

PROFESSIONAL NEGLIGENCE OF DOCTORS

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PREFACE

There is no doubt that professional negligence is a matter of increasing concern to professionals and the public alike. It is unknown how often patients sue their doctors for negligence. These actions are likely to increase with the growing public reliance on health care services.

There is no statutory law for professional negligence and therefore the negligence of doctors is an area of law which is based on judicial decisions. It requires a detailed study of various cases to see how they have developed the law.

One important legal consequence of this has been the development of the law on medical negligence, particularly in the area of the standard of care owed by doctors to their patients. In this context, it is proposed to examine the obligations and liability of medical men in the various aspects of their work, and since the study is based on judicial decisions and not statutory law, the discussions will therefore be based primarily on cases.

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INTRODUCTION

Generally, the person who can be categorised as a medical practitioner is a person registered under the general Medical Council¹.

This medical practitioner owes liability in torts and contract to exercise the duty of care expected of an ordinary competent medical practitioner. He must exercise his duty with the ordinary degree of professional skill in his particular field. He will be liable in negligence if he fails to exercise such skill.

The word 'negligence' means an omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs would do or doing something which a prudent and reasonable man would not do².

A. The Nature Of Negligence

The main source of our law of tort is common law as opposed to the statute law. This signifies that, it is

¹Medical Act 1971 (Amendment 1980)

²Blyth v Birmingham Waterwork (1859) II Ex 781, per Alderson B at p. 784, also see Winfield on Torts.

for the most part based on decided cases. Therefore, its development is owed to the activity of the judges more than the activity of parliament.

The Law of Torts in Malaysia is based on the English Common Law. The authority for the reception of the Law in England into this country is provided under section 3 of the Civil Law Act 1956 (Revised 1972).

Section 3(1)(a) provides that:-

"Same so far as other provision has been made or may hereafter been made by any written law in force in Malaysia, the court shall apply the common law of England and the rules of equity as administered in England on the 7th day of April, 1956".

But the said common law and the rules of equity shall be applied only as the circumstances of the states of Malaysia and their respective inhabitants permit and subject to such qualifications as local circumstances render necessary³.

³Section 3, Civil Law Act 1956.