

**TAINED BLOOD TRANSFUSION IN HOSPITALS: A STUDY OF
THE LAW GOVERNING HOSPITAL'S, BLOOD BANK'S AND
BLOOD DONOR'S LIABILITY TOWARDS BLOOD RECIPIENTS**

by

Aznyda binti Yaakub (2005479196)

Azreen Syaheeda binti Hasnudin (2005478024)

Submitted in the partial fulfillment of the requirements for the degree of
Bachelor of Legal Studies (Hons)

**Universiti Teknologi MARA
Faculty of Law**

October 2007

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

ACKNOWLEDGMENTS

This research paper has been carried out by a team which has included Aznyda binti Yaakub and Azreen Syaheeda binti Hasnudin.

In the preparation of this project paper, we have accumulated a great many debts. We must first acknowledge our immense debt to Miss Nurnazida binti Nazri for being our supervisor who has provided us with guidance throughout the entire process of completing this project paper.

We would like to extend our gratitude to Madam Norha Abu Hanifah for her guidance in helping us prepare the proposal for the subject of Legal Research and Methodology.

Our sincere appreciation to Dr. Wan Hayati Yaakob, Hematologist from Pathology Unit and Madam Syarifah Halimah Syed Halim, a Medical Staff who are both from Hospital Tengku Ampuan Rahimah, Klang for aiding us in our medical research through an interview.

We would also like to thank Assoc. Prof Sue Valquis Mashor, a lecturer in Faculty of Law, UiTM Shah Alam, for her cooperation and knowledge shared with us regarding our research topic.

To Mr. Mohan Ramakrishnan, a legal practitioner from Ramakrishnan & Associates, we would like to express our greatest appreciation for his expert comments and advice during the series of correspondence and interviews conducted with him. His knowledge of the issue has assisted us tremendously regarding the legal issues of our research topic.

Last but not least, many thanks to those who were either directly or indirectly involved in providing their assistance to us in completing this research paper.

ABSTRACT

This research paper will discuss on current situation of tainted blood transfusions in Malaysia and the law governing this matter. We will look into the liability of the Hospitals, blood banks and the donors. We will also conduct both medical and legal researches to find out the real problem and means to solve them. Having regards to the present situation, we will discuss several cases which have taken place in Malaysia and also the relevant local laws pertinent to this matter. For example, the law on professional negligence as well as laws regarding the spreading of infectious diseases as provided in our local statutes.

As part of our research, we will conduct several interviews with different parties both from the medical as well as legal field to obtain information regarding this issue. An analysis of the interviews conducted will be provided. In addition, we will also conduct a comparative study between the laws relevant to this issue in other countries such as United States of America, Australia as well as India in comparison with our Malaysian law.

At the end of the research, we will provide recommendations and conclusion on the issue of blood transfusions.

TABLE OF CONTENTS

Acknowledgement	i
Abstract	ii
Table of Contents	iii
List of Cases	vi
List of Statutes	vii

CHAPTER ONE: INTRODUCTION

1.0	Introduction	1
1.2	Summary of Chapters	2
1.2	Problem Statement	3
1.3	Objective of Study	5
1.4	Methodology	5
1.5	Significance of Study	6

CHAPTER 2: TAINTED BLOOD TRANSFUSION IN MALAYSIA

2.0	Introduction	8
2.1	The Flow of the Blood Transfusion Procedure	8
2.2	Current Cases Pertaining to Tainted Blood Transfusions	9
2.3	Legislation on Tainted Blood Transfusion	11
2.4	Conclusion	13

CHAPTER 3: LITERATURE REVIEW

3.0	Introduction	14
3.1	Liability against Hospitals	14
3.2	Liability against Other Parties in Tainted Blood Transfusion Incidents	17
3.3	Liability of Blood Donors	20
3.4	Conclusion	20

CHAPTER FOUR: A COMPARISON OF THE VARIOUS LAWS CONCERNING LIABILITY FOR TAINTED BLOOD TRANSFUSION PROCEDURES

4.0	Introduction	21
4.1	Position in United States of America	21
4.2	Position in Australia	23
	4.2.1 Cases of Tainted Blood Transfusion in Australia	26
4.3	Position in India	27
	4.3.1 Cases of Tainted Blood Transfusion in India	27
4.2	Comparison of the Law	29
4.3	Conclusion	31

CHAPTER 5: ANALYSIS OF INTERVIEWS

5.0	Introduction	33
5.1	List of Interviewees	33
5.2	Analysis of Interviews	34
	5.2.1 Qualifications to be a Blood Donor	34
	5.2.2 Blood Collection and Screening Process	35
	5.2.3 Weaknesses in Blood Screening System	36
	5.2.4 Statistics of Reported Tainted Blood Transfusion Incidents in Malaysia	36
	5.2.5 Law on Regulation of Tainted Blood Transfusion Incidents in Malaysia	37
	5.2.6 Alternatives to Public Donated Blood	38
	5.2.7 Liability of Pusat Darah Negara in Tainted Blood Transfusion Incidents	39
	5.2.8 Comparison of Liability of Donors and Hospitals in Tainted Blood Transfusion Incidents	40
	5.2.9 Compensation for Victims of Tainted Blood Transfusion	41