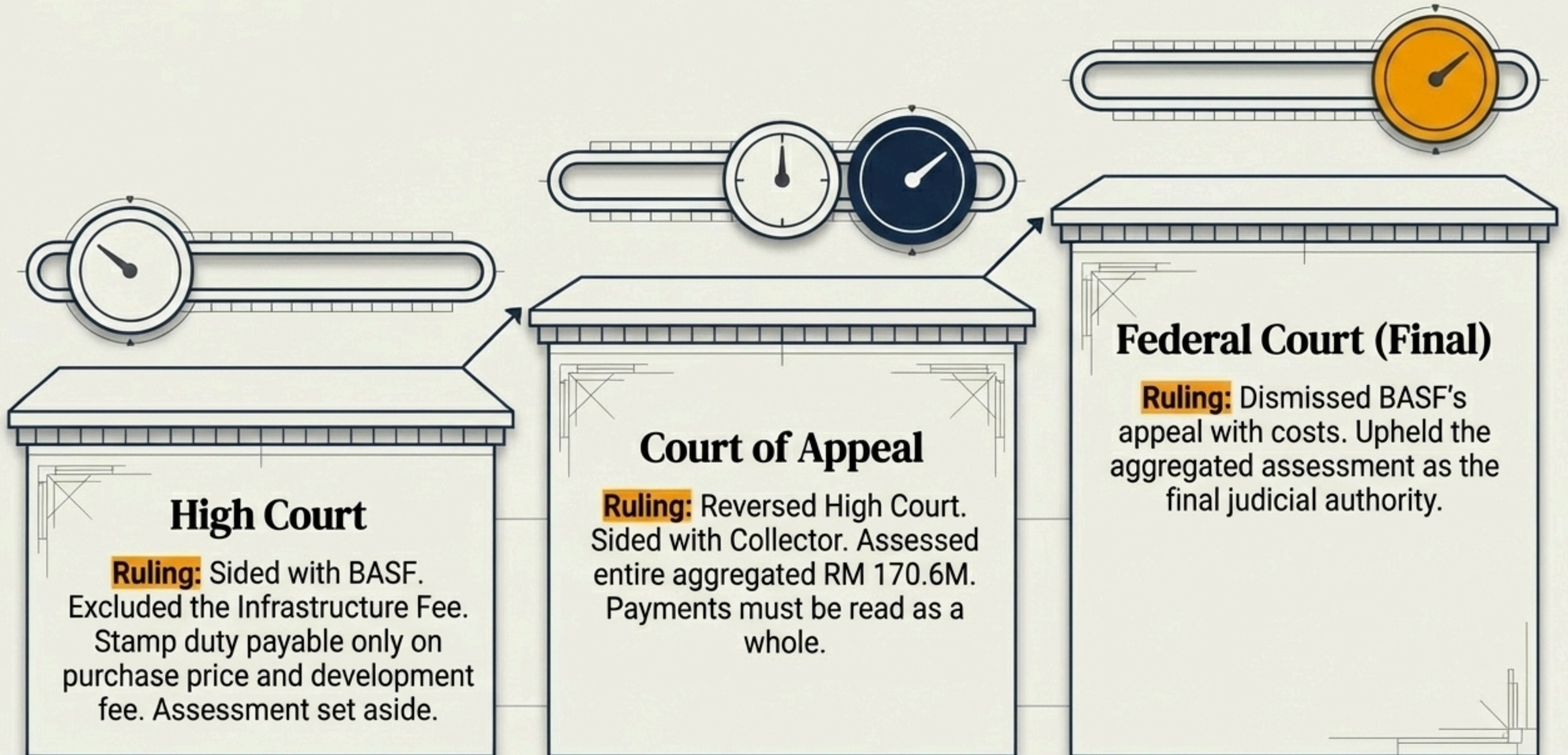
Part and parcel of the consideration
for the property transfer.

Severable, independent
agreements.

Nature of Transaction

Interlocked payments constituting
a single 'Package Deal'.

