

**PRINCIPLE OF CONSENT FOR ORGAN DONATION IN MALAYSIA**

By

Khairul Anuar b Abdul Hadi (2004644466)  
Nur Khalidah bt Dahlan (2004215779)  
Allycia Taidin (2004614578)

Submitted in Partial Fulfillment of the Requirements  
for the Bachelor in Legal Studies (Hons)

Universiti Teknologi MARA  
Faculty of Law

October 2006

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.

## ACKNOWLEDGEMENT

We would like to express our sincere appreciation and respect to Associate Prof. Ramlah Md. Noh for her guidance and consultation during our research on Principle of consent for organ donation in Malaysia. We would also like to express our gratitude to Dr. Lela Yasmin Mansor, a Consultant Anesthesiologist of the National Transplant Resource Centre for assistance on our project paper.

Thanks are due to Encik Zulharry Abdul Rashid; the legal advisor of the Ministry of Health for research support and cooperation in assisting our completion of the research work. We would like also to express our thanks to Puan Norha Abu Hanifah and Puan Nuraisyah Chua Abdullah for their support and comment during our completion on our proposal project paper last semester.

Appreciation also must be given to our other interviewers; Associate Prof. Sue Valquis, our lecturer who had taught us the Medical Law and Associate Prof. Dr. Mohd. Amin Bin Abdul Rahman, who had given some of his religion's views in terms of organ donation. Our very personal gratitude and love are expressed to our families and friends for their love, help and encouragement throughout this semester.

Finally, we thank God for everything.

**ABSRTACT**

Our Human Tissue Act 1974 is considered outdated and had not clearly stated whose lawfully possess the body of deceased should objection arises due to the consent given before. The term 'tissue' or 'death' or 'lawful in possession of a body' and 'the hierarchy of relatives deemed to be next of kin' also did not classify in the act.

This research will analyze the significance of consent. It looks into the view both medical ethic and morality. Our research is based on the qualitative methodology whereby apart from references to the books, article and journals we also conducted interview with several lectures and official expertise in this field.

This research is aim to answer the question on validity of consent given by the donor when there is an objection against the wishes of the deceased and to see whether our act is sufficient to cover organ donation.

The Human Tissue Act 1974 is the only main legislation in Malaysia. It is also consider being ambiguous. This research intends to make the Act become more specific and clear. As the Act mentioned only about cadaver donors, we hope that the terms of living donor also included in the Act.

## **TABLE OF CONTENTS**

ACKNOWLEDGEMENT	ii
ABSRTACT	iii
CONTENTS	iv
LIST OF CASES	vii

### **CHAPTER ONE: INTRODUCTION**

1.0 Background	1
1.1 Problem Statement	2
1.2 Research Questions	3
1.3 Research Objectives	3
1.4 Significance of Study	3
1.5 Limitation of Research	4
1.6 Methodology	4
1.7 Outline of Research	5
1.8 Conclusion	5

### **CHAPTER TWO: OVERVIEW OF THE PRINCIPLE OF CONSENT FOR ORGAN DONATION IN MALAYSIA**

2.0 Introduction	6
2.1 The Religious Point of View	8
2.2 Opting Out	9
2.3 The Ethical Issue	10
2.4 Brain Death	11

2.5 The Present Law at Malaysia: Human Tissue Act 1974	12
2.6 The Occurrence of Problem and Difficulties	14
2.7 The Hospital Policies	15

### **CHAPTER THREE: PRINCIPAL OF CONSENT**

3.0 Introduction of Consent	18
3.1 Element of Valid Consent	19
3.2 Issue of Consent for Incompetent Donor	20
3.3 Application of Principle of Consent under Human Tissue Act 2002 (United Kingdom)	24
3.4 Presumed Consent	25

### **CHAPTER FOUR: RESEARCH FINDING**

4.0 Introduction	27
4.1 The medical perspectives	30
4.2 The legal perspectives	34

### **CHAPTER FIVE: RECOMMENDATIONS AND SOLUTIONS**

5.0 Introduction	37
5.1 Presumed Consent as a Solution	37
5.1.1 Disadvantages	37
5.2 Education Awareness	38
5.2.1 Effective Campaign and Training	38
5.3 Amendment of Human Tissue Act 1974	39