

**MEDICAL NEGLIGENCE: PROTECTION FOR PATIENTS
IN MEDICAL CLAIMS**

BY

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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 works of others.

ABSTRACT

Medical negligence is defined as a claim against doctors or medical practitioners by the patients in regards to their misconduct. A claim in medical negligence is a traumatic experience for both doctors and patients. Since the *Bolam* principle was introduced in 1957, the tort of negligence applies an objective standard as a measure of professional conduct, and though it is known as ‘fault liability’, there is no necessary correlation between a finding that a doctor was negligent in law and a judgment that his conduct was morally blameworthy.

The burden of proof lies on the plaintiff. To succeed in his action, the plaintiff must show, first, that there was a breach of duty and second, that the damage flowed from that breach. But it has often been said that the legal concept of causation is not based on logic or philosophy. It is based on the practical way in which the ordinary man’s mind works in the everyday affairs of life.

Since the *Bolam* principle is no longer applicable in Malaysia, this study suggests a better protection for patients in medical claims. This is due to the fact that the previous laws being applied by the Malaysian Courts seemed not to be protecting the patients and their rights were jeopardized.

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TABLE OF CONTENT

Acknowledgement	ii
Abstract	iii
Content	iv
List of Cases	vii

CHAPTER ONE: INTRODUCTION

1.0 Introduction	1
1.1 Problem Statement	2
1.2 Objective of the study	3
1.3 Research Methodology	4
1.4 Limitation	5
1.5 Significant of Research/Study	5
1.6 Provisional Plan of Research	6

CHAPTER TWO: BOLAM PRINCIPLE: APPLICATION, DEVELOPMENT, PROBLEMS AND REJECTION

2.0 Introduction	7
2.1 Defining medical negligence	7
2.1.1 Duty of care	8
2.1.2 Standard of care	9
2.2 The Bolam Principle	9
2.3 The Application of the Bolam Principle	11
2.4 Development on Application of Bolam Principle in Medical Negligence claim	19
2.5 The Problem with the Bolam Principle	21

2.5.1	It is too General	21
2.5.2	It Protects Doctor	22
2.6	The Rejection of Bolam Principle	22
2.7	Impact of the Problems on Medical Negligence Claims	26
2.7.1	Quality of Doctors	26
2.7.2	Disadvantages	26
2.8	Conclusion	27

CHAPTER THREE: PROCEDURAL PROBLEMS IN MEDICAL NEGLIGENCE CLAIMS

3.0	Introduction	28
3.1	Funding the Claim	28
3.2	Limitation Period	29
3.3	Access to Health Records	31
3.4	Accountability Outside the Tort System	32
3.4.1	Malaysian Medical Council (MMC) Code of Professional Conduct	32
3.5	Pre-Action Discovery	32
3.6	Pre-Trial Discovery	34
3.7	The Expert Medical Witness	34
3.8	Damages and Compensation	36

CHAPTER FOUR: RECOMMENDATIONS AND CONCLUSION

4.0	Recommendations	38
4.01	Inclusion of New Provisions in Limitation Act 1953	38
4.02	Reforming the Current Law	38
4.03	Shifting the Burden of Proof	39
4.04	Right to Call an Expert Witness to be Determined by the Court	39
4.05	The Court must Determine Whether the Act of Doctors was one of Acceptable Act	40