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**STERILIZATION OF THE MENTALLY HANDICAPPED --
A COMPARATIVE LEGAL RESEARCH BETWEEN UNITED KINGDOM AND
MALAYSIA**

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The students/authors hereby confirm that the work submitted is their own and that appropriate credit has been given where references has been made to the work of others.

ABSTRACT

This research was conducted to highlight the vagueness of Malaysian law regarding sterilization especially on the mentally handicapped and to compare our law with that of the United Kingdom. We will also propose a solution to clarify the ambiguity in our law regarding this topic. Apart from that, the implied purpose of this research is to safeguard the mentally handicapped from the infringement of their rights. This topic was chosen because it had sparked our interest as it has never been brought up for discussion in Malaysia, while in the United Kingdom this topic had been quite a controversial subject. We hope that our research will shed some light as to clarify our laws with regards to the sterilization of the mentally handicapped people.

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CHAPTER 1: INTRODUCTION

1.0 Introduction

A mentally handicapped and epileptic 17-year-old girl who had the mental age of five or six is said to have no understanding of sexual intercourse and would not be able to cope with childbirth but it was found later that she was exhibiting a normal sexual inclination for someone of her physical age.¹ Expert evidence showed that it was very important that she should not be allowed to become pregnant.² This is because it would be a traumatic experience for her since her condition would mean that she would not be able to understand what is happening to her body should she get pregnant nor care for a child of her own.³ Therefore, the court came to the judgment that it is in the best interest of the girl to be sterilized in ensuring that she will not become pregnant, even without her consent.⁴

The above case is only one of the many cases of sterilization of the mentally handicapped that had been occurring in England. This kind of sterilization of the mentally handicapped gives rise to a medico-legal and ethical issue as they are incapable of giving consent. Mason and McCall Smith⁵ stated that the subject of non-consensual sterilization give rise to ‘a minefield of powerful objection’ as it ‘raises starkly the subject of what has been named the basic human right to reproduce.’ Sterilization of incompetent patients also raises profound ethical issues as it is inevitably linked with the practice carried out by the eugenics movements during the 1930s and 1940s carried out by the Nazis.⁶ Eugenics movement is a movement that carried out the horrific theory of ‘species could be improved or perfected by a cleansing of the gene pool through selective breeding.’⁷

¹ *Re B* (wardship: sterilization) [1988] 1 AC 199.

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*

⁵ Mason, J.K., and G.T. Laurie, *Law and Medical Ethics* (7th ed. United States: Oxford UP, 2006)

⁶ Stauch, Marc, Kay Wheat and John Tingle, *Sourcebook on Medical Law* (2nd Ed. Great Britain: Cavendish Publishing Limited, 2002)

⁷ *Ibid.*