

THE DEVELOPMENT IN THE
LAW OF NERVOUS SHOCK

BY

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PREFACE

The law of nervous shock as an area of tort has gone through tremendous change since the late 19th Century. This area of tort is yet to develop in this country although it is rapidly expanding in other common law countries particularly in England and Australia. The writer feels that there is a need to compile the subject for greater knowledge and understanding and for the benefit of students and lawyers.

The purpose of this paper is to trace the development until the existing principle propounded from the very recent case of MC LOUGHLIN V. O' BRIAN. This paper will deal with the difficulties faced by the courts and will forecast a change in judicial attitude where judges now tend to be more sympathetic towards "genuine" nervous shock victims.

Since the law is still at infant stage in Malaysia, this paper deals more with the development in the common law countries particularly in England and Australia. The paper also touch briefly the position in the United States.

The main source of this paper can be found in the reported cases in various law journals notably the King's Bench and the Queen's Bench Divisions. Articles on the subject were mainly obtained from the Modern Law Review and the Annual Survey of Commonwealth Law. The writer experienced few problems in the course of collecting materials. In main, the law is embodied in

decisions
judicial as there is no single legislation which deals directly with this area of law with exception to New South Wales, Australia. As such the writer relied heavily on reported cases and articles found in the various journals. With such a short time to complete the project and due to the difficulty in obtaining various law journals of other countries, the paper is limited only to the development in England, Australia and America.

The paper begins with the law of torts in Malaysia where the courts follow the English principles as there is no legislation on point. Chapter 2 deals with the evolution of the law relating to nervous shock in England, Australia and America. The development in Malaysia is briefly discussed. Chapter 3 deals with the difficulties frequently faced by the courts in dealing with nervous shock cases that is the question of area of physical risk. Chapter 4 touches on rescue cases which resulted in injury inflicted by nervous shock and Chapter 5 deals with the "aftermath doctrine" propounded from the very recent case of MC LOUGHLIN V. O'BRIAN. In the concluding Chapter the writer will round up the study by making comments and suggestions.

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