The Judicial Pendulum



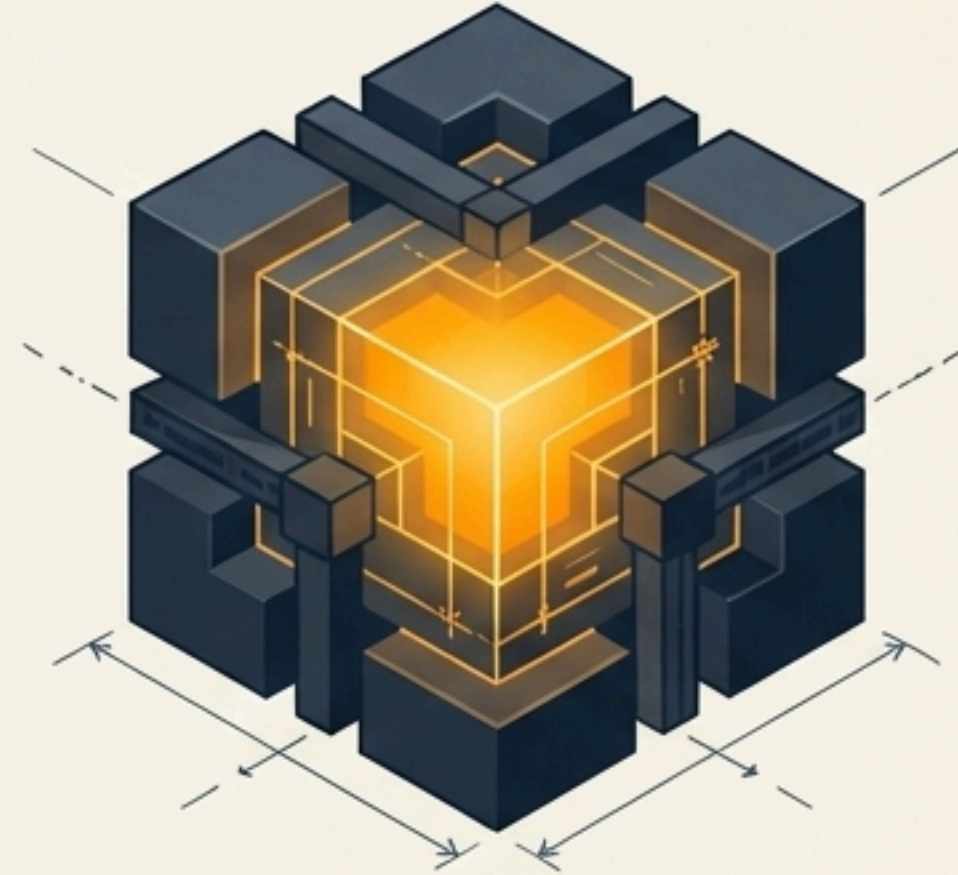
Federal Court Dissection I: A Nuanced Defeat

The Instrument (BASF Wins)



The Court agreed with BASF that the Transfer Form, not the Main Agreement, is the instrument attracting duty. The agreement was merely a contract to convey, not the actual transfer of title.

The Consideration (Collector Wins)



The Catch: Under item 32(a) First Schedule Stamp Act 1949, the consideration (value) attached to that transfer form must encompass the full, aggregated infrastructure fees.

Takeaway: Winning the debate on which document is taxed does not limit what value the court assigns to it.

Federal Court Dissection II: The 'Package Deal'



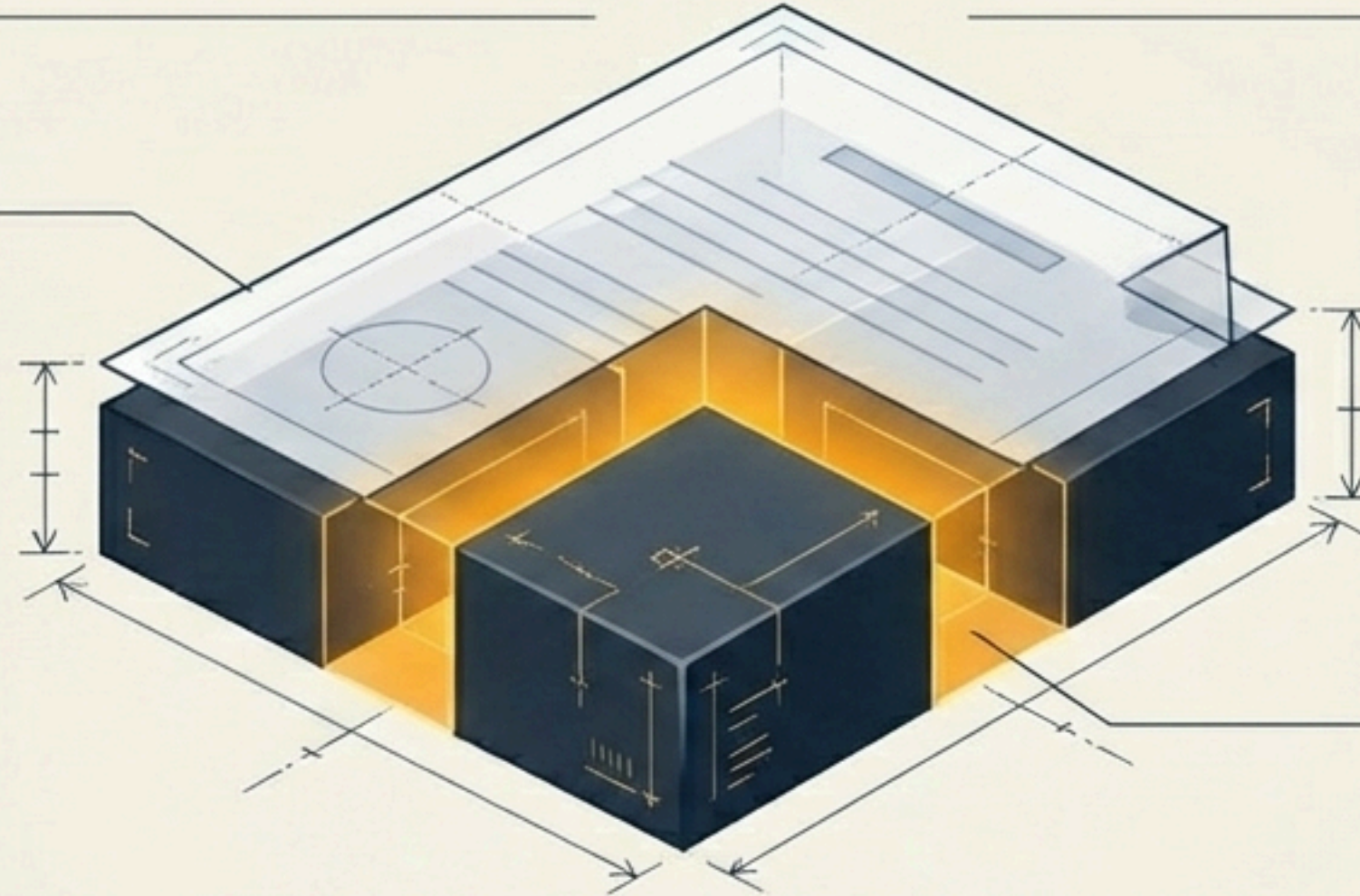
The Principle of Interlocked Interests

- **Bullet 1**
The agreement deliberately treated all three fees conjunctively as "The Price".
- **Bullet 2**
The infrastructure contract and the purchase price were deemed incapable of being genuinely independent.

The Judicial Conclusion
Splitting the fees was a deliberate attempt to suppress and dilute the total consideration to avoid paying the full, aggregated stamp duty.

Core Precedents for Corporate Structuring

Form
(The Label)



Substance
(The Action)

Principle 1: Substance Over Form

Courts look past the label. Stamp duty is levied on what an instrument actually does in its entirety, not just what it is titled.

Principle 2: The Gravity of Interlocking Interests

Multiple transactions combined within a single instrument risk being taxed as a 'whole package.' If components cannot survive independently, the court will aggregate the duty.

Author's Note: The Unmasked Question

The Strategic Miss: The courts were never asked if the development and infrastructure fees should be characterized strictly as services rather than a conveyance on sale.

Conveyance on Sale
Ad Valorem Rate:
Up to 4%

Services Agreement
Ad Valorem Rate:
~ 0.1%

Final Insight: For future transactions, structuring and arguing the fundamental nature of the fee—rather than just its independence—may be the critical battleground for tax efficiency